

WHEN RECORDED RETURN TO:

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STOEL RIVES LLP
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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
9/30/2009 2:34:00 PM
FEE \$28.00 Pgs: 10
DEP eCASH REC'D FOR SECURITY TITLE OF DAVIS COUNTY

STC 128676

09-051-0052

TRUST DEED

With Security Agreement and Assignment of Rents

THIS TRUST DEED WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS ("Trust Deed"), is made this 10th day of September, 2009, by EAST LAYTON, LLC, a Utah limited liability company, whose address is 1099 West South Jordan Parkway, South Jordan, Utah 84095, as trustor ("Trustor"), in favor of SURETY TITLE INSURANCE AGENCY, INC., a Utah corporation, with an address of 5295 Commerce Dr. Suite 250, Salt Lake City, Utah 84107, as trustee ("Trustee"), for the benefit of MAVERIK, INC., a Wyoming corporation, whose address is 880 West Center Street, North Salt Lake, Utah 84054, Attention: Dan Murray, Vice President - Real Estate, as beneficiary ("Beneficiary").

Trustor hereby CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE AND DOES FURTHER ASSIGN AND CONVEY TO BENEFICIARY all the estate, right, title and interest, including insurance, which Trustor now has or may hereafter acquire, either in law or in equity, in and to that certain real property situated in Davis County, state of Utah ("Property"), described as:

Parcel 3:

A part of the Northeast Quarter of Section 10, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Davis County, Utah:

Beginning at a point on the Northerly Line of Utah State Highway 193, located 569.75 feet South 89°13'30" East along the Section Line; and 743.26 feet South from the North Quarter Corner of said Section 10; and running thence North 258.60 feet; thence East 156.77 feet; thence South 249.84 feet to the Northerly Line of said Utah State Hwy 193; thence Southwesterly along the arc of a 5654.65 foot radius curve to the right a distance of 157.02 feet (Center bears North 3°59'37" West; Central Angle equals 1°35'27" and Long Chord bears South 86°48'07" West 157.01 feet) along said Northerly Line to the point of beginning.

Contains 39,910 sq. ft. or 0.916 acre

Parcel 5:

A part of the Northeast Quarter of Section 10, Township 4 North, Range 1 West, Salt Lake Base & Meridian, U.S. Survey in Davis County, Utah:

Beginning at a point on the Southeasterly Line of Church Street located 492.37 feet South 0°07'30" West along the Quarter Section Line; and 248.83 feet East from the North Quarter Corner of said Section 10; and running thence Northeasterly along the arc of a 467.00 foot radius curve to the right a distance of 320.73 feet (Central Angle equals 39°20'59" and Long Chord bears North 43°48'28" East 314.46 feet) along said Southeasterly Line of Church Street as it is dedicated to 33.00 foot half-width; thence South 26°31'03" East 61.58 feet; thence South 171.83 feet; thence West 245.18 feet to the point of beginning.

Contains 35,932 sq. ft. or 0.825 acre

Tax Parcel Nos. _____

For purposes of this Trust Deed the two parcels of property described herein as the "Property" are sometimes individually referred to as a "Parcel" and collectively referred to as the "Parcels."

TOGETHER WITH all rents, revenues, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"), subject to the right, power and authority hereinafter given to Trustor to collect and apply such rents;

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

TOGETHER WITH all right, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

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

TOGETHER WITH all development plans, drawings, designs, plats, maps, and related documents and Trustor's interest in all funds now or hereafter escrowed for the completion of, the development, subdivision, improvement and/or use of the Property and any other properties of Trustor that are contiguous to the Property.

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

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, or other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or 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.

The foregoing grant shall also be deemed to be a grant and creation of a security interest in (and assignment for security of) any and all of the foregoing items which constitute personal property or fixtures or any other property or right of a nature which is subject to the rules and provisions of the Uniform Commercial Code for the State of Utah (or any other applicable state) (the "UCC") or to any common law rules or laws, or rules or laws of the government of the United States, with respect to pledges, security interests, chattel mortgages and similar rights; said grant also creating such pledge, chattel mortgage, security interest, assignment or similar lien interest or right. This Trust Deed also is a security agreement for all of the foregoing purposes.

Trustor agrees with respect to the foregoing security interest, pledge and assignment, that it will take all such actions and accomplish all such other acts (including the delivery of physical possession, where required) necessary in the reasonable judgment of the Beneficiary for purposes of perfecting the same, including filing appropriate UCC- 1 financing statements.

The foregoing entire estate, property and interest hereby conveyed, granted, assigned and created in and to Trustee and Beneficiary may hereafter be referred to as the "Property."

