

Recording Requested by
U.S. Bank National Association,
d/b/a Housing Capital Company

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12/22/2016 03:15 PM \$72.00
Book - 10514 Pg - 907-936
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: MSP, DEPUTY - WI 30 P.

And when recorded return to:
U.S. Bank National Association,
d/b/a Housing Capital Company
265 E. River Park Circle, Suite 460
Fresno, CA 93720
Attention: Loan Administration Manager
Loan No. 2459L, 2459B

APN: 27-19-183-005-0000, 27-18-381-002-
0000, 27-18-351-002-0000 and 27-18-151-
004-0000

CONSTRUCTION DEED OF TRUST
with Assignment of Leases and Rents,
Security Agreement and Fixture Filing

NOTICE: THIS DEED OF TRUST SECURES AN INDEBTEDNESS WHICH PROVIDES FOR A REVOLVING LINE OF CREDIT AND WHICH PROVIDES FOR A VARIABLE RATE OF INTEREST.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF *UTAH CODE ANNOTATED* §70A-9a-334(8) OR ANY SUCCESSOR STATUTE. THE PROCEEDS OF THE LOAN SECURED BY THIS DEED OF TRUST ARE TO BE USED BY TRUSTOR IN PART FOR THE PURPOSE OF FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF THE PROPERTY AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN

DOCUMENTS (AS HEREINAFTER DEFINED). TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THE PARTIES TO THIS DEED OF TRUST, made as of December 19, 2016, are VP Daybreak Operations LLC, a Delaware limited liability company ("**Trustor**"), First American Title Insurance Company, a Nebraska corporation ("**Trustee**"), and U.S. Bank National Association, d/b/a Housing Capital Company ("**Beneficiary**").

ARTICLE I. GRANT IN TRUST

1.1 **Grant**. For the purposes and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all that real property located in the County of Salt Lake, State of Utah, described on **Exhibit A** attached hereto (the "**Real Property**"), together with the following (all of which together with said Real Property, is referred to herein as the "**Subject Property**");

- (a) All appurtenances, easements, Water Rights (as hereinafter defined) rights and rights of way appurtenant or related thereto;
- (b) All buildings, other improvements and fixtures now or hereafter located thereon (the "**Improvements**");
- (c) All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on, the Real Property; together with all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and services marks arising from or related to the Real Property and any business conducted thereon by Trustor; together with all books, records and files, whether in tangible, electronic or other form, relating to any of the foregoing;
- (d) All sales contracts of any nature whatsoever now or hereafter executed covering any portion of the Real Property or Improvements, together with any modifications thereof, and also together with any and all deposits or other payments made in connection therewith (subject, however, to any applicable restrictions imposed by law);
- (e) All permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Real Property or

Improvements, including warranties and guaranties, and all deposits made with or other security given to utility companies and governmental agencies with respect to the Real Property or Improvements, and all of Trustor's funds held back or escrowed for completion of off-site improvements in the vicinity of the Real Property or Improvements;

- (f) All rights of Trustor under any construction contracts and subcontracts, architects' and engineers' contracts, plans, specifications and drawings for the Improvements;
- (g) All rights of Trustor as declarant under any Declaration affecting any of the Real Property;
- (h) All insurance policies (and unearned premiums thereon) pertaining to the Subject Property, whether or not required to be carried by the terms of the Loan Documents, and all proceeds thereof;
- (i) Any evidence of title to the Subject Property provided by Trustor to Beneficiary;
- (j) Any bank account(s) into which proceeds of the Secured Obligations as defined below are deposited by Beneficiary for the benefit of Trustor; and
- (k) All interest or estate which Trustor may hereafter acquire in the property described above, and all replacements, proceeds, additions and accretions thereto. The listing of specific rights or property shall not be interpreted as a limit of general terms.
- (l) Notwithstanding anything to the contrary contained in Section 1.1 (a) through (k) herein, these provisions do not include (the "***Disclaimed Collateral***") equipment, inventory or other tangible personal property owned by the Borrower located on or within the Subject Property, provided that such Disclaimed Collateral does not include, and is not a disclaimer of, a security interest in all building materials and supplies to be used for construction, alteration or repair of any building located or to be located on the Subject Property, all fixtures and all as-extracted collateral such as oil, gas or other minerals, or timber to be cut owned by Trustor.

