

2010-001884

Klamath County, Oregon



00079554201000018840070079

02/04/2010 02:41:16 PM

Fee: \$67.00

Recording Requested By:  
Aspen Title & Escrow, Inc.  
525 Main Street  
Klamath Falls, OR 97601

When Recorded Return To:

Aspen Title & Escrow, Inc.  
525 Main Street  
Klamath Falls, OR 97601

Until requested otherwise, send all tax statements:

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ATE 67501

## COVER SHEET

### DOCUMENT:

Deed of Trust

### GRANTOR:

S-CAP 09-5080 LLC, A Delaware Limited Liability Company

### GRANTEE:

Bruce Kleege  
George Percy, Trustee of CGGP Family Trust  
West Coast Limited Partnership, Ronald Temko, General Partner  
Anthony and Barbara Ciullo

### CONSIDERATION

N/A

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON  
PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING. ANY  
ERRORS CONTAINED IN THE COVER SHEET DO NOT AFFECT THE  
TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF

ATE 67

## TRUST DEED

This is a second Trust Deed, junior and subordinate to that certain first Trust Deed executed in favor of, See Attached Beneficiary Addendum, by S-CAP 09-5080, LLC, a Delaware Limited Liability Company, in the original amount of \$7,600,000.00 as recorded under Recording Number 2010 - 1883.

*THIS TRUST DEED, made this 30<sup>th</sup> day of December, 2009, between S-CAP 09-5080 LLC, a Delaware limited liability company, as Grantor, Foreclosure Consultants, Inc., as Trustee, and See attached Beneficiary Addendum, as Beneficiary,*  
*WITNESSETH:*

*Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the (4) properties in Klamath County, Oregon, described as:*  
 34212 Brittany Court, Chiloquin, OR; 34535 Castle Drive, Chiloquin, OR; 34541 Castle Drive, Chiloquin, OR &  
 34659 Castle Drive, Chiloquin, OR

Legal Descriptions attached hereto and made a part hereof  
 Tax Account No.'s – (see attached legal description)

*together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with the property.*

*FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of TWO MILLION AND NO/100<sup>TH</sup> DOLLARS (\$2,000,000.00), with interest thereon according to the terms of a promissory note and loan agreement of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable on March 30, 2010.*

*The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of the note becomes due and payable. Should the grantor either agree to, attempt to, or actually sell, convey, or assign all (or any part) of the property or all (or any part) of grantor's interest in it without first obtaining the written consent or approval of the beneficiary, the, at the beneficiary's option\*, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable. The execution by grantor of an earnest money agreement\*\* does not constitute a sale, conveyance or assignment.*

*To protect the security of this trust deed, grantor agrees:*

- 1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of the property.*
- 2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.*
- 3. To comply with all laws, ordinances, regulation, covenants, conditions and restrictions affecting the property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the beneficiary.*
- 4. To keep the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note and loan agreement secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.*
- 5. To provide and continuously maintain insurance on the buildings now or hereafter erected on the property against loss or damage by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than the replacement cost of all improvements, written in companies acceptable to the beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the beneficiary as soon as insured; if the grantor shall fail for any reason to procure any such insurance and to deliver the policies to the beneficiary at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on the buildings, the beneficiary may procure the same at grantor's expense. The amount collected under any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of beneficiary the entire amount so collected, or any part thereof, may be released to grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.*
- 6. To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.*
- 7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee; and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.*

**NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 696.505 to 696.585.**

**\*WARNING: 12 USC 1701j-3 regulates and may prohibit exercise of this option.**

**\*\*The publisher suggests that such an agreement address the issue of obtaining beneficiary's consent in complete detail.**

### Trust Deed

Grantor: S-CAP 09-5080 LLC  
 3655 Noble Drive Suite 330  
 San Diego, CA 92122  
 and  
 Beneficiary: See attached Beneficiary Addendum  
 c/o Foreclosure Consultants, Inc.  
 8180 E. Kaiser Blvd  
 Anaheim Hills, CA 92808

### After Recording return to:

Foreclosure Consultants, Inc.  
 8180 E. Anaheim Blvd  
 Anaheim Hills, CA 92808  
 RE: S-CAP 09-5080 LLC

It is mutually agreed that:

8. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon beneficiary's request.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed, the loan agreement, and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may (a) consent to the making of any map or plat of the property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.

