

**When Recorded Return To:**

Snell & Wilmer L.L.P.  
Attention: Wade R. Budge  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

**13945423 B: 11335 P: 5816 Total Pages: 25**  
**05/03/2022 04:34 PM By: zjorgensen Fees: \$40.00**  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

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Tax Parcel Nos. 26-22-152-001; 26-22-256-001;  
26-22-326-003; 26-22-177-001;  
26-22-255-001; 26-22-176-001

**DEED OF TRUST**  
*with Security Agreement*

THIS **DEED OF TRUST** (as it may be amended and modified from time to time, the "*Deed of Trust*") is made and entered into effective as of February 17, 2022, by **VP DAYBREAK DEVCO 2, INC.**, a Utah corporation ("*Trustor*"), as trustor, whose mailing address 9350 South 150 East, Suite 900, Sandy, Utah 84070, in favor of **COTTONWOOD TITLE INSURANCE AGENCY, INC.** ("*Trustee*"), as trustee, whose mailing address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, for the benefit of **VP DAYBREAK INVESTCO 3 LLC**, a Utah limited liability company (the "*Beneficiary*"), as beneficiary, whose mailing address is 9350 South 150 East, Suite 900, Sandy, Utah 84070.

WITNESSETH:

WHEREAS, Beneficiary has agreed to loan certain funds in the initial principal amount of **FOURTEEN MILLION FIVE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$14,580,000.00)** (the "*Loan*"), to Trustor pursuant to a Promissory Note of even date herewith (the "*Note*");

WHEREAS, Beneficiary desires to secure the performance of Trustor's obligations under the Note;

NOW, THEREFORE, upon the terms, covenants and conditions set forth in this Deed of Trust, and for good and valuable consideration, including the indebtedness and obligations herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby (i) irrevocably grants, transfers, conveys and assigns to Trustee, **IN TRUST, WITH POWER OF SALE**, and (ii) hereby grants to Beneficiary, as secured party, a security interest in and to any personal property related thereto; for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, that certain real property located in South Jordan City, Salt Lake County, State of Utah, more particularly described on Exhibit A attached hereto and incorporated herein (the "*Property*").

TOGETHER WITH any and all buildings and other improvements now or hereafter erected on the Property including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "*Improvements*"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Property and the Improvements (collectively the "*Rents*"), subject to the terms and provisions of Article II of this Deed of Trust with respect to all leases and subleases of the Property or Improvements now or hereafter existing or entered into, or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Property or the Improvements or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto), and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Property or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Property or the Improvements;

TOGETHER WITH all right, title, and interest of Trustor in (i) the property and interests in property described on Exhibit B attached hereto and incorporated herein by reference, (ii) all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Property or the Improvements, (iii) all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Property or the Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor and located on or used in connection with the Property, and (v) all proceeds thereof;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH all the 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, or any other part of the Trust Estate (as defined below), 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 Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages);

TOGETHER WITH 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.

The entire estate, property, right, title and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "*Trust Estate*."

## ARTICLE 1: OBLIGATIONS SECURED

FOR THE PURPOSE OF SECURING, (IN SUCH ORDER OF PRIORITY AS BENEFICIARY MAY ELECT) (the "*Obligations*"):

- (a) Payment and performance of all obligations of Trustor under the Note, including without limitation, the payment of indebtedness in the total principal amount of **FOURTEEN MILLION FIVE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$14,580,000.00)**, with interest thereon as evidenced by the Note.

(b) The payment and performance of each and every agreement and obligation of Trustor under this Deed of Trust and under any other instrument given to further evidence or secure the payment and performance of any obligations secured by this Deed of Trust;

(c) The payment of all sums expended and advanced by Trustee or Beneficiary pursuant to the terms of this Deed of Trust, together with interest thereon as provided in this Deed of Trust;

(d) The payment and performance of any other agreement or obligation reciting that it is secured by this Deed of Trust; and

(e) Any extensions, renewals or modifications of, or advances under the Note, or any of the obligations contained in or otherwise evidenced by the Note, regardless of the extent of or the subject matter of any such extension, renewal, modification or advance.

## **ARTICLE 2: REPRESENTATIONS AND WARRANTIES.**

2.1 Property. Trustor represents and warrants to Beneficiary as follows:

(a) Trustor is the owner of fee simple marketable title in and to the Property; and

(b) Trustor shall defend title to the Property against all claims and demands whatsoever.

## **ARTICLE 3: MAINTENANCE OF TRUST ESTATE**

Trustor shall (1) maintain the Property at all times in good condition and repair; (2) not commit any waste of the Property, or remove, damage, demolish, or structurally alter any of improvement on the Property without the consent of Trustee; (3) complete promptly and in good and workmanlike manner any building, fixture, or improvement on the Property, or any portion of the Property, which may for any reason be constructed; (4) except to the extent that insurance proceeds are applied by Beneficiary to the satisfaction of the Obligations in accordance with the provisions of **Article 4**, restore promptly and in good and workmanlike manner any of the Improvements or any portion thereof which may for any reason be damaged or destroyed; (5) comply at all times with all laws, ordinances, regulations, covenants and restrictions in any manner affecting the Property; (6) not commit or permit any act upon the Property in violation of law; (7) do all acts which by reason of the character or use of the Property may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general.

## **ARTICLE 4: INSURANCE**

4.1 Insurance. Trustor shall secure and at all times maintain and promptly pay when due all premiums for the following types of insurance:

(a) Hazard insurance against loss or damage to the Property by fire, vandalism, malicious mischief, and any of the risks covered by insurance of the type now known as “fire and extended coverage” in an amount not less than one hundred percent (100%) of the full replacement value thereof. Such insurance policy or policies shall contain a “Replacement Cost Endorsement” and shall name Beneficiary as a “Loss Payee”; and

(b) Bodily injury liability and property damage liability insurance acceptable to Beneficiary insuring against any and all liability of the insured with respect to the Property or arising out of the maintenance, use or occupancy thereof, with a single limit per accident or occurrence acceptable to Beneficiary.

4.2 Rights in Policy. All policies of fire and extended coverage and other casualty insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of the insurance. The policies shall provide that the insurer will waive all rights of set-off, counterclaim or deduction against Trustor.