- 1.2 **Address.** The address of the Subject Property has not yet been established, however, the failure to designate an address shall not affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on **Exhibit A**.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **Obligations Secured.** Trustor makes this grant and assignment for the purpose of securing the following obligations ("***Secured Obligations***"):

- (a) Payment to Beneficiary of all sums at any time owing under a revolving promissory note ("**Revolving Note**") of even date herewith, in the maximum principal amount of FIFTEEN MILLION AND NO/100 DOLLARS (\$15,000,000.00) executed by Trustor and each of Daybreak Communities LLC, a Delaware limited liability company ("**Daybreak Communities**"), VP Daybreak Investments LLC, a Delaware limited liability company ("**Daybreak Investments**"), and VP Daybreak Soda Row LLC, a Delaware limited liability company ("**Daybreak Soda Row**") (Trustor, Daybreak Communities, Daybreak Investments and Daybreak Soda Row are sometimes referred to herein, individually and collectively, as "**Borrower**"), jointly and severally as Borrower, and payable to the order of Beneficiary as Lender, under which Beneficiary has agreed to make advances to Borrower, which advances will be of a revolving nature and may be made, repaid and remade from time to time, subject to the limitation that the total outstanding principal balance at any one time under said Revolving Note (not including interest thereon at a rate which will be adjusted from time to time pursuant to the terms of said Revolving Note, and any late charges, collection costs and other charges under said Revolving Note or advances hereunder) will not exceed the maximum principal amount stated above; and
- (b) Payment to Beneficiary of all sums at any time owing under a promissory note ("**Term Note**," and, together with the Revolving Note, collectively, the "**Note**") of even date herewith, in the principal amount of THIRTY MILLION AND NO/100 DOLLARS (\$30,000,000.00) executed by Trustor and each of Daybreak Communities, Daybreak Investments and Daybreak Soda Row, jointly and severally as Borrower, and payable to the order of Beneficiary as Lender, under which Beneficiary has agreed to make a term loan to Borrower; and
- (c) Payment and performance of all obligations of Trustor under this Deed of Trust and under any and all future deeds of trust which state that they are future phase deeds of trust on or adjacent to the Subject Property; and
- (d) Payment and performance of all obligations of Borrower under a revolving loan agreement ("**Revolving Loan Agreement**") of even date herewith by and between Borrower, and Beneficiary, as "Lender" and any and all other "Loan Documents" (as defined in the Revolving Loan Agreement); provided, for clarity, that this Deed of Trust does not secure the obligations of Borrower under that certain Hazardous Materials Indemnity Agreement of approximately even date herewith; and
- (e) Payment and performance of all obligations of Borrower under a loan agreement ("**Term Loan Agreement**," and, together with the Revolving Loan Agreement, individually and collectively, the "**Loan Agreement**") of even date herewith by

and between Borrower, and Beneficiary, as "Lender" and any and all other "Loan Documents" (as defined in the Term Loan Agreement); provided, for clarity, that this Deed of Trust does not secure the obligations of Borrower under that certain Hazardous Materials Indemnity Agreement of approximately even date herewith; and

- (f) Payment and performance of all obligations, if any, which any rider attached as an Exhibit to this Deed of Trust recites are secured hereby; and
- (g) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
- (h) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

As used herein, "***Loan Document***" means each document defined as a "Loan Document" in the Revolving Loan Agreement and/or the Term Loan Agreement.

Notwithstanding the amount outstanding under said Note at any particular time, this Deed of Trust secures the total amount of said Note and any future advances thereon. The unpaid balance of the revolving line of credit under the Revolving Note may at certain times be zero dollars. A zero balance does not affect Beneficiary's agreement to make advances to Borrower under said Revolving Note. Beneficiary's interest under said Revolving Note and any other Loan Document will remain in full force and effect notwithstanding a zero balance under said Revolving Note.

- 2.2 **Obligations.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.
- 2.3 **Incorporation.** All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Revolving Note or the Revolving Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the

amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **Assignment.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all leases of the Subject Property (to the extent any leases are entered into), all licenses and agreements relating to the management, leasing or operation of the Subject Property and all other agreements of any kind relating to the use or occupancy of the Subject Property, whether now existing or entered into after the date hereof ("***Leases***"); and (b) the rents, issues and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("***Payments***"). The term "***Leases***" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.
- 3.2 **Grant of License.** Beneficiary confers upon Trustor a license ("***License***") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.
- 3.3 **Effect of Assignment.** The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; (ii) the

failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

- 3.4 **Representations and Warranties.** Trustor represents and warrants that, except as disclosed in writing to Beneficiary prior to the date hereof: (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases; and (b) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (c) none of the lessor's interests under any of the Leases has been transferred or assigned.
- 3.5 **Covenants.** Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Beneficiary prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) deliver to Beneficiary fully executed copies of each and every Lease if requested to do so; and (d) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance reasonably acceptable to Beneficiary, as Beneficiary may reasonably request. Except with Beneficiary's prior written consent, or as otherwise permitted by any provision of the Loan Agreement, Trustor shall not: (i) enter into any Leases after the date of this Assignment; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Subsection shall be null and void.
- 3.6 **Estoppel Certificates.** Within thirty (30) days after request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and by each of the applicable lessees (to the extent reasonably practicable), in recordable form, certifying (if such be the case): (i) that the foregoing assignment and the Leases are in full force and effect; (ii) the date of each lessee's most recent payment of rent; (iii) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (iv) any other information reasonably requested by Beneficiary.
- 3.7 **Utah Uniform Assignment of Rents Act.** This Article 3 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. § 57-26-101 et seq. (the "*Utah Act*"), and in the event of any conflict or inconsistency between the provisions of this Article 3 and the

provisions of the Utah Act, the provisions of the Utah Act shall control and Beneficiary shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **Security Interest.** Trustor hereby grants and assigns to Beneficiary as of the “Effective Date” (defined in the Term Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the Subject Property which is or may be held to be personal property and in which Trustor now or at any time hereafter has any interest (“*Collateral*”). As to all of the Subject Property which is or which hereafter becomes a “fixture” under applicable law, this Deed of Trust is to be recorded in the real property records and filed as a fixture filing under Sections 9a-334 and 9a-502 of the Utah Uniform Commercial Code, as amended or recodified from time to time (“*UCC*”), and is acknowledged and agreed to be a “construction mortgage” under Section 9a-334(8) of the UCC.
- 4.2 **Representations and Warranties.** Trustor represents and warrants that as of the effective date as defined in the Term Loan Agreement: (a) Trustor has good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, except as described in the Loan Agreement, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Trustor’s principal place of business is located at the address specified herein.
- 4.3 **Rights of Beneficiary.** In addition to Beneficiary’s rights as a “Secured Party” under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary’s rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC Sections 9a-620 and 9a-621, or other applicable law.
- 4.4 **Rights of Beneficiary on Default.** Upon the occurrence of a Default as defined in Section 6.1 under this Deed of Trust, then in addition to all of Beneficiary’s rights as a “Secured Party” under the UCC or otherwise by law or under this Deed of Trust:
- (a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Real Property, the

Improvements or any other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and

- (b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect, by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC Sections 9a-620 and 9a-621, or other applicable law.

- 4.5 **Power of Attorney.** Upon ten (10) business days' notice of the necessity of a power of attorney, Trustor will irrevocably appoint Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.
- 4.6 **Possession and Use of Collateral.** Except as otherwise provided in this Section or the other Loan Documents, so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **Title.** Trustor warrants that Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Deed of Trust is a lien on the Subject Property subject only to those liens and encumbrances in the Title Policy (as defined in the Loan Agreement).

- 5.2 **Taxes and Assessments.** Subject to Trustor's rights to contest payment of taxes as may be provided in the Loan Agreement, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 5.3 **Tax and Insurance Impounds.** If Trustor should fail to pay taxes and/or insurance premiums prior to delinquency, then at Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (i) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (ii) premiums for any and all insurance required by the Loan Agreement next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation; Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto. Within thirty (30) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.
- 5.4 **Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation when due.

