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Rhonda Francis Summit County Recorder

09/16/2021 01:27:27 PM Fee \$40.00

By MERAKI TITLE INSURANCE AGENCY

Electronically Recorded

When recorded return to:

Blake D. Johnson
2225 Washington Blvd., Suite 200
Ogden, UT 84401

Mail tax notice to:

IHC Development, LLC
430 East Chalk Creek Court
Coalville, UT 84017

Tax ID CD-575-12 **DEED OF TRUST**

THIS DEED OF TRUST is made this 15 day of September 2021 between **IHC Development, LLC**, as TRUSTOR or BORROWER, **Meraki Title**, 262 N University Ave. Drive, Farmington, UT 84025, as TRUSTEE, and **BAM FAM Group II, LLC**, a Utah limited liability company as BENEFICIARY.

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Summit, State of Utah:

See Exhibit A

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property";

It is mutually agreed that:

Borrower hereby represents and warrants that Borrower is lawfully seized of said property in fee simple, that Borrower has good and lawful right to execute and deliver this trust deed, that Borrower will warrant and defend said property against all claims and demands whatsoever, except the following:

TO SECURE TO LENDER the repayment of the indebtedness evidenced by Borrower's Promissory Note signed contemporaneously with this instrument (herein "Note"), in the principal sum of up to One Million Seven Hundred Fifty Thousand Dollars and 00/100 (1,750,000.00), with interest thereon, with the balance of the indebtedness, if not sooner paid, due and payable on the March 15, 2023 the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

Beneficiary's interest contained herein is subject to, and subordinate to, that certain interest held by BRMK Lending, LLC which is secured by a security agreement, trust deed, deed of trust, or similar instrument of even date herewith, granted by Borrower for the purpose of securing purchase money lending to acquire title to the Property. Any and all interests of Beneficiary shall not take priority over interests held by BRMK Lending, LLC.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations,

easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, including the payments applicable to the sale of lots within the proposed Indian Hollow Creek Subdivision as provided in the Note, and prepayment and late charges as provided in the Note.

2. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and Paragraph 1 shall be applied by Lender first in payment of amounts payable to Lender by Borrower as reimbursement for costs incurred under Paragraphs 3 and 4 hereof, then to interest payable on the Note, then to the principal of the Note.

3. Charges; Liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner provided under Paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender or shall in good faith contest such lien by, or defend enforcement of such lien in legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Deed of Trust. Borrower shall also keep, either as a separate policy or covered under the general policy above, insurance coverage for losses to naturally occurring trees on the Property which are damaged due to natural disaster, including wildfires. Borrower shall also keep a separate commercial general liability insurance policy with a coverage limit no less than \$3,000,000.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonable withheld. All premiums on insurance policies shall be paid in the manner provided under Paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance

benefits, Lender is authorized to collect and apply the insurance proceeds at the Lender option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the payments referred to in Paragraph 1 or change the amount of such payments. If the Property is acquired by Lender under this Deed of Trust, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

5. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider were a part hereof.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursements of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this Paragraph 6, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the property.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application or proceeds to principal shall not extend or postpone the due date of the payments referred to in Paragraph 1 hereof or change the amount of such payments.

9. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest.

10. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

11. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

13. Notices. Except for any notice required under applicable law to be given in another manner: (a) any notice to Borrower provided for in this Deed of Trust shall be given by mailing such notice by certified mail, addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein; and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

14. Uniform Deed of Trust; Governing Law; Severability. This form of Deed of Trust combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. The state and local laws applicable to this Mortgage (Deed of Trust) shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage (Deed of Trust). In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given without the conflicting provision, and to this end the provisions of the Deed of Trust and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be furnished a conformed copy of the note and Deed of Trust at the time of execution or after recordation hereof.

16. Section Intentionally Omitted.

NON-UNIFORM COVENANTS. BORROWER AND LENDER FURTHER COVENANT AND AGREE AS FOLLOWS:

17. Acceleration; Remedies. Except as provided in Section 22 for default of the covenants to pay when due any sums secured by this Deed of Trust or otherwise due under the Note, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in Paragraph 13 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and those remedies permitted by applicable law may be invoked. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Paragraph 17, including, but not limited to, reasonable attorney's fees.

