

When recorded mail to:
Indicate Capital Fund 1, LLC
Attn: Loan Closing Dept.
2828 N. Speer Blvd. #210
Denver, CO 80211



ENT 58740:2021 PG 1 of 6
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Mar 29 4:24 pm FEE 70.00 BY JR
RECORDED FOR COTTONWOOD TITLE

Escrow 141327-DMF

Assignment of Leases and Rents

Tax Id No.:

- 67-088-0001
- 67-088-0002
- 67-088-0003
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ASSIGNMENT OF LEASES AND RENTS

1. **Assignor:** Montdella Townhomes, LLC, a Utah limited liability company
1192 E Draper Parkway #305
Draper, UT 84020
Attention Name: David Wilkes

2. **Lender:** Indicate Capital Fund 1, LLC
2828 N Speer Blvd. #210
Denver, CO 80211
Phone: 801-505-6554
Attention: Loan Closing Department

3. **Obligations:** (a) All indebtedness evidenced and created by the Promissory Note of even date herewith (the "Note") in the principal face amount of \$4,000,000 from Assignor in favor of Lender and payable in full on or before March 25, 2022 (unless extended in accordance with the Note), and all renewals, extensions, modifications amendments and restatements thereof and substitutions therefor; and

(b) future advances made by Lender plus interest thereon at the Default Rate; and

(c) all other indebtedness due under the Note, this Assignment, the Deed of Trust (as defined below) and any other documents or instruments evidencing, securing or otherwise executed in connection with the Loan defined and described in the Note, together with all amendments, modifications, extensions, replacements and substitutions to any of the foregoing documents and instruments (collectively, the "Loan Documents").

4. **Property:** The real property described on **Exhibit A** attached hereto, together with (i) all buildings, structures, and other improvements now or hereafter constructed thereon; (ii) all fixtures, easements, minerals, crops, landscaping features, development rights, water, ditch, reservoir, well or spring rights, groundwater rights, leases, rents, issues and profits, income, revenues and condemnation awards and insurance proceeds, however evidenced, relating or appertaining in any way to the real property; and (iii) all other appurtenances and hereditaments now or hereafter appertaining to, located on or used in connection with the real property.

5. **Assignment.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby absolutely and unconditionally assigns, transfers and sets over to Lender all of its right, title and interest in (a) all leases, tenancies and other occupancy arrangements, whether written or oral, now existing or hereafter entered into in connection with the Property or any part thereof ("Leases"), (b) the rents, issues and profits derived from the Property, and (c) the right to use and possession of all furniture, furnishings, equipment, fixtures and appurtenances of every kind.

6. **Default and Remedies.** Assignor agrees with Lender as follows:
 - (a) **Acceleration.** Upon the occurrence of an Event of Default, Lender may accelerate the entire unpaid principal balance, together with accrued interest thereon, and declare the same to be immediately due and payable. Lender, in its sole discretion, may suspend or terminate any obligation it may have hereunder to make additional disbursements hereunder. Without waiving any right or remedy available to it, Lender may proceed against Borrower, any or all Guarantors, or any Collateral simultaneously or in any order it chooses. Lender shall have all of the rights and remedies of a secured party under applicable law.

 - (b) **Collection of Accounts.** Borrower shall, at the request and option of Lender, notify account debtors and other persons obligated on any of the Collateral of the security interest of Lender in any account, chattel

paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to Lender; provided, however, Lender may itself so notify account debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, Borrower shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by Borrower as trustee for Lender without commingling the same with other funds of Borrower and shall turn the same over to Lender in the identical form received, together with any necessary endorsements or assignments.

(c) **General Rights and Obligations.** Lender may in its discretion require Borrower to assemble all or any part of the Collateral at such location or locations within the State of Utah or at such other locations as Lender may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Borrower at least five (5) Business Days' prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. Borrower hereby acknowledges that five (5) Business Days' prior written notice of such sale or sales shall be commercially reasonable notice. Anything herein to the contrary notwithstanding, Borrower shall remain obligated and liable under each contract or agreement comprised in the Collateral to be observed or performed by Borrower thereunder. Lender's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with such Collateral in the same manner as Lender deals with similar property for its own account, but shall deal with such Collateral with no less than commercially reasonable standards.