5.5 **Liens, Encumbrances and Charges.** Trustor shall immediately discharge any lien other than non-delinquent taxes or assessments not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber all or any part of the Subject Property or any interest therein, whether senior or subordinate hereto.

5.6 **Damages; Insurance and Condemnation Proceeds.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property; (iii) all insurance proceeds that become payable by reason of loss sustained to all or any part of the Subject Property, under all insurance policies that are subject to the assignment in Section 1.1(h) above; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and subject to the provisions of Section 5.6(b) may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may reasonably commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

(b) Notwithstanding anything in Section 5.6(a) Beneficiary shall permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration provided all of the following have been satisfied: (i) the deposit with Beneficiary of such additional funds, if any, which Beneficiary reasonably determines are needed to pay all cost of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds reasonably acceptable to Beneficiary; (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor reasonably acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be reasonably acceptable to Beneficiary; (iv) such reasonable conditions as set forth in the Loan

Agreement; and (v) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that upon completion of the work, the size, capacity and total value of the affected Subject Property will be at least as great as it was before the damage or condemnation occurred; (bb) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (cc) of satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable.

- 5.7 **Maintenance and Preservation of the Subject Property.** Subject to the provisions of the Loan Agreement, Trustor covenants: (a) to insure the Subject Property against such risks as Beneficiary may reasonably require and to comply with the requirements of any insurance companies insuring the Subject Property; (b) to keep the Subject Property in good condition and repair; (c) except with Beneficiary's prior written consent, not to remove or demolish the Subject Property or any part thereof, not to alter, restore or add to the Subject Property (except as expressly provided for in the Loan Agreement) and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property; (d) to repair or restore, promptly and in good and workmanlike manner, the Subject Property or any part thereof which may be damaged or destroyed, provided that, any insurance or condemnation proceeds paid out as a result of such damage or destruction shall be made available to Trustor for such purposes if Trustor satisfies the requirements pertaining thereto as set forth above in Section 5.6(b); (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to knowingly commit or permit waste of the Subject Property; (g) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value; (h) not to knowingly make any use of the Subject Property which would invalidate any insurance thereon which Trustor is required to carry pursuant to the Loan Agreement; and (i) not to construct any improvements on the Real Property, except those described in the Loan Agreement.
- 5.8 **Defense and Notice of Losses, Claims and Actions.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and title to and right of possession of the Subject Property, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property, of any condemnation offer or action actually made or filed, and of any Default hereunder, or any event which will become a Default hereunder after notice and/or expiration of any cure period.

5.9 **Acceptance of Trust; Powers and Duties of Trustee.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Trustee may, without liability therefor and without notice: (i) reconvey all or any part of the Subject Property; (ii) consent to the making of any lot line adjustment map or plat thereof; and (iii) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability or expense.

5.10 **Compensation; Exculpation; Indemnification.**

- (a) Trustor shall pay upon demand Trustee's fees and reimburse Trustee for necessary expenses in the administration of this trust, including reasonable attorneys' fees, together with interest at the "Default Rate" (as defined in the Note) from the date funds were spent. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Subject Property after a default or from any other act or omission of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.
- (b) Trustor indemnifies Trustee, Beneficiary and their respective directors, officers, employees, agents, successors and assigns (including without limitation any participants in the loan secured hereby) against, and holds Trustee, Beneficiary and their respective directors, officers, employees, agents, successors and assigns (including without limitation any participants in the loan secured hereby) harmless from, all losses, damages, liabilities, claims, causes of action,

judgments, fines, penalties, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which they may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations; (iv) by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained herein or in any other document related to the Subject Property; (v) as a result of the construction of or any failure to construct the Improvements; (vi) as the result of any negligence or intentional wrongful act or omission of Trustor; or (vii) as the result of any death, personal injury or bodily injury occurring on or about the Real Property, except with respect to all of the above for Beneficiary's own gross negligence or willful misconduct. The above obligation of Trustor to indemnify and hold harmless shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust.

- (c) Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest applicable to the principal balance of the Note as specified therein.

5.11 **Substitution of Trustees.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth a description of this Deed of Trust, including recording information and information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.

5.12 **Transfer or Encumbrance of Property by Trustor.** Trustor acknowledges that: (a) the financial stability, development expertise and managerial and marketing ability of Trustor were and are a substantial and material consideration to Beneficiary and, in reliance thereon, Beneficiary has agreed to make the loan to Borrower evidenced by the Loan Documents; and (b) the transfer of the Subject Property except in accordance with the Loan Agreement or a change in the person or entity constructing and developing the Subject Property may significantly and materially alter or reduce Beneficiary's security for the Note. Accordingly, as a material inducement to Beneficiary to enter into the transactions contemplated by the Loan Documents, Trustor shall not transfer the Subject Property or any portion thereof or interest therein, other than in accordance with the terms and conditions of the Loan Documents, without the prior written consent of Beneficiary, except as may be specifically permitted elsewhere herein. Beneficiary may

grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Deed of Trust, and any transferee shall assume all of Trustor's obligations hereunder and agree to be bound by all provisions and perform all obligations contained herein. In the event of any such transfer without the written consent of Beneficiary, Beneficiary may, at its option, without demand or notice, declare all sums secured hereby immediately due and payable. Consent to one such transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers. As used herein, "transfer" shall mean (i) the sale, agreement to sell, transfer or conveyance of the Subject Property, or any portion thereof or interest therein, including, without limitation, air rights and development rights, whether voluntary, involuntary, by operation of law or otherwise, or the lease of all or substantially all of the Subject Property, but shall not include the conveyance of easements or licenses reasonably necessary for the development of the Subject Property in compliance with the Loan Agreement, the repair or replacement of any Collateral in the ordinary course of business or the sale and transfer of the Subject Property or any portion thereof in accordance with the Loan Agreement; (ii) any transfer by way of security, including the placing or permitting the placing on the Subject Property of any mortgage, deed of trust, assignment of rents or other security device; and (iii) if Trustor, or any person owning directly or indirectly through one or more entities any interest in Trustor (individually and collectively a "*Principal*"), is a partnership, joint venture, trust, closely-held corporation or other entity, the issuance, sale, conveyance, transfer, disposition or encumbering of more than twenty percent (20%) of any class of the currently issued and outstanding stock or other beneficial interest of Trustor, or any Principal or a change of any general partner or any joint venturer of Trustor or any Principal, either voluntarily, involuntarily, or otherwise. For purposes of this section, "closely-held corporation" shall mean any corporation not listed on a national or regional stock exchange.

- 5.13 **Releases, Extensions, Modifications and Additional Security.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under the Secured Obligations ("*Interested Parties*"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Subject Property.
- 5.14 **Reconveyance.** Upon Beneficiary's written request, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither

Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.

- 5.15 **Subrogation.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.
- 5.16 **Right of Inspection.** Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Trustor's compliance with the terms hereof.
- 5.17 **Water Rights.**
- (a) Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Salt Lake, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Deed of Trust.
 - (b) Trustor shall promptly provide Beneficiary with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

As used in this Deed of Trust, "***Water Rights***" in addition to any foregoing meaning assigned in this Deed of Trust, means and includes those certain 8,679 Class A shares ("***Water Shares***") of the capital stock of Daybreak Water Company, a Utah nonprofit corporation ("***Water Company***") held by Trustor, as well as all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Real Property, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor; subject to the assignment to Beneficiary set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the State Engineer's approval of any application filed by Trustor to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all

estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

5.18 Mechanic's Liens; State Construction Registry.

- (a) Trustor agrees to promptly pay all bills for labor and materials incurred in connection with the Subject Property and to prevent the fixing of any lien against any part of the Subject Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Trustor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.
- (b) Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Real Property in the State Construction Registry in accordance with Utah Code Ann. § 38-1a-201. Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Subject Property that are included in the State Construction Registry and/or received by Trustor.
- (c) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary by Trustor in writing. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Real Property or recorded against the Real Property.
- (d) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Utah Code Ann. § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

