

RECORDING REQUESTED AND  
WHEN RECORDED, RETURN TO:

Bank of America, N.A.  
Gateway Village – 900 Building  
NC1-026-06-06  
900 West Trade Street  
Charlotte, NC 28255  
Attention: CREB – Loan Administration

APN(s): 26-24-101-020-0000

**ESTOPPEL AND AGREEMENT**

April 30, 2025

Effective as of the date hereof, the undersigned (i) **DTDB OPERATIONS, LLC**, a Utah limited liability company (“Declarant”), as declarant under that certain Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak, recorded on April 9, 2025, in the Office of the Salt Lake County Recorder (“Recording Office”) as Entry No. 14368656, in Book 11562, at Page 4490 (as the same maybe amended, modified, