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RASHELLE HOBBS
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE INS TN
BY: eCASH, DEPUTY - EF 8 P.

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made as of the day of April 2, 2019 (the "Date of this Declaration"), by HTC COMMUNITIES, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant"), having an address at 10421 S. Jordan Gateway, Suite 200, South Jordan, Utah 84095, under the following circumstances:

WITNESSETH:

A. Declarant is the owner of certain real property located in Salt Lake County, Utah as described on Exhibit A attached hereto and made a part hereof (the "Adjacent Land");

B. Declarant is also the owner of certain real property located in Salt Lake County, Utah as described on Exhibit B attached hereto and made a part hereof (the "FSED Land"), which Declarant intends to sell;

C. FSED Land Owner (as defined in Article I) desires to construct and operate on the FSED Land a free-standing emergency department and, in connection therewith, Declarant desires that the use of the Adjacent Land and all improvements now or hereafter located thereon complement and not conflict with the development and use of the FSED Land, and, therefore, Declarant is executing and recording this Declaration for the additional purpose of imposing certain restrictions upon the Adjacent Land and for other purposes as herein provided.

NOW, THEREFORE, in consideration of the premises and for the purpose of enhancing and protecting the value, desirability and attractiveness of the FSED Land and the Adjacent Land, Declarant as fee simple owner of the Adjacent Land and the FSED Land declares that the "Adjacent Property" (as described and defined in Article I) shall be held, sold, conveyed, transferred, leased, encumbered and mortgaged, subject to this Declaration.

ARTICLE I DEFINITIONS

1.01 Definitions. As used in this Declaration, the following terms shall have the following meanings:

“Adjacent Land” shall mean that certain real property described on Exhibit A attached hereto.

“Adjacent Land Owner” shall mean each Person that is the owner from time to time of fee simple title to the Adjacent Land, but only during the period of such Person’s ownership; provided, however, if any such owner of record fee simple title to the Adjacent Land leases the Adjacent Land to another Person for a term of 10 years or more pursuant to a lease, which lease or a memorandum thereof is Recorded, then until the expiration or termination of such lease, “Adjacent Land Owner” shall also include the then-current tenant under such lease.

“Adjacent Property” shall mean and include the Adjacent Land and all buildings and improvements now or hereafter located thereon.

“Affiliate” shall mean as to the person or entity in question, any person or entity that directly or indirectly controls or is controlled by or is under common control with such person or entity. For purposes of this definition, “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used herein, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, through the ownership of voting securities, partnership interests or other equity interests.

“Date of this Declaration” shall have the meaning set forth in the first paragraph of this Declaration.

“Declarant” shall have the meaning set forth in the first paragraph of this Declaration.

“FSED Land” shall mean that certain real property described on Exhibit B attached hereto.

“FSED Land Owner” shall mean each Person that is the owner from time to time of fee simple title to the FSED Land, but only during the period of such Person’s ownership.

“FSED Property” shall mean and include the FSED Land and all buildings and improvements now or hereafter located thereon.

“Mortgage” shall mean any first mortgage, deed of trust or similar lien which has priority over all other mortgages, deeds of trust and similar liens and which is Recorded, secures the payment of any indebtedness and encumbers all or any part of the Adjacent Land or any interest therein.

“Mortgagee” shall mean the holder of any Mortgage.

“**Person**” or “**person**” shall mean anyone or more natural persons, corporations, partnerships, limited liability company, firms, trusts, trustees, governments, governmental authorities or other entities.

“**Recorded**” shall mean filed for record in the land records of the county in which the Adjacent Land is located.