4.3 Policies and Premiums. All policies of insurance shall be issued by insurance companies which have a company rating of not less than "A" and a financial rating of not less than Class VII in "Best's Insurance Reports". All policies of insurance required pursuant to the provisions of *Section 4.1* shall name Beneficiary as an additional insured and loss payee. Upon request of Beneficiary, Trustor shall furnish Beneficiary with an original policy of all policies of required insurance. Upon request of Beneficiary, all such policies shall contain a provision that such policies will not be canceled or materially amended or altered without at least thirty (30) days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by *Section 4.1*, Beneficiary may, but without any obligation to do so, procure such insurance for such risks covering Beneficiary's interest and Trustor shall pay all premiums thereon promptly upon demand by Beneficiary. If Trustor fails to pay any premiums after demand by Beneficiary, Beneficiary, at Beneficiary's option, may advance any sums necessary to maintain and to keep in force such insurance. Any sums so advanced, together with interest thereon at the default interest rate specified in the Note, shall be secured by the Deed of Trust.

4.4 Occurrence and Notice of Casualty. In the event of loss or damage to the Property, or any portion of the Property, Trustor shall immediately give notice thereof to Beneficiary. Beneficiary may, but without any obligation to do so, make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary. The insurance proceeds or any part thereof shall be deemed part of the security for the Obligations and shall, at the election of Beneficiary, be applied either to restore or repair the portion of the Property damaged, or to reduce the indebtedness secured by this Deed of Trust (whether or not then due and payable). Except to the extent that insurance proceeds are received by Beneficiary and applied to the indebtedness secured by this Deed of Trust, nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property as provided in *Article 3* of this Deed of Trust or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount. The application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

4.5 Disposition of Policies on Foreclosure. In the event Beneficiary exercises the power of sale provisions of this Deed of Trust or makes any other transfer of title or assignment of the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Trustor in and to policies of insurance required by *Section 4.1* shall inure to the benefit of and pass to the successor in interest of Trustor or the purchaser or grantee of the Property.

## ARTICLE 5: INDEMNIFICATION AND OFF-SET

5.1 Indemnification. Trustor hereby indemnifies and holds Beneficiary harmless in accordance with the following:

(a) Trustor shall indemnify and hold Beneficiary harmless from any and all losses, damages, claims, causes of action, suits, debts, obligations, or liabilities which arise from or are related to, this Deed of Trust, any other document evidencing or securing the obligations of Trustor under the Note, or the use or occupation of the Property, or any part thereof. If Beneficiary commences an action against Trustor to enforce any of the terms, covenants or conditions of this Deed of Trust because of the breach by Trustor of any of such terms, covenants, or conditions, or for the recovery of any sum secured hereby, Trustor shall pay to Beneficiary attorneys' fees and costs actually incurred by Beneficiary. The right to such attorneys' fees and costs shall be deemed to have

accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any material term, covenant or condition of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect Beneficiary's rights hereunder and in the event of such employment following any breach of Trustor, Trustor shall pay Beneficiary attorneys' fees and costs actually incurred by Beneficiary, whether or not action is actually commenced against Trustor by reason of such material breach; and

(b) If Beneficiary is held liable or could be held liable for, or is subject to any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor, or material furnished in connection with or arising from the construction of any building, fixture and improvements, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability or expense arising therefrom including reasonable attorneys' fees and costs.

5.2 Off-Set. All sums payable by Trustor under this Deed of Trust shall be paid without notices, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (1) any damage to or destruction of, or any condemnation or similar taking of the Property or any part thereof; (2) any destruction or prevention of or interference with any use of the Property or any part thereof; (3) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (4) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (5) any claim which Trustor has or might have against Beneficiary; (6) any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Deed of Trust or of any other agreement with Trustor; or (7) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

## ARTICLE 6: TAXES AND IMPOSITIONS

6.1 Payment of Taxes and Impositions. Trustor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and other governmental, municipal, or other charges or impositions of any kind or nature whatsoever (including without limitation, charges and assessments on water or water stocks used on or with the Property and levies or charges resulting from covenants, conditions and restrictions affecting the Property) which are assessed or imposed upon the Property, or become due and payable, and which create, may create, or appear to create, a lien upon the Property or any portion of the Property, or upon any equipment or other facility used in the construction, operation or maintenance of the Property (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "*Impositions*"); provided, however, that if, by law, any such Imposition is payable, or may at the election of the taxpayer be paid in installments, Trustor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

6.2 Evidence of Payment. Unless such Imposition is paid directly by Beneficiary pursuant to *Section 7.3*, Trustor shall, if requested by Beneficiary, furnish Beneficiary, within thirty (30) days after the date upon which such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payments thereof.

6.3 Right to Contest. Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in *Section 6.1*, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's option

(a) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (b) Trustor shall furnish a good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

6.4 Tax on Deed of Trust. If at any time after the date hereof there shall be assessed or imposed (a) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by Trustor, or (b) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations or upon payments pursuant to the Note (whether principal or interest), then all such taxes, assessments and fees shall be deemed to be included within the term "Impositions" as defined in *Section 6.1* of this Deed of Trust, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. Trustor shall have no obligation to pay any franchise, income, excess profits or similar tax levied on Beneficiary or on the obligation secured hereby.

## ARTICLE 7: ADDITIONAL COVENANTS

7.1 Payment of Utilities. Trustor shall pay when due all utility charges incurred by Trustor for the benefit of the Property or which may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such assessments or charges are liens thereon.

7.2 Defense of Title. Trustor has and shall preserve good and marketable fee title to the Property free of all liens, claims, charges, security interests, encumbrances, easements or restrictions occurring or attaching after the date hereof. Except as provided otherwise in *Section 6.3*, Trustor shall promptly discharge any above-described lien which has, or may have, priority over or equality with the lien created by this Deed of Trust. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Property, or the rights or powers of Beneficiary or Trustee. Should Beneficiary elect to appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including costs of evidence of title and reasonable attorneys' fees and costs, incurred by Beneficiary or Trustee.