- (e) Trustor shall cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by Utah Code Ann. § 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Real Property secured hereby, the address of the Real Property, and the county in which the Real Property is located.
- (f) Trustor shall cause, as a condition precedent to the closing of the Loan, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Subject Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.
- (g) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Subject Property, or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Real Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien as permitted under the Loan Agreement, so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Ann. § 38-1a-804 and otherwise complies with the requirements of Utah Code Ann. § 38-1a-804 to release the Subject Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Ann. § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as permitted under the Loan Agreement.
- (h) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by

paying the amount claimed to be due or by procuring the release of the Real Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account of Trustor and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by Utah Code Ann. § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **Default.** For all purposes hereof, the term “***Default***” shall mean (a) the failure of Trustor to perform any material obligation hereunder, or the failure to be true of any material representation or warranty of Trustor contained herein, and the continuance of such failure for ten (10) business days after notice, or within any longer grace period, if any, allowed in the Loan Agreement for such failure, subject to any right the Trustor may have under the Loan Agreement to commence the cure of any breach or default and diligently pursue such cure to completion within the time frames established therein, or (b) the existence of any Default as defined in the Note, the Loan Agreement or any other Loan Document.
- 6.2 **Rights and Remedies.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:
- (a) Within ten (10) business days notice, to declare all Secured Obligations immediately due and payable;
 - (b) Within ten (10) business days notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deems reasonably necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons;

- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;
- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to collect all rents, income and profits therefrom, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property pertaining to Trustor and/or the Subject Property, to make, terminate, enforce or modify leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, and to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's reasonable judgment, to protect or enhance the security hereof;
- (f) To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine (but subject to Trustor's statutory right under Utah Code Ann. § 57-1-27 to direct the order in which the Subject Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Ann. § 57-1-27. Trustee shall deliver to the purchaser at such sale a Trustee's Deed, in accordance with Utah Code Ann. § 57-1-28, conveying

conveying the Subject Property or portion thereof 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 Trustee, Trustor or Beneficiary may purchase at the sale;

- (g) Upon any sale made under or by virtue of this Section 6.2, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Subject Property, whether by payment of cash or by credit bid in accordance with Utah Code Ann. § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the Secured Obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Subject Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws;
- (h) To suspend or terminate, at its option, its obligation to make further disbursements under the Loan Agreement; and
- (i) To exercise any other rights or remedies available to Beneficiary at law, in equity, by statute or otherwise.

If Beneficiary spends its funds in exercising any of its rights or remedies hereunder, the amount of funds spent shall be payable to Beneficiary upon demand, together with interest at the Default Rate from the date the funds were spent.

At any sale of the Subject Property held pursuant to Section 6.2(c) or Section 6.2(f) above, Beneficiary may bid, as the equivalent of cash, the amount of all or any of the Secured Obligations, including, without limitation, attorneys' fees.

- 6.3 **Application of Foreclosure Sale Proceeds.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale, Trustee shall apply all proceeds of any foreclosure sale as follows:

FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed.

SECOND: To payment of the Secured Obligations secured by the Deed of Trust.

THIRD: The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with, in accordance with Utah Code Ann. § 57-1-29 or any successor provision of law.

- 6.4 **Application of Other Sums.** All sums received by Beneficiary under Section 3.2 or Section 6.2, less all reasonable costs and expenses incurred by Beneficiary or any receiver under Section 3.2 or Section 6.2, including, without limitation, reasonable attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5 **No Cure or Waiver.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other Defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.
- 6.6 **Payment of Costs, Expenses and Attorney's Fees.** Trustor agrees to pay to Beneficiary immediately and without demand all reasonable costs and expenses incurred by Trustee and Beneficiary pursuant to subparagraphs (a) through (g) inclusive of Section 6.2 (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not and also including, without limitation, fees and costs in any action intended to protect Beneficiary's interests or security in any bankruptcy case in which Trustor or any of its affiliates is a debtor) with interest from the date of expenditure until said sums have been paid, at the rate applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any reasonable attorneys' fees.
- 6.7 **Power to File Notices and Cure Defaults.** Upon the occurrence of a Default, Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of