If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an event of default and of the election to cause the Property to be sold and shall record such notice in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be *prima facie* evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto or to the county clerk of the county in which the sale took place.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) the fifth day before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust and in enforcing Lender's and Trustee's remedies as provided in Paragraph 17 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Section Intentionally Omitted.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. Upon the sale of any lot within the proposed Indian Hollow Creek Subdivision, Lender shall surrender its interest to that lot at closing and reconvey the portion of the Property represented by the sale of the lot in order to facilitate the sale of marketable title to the third-party purchaser.

21. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

22. Deed in Lieu of Foreclosure. Borrower agrees to provide Trustee with a Warranty Deed for the entirety of the Property which Borrower will execute contemporaneously with this Agreement. The executed Warranty Deed shall be held by Trustee in escrow and it is only to be released as follows: (1) Upon notification from both Parties that all amounts owing under the Promissory Note have been paid in full or otherwise satisfied, Trustee shall be authorized to void the Warranty Deed and provide copies of the voided Warranty Deed to each Party. (2) Trustee may release the Warranty Deed to Lender upon Lender's request if Lender has notified Borrower, in writing, no sooner than 30 days before the Maturity Date of the Promissory Note that amounts under the Promissory Note are not yet paid in full or satisfied and Lender will exercise its right to record the Warranty Deed if all amounts are not paid within 30 days from the date of the notice. (3) Trustee may release the Warranty Deed to Lender upon Lender's request after Lender has notified Borrower, in writing, that an amount greater than \$50,000 (fifty thousand dollars) as required under Paragraph 1 has accumulated and remains unpaid to Lender or under the Promissory Note with respect to the sale of lots within the proposed Indian Hollow Creek Subdivision and Lender will exercise its right to record the Warranty Deed if all amounts are not paid within 30 days from the date of the notice. If Lender provides notice to Borrower under Subsection 2 above, Trustee shall be authorized to release the Warranty Deed to Lender on the first business day following the Maturity Date if all amounts under the Promissory Note or Paragraph 1 are not paid in full or otherwise satisfied, with notice from Borrower to Trustee of Borrower's failure to pay in full or otherwise satisfy the Promissory Note. If Lender provides notice to Borrower under Subsection 3 above, Trustee shall be authorized to release the Warranty Deed to Lender on the first business day following the 30th day from the date of such notice if all amounts under the Promissory Note and Paragraph 1 are not paid in full or otherwise satisfied.

23. Control of Utility Entities. For the purposes of developing the Indian Hollow Creek Subdivision, and as required by the City of Kamas, Borrower will organize and own certain companies which will own and/or operate certain utilities for the subdivision such as water and sewer facilities (herein "Utility Entities"). In the event the Warranty Deed referenced in Paragraph 22 is recorded due to a default by Borrower, or Lender acquires the Property pursuant to Paragraph 17, Lender shall have the right to request that Borrower transfer ownership and managing control of the Utility Entities to Lender. Upon such request, Borrower shall, within 5 business days, execute any reasonably necessary documents to transfer all ownership and control of the Utility Entities to Lender.

24. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address.

SIGNATURES ON NEXT PAGE

EXHIBIT "A"

The South half of the Northwest Quarter of Section 18, Township 2 South, Range 6 East, Salt Lake Base and Meridian.

Less and excepting therefrom the following:

That portion being Tax Parcel CD-563-B as described by a Warranty Deed recorded December 24, 1986 as Entry No. 262704 in Book 411 at Page 198, of Official Records.

Also less and excepting therefrom that portion being Tax Parcel CD-563-C, as described by a Warranty Deed recorded May 29, 1983, as Entry No. 271889 in Book 432 at Page 575, of Official Records.

Also less and excepting therefrom that portion being Tax Parcel CD-563-E, as described by a Warranty Deed recorded January 29, 1990, as Entry No. 319644, in Book 552 at Page 330, of Official Records.

Also less and excepting that portion within the bounds of Naylor Subdivision, Amended.

Also less and excepting therefrom that portion being Tax Parcel No. CD-575-A, as described by a Warranty Deed recorded January 21, 1993, as Entry No. 372636 in Book 705 at Page 381, of Official Records.

Also less and excepting therefrom that portion being Tax Parcel No. CD-575, said parcel is further defined as being South of a Boundary Agreement dated September 17, 1981, recorded September 17, 1981, as Entry No. 183681 in Book 198 at Page 487, of Official Records.

Tax Parcel No.: CD-575-B