7.3 Reserves for Taxes and Insurance. In furtherance of *Article 4* and *Article 6* of this Deed of Trust and anything to the contrary herein notwithstanding, Trustor shall, at Beneficiary's request, pay to Beneficiary, on the first day of each month, until all obligations under the Note have been satisfied or otherwise discharged, an amount equal to one-twelfth of the annual Impositions, as defined in *Article 6*, reasonably estimated by Beneficiary to pay the installment of Impositions next due on the Property; and one-twelfth of the estimated annual aggregate insurance premiums on all policies of insurance required in *Article 4*. In such event, Trustor shall cause all bills, statements or other documents relating to the Impositions and insurance premiums to be sent to Beneficiary. Providing Trustor has deposited sufficient funds with Beneficiary pursuant to this *Section 7.3*, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds deposited with Beneficiary pursuant to this *Section 7.3*. Beneficiary shall not be obligated to pay any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may, after written notice to Trustor, impound or reserve for future payment of Impositions and insurance premiums such portion of such payments as Beneficiary may in Beneficiary's absolute discretion deem proper, applying the balance on the principal of or interest on the obligations secured hereby. Should Trustor fail to deposit with Beneficiary (exclusive of that portion of the payments which has been applied by Beneficiary on any principal of or interest due pursuant to the Note) sums sufficient to fully pay such Impositions and insurance premiums at least thirty (30) days before delinquency thereof, Beneficiary, at Beneficiary's election, but without any obligation to do so, may advance any amounts required to make up the deficiency, which advances, if any,

shall be secured by this Deed of Trust and shall bear interest and be repayable to Beneficiary in the manner specified in *Section 7.5* of this Deed of Trust.

7.4 Performance in Trustor's Stead. Should Trustor fail to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee, but without any obligation to do so, and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon the Property for such purposes); commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior to the lien of this Deed of Trust; and in exercising any such powers, incur any liability, expend such reasonable amounts as Beneficiary may deem necessary therefor, including cost of evidence of title, employment of attorneys, and payment of attorneys' fees and costs. All such amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, be added to the principal indebtedness secured by this Deed of Trust and shall accrue interest at the default interest rate under the Note until paid. Trustor hereby waives and releases all claims or causes of action which may hereafter arise in favor of Trustor against Beneficiary by reason of any action taken by Beneficiary granted in this *Section 7.4*.

7.5 Repayment of Advances. Trustor shall immediately repay to Beneficiary sums, with interest thereon at the default interest rate specified in the Note, which at any time may be paid or advanced by Beneficiary for the payment of insurance premiums, taxes, assessments, other governmental, municipal, or other charges or impositions, title searches, title reports or abstracts, and any other advances made by Beneficiary which are reasonably necessary or desirable to maintain this Deed of Trust as a prior, valid, and subsisting lien upon the Property, to preserve and protect Beneficiary's interest in this Deed of Trust, or to preserve, repair, or maintain the Property. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Deed of Trust.

7.6 No Removal of Fixtures. Trustor shall not, during the existence of this Deed of Trust and without the written consent of Beneficiary, remove from the Property or the Improvements, any fixture, structure, or other improvement at any time affixed or constructively affixed to the Property or the Improvements or any portion thereof, except in the ordinary course of Trustor's business.

7.7 Further Assurance. Trustor shall execute and deliver to Beneficiary such further instruments, including without limitation Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may be reasonably required by Beneficiary to carry out more effectively the purposes of this Deed of Trust and to subject to the lien and mortgage created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Deed of Trust. Trustor authorizes (to the extent such authorization is valid under applicable law) Beneficiary to execute and file, without Trustor's signature, such Uniform Commercial Code Financing Statements and Continuation Statements as Beneficiary may deem necessary in order to perfect, or continue the perfection, of the security interests created by this Deed of Trust.

7.8 No Further Encumbrances. As an expressed condition of Beneficiary making the loan secured by this Deed of Trust, Trustor shall not further encumber, pledge, mortgage, hypothecate, place any lien, charge or claim upon, or otherwise give as security the Property or any interest therein nor cause or allow by operation of law the encumbrance of the Property or any interest therein without the written consent of Beneficiary even though such encumbrance may be junior to the encumbrance created by this Deed of Trust. Encumbrance of the Property contrary to the provisions of this *Section 7.8* without the express written consent of Beneficiary, whether the same be created by Trustor or an unaffiliated third party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect, shall constitute a default under this Deed of Trust.

7.9 Evidence of Title. Trustor shall deliver to, pay for and maintain with Beneficiary until the Obligations are fully satisfied or otherwise discharged in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereof.

#### **ARTICLE 8: CONDEMNATION AWARDS**

If the Property or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, or in any purchase in lieu thereof, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at Beneficiary's option to commence, appear in, and prosecute in Beneficiary's own name any action or proceeding, and to make any compromise or settlement, in connection with such taking. Trustor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking for public improvement. All such compensation, awards, damages, causes of action, proceeds, or other payments are hereby assigned to Beneficiary, which may, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including attorneys' fees, incurred by Beneficiary in connection with such compensation, awards, damages, rights of action, proceeds, or other payments, release any and all moneys so received by Beneficiary or apply the same, or any portion thereof, on any of the Obligations (whether or not then due) secured by this Deed of Trust. Beneficiary shall have no obligation to apply proceeds of condemnation to restore or repair damage to the Property regardless of whether such taking has a significant adverse impact on the operation of the remaining portion of the Property. Trustor shall execute and deliver to Beneficiary such further assignments of such compensation, awards, damages, causes of action, proceeds, or other payments as Beneficiary may from time to time require.

#### **ARTICLE 9: ASSIGNMENT OF RENTS AND INCOME**

9.1 Assignment. Trustor hereby assigns, transfers, and conveys to Beneficiary during the term of this Deed of Trust, any and all rents, subrents, issues, royalties, income, and profits of and from the Property. Until the occurrence of an Event of Default (as hereinafter defined), Trustor may collect and use all such rents, subrents, issues, royalties, income, and profits which become payable prior to default. Upon the occurrence of an Event of Default hereunder and upon Beneficiary's election to collect the rents, subrents, issues, royalties, income and profits as hereinafter provided, Trustor's right to collect and use any of such proceeds shall cease, and Beneficiary shall have the right, with or without taking possession of the Property, and either in person, by agent, or through a court-appointed receiver (Trustor hereby consents to the appointment of Beneficiary or Beneficiary's designee as such receiver), to sue for or otherwise collect all such rents, subrents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including attorneys' fees, shall be applied toward the payment of the Obligations. Such right of collection and use of such proceeds by Beneficiary shall obtain both before and after the exercise of the power of sale provisions of this Deed of Trust, the foreclosure of this Deed of Trust and throughout any period of redemption. The rights granted under this *Section 9.1* shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Property is in danger of being lost, removed, or materially injured, or whether the Property or any other security is adequate to discharge the obligations secured by this Deed of Trust. Beneficiary's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Beneficiary thereafter to collect the same. Neither any provision contained herein, nor the Beneficiary's exercise of Beneficiary's right to collect such proceeds, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease, sublease, option, or other interest in the Property, or an assumption of liability under, or a subordination of the lien or charge of this Deed of Trust to, any tenancy, lease, sublease, option, or other interest in the Property. All tenants, lessees, sublessees and other persons which have any obligation to make any payment to Trustor in connection with the Property or any portion thereof are hereby authorized and directed to pay the rents, subrents, issues, royalties, income, and profits payable by them with respect to the Property, or any part thereof, directly to Beneficiary on the demand of Beneficiary. Beneficiary's receipt of such rents, subrents,



issues, royalties, income, and profits shall be a good and sufficient discharge of the obligation of the tenant, lessee, sublessee, or other person concerned to make the payment connected with the amount so received by the Beneficiary. When all of the Obligations have been fully satisfied and such satisfaction is evidenced by a recorded deed of reconveyance of this Deed of Trust, this Assignment shall no longer be of effect and shall be void.