time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

- 6.8 **Restoration of Position.** In case Beneficiary shall have undertaken to enforce any right under this Deed of Trust by foreclosure, sale, entry or otherwise, and such undertaking shall have been discontinued or abandoned for any reason or shall have been determined adversely to Beneficiary, then and in every such case Trustor, Trustee and Beneficiary shall be restored to their former positions and rights hereunder with respect to the Subject Property, and all rights, remedies, powers and security of Beneficiary and Trustee shall continue in full force and effect, as if no such proceedings had ever been initiated.
- 6.9 **Evidence of Title.** In the event of the occurrence of any Default under this Deed of Trust, Beneficiary may procure evidence of title to the Subject Property, including but not limited to an abstract of title or continuation thereof or a title insurance policy or commitment therefor or extension thereof, covering the Real Property, and/or chattel lien searches covering any of the remainder of the Subject Property, all at the sole cost and expense of Trustor, and, in case action is commenced to foreclose this Deed of Trust or to sell the Subject Property, Trustor agrees that, in addition to the reasonable attorneys' fees of Beneficiary (prior to trial, at trial and on appeal), it will pay any court costs which may be incurred in connection therewith. The reasonable costs of any such abstract of title, continuation, title insurance policy, commitment or extension, and chattel lien searches, and all of such court costs and reasonable attorneys' fees, together with interest thereon at the highest Default Rate (as that term is defined in the Note) applicable under any Note from the date incurred, shall be charged and added to the indebtedness secured hereby and shall be payable on demand.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **Additional Provisions.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and such further rights and agreements are incorporated herein by this reference.
- 7.2 **Merger.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing.

- 7.3 **Obligations of Trustor, Joint and Several.** If more than one person has executed this Deed of Trust as “Trustor”, the obligations of all such persons hereunder shall be joint and several.
- 7.4 **Recourse to Separate Property.** Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person’s separate property, and any community property of which that person is a manager.
- 7.5 **Waiver of Marshalling Rights.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property, hereby waives all rights to have the Subject Property and/or any other property which is now or later may be security for any Secured Obligation (“***Other Property***”) marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.6 **Rules of Construction.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term “***Subject Property***” means all and any part of the Subject Property and any interest in the Subject Property.
- 7.7 **Successors in Interest.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive the provisions of Section 5.12.
- 7.8 **Incorporation.** **Exhibit A** is attached and is are hereby incorporated into this Deed of Trust by this reference.
- 7.9 **Addresses; Request for Notice.** Notice to Beneficiary shall be sent to Beneficiary addressed to: **U.S. Bank National Association, d/b/a Housing Capital Company**, 265 E. River Park Circle, Suite 460, Fresno, CA 93720, Attn: Loan Administration Manager, Loan #2459L, 2459B. Any Trustor whose address is set forth below hereby requests that a copy of notice of default and notice of sale be mailed to him at that address. Failure to insert an address shall constitute a designation of Trustor’s last known address as the address for such notice. Correspondence to Trustee shall be addressed to: First American Title Insurance Company, 215 South State Street, Suite 280, Salt Lake City, UT 84111.
- 7.10 **Addresses.** All notices, demands, or other communications under this Deed of Trust shall be in writing and shall be delivered to the appropriate party at the address set forth below

Loan No. 2459L, 2459B

(subject to change from time to time by written notice to all other parties to this Deed of Trust). All communications shall be deemed served upon delivery of, or if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address of Trustor, Trustee or Beneficiary at the address specified; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. The addresses of the Beneficiary, Trustor, and Trustee are as follows:

Beneficiary: U.S. Bank National Association,
d/b/a Housing Capital Company
265 E. River Park Circle, Suite 460
Fresno, CA 93720
Attn: Loan Administration Manager
Loan # 2459L, 2459B

Trustor: VP Daybreak Operations LLC
c/o Daybreak Communities
4700 Daybreak Pkwy
South Jordan, UT 84009
Attn: Ty McCutcheon

With a copy to:

c/o Värde Partners, Inc.
901 Marquette Ave S. Suite 3300
Minneapolis, MN 55402
Attn: Legal Department

Trustee: First American Title Insurance Company
215 South State Street, Suite 280
Salt Lake City, UT 84111

7.11 State-Specific Provisions. In the event of any conflict between the provisions of this Section 7.11 and any other provisions of this Deed of Trust, the provisions of this Section 7.11 shall govern and control the agreement of the parties.