FOR THE PURPOSE OF SECURING:

(a) Payment of the indebtedness of Four Hundred Forty Thousand Six Hundred Fifty Five and 54/100 Dollars (\$440,655.54) and all interest accrued thereon, and the payment and performance of all other obligations of Borrower evidenced by and contained in that certain Promissory Note of even date herewith executed by Trustor as Borrower in favor of Beneficiary as payee and holder (the "Note") and any extensions and/or renewals or modifications thereof, which Note was made and delivered pursuant to the terms and conditions of that certain Settlement Agreement dated July 1, 2009, which Settlement Agreement was reinstated and modified by that certain First Amendment and Reinstatement of Settlement Agreement, dated September 29, 2009 (as amended, the "Settlement Agreement"), by and among Trustor, Beneficiary, and others;

(b) the performance of each agreement of Trustor herein contained; and

(c) the payment of all sums hereafter extended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:

1. To keep the Property free of rubbish and other unsightly or unhealthful conditions, and not to in any way change or restrict the use of the Property without the prior written consent of Beneficiary. Beneficiary or Trustee, or both, may, at any time or from time to time and without notice to Trustor, enter and inspect or protect the Property, in person or by a representative, in such manner and to such extent as it may deem necessary.
2. To comply fully with all applicable local, state and federal laws, rules, regulations and ordinances relating to land use, zoning or protection of the environment, or to the generation, use, storage, removal, transportation, handling or disposal of toxic materials, hazardous substances, hazardous waste or other similar materials or substances, as such substances may be identified or defined by such laws and regulations from time to time.
3. To promptly notify Beneficiary of any event or occurrence whether occurring on real property comprising part of the Property or on adjacent or nearby property, which poses a risk of contamination of such property or of air or water on, under or near such property, with any hazardous substance, toxic material, hazardous waste or similar substance or material as defined in or regulated by any applicable local, state or federal law, rule, regulation or ordinance.
4. To protect, indemnify, defend, and save harmless Beneficiary and its directors, officers, trustees, agents and employees from and against any and all liability, expense, or damage or any kind or nature and from any suit, claims, or demands, including reasonable legal fees and expenses, on account of any matter or thing, whether in suit or not, arising out of the Settlement Agreement or in connection therewith, or relating to the condition of the Property, including specifically but without limitation those arising from any default by Trustor and/or any breach of any representations or warranty of Trustor, unless such suits, claims, or damages are caused by the gross negligence or willful malfeasance of the Beneficiary. This obligation shall survive the repayment of the Note and/or the sale of the property under the powers of sale granted herein or pursuant to a judicial foreclosure of this Trust Deed as a mortgage.
5. To deliver to, pay for and maintain with Beneficiary until the indebtedness and other obligations secured hereby are paid and performed in full, such evidence of title as Beneficiary may require, including policies of title insurance (including, without limitation, the policy of title insurance to be issued pursuant to Section 2.1D(iii) of the Settlement Agreement) and any extensions or renewals thereof or supplements thereto, in such form as Beneficiary may require.
6. To pay, or post a bond as required for the immediate release of, and to discharge from the Property in the records of the Davis County Recorder, all mechanic's liens asserted against the Property or any portion thereof within ten (10) days after the recording of any notice of mechanic's lien with respect thereto.
7. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said Property, or the rights or powers of Beneficiary or Trustee, and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all

costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum incurred by Beneficiary or Trustee.

8. To pay at least ten (10) days before delinquency all taxes and assessments affecting said Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said Property; to pay, when due, all encumbrances, charges, and liens, with interest, on said Property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees and expenses of this Trust.

9. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, 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 said 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 prior or superior hereto; and in exercising any such power, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employment of counsel, and payment of reasonable counsel fees.

10. That the Beneficiary shall have the right to inspect said Property at any and all times during usual business hours.

11. Trustor agrees that on request of Beneficiary, Beneficiary shall be provided (a) current signed financial statements of Trustor; and (b) Trustor's most recent federal and state tax returns.

12. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee with interest from date of expenditure at the default rate specified in the Note, if any, until paid, and the repayment thereof shall be secured hereby.

IT IS MUTUALLY AGREED BY TRUSTOR AND BENEFICIARY THAT:

13. Should said Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorneys' fees, apply the same on any indebtedness and payments secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

14. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the Note for endorsement (in case of full reconveyance, for cancellation and retention) without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may, but shall have no obligation to (a) consent to the making of any map or plat of said Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) grant any extension or modification of the terms of the indebtedness secured hereby; (e) reconvey, without warranty, all or any part of said Property; and (f) take other or additional security for the payment thereof. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters of facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this Section.

15. As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, proceeds, contract rights, issues, royalties, proceeds, and profits of the Property affected by this Trust Deed. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, proceeds and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such monies shall cease and Beneficiary shall have the right, with or without taking possession of the Property affected hereby, to notify such Buyers and such lessees to make all payments of purchase and rental directly to Beneficiary, and to collect all rents, royalties, proceeds, issues and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such contract, tenancy, lease or option.