9.2 Application of Payments. If at any time during the term of this Deed of Trust, Beneficiary receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note and under all other instruments further evidencing or securing the Obligations, then Beneficiary shall, notwithstanding any instructions which may be given by Trustor, have the right to apply such payment, installment, or sum, or any part thereof, to such of the items or obligations then due from Trustor or to Beneficiary as Beneficiary may in Beneficiary's sole discretion determine.

9.3 No Waiver of Rights by Collection of Proceeds. The entering upon and taking possession of the Property or any portion of the Property or the collection of rents, subrents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Property, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of any scheduled installments provided for in any of the Obligations secured by this Deed of Trust.

9.4 Indemnification. Trustor shall indemnify and hold Beneficiary harmless from and against all claims, demands, judgments, liabilities, actions, costs, and fees (including reasonable attorneys' fees) arising from or related to receipt by Beneficiary of the rents, subrents, issues, royalties, income and profit from the Property or any portion of the Property, except those liabilities arising from Beneficiary's own negligence.

#### **ARTICLE 10: EVENTS OF DEFAULT AND REMEDIES**

10.1 Events of Default. The occurrence and continuance of any one of the following shall constitute an event of default (herein referred to as an "*Event of Default*"):

(a) Except as provided otherwise in *Section 10.1(b)*, failure by the Trustor to observe and perform any of the terms, covenants, or conditions to be observed or performed by Trustor contained in either this Deed of Trust or the Note for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to Trustor by Beneficiary, unless Beneficiary shall agree in writing to an extension of such time prior to its expiration;

(b) If Trustor shall fail to make any payment due and payable under the terms of the Note or this Deed of Trust, failure to make any payment as herein required when and as due and the expiration of thirty (30) days after written of such failure by Holder to Maker without such payment having been made;

(c) Any material representation or warranty of the Trustor contained in this Deed of Trust or the Note was untrue when made;

(d) If (1) Trustor commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Trustor or Trustor's debts under any law relating to bankruptcy, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for Trustor or for all or any substantial part of Trustor's property; (2) any guarantor of the Note commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of such guarantor or such guarantor's debts under any law relating to bankruptcy, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other

similar official for such guarantor or for any substantial part of such guarantor's property; or (3) any such case, proceeding, or other action is commenced against either Trustor, or any guarantor of the Note and such case, proceeding, or other action either results in an order for relief against either Trustor or any guarantor of the Note which is not fully stayed within ten (10) days after the entry thereof, or remains undismissed for a period of sixty (60) days;

(e) Trustor fails to pay Trustor's debts as they become due, admits in writing Trustor's inability to pay Trustor's debts, or makes a general assignment for the benefit of creditors; or

(f) The occurrence of a default, breach or an event of default under the Note or any other document relating to, securing or evidencing the indebtedness evidenced by the Note.

10.2 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Beneficiary may, in addition to the exercise of any or all of the remedies specified herein:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to the Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale contained herein;

(b) Commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver as more particularly described herein, or specifically enforce any of the covenants hereof;

(c) Exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Trust Estate to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law; or

(d) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law.

10.3 Exercise of Power of Sale. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as

Beneficiary may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than 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 Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale 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 attorneys' fees actually incurred not to exceed the amount which may be provided for in the trust deed.

*SECOND*: To payment of the obligations secured by the Deed of Trust.

*THIRD*: To the balance, if any, to the person or persons legally entitled to the proceeds, or the trustee, in the 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 *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this Section, 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 Trust Estate, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 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 Obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the 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.

For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Trust Property, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Trust Property pursuant to this Deed of Trust.

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.

10.4 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Beneficiary, upon an Event of Default, may proceed under the Utah Uniform Commercial Code 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 property interests as one parcel or package of security as permitted by *Utah Code Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

10.5 Appointment of Receiver. Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefore and consents to Beneficiary being appointed as such receiver if Beneficiary so elects. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period, unless such receivership is sooner terminated.

10.6 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing under the law. Every power or remedy given by any of the Loan Documents or by law to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by law, either of them may pursue inconsistent remedies.

10.7 Deficiency. Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, any Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law.

10.8 Reinstatement. If Trustor, Trustor's successor interest, or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan with three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 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.

10.9 One Action Rule and Deficiency Statute. Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under *Utah Code Annotated* §§ 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

10.10 Marshalling of Assets. Trustor, on its own behalf and on behalf of its successors and assigns, hereby expressly waives all rights to require a marshalling of assets by Trustee or Beneficiary, or to require Trustee or Beneficiary, upon a foreclosure, to first resort to the sale of any portion of the Trust Estate which might have been retained by Trustor before foreclosing upon and selling any other portion as may be conveyed by Trustor subject to this Deed of Trust.

10.11 No Merger. In the event of a foreclosure of this Deed of Trust or any other mortgage or deed of trust securing the Obligations, the Obligations then due Beneficiary shall not be merged into any decree of foreclosure entered by the court, and Beneficiary may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations.

10.12 Request for Notice. Beneficiary hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale be mailed to it at its address set forth in the introductory paragraph hereof.

10.13 Fixture Filing. Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

10.14 Foreclosure as a Mortgage. If an Event of Default occurs hereunder, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees and costs in such amounts as shall be fixed by the court.

#### ARTICLE 11: DUE ON SALE

11.1 Right to Accelerate. Notwithstanding anything to the contrary in *Section 10.1*, in the event the Trustor shall either sell, convey, alienate, hypothecate, pledge or encumber the Property, or any part thereof, or any interest therein (except in favor of Beneficiary), without the express written permission of Beneficiary first had and obtained or be divested of title in any manner, whether voluntarily or involuntarily, then all obligations secured by this Deed of Trust, irrespective of the maturity date, at the option of Beneficiary and without demand or notice, shall immediately become due and payable.

11.2 Notice of Acceleration. If Beneficiary exercises the option to accelerate referred to in *Section 11.1* above, Beneficiary shall mail Trustor notice of acceleration in accordance with *Section 13.1* hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Trustor may pay the sums declared due. If Trustor fails to pay such sums prior to the expiration of such period, Beneficiary may, without further notice or demand on Beneficiary, invoke any remedies permitted by *Article 10* hereof.

#### ARTICLE 12: SECURITY AGREEMENT

##### 12.1 Creation of Security Interest.

(a) Trustor hereby grants to Beneficiary, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to Beneficiary all of Trustor's Personal Property, including, without limitation, (i) all rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Property or Improvements, including, without limiting the foregoing, (ii) all of Trustor's present and future "Accounts", "Cash Proceeds", "Chattel Paper", "Collateral", "Deposit Accounts", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-credit Rights", "Noncash Proceeds", "Tangible Chattel Paper" (as such terms are defined in the Utah Uniform Commercial Code, Utah Code Annotated §§ 70A-1-1, *et seq.* (the "*Utah Uniform Commercial Code*") and vehicles, (iii) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor, (iv) all of Trustor's right, title and interest in and to all deposit accounts maintained with Beneficiary or any affiliate of Beneficiary, and (v) all appurtenances and additions thereto and substitutions or replacements thereof (such personal property (collectively, "*Personal Property*"), together with proceeds, as more particularly described on Exhibit B hereto), and all insurance claims and other proceeds or products thereof, whether now owned or existing or hereafter acquired or arising,

wherever located and whether in Trustor's possession and control or in the possession and control of a third party.

(b) This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Utah Uniform Commercial Code. Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the Utah Uniform Commercial Code.

(c) Trustor further agrees, at the request and option of Beneficiary, to take any and all actions Beneficiary may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of Beneficiary to enforce, Beneficiary's security interest in any and all of the Personal Property, including, without limitation, (a) causing Beneficiary's name to be noted as Beneficiary on any certificate of title for the Personal Property or any portion thereof if such notation is a condition to attachment, perfection or priority of, or ability of Beneficiary to enforce, Beneficiary's security interest in such Personal Property, (b) complying with any provision of any statute, regulation or treaty of any State or the United States as to any Personal Property if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Beneficiary to enforce, Beneficiary's security interest in such Personal Property, (c) obtaining governmental and other third party waivers, consents and approvals in form and substance satisfactory to Beneficiary, including, without limitation, any consent of any licensor, lessor or other person obligated on Personal Property, and (d) obtaining waivers from mortgagees and landlords in form and substance satisfactory to Beneficiary.

12.2 Financing Statements. Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file or record in any filing office in any Uniform Commercial Code jurisdiction, or in any county recorder's office or other public office for recording of public land records, any initial financing statements and amendments thereto that (a) indicate the Personal Property: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Personal Property falls within the scope of Article 9a of the Uniform Commercial Code of the State of Utah or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9a of the Uniform Commercial Code of the State of Utah, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Personal Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Personal Property relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor also ratifies its authorization for Beneficiary to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Beneficiary is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9a-509(4)(b) of the Utah Uniform Commercial Code. Trustor will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

### 12.3 Power of Attorney.

(d) Appointment and Powers of Beneficiary. Trustor hereby irrevocably constitutes and appoints Beneficiary and any officer or agent thereof with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor or in Beneficiary's own name, for the purpose of carrying out the terms of this Deed of Trust, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Deed of Trust and, without limiting the generality of the

foregoing, hereby gives said attorneys the power and right, on behalf of Trustor, without notice to or assent by Trustor, to do the following:

(i) Upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Personal Property in such manner as is consistent with the Utah Uniform Commercial Code and as fully and completely as though Beneficiary were the absolute owner thereof for all purposes, and to do, at Trustor's expense, at any time, or from time to time, all acts and things which Beneficiary deems necessary or useful to protect, preserve or realize upon the Personal Property and Beneficiary's security interest therein, in order to effect the intent of this Deed of Trust, all at least as fully and effectively as Trustor might do, including, without limitation, (A) the filing and prosecuting of registration and transfer applications with the appropriate federal, state, local or other agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (B) upon written notice to Trustor, the exercise of voting rights with respect to voting securities, which rights may be exercised, if Beneficiary so elects, with a view to causing the liquidation of assets of the issuer of any such securities, and (C) the execution, delivery and recording, in connection with any sale or other disposition of any Personal Property, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Personal Property; and

(ii) To the extent that Trustor's authorization given in *Section 12.3(a)* is not sufficient, to file such financing statements with respect hereto, with or without Trustor's signature, or a photocopy of this Deed of Trust in substitution for a financing statement, as Beneficiary may deem appropriate and to execute in Trustor's name such financing statements and amendments thereto and continuation statements which may require Trustor's signature.

(e) Ratification by Trustor. To the extent permitted by law, Trustor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

(f) No Duty on Beneficiary. The powers conferred on Beneficiary hereunder are solely to protect its interests in the Personal Property and shall not impose any duty upon it to exercise any such powers. Beneficiary shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Trustor for any act or failure to act, except for Beneficiary's own gross negligence or willful misconduct.

#### 12.4 Remedies Upon an Event of Default.

(g) Remedies. If an Event of Default shall have occurred and be continuing, in addition to the remedies provided in *Article 10* hereof, Beneficiary, without any other notice to or demand upon Trustor, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a Beneficiary under the Utah Uniform Commercial Code and any additional rights and remedies which may be provided to a Beneficiary in any jurisdiction in which Personal Property is located, including, without limitation:

(i) Either personally, or by means of a court-appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event

Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at such location or locations within the jurisdiction(s) of Trustor's principal office(s) or at such other locations as Beneficiary, or an agent or representative designated by Beneficiary, may reasonably designate. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's Property and Improvements to exercise Beneficiary's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public or private sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any other remedies of a secured party under the Utah Uniform Commercial Code, the other Loan Documents or any other applicable law.

(h) Notice of Sale. Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give to Trustor at least ten (10) business days' prior written notice of the time and place of any public sale of Personal Property or of the time after which any private sale or any other intended disposition is to be made. Trustor hereby acknowledges that ten (10) business days' prior written notice of such sale or sales shall be reasonable notice. Such notice may be mailed to Trustor at the address set forth in *Section 13.1*. In addition, Trustor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of Beneficiary's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Personal Property and to exercise its rights and remedies with respect thereto.