- (a) For purposes of Utah Code Ann. § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Subject Property, and (ii) Trustor may add all default interest, late charges, prepayment premiums, swap breakage fees

and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

- (b) Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Ann. § 57-1-32 or other applicable law. Trustor agrees for purposes of Utah Code Ann. § 57-1-32 that the value of the Subject Property as determined and set forth in an FIRREA appraisal of the Subject Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Subject Property for purposes of Utah Code Ann. § 57-1-32.
- (c) If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Subject Property, reinstates this Deed of Trust within three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Ann. § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.
- (d) Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Ann. § 78B-6-901 (formerly Utah Code Ann. § 78-37-1) and Utah Code Ann. § 57-1-32 and any successor or replacement statute or any similar laws or benefits.
- (e) In the event of any amendment to the provisions of Utah Code Annotated Title 57 or other provisions of Utah Code Annotated referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.
- (f) For purposes of Utah Code Ann. § 57-1-25 and Utah Code Ann. § 78B-6-901.5, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.
- (g) It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the UCC, Beneficiary, upon an Event of Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal

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property interests as one parcel or package of security as permitted by Utah Code Ann. § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing Water Rights in accordance with Utah Code Ann. § 57-1-30 or other applicable law.

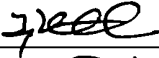
- (h) PURSUANT TO UTAH CODE ANN. § 25-5-4, TRUSTOR IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Signature on the Following Page]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

“Trustor”

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: 
Name: Ty McLUTCHEON
Title: Vice President

ACKNOWLEDGMENT

STATE OF UTAH)
)SS.
County of Salt Lake)

On Dec. 19th 2016, before me, the undersigned Notary Public, personally appeared Tymotee Cheon, the Vice President of Daybreak Operations, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires: 11/22/2018 Annette A. Mabey
Notary Public

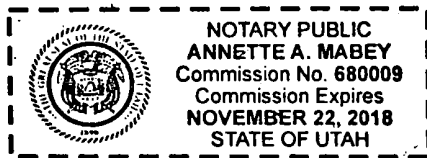


EXHIBIT A
(Description of Property)

Exhibit A to DEED OF TRUST dated as of December 19, 2016, executed by VP Daybreak Operations LLC, as Trustor, to First American Title Insurance Company, as Trustee, for the benefit of U.S. Bank National Association, d/b/a Housing Capital Company, as Beneficiary.

Description of Property

THAT CERTAIN REAL PROPERTY LOCATED IN SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS:

PARCEL 24:

A PORTION OF LOTS P-112 AND O-104 OF AMENDED KENNECOTT DAYBREAK PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING NORTH 89°52'04" WEST - 2642.201 FEET BETWEEN THE SOUTHWEST CORNER AND THE SOUTH QUARTER CORNER OF SAID SECTION 19) AND RUNNING NORTH 89°52'04" WEST ALONG THE SOUTH LINE OF SAID SECTION 19 FOR 1223.592 FEET; THENCE NORTH 00°07'56" EAST PERPENDICULAR TO SAID SECTION LINE FOR 2838.228 FEET TO THE POINT OF BEGINNING; THENCE NORTH 36°32'54" WEST FOR 87.50 FEET; THENCE NORTH 53°27'06" EAST FOR 517.00 FEET; THENCE SOUTH 32°25'52" EAST FOR 197.57 FEET; THENCE WITH A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 7,439.00 FEET, WHOSE CENTER BEARS NORTH 17°06'09" WEST, WITH A CENTRAL ANGLE OF 02°23'37" (CHORD BEARING AND DISTANCE OF SOUTH 74°05'39" WEST - 310.77 FEET) FOR AN ARC LENGTH OF 310.79 FEET; THENCE SOUTH 53°27'06" WEST FOR 212.00 FEET TO THE POINT OF BEGINNING.

PARCEL 44:

O-103, O-121 AND O-122, KENNECOTT DAYBREAK OQUIRRH LAKE PLAT, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.