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

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

12. Upon default by grantor in payment of any indebtedness secured hereby or in grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the beneficiary may declare all sums secured hereby immediately due and payable. In such an event the beneficiary may elect to proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the event the beneficiary elects to foreclose by advertisement and sale, the beneficiary or the trustee shall execute and cause to be recorded a written notice of default and election to sell the property to satisfy the obligation secured hereby whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with trustee's and attorney's fees not exceeding the amounts provided by law.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The trustee may sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the grantor or to any successor in interest entitled to such surplus.

16. Trustee accepts this trust when this 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 deed of trust or of any action or proceeding in which grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

17. Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

18. If and when Borrower has paid all of the secured indebtedness as the same becomes due and payable, then, and in such event only, all rights under this Security Instrument shall terminate except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Lender in due form at Borrower's cost. Borrower shall be responsible for the recordation of such release and payment of any recordation costs associated therewith. Notwithstanding the foregoing, Lender shall release this Security Instrument upon satisfaction of the terms and conditions of Section 2.04 of the Loan Agreement.

The grantor covenants and agrees to and with the beneficiary and the beneficiary's successor in interest that the grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto and that the grantor will warrant and forever defend the same against all persons whomsoever.

The grantor warrants that the proceeds of the loan represented by the above described note, loan agreement and this trust deed are:

- (a) ~~\*primarily for grantor's personal, family or household purposes (see Important Notice below);~~
- (b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes.

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY BOTH PARTIES TO BE ENFORCEABLE.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a beneficiary herein.

In construing this trust deed, it is understood that the grantor, trustee and/or beneficiary may each be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the grantor has executed this instrument.

\* IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; if warranty (a) is applicable and the beneficiary is a creditor as such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures. If compliance with the Act is not required, disregard this notice.

S-CAP 09-5080, LLC  
a Delaware limited liability company

By: Sierra Capital Investment Partners, Inc.  
a Delaware corporation  
Its Manager

By:   
Name: Kefler Morris  
Title: CEO/President

STATE OF OREGON, County of [ ] ss.  
This instrument was acknowledged before me on [ ], by [ ]  
This instrument was acknowledged before me on [ ], by [ ] as  
[ ] of [ ].

Notary Public for Oregon  
My commission expires: \_\_\_\_\_

REQUEST FOR FULL RECONVEYANCE (To be used only when obligations have been paid.)

TO: Foreclosure Consultants, Inc., trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed the estate now held by you under the same. Mail reconveyance and documents to

DATED:

Beneficiary:

Do not lose or destroy this Trust Deed OR THE NOTE which it secures.  
Both must be delivered to the trustee for cancellation before  
reconveyance will be made.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Legal Descriptions

- (1) **34212 Brittany Court**  
**Chiloquin, OR**

Code: 118 Map: 3507-017DB TL: 01300 Key 893455

Lot 18, PINE MEADOW VILLAGE, PHASE 2, Tract No. 1502, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon

- (2) **34535 Castle Drive**  
**Chiloquin, OR**

Code: 118 Map: 3507-017A0 TL: 03600 Key: 892933

Lot 6, Tract No. 1281, PINE MEADOW VILLAGE, PHASE 1, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon

- (3) **34541 Castle Drive**  
**Chiloquin, OR**

Code: 118 Map: 3507-017A0 TL: 03700 Key: 892934

Lot 5, Tract No. 1281, PINE MEADOW VILLAGE, PHASE 1, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon

- (4) **34659 Castle Drive**  
**Chiloquin, OR**

Code: 118 Map: 3507-017A0 TL: 04000 Key: 892937

Lot 2, Tract No. 1281, PINE MEADOW VILLAGE, PHASE 1, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon

**California All-Purpose Acknowledgement as of January 1, 2008**

State of California

County of San Diego

On January 12, 2009, before me, Lorri Wirick, a Notary Public in and for said state, personally appeared Keffer Norris, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature \_\_\_\_\_

A handwritten signature in black ink, consisting of a stylized 'L' and 'W' connected together, written over a horizontal line.

(area for Notary Seal)

Exhibit "A"

Beneficiary Addendum

<u>BENEFICIARIES</u>	<u>Funds Deposited</u>	<u>Percentage Owned</u>
Bruce Kleege	\$1,210,000.00	60.50%
George Percy, Trustee of C.G.G.P. Family Trust	\$500,000.00	25.00%
West Coast Limited Partnership, Ronald Temko, General Partner	\$239,000.00	11.95%
Anthony and Barbara Ciullo	\$51,000.00	2.55%
	\$2,000,000.00	100.00%