(d) **Standards in Exercising Rights and Remedies.** Lender shall not be required to repair, restore, or refurbish any of the Collateral prior to any sale or disposition thereof, but may sell or dispose of the same "as is" and in its condition at the time of sale or disposition. No failure or delay on the part of Lender in exercising any right, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. To the extent that applicable law imposes duties on Lender to exercise remedies in a commercially reasonable manner, Borrower acknowledges and agrees that it is not commercially unreasonable for Lender: (i) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (ii) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (iii) to contact other persons, whether or not in the same business as Borrower, for expressions of interest in acquiring all or any portion of the Collateral; (iv) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (v) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets; (vi) to dispose of assets in wholesale rather than retail markets; (vii) to disclaim disposition warranties; (viii) to purchase insurance or credit enhancements to insure Lender against risks of loss, collection or disposition of Collateral or to provide to Lender a guaranteed return from the collection or disposition of Collateral; or (ix) to the extent deemed appropriate by Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Lender in the collection or disposition of any of the Collateral. Borrower acknowledges that the purpose of this Paragraph 6 is to provide non-exhaustive indications of what actions or omissions by Lender would fulfill Lender's duties under the Uniform Commercial Code or other law of the State of Utah or any other relevant jurisdiction in Lender's exercise of remedies against the Collateral and that other actions or omissions by Lender shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Paragraph 6. Without limitation upon the foregoing, nothing contained in this Paragraph 6 shall be construed to grant any rights to Borrower or to impose any duties on Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Paragraph 6.

(e) **Non-Waiver of Rights.** Lender shall not be deemed to have waived any of its rights or remedies in respect of the secured obligations or the Collateral unless such waiver shall be in writing and signed by Lender. The rights and remedies described in this Paragraph 6 shall be in addition to all other rights and remedies available to Lender at law or in equity. Reasonable delay or omission on the part of Lender in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. All rights and remedies of Lender with respect to the secured obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, may be exercised singularly, alternatively, successively or concurrently in a reasonable manner.

7. Assignor's Right to Retain Rents. It is the parties' intention that this Assignment constitutes an absolute assignment. However, it is understood that so long as there shall exist no Event of Default, Assignor shall have the

right to collect, but not in excess of one month prior to accrual under such Lease, all rents, issues and profits from the Property, but only as trustee for the benefit of Lender; and Assignor shall apply the amounts so collected first to the payment of interest and principal and all other sums due and payable under the Note, this Assignment and the Loan Documents, and thereafter, so long as no Event of Default has occurred, the balance of such rents, issues and profits shall be retained by Assignor for its own account. Nothing contained in this Section 7 or elsewhere in this Assignment or any other document shall be construed to make Lender a "mortgagee-in-possession."

8. No Obligation of Lender/Indemnity by Assignor. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases assigned hereunder or under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify Lender against and hold it harmless from any and all liability, loss, damage, cost or expense that Lender may or might incur under any of the Leases or under or by reason of this Assignment, and against and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligation or undertaking on Assignor's part to perform or discharge any of the terms, covenants or agreements contained in the Leases.

9. Release/Conflict. A release of the Deed of Trust, Security Agreement and Financing Statement of even date herewith from Assignor in favor of Lender (as amended, modified, extended, replaced and substituted from time to time, the "Deed of Trust") shall automatically release this Assignment. In the event of any conflict between the assignment of leases and rents contained in the Deed of Trust and this Assignment, this Assignment shall govern and control the respective rights, duties and obligations of Lender and Assignor.

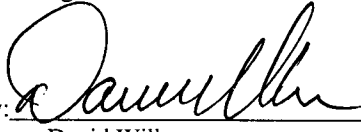
10. General. (a) This Assignment may be amended or modified only by an instrument in writing signed by the party charged with such amendment or waiver. (b) The terms "Assignor," and "Lender" are defined in Sections 1 and 2, respectively, the terms "Note," "Obligations" and "Loan Documents" are defined in Section 3, and the term "Property" is defined in Section 4. (c) Failure on the Lender's part to exercise its rights in the event of any one default shall not constitute a waiver of such rights in the event of any subsequent default. (d) Assignor hereby expressly waives Lender's written acceptance of this Assignment. (e) Any consent, notice or other communications required or contemplated by this Assignment shall be in writing and shall be given and deemed received in accordance with the terms and provisions of the Note. (f) This Assignment shall be governed by, and construed in accordance with, the laws of the State of Utah. (g) This Assignment and each of its provisions shall be binding upon the heirs, personal representatives, successors and assigns of Assignor and shall inure to the benefit of the Lender and its successors and assigns. (h) All the rights of Lender under this Assignment shall be cumulative. (i) If there is more than one Assignor, each Assignor shall be jointly and severally liable for the payment, observance and performance of all of Assignor's indebtedness, covenants, duties, indemnities, liabilities and other obligations under this Assignment and the other Loan Documents and this Assignment shall affect their jointly and severally owned properties and assets. (j) Where the Assignor and an obligor on the Obligations are not the same, the term "Assignor" means the owner of the Property in any provision dealing with the Property, the obligor in any provision dealing with the Obligations, and both where the context so requires. (k) Time is of the essence of this Assignment and all duties and obligations to be performed by Assignor under this Assignment. (l) Assignor agrees to execute and deliver such additional documents and instruments and undertake such further actions as may be necessary to effectuate the transactions contemplated in this Assignment, the Note and other Loan Documents. (n) Capitalized terms used herein but not defined herein shall have the meanings given them in the Deed of Trust and other Loan Documents.

[signature page to follow]

Date: March 26, 2021.

ASSIGNOR:

Montdella Townhomes, LLC, a Utah limited liability company
By DSD Development, LLC, a Utah limited liability company,
its Manager

By: 
Name: David Wilkes
Title: Manager

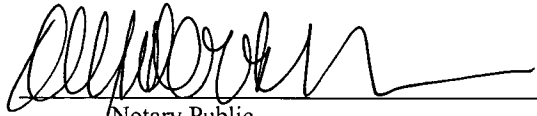
STATE OF UTAH)
COUNTY OF Salt Lake) ss.

The foregoing instrument was acknowledged before me this 26th Day of March, 2021, by David Wilkes, as Manager of DSD Development, LLC, a Utah limited liability company Manager of Montdella Townhomes, LLC, a Utah limited liability company.

Witness my hand and official seal.

[SEAL]

My commission expires: 10/18/22


Notary Public

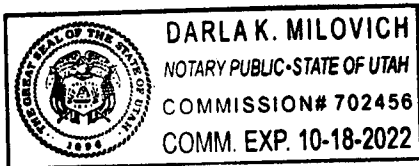


EXHIBIT A

Attached to and forming part of the Assignment of Leases and Rents dated March 26, 2021, from Montdella Townhomes, LLC, a Utah limited liability company, as Assignor, for the use and benefit of Indicate Capital Fund 1, LLC, a Colorado Limited Liability Company, as Lender.

Description of Property:

PARCEL 1:

All of Units 1 through 25, inclusive, MONTDELLA TOWNHOMES AMENDED SUBDIVISION, Amending Montdella Subdivision, according to the official plat thereof on file and of record in the office of the Utah County Recorder, recorded July 14, 2020 as Entry No. 100155:2020.

PARCEL 1A:

A right of easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions, recorded December 17, 2019 as Entry No. 133919:2019, which include, without limitation, an easement for vehicular ingress and egress over and across said Common Areas and Private Roads to and from said Units to a physically open and legally dedicated public street.

Also Known As:

250 South Main Street
Alpine, UT 84004