16. Within ten (10) days after Beneficiary's receipt of Trustor's written request to Beneficiary for reconveyance of one (1) of the Parcels to facilitate the sale of such Parcel to a bona fide purchaser of one (but not both) of the Parcels to an unrelated third party, Beneficiary agrees to cause Trustee to reconvey from the lien of this Trust Deed the Parcel identified in Trustor's written request, subject to and on the following terms and conditions:

(a) Prior to the reconveyance of either of the Parcels, Trustor shall have completed and paid in full for all of the "Required Improvements" (as such term is defined in the Settlement Agreement) for the subdivision in which the Parcels are situated (the "Subdivision") in accordance with all applicable laws, ordinances, and regulations and provided Trustee and Beneficiary reasonable evidence thereof.

(b) Not less than three (3) business days prior to the closing, Trustor shall provide Beneficiary with a copy of the contract for sale of the Parcel to be reconveyed, together with all closing documents for the sale, including a settlement statement showing the proposed disposition of all sale proceeds.

(c) Trustor shall pay to Beneficiary by federal wire transfer to an account designated by Beneficiary the amount of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00) to be applied in prepayment of the obligations of Trustor under the Note, in accordance with its terms.

(d) Only one of the Parcels shall be reconveyed pursuant to the provisions of this Section 16. The remaining Parcel shall remain subject to the Trust Deed until Trustor's obligations under the Note and this Trust Deed are paid in full.

(e) No payment made pursuant to this Section 16 shall extend or change the due date for the balance of amounts owing under the Note.

(f) Trustor shall provide Beneficiary, at Trustor's cost and expense, through the escrow in which the reconveyance of a Parcel pursuant to this Section 16 is to take place, an endorsement to Beneficiary's lender's policy of title insurance insuring that such partial reconveyance of the Property does not affect the priority of the lien of this Trust Deed as to the remaining Parcel.

(g) Trustor shall pay all costs and expenses incurred by Beneficiary and Trustee relative to a reconveyance under this Section 16, including without limitation reasonable attorney's fees, trustee's fees, escrow fees, filing and recording fees, and title insurance endorsement premiums.

(h) At the time of a request for reconveyance under this Section 16, and the time of the reconveyance so requested, Trustor shall not then be in default under the Note, the Settlement Agreement, or this Trust Deed or any of the obligations secured hereby.

17. Upon default by Trustor hereunder, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said Property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

18. The entering upon and taking possession of said Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

19. Failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default or acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver of any other subsequent default.

20. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder or pursuant to the terms and conditions of any guaranties, loan agreements, promissory notes, security agreements, or other obligations of Trustor or in the event a receiver or a trustee is appointed for Trustor or Trustor's Property, or Trustor makes an assignment for benefit of creditors, or Trustor becomes insolvent, or a petition is filed by or against Trustor pursuant to any provision of the United States Bankruptcy Code, as amended, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said Property to be sold to satisfy all obligations secured hereby, and Trustee shall file such notice for record in each county wherein said Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the Contract and all documents evidencing expenditures secured hereby.

21. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every 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 the time period allowed by law, notice thereof shall be given in the same manner as the original notice of sale, if required. Trustee shall execute and deliver to the purchaser its trustee's deed conveying said Property so sold, but without any covenant or 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 to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorneys' fees; (2) cost of any evidence of title procured in connection with such sale and preparation and recording of the trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the default rate of interest specified in the Note from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

22. Trustor agrees to surrender possession of the Property to the purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

23. Upon the occurrence of any default hereunder or under the provisions of the terms and conditions of any obligations of Trustor secured hereby, including any guaranties, promissory notes, security agreements, loan agreements, or letters of credit, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose

this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

24. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of the county in which said Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made. in the manner provided by law.

25. This Trust Deed 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 and/or other note or notes secured hereby. In this Trust Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

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

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

28. Notwithstanding any provision herein, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the applicable laws of the State of Utah.

29. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Trust Deed.

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

31. Except with respect to a Parcel reconveyed by Trustee in accordance with Section 16 hereof, if Trustor shall sell, convey or alienate the Property, or any part thereof, or any interest therein, or shall be divested of Trustor's title or any interest therein in any manner or way, or if there shall be any change in the ownership or control of the Property, directly or indirectly, whether voluntarily or involuntarily, without Beneficiary's prior written consent, which consent shall be in Beneficiary's sole discretion, Beneficiary shall have the right to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in the Note evidencing the same, immediately due and payable.

32. Trustor shall not allow any additional lien inferior to this Trust Deed to be perfected against the Property without Beneficiary's prior written consent, which consent shall be in Beneficiary's absolute, sole and subjective discretion.