ARTICLE II
RESTRICTIONS APPLICABLE TO ADJACENT PROPERTY

The Adjacent Property shall be burdened with the following restrictions upon use for the benefit of the FSED Land and the FSED Land Owner:

2.01 Prohibited Uses The Adjacent Property shall not be used for any use related to the operation of (i) acute care, medical, surgical or specialty hospitals, (ii) outpatient or inpatient surgery facilities, (iii) birthing centers, (iv) emergency medicine departments, (v) urgent care facilities, (vi) medical physician office practices (as long as those medical offices do not have extended hours or provide services where no ongoing patient/physician relationship is contemplated on the Adjacent Property), (vii) cancer treatment centers (which includes, without limitation, any facility providing any of the following: PET CT, radiation therapy and/or chemotherapy), (viii) outpatient diagnostic imaging centers (which includes, without limitation, any facility providing any of the following: fluoroscopy, x-ray, plane film radiography, CT, ultrasound, radiation therapy, mammography and breast diagnostics, nuclear medicine testing and MRI), or (ix) any healthcare related commercial office uses (each a “**Medical Use**” and collectively, “**Medical Uses**”), with the exception that those uses enumerated in (ii), (iv), (v), (vii), and (viii) are permitted where such use is incidental and ancillary to the office practice of a physician or physician group and is not intended as the primary function or service of the facility located on the Adjacent Property.

2.02 Term of Certain Restrictions and Rights. The provisions of this Article II shall remain in effect and be enforceable for a period of ninety-nine (99) years after the date of this Declaration. Notwithstanding anything to the contrary set forth in this Declaration, at such time as the FSED Land is no longer used for any Medical Use, then the rights and restrictions set forth in Article II of this Declaration shall terminate, lapse and be of no further force or effect.

2.03 Covenants Running with the Land; Enforcement and Remedies. The covenants, agreements, rights, options and restrictions set forth in this Article II shall be effective upon the Date of this Declaration and shall be covenants running with the land and shall be binding upon Adjacent Land Owner, its heirs, successors and assigns, and all Persons claiming by, through or under Adjacent Land Owner, its or his/her heirs, successors and assigns, and shall inure to the benefit of FSED Land Owner, its heirs, successors and assigns. If Adjacent Land Owner or any

tenant, subtenant or other occupant of space in the Adjacent Property is in violation of any of the restrictions set forth in Section 2.01 of this Declaration, then Adjacent Land Owner shall at its sole cost and expense cure and remedy such violation within thirty (30) days after Adjacent Land Owner receives written notice of such violation from FSED Land Owner. If Adjacent Land Owner fails to cure such violation within such thirty (30) day period, then FSED Land Owner may take all actions available at law or in equity to enforce such restrictions and Adjacent Land Owner shall reimburse and pay to FSED Land Owner all costs and expenses incurred by FSED Land Owner in connection with such enforcement (including without limitation, reasonable attorneys' fees and expenses and all costs of litigation or mediation), together with interest thereon at the lesser of eighteen percent (18%) per annum or the highest non-usurious rate permitted by applicable law. Adjacent Land Owner shall pay such costs and expenses and interest thereon within ten (10) days after receipt from FSED Land Owner of a written demand for payment. Irreparable harm will result to FSED Land Owner by reason of any breach of the agreements, covenants and restrictions set forth in Article II of this Declaration, and, therefore, FSED Land Owner shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Article II, as well as any other relief available at law or equity. The failure of FSED Land Owner, in any one or more instances, to insist upon compliance with any of the terms and conditions of this Article II, or to exercise any right or privilege conferred in this Article II, shall not constitute or be construed as the waiver of such or any similar restriction, right, option, or privilege, but the same shall continue and remain in full force and effect as if no such forbearance had occurred.

ARTICLE III **MISCELLANEOUS**

3.01 Mortgages. No breach of the covenants, conditions and restrictions contained herein shall defeat or render invalid the lien of any Mortgage now or hereinafter executed upon any portion of the Land subject to this Declaration; provided, however, that the rights of any Mortgagee shall be subject to all of the covenants, conditions and restrictions of this Declaration, and if any portion of such property subject to any Mortgage is sold under a foreclosure of any mortgage or is conveyed to the Mortgagee or any other Person in lieu of foreclosure, any purchaser at such sale or any such grantee and his successors and assigns shall hold any and all property so purchased and acquired subject to all of the covenants, conditions and restrictions of this Declaration.