(i) Proceeds of Dispositions; Expenses. Trustor shall pay to Beneficiary on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Beneficiary in protecting, preserving or enforcing Beneficiary's rights and remedies under or in respect of any of the Obligations or any of the Personal Property and arising from the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made). After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Personal Property shall, to the extent actually received in



cash, be applied to the payment of the Obligations in such order or preference as Beneficiary may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9a-608(a)(1)(C) or 9a-615(a)(3) of the Utah Uniform Commercial Code, any excess shall be returned to Trustor. In the absence of final payment and satisfaction in full of all of the Obligations, Trustor shall remain liable for any deficiency. Until paid, all amounts due and payable by Trustor hereunder shall be a debt secured by the Trust Estate and shall bear, whether before or after judgment, interest at the Agreed Rate.

12.5 Successive Remedies. Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

12.6 Standards for Exercising Rights and Remedies. To the extent that applicable law imposes duties on Beneficiary to exercise remedies in a commercially reasonable manner, Trustor acknowledges and agrees that it is not commercially unreasonable for Beneficiary (a) to fail to incur expenses reasonably deemed significant by Beneficiary to prepare Personal Property for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third-party consents for access to Personal Property to be disposed of or to obtain or, if not required by other law, to fail to obtain governmental or third-party consents for the collection or disposition of Personal Property to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Personal Property or to fail to remove liens or encumbrances on or any adverse claims against Personal Property, (d) to exercise collection remedies against account debtors and other persons obligated on Personal Property directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Personal Property through publications or media of general circulation, whether or not the Personal Property is of a specialized nature, (f) to contact other persons, whether or not in the same business as Trustor, for expressions of interest in acquiring all or any portion of the Personal Property, (g) to hire one or more professional auctioneers to assist in the disposition of Personal Property, whether or not the Personal Property is of a specialized nature, (h) to dispose of Personal Property by utilizing Internet sites that provide for the auction of assets of the types included in the Personal Property or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure Beneficiary against risks of loss, collection or disposition of Personal Property or to provide to Beneficiary a guaranteed return from the collection or disposition of Personal Property, or (l) to the extent deemed appropriate by Beneficiary, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Beneficiary in the collection or disposition of any of the Personal Property. Trustor acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Beneficiary would fulfill Beneficiary's duties under the Utah Uniform Commercial Code or other law of the State of Utah or any other relevant jurisdiction in Beneficiary's exercise of remedies against the Personal Property and that other actions or omissions by Beneficiary shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section. Without limitation upon the foregoing, nothing contained in this Section shall be construed to grant any rights to Trustor or to impose any duties on Beneficiary that would not have been granted or imposed by this Deed of Trust or by applicable law in the absence of this Section.

## ARTICLE 13: GENERAL PROVISIONS

13.1 Notices. All notices and other communications required to be given under this Deed of Trust shall be given in writing and shall be delivered in person, or by first class, postage prepaid, addressed as follows:

If to Trustor:

VP DAYBREAK DEVCO 2, INC.  
11248 S. Kestrel Rise Road, Suite 201  
South Jordan, UT 84009  
Attn: Courtney Palmer

With a copy to:

Wade R. Budge  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

If to Beneficiary:

VP DAYBREAK INVESTCO 3 LLC  
9350 South 150 East, Suite 900  
Sandy, UT 84070  
Attn: Brad Holmes

With a copy to:

Wade R. Budge  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

Such notice shall be deemed to have been given when delivered in person or two (2) days after deposit of the notice in the United States mail in the manner provided above. Any party may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications directed to it shall be sent.

13.2 Severability. If any provision of this Deed of Trust shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions contained in this Deed of Trust or render the same invalid, inoperative, or unenforceable to any extent whatever.

13.3 Amendments, Changes, and Modifications. This Deed of Trust may not be amended, changed, modified, altered, or terminated without the written consent of Beneficiary.

13.4 Governing Law. This Deed of Trust shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah, without giving effect to its conflict of laws principles.

13.5 Interpretation. Whenever the context shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The section headings contained in this Deed of Trust are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

13.6 Binding Effect. This Deed of Trust shall be binding upon Trustor and Trustor's successors and assigns. This Deed of Trust shall inure to the benefit of Beneficiary, and Beneficiary's successors and assigns, and the holders of any of the Obligations secured hereby.

13.7 Waivers. Beneficiary's failure at any time or times hereafter to require strict performance by Trustor of any of undertakings, agreements, or covenants contained in this Deed of Trust shall not waive, affect, or diminish any right of Beneficiary hereunder to demand strict compliance and performance therewith. Any waiver by Beneficiary of any Event of Default under this Deed of Trust shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements, or covenants of Trustor under this Deed of Trust shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Trustor specifying such waiver.

13.8 Access. Beneficiary, or Beneficiary's authorized agents and representatives, are hereby authorized and shall have the right, at all reasonable times during the existence of this Deed of Trust and upon reasonable written notice to Trustor, to enter upon the Property or any portion of the Property for the purpose of inspecting the Property or for the purpose of performing any of the acts that Beneficiary is authorized under this Deed of Trust to perform.

13.9 Cross Default. A default by Trustor under the terms of any one or more of this Deed of Trust or the Note, or any other note or other evidence of an indebtedness of Trustor to Beneficiary secured hereby or secured by any other deed of trust or mortgage between the parties hereto, or any other agreement or arrangement between the parties to the Note now existing or entered into hereafter shall constitute a default under this Deed of Trust and the Note, any other deed of trust or mortgage entered into between the parties hereto and the Note secured thereby, and any other agreement or arrangement between the parties.

13.10 Successor Trustee. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of Salt Lake County, State of Utah, a substitution of trustee. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

13.11 Heirs, Successors, Etc., Definitions. This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes both the feminine and neuter, and the singular number includes the plural.

13.12 Acceptance of Trust. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

13.13 Request for Notice. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address for Trustor specified in *Section 13.1*.

13.14 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of the Deed of Trust, the prevailing party will have the right to recover its attorneys' fees and costs of suit from the other party. Also, Beneficiary and Trustee will have the right to recover all attorneys' fees and costs incurred with respect to any insolvency or bankruptcy action or proceeding involving Trustor as a debtor.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Deed of Trust has been executed the date and year first above written.