3.02 Attorney's Fees. In the event any litigation ensues with respect to the rights, duties and obligations of the parties under this Lease, the unsuccessful party in any such action or proceeding shall pay for all costs, expenses and reasonable attorney's fees incurred by the prevailing party in enforcing the covenants and agreements of this Lease. The term "prevailing party," as used herein, shall include, without limitation, a party who obtains legal counsel and brings action against the

other party by reason of the other party's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment.

3.03 Amendment, Etc. This Declaration may not be terminated, extended, modified or amended except by a written instrument duly executed and Recorded by the FSED Land Owner and the Adjacent Land Owner.

3.04 No Merger. The covenants and restrictions provided for herein shall remain in full force and effect and shall be unaffected by any change in ownership of the Adjacent Land or the FSED Land, or any part of any of them, or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein.

3.05 Severability. If any term or provision of this Declaration, or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Declaration, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

3.06 Governing Law; Legal Requirements. This Declaration shall be governed, construed and enforced in accordance with the laws of the state in which the Land is located. If any covenant, condition, restriction or other provision of this Declaration shall be unlawful, void or voidable for the violation of any rule of law, including, but not limited to, the rule against perpetuities, any law regarding unreasonable restraints on alienation or any similar rule of law, then such provision shall continue only until the date twenty-one (21) years after the death of the last survivor of the now-living lineal descendants of Elizabeth II, Queen of England.

3.07 Waiver. Failure by FSED Land Owner or Adjacent Land Owner to enforce any of the provisions hereof for any length of time shall not be deemed a waiver of its rights set forth in this Declaration. Such a waiver may be made only by an instrument in writing signed by the waiving party. No waiver of any condition or covenant of this Declaration shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Declaration shall be construed to be a waiver on the part of FSED Land Owner or Adjacent Land Owner of any right or remedy at law or in equity or otherwise.

3.08 Time of Essence. Time is of the essence with respect to all provisions of this Declaration.


[signatures on next page]

IN WITNESS WHEREOF, these presents have been executed by the duly authorized officer of Declarant on the day and year first above written.

DECLARANT:

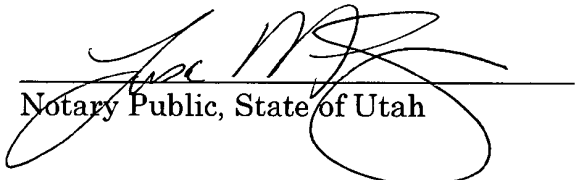
HTC COMMUNITIES, LLC, a Delaware limited liability company

By: Momentum - HTC, LLC, a Utah limited liability company, its Manager

By: 
Name: Corey A. Leiseth
Title: Manager

STATE OF Utah)
) :ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 2nd day of April, 2019, by Corey A. Leiseth, as Manager of Momentum - HTC, LLC, the Manager of **HTC COMMUNITIES, LLC**, a Delaware limited liability company, on behalf of said company.


Notary Public, State of Utah

My Commission Expires: 7.31.21



This instrument was prepared by:
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219-8966

**EXHIBIT A
TO
DECLARATION**

Description of the Adjacent Land

Lot 7, Herriman Towne Center Market Place Lot 7, according to the Official Plat thereof on file and of record in the Salt Lake County Recorder's Office.

**EXHIBIT B
TO
DECLARATION**

Description of the FSED Land

PARCEL 1:

Lot W-3, Herriman Towne Center Plat "W", according to the Official Plat thereof on file and of record in the Salt Lake County Recorder's Office.

PARCEL 1A:

Easements with covenants and restrictions affecting the land recorded June 12, 2014 as Entry No. 11864952 in Book 10237 at Page 7857 of Official Records.