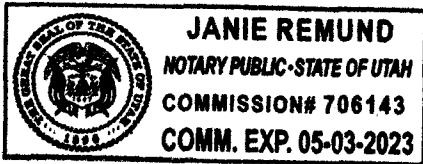
**TRUSTOR:**

**VP DAYBREAK DEVCO 2, INC.,** a Utah corporation

By: \_\_\_\_\_  
Name: Courtney Palmer  
Title: Vice President

STATE OF UTAH                    )  
  :SS.  
COUNTY OF SALT LAKE        )

The foregoing instrument was acknowledged before me this 29 day of April, 2022, by Courtney Palmer, the Vice President of **VP DAYBREAK DEVCO 2, INC.**, a Utah corporation, for and on behalf of such corporation.



\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT A

### Description of Real Property

Parcel 1: (TPN 17 - Parcel HHH - 26-22-152-001)

Beginning at the Southernmost Corner of Lot V5 of the Kennecott Master Subdivision Amended #1, said point lies South 89°56'03" East 1323.407 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 2450.606 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot V5 the following (3) courses: 1) North 00°02'03" East 192.379 feet; 2) North 89°47'52" West 1320.211 feet; 3) North 00°03'55" East 210.847 feet; thence East 54.517 feet to a point on a 527.000 foot radius tangent curve to the left, (radius bears North, Chord: North 87°25'30" East 47.353 feet); thence along the arc of said curve 47.369 feet through a central angle of 05°09'00"; thence North 84°51'00" East 522.298 feet; thence South 88°29'34" East 314.328 feet; thence South 89°46'08" East 172.189 feet; thence South 52°43'34" East 504.350 feet to the Southeasterly Line of said Lot V5; thence along said Southeasterly Line South 53°07'08" West 237.419 feet to the point of beginning.

Parcel 2: (TPN 20 - Parcel GG - 26-22-256-001)

Beginning at a point that lies South 89°56'03" East 3507.873 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 2509.642 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 55°43'37" West 493.793 feet; thence North 21°52'37" East 17.807 feet to a point on a 470.000 foot radius tangent curve to the right, (radius bears South 68°07'23" East, Chord: North 25°56'18" East 66.579 feet); thence along the arc of said curve 66.635 feet through a central angle of 08°07'23"; thence North 30°00'00" East 332.613 feet; thence North 24°35'09" East 116.811 feet to a point on a 1569.000 foot radius non tangent curve to the left, (radius bears North 10°13'57" East, Chord: South 84°53'01" East 279.838 feet); thence along the arc of said curve 280.210 feet through a central angle of 10°13'57"; thence East 222.261 feet; thence South 04°31'38" West 189.916 feet; thence South 30°00'00" West 394.990 feet; thence South 34°16'23" West 232.818 feet to the point of beginning.

Parcel 3: (TPN - 16a - Parcel RR - 26-22-326-003)

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 2113.602 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3044.399 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot Z101 North 53°07'08" East 234.828 feet; thence South 60°00'00" East 340.822 feet; thence South 25°43'37" West 5.014 feet; thence South 60°00'00" East 497.569 feet; thence South 21°52'37" West 709.421 feet to a point on a 230.000 foot radius tangent curve to the left, (radius bears South 68°07'23" East, Chord: South 14°59'23" West 55.159 feet); thence along the arc of said curve 55.292 feet through a central angle of 13°46'26" to a point of reverse curvature with a 170.000 foot radius non tangent curve to the right, (radius bears North 04°53'20" East, Chord: North 76°58'01" West 48.166 feet); thence along the arc of said curve 48.329 feet through a central angle of 16°17'18"; thence North 68°49'22" West 779.106 feet to a point on a 467.000 foot radius tangent curve to the right, (radius bears North 21°10'38" East, Chord: North 64°12'21" West 75.181 feet); thence along the arc of said curve 75.263 feet through a central angle of 09°14'02"; thence South 30°24'40" West 17.500 feet to a point on a 484.500 foot radius non tangent curve to the right, (radius bears North 30°24'40" East, Chord: North 54°48'21" West 80.800 feet); thence along the arc of said curve 80.894 feet through a central angle of 09°33'59" to a point of compound curvature with a 25.000 foot radius tangent

curve to the right, (radius bears North 39°58'39" East, Chord: North 20°18'08" West 24.788 feet); thence along the arc of said curve 25.936 feet through a central angle of 59°26'26" to a point of compound curvature with a 977.500 foot radius tangent curve to the right, (radius bears South 80°34'55" East, Chord: North 11°28'08" East 69.969 feet); thence along the arc of said curve 69.984 feet through a central angle of 04°06'07"; thence North 08°42'58" East 38.709 feet to a point on a 981.500 foot radius non tangent curve to the right, (radius bears South 74°13'39" East, Chord: North 22°53'10" East 243.099 feet); thence along the arc of said curve 243.725 feet through a central angle of 14°13'39"; thence North 30°00'00" East 52.362 feet; thence South 60°00'00" East 11.500 feet; thence North 30°00'00" East 282.031 feet to the point of beginning.

LESS AND EXCEPTING from Parcel 3 any portion lying within the bounds of the following described tract of land, as disclosed by that certain Special Warranty Deed recorded September 1, 2021 as Entry No. 13761270 in Book 11232 at Page 2001 in the Salt Lake County Recorder's office, to-wit:

Beginning at a point on the Southwesterly Line of the Less & Except Parcel RR as shown on said Daybreak West Villages Roadway Dedication Plat in Lieu of Condemnation subdivision, said point also being a point on a 484.500 foot radius non tangent curve to the right, (radius bears North 37°26'52" East, Chord: North 51°17'15" West 21.388 feet), said point lies South 89°56'37" East 1847.416 feet along the Daybreak Baseline Southwest (Being South 89°56'37" East 10583.405 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 23, T3S, R2W) and North 2392.529 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Less & Except Parcel RR the following (5) courses: 1) along the arc of said curve 21.390 feet through a central angle of 02°31'46" to a point of compound curvature with a 25.000 foot radius tangent curve to the right, (radius bears North 39°58'39" East, Chord: North 20°18'08" West 24.788 feet); 2) along the arc of said curve 25.936 feet through a central angle of 59°26'26" to a point of compound curvature with a 977.500 foot radius tangent curve to the right, (radius bears South 80°34'55" East, Chord: North 11°28'08" East 69.969 feet); 3) along the arc of said curve 69.984 feet through a central angle of 04°06'07"; 4) North 08°42'58" East 38.709 feet to a point on a 981.500 foot radius non tangent curve to the right, (radius bears South 74°13'39" East, Chord: North 20°38'37" East 166.694 feet); 5) along the arc of said curve 166.895 feet through a central angle of 09°44'33" to a point of compound curvature with a 5.500 foot radius non tangent curve to the right, (radius bears South 85°12'07" West, Chord: South 09°08'52" West 2.651 feet); thence along the arc of said curve 2.677 feet through a central angle of 27°53'29" to a point of reverse curvature with a 481.500 foot radius tangent curve to the left, (radius bears South 66°54'24" East, Chord: South 15°23'01" West 129.188 feet); thence along the arc of said curve 129.578 feet through a central angle of 15°25'09" to a point of reverse curvature with a 518.500 foot radius tangent curve to the right, (radius bears North 82°19'33" West, Chord: South 09°59'51" West 42.039 feet); thence along the arc of said curve 42.051 feet through a central angle of 04°38'48" to a point of compound curvature with a 5.500 foot radius tangent curve to the right, (radius bears North 77°40'45" West, Chord: South 35°30'24" West 4.331 feet); thence along the arc of said curve 4.451 feet through a central angle of 46°22'17"; thence South 58°41'32" West 4.142 feet to a point on a 4.500 foot radius tangent curve to the left, (radius bears South 31°18'28" East, Chord: South 36°03'58" West 3.462 feet); thence along the arc of said curve 3.554 feet through a central angle of 45°15'08" to a point of reverse curvature with a 512.500 foot radius tangent curve to the right, (radius bears North 76°33'36" West, Chord: South 13°51'20" West 7.437 feet); thence along the arc of said curve 7.437 feet through a central angle of 00°49'53" to a point of reverse curvature with a 967.500 foot radius tangent curve to the left, (radius bears South 75°43'43" East, Chord: South 11°56'00" West 78.937 feet); thence along the arc of said curve 78.959 feet through a central angle of 04°40'33" to a point of compound curvature with a 39.500 foot radius tangent curve to the left, (radius bears South 80°24'16" East, Chord: South 21°28'42" East 40.775 feet); thence along the arc of said curve 42.845 feet through a central angle of 62°08'51" to the point of beginning

Parcel 4: (TPN 16b - Parcel SS - 26-22-177-001)

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 2301.438 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the

Southeast Corner of Section 19, T3S, R1W) and North 3185.548 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot Z101 South 53°07'08" West 234.828 feet; thence North 30°00'00" East 215.969 feet; thence South 60°00'00" East 92.204 feet to the point of beginning.

Parcel 5: (TPN 19a - Parcel TT - 26-22-255-001)

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 2344.924 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3218.226 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot Z101 North 53°07'08" East 492.699 feet to a point on a 1565.000 foot radius non tangent curve to the left, (radius bears North 34°40'01" East, Chord: South 57°38'07" East 125.738 feet); thence along the arc of said curve 125.772 feet through a central angle of 04°36'17"; thence South 30°03'44" West 4.000 feet to a point on a 1569.000 foot radius non tangent curve to the left, (radius bears North 30°03'44" East, Chord: South 68°27'57" East 465.356 feet); thence along the arc of said curve 467.079 feet through a central angle of 17°03'23"; thence South 24°35'09" West 140.534 feet; thence South 22°52'30" West 79.203 feet; thence South 30°00'00" West 206.459 feet to a point on a 530.000 foot radius tangent curve to the left, (radius bears South 60°00'00" East, Chord: South 25°56'18" West 75.078 feet); thence along the arc of said curve 75.141 feet through a central angle of 08°07'23"; thence South 21°52'37" West 7.684 feet; thence North 60°00'00" West 489.772 feet; thence South 30°00'00" West 5.000 feet; thence North 60°00'00" West 319.081 feet to the point of beginning.

Parcel 6: (TPN 19b - Parcel UU - 26-22-176-001)

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 2739.027 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3514.375 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot Z101 South 53°07'08" West 492.699 feet; thence North 60°00'00" West 113.550 feet; thence North 30°00'00" East 262.000 feet; thence North 60°00'00" West 17.500 feet; thence North 30°00'00" East 42.227 feet; thence North 52°59'18" East 51.211 feet; thence North 30°00'00" East 135.006 feet to a point on a 28.000 foot radius tangent curve to the right, (radius bears South 60°00'00" East, Chord: North 57°47'32" East 26.111 feet); thence along the arc of said curve 27.164 feet through a central angle of 55°35'05"; thence South 50°00'00" East 152.212 feet to a point on a 1553.500 foot radius tangent curve to the left, (radius bears North 40°00'00" East, Chord: South 51°57'04" East 105.783 feet); thence along the arc of said curve 105.804 feet through a central angle of 03°54'08"; thence South 36°05'52" West 11.500 feet to a point on a 1565.000 foot radius non tangent curve to the left, (radius bears North 36°05'52" East, Chord: South 54°37'04" East 39.082 feet); thence along the arc of said curve 39.083 feet through a central angle of 01°25'51" to the point of beginning.

## EXHIBIT B

### Description of Personal Property

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, vehicles, and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Trust Estate or useful in the operation, use, or occupancy thereof or the construction of any improvements thereon, together with any interest of Trustor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Trust Estate;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Trust Estate, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Trust Estate, accounts and other accounts receivable, deposit accounts, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property and rights relating to the Trust Estate, the personal property described in *Paragraph (a)* above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Trust Estate, all names under or by which the Trust Estate may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Trust Estate, and all good will in any way relating to the Trust Estate;

(e) Trustor's rights under all insurance policies covering the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(f) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of the Trust Estate;

(g) All water stock relating to the Trust Estate;

(h) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Trust Estate or any portion thereof, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Trust Estate or any portion thereof, or for any loss or diminution in value of the Trust Estate or any portion thereof;

(i) All proceeds from sale or disposition of any of the aforesaid collateral; and

(j) All proceeds of any of the foregoing.



**EXHIBIT C**

**Financing Statement Information**

The Beneficiary/Secured Party is:

VP DAYBREAK INVESTCO 3 LLC  
9350 South 150 East, Suite 900  
Sandy, UT 84070  
Attn: Brad Holmes

The Trustor/Debtor is:

VP DAYBREAK DEVCO 2, INC.  
11248 S. Kestrel Rise Road, Suite 201  
South Jordan, UT 84009  
Attn: Courtney Palmer

The Collateral is the Real Property described in this Exhibit A to the Deed of Trust and the Personal Property (including all fixtures) described in this Exhibit B to the Deed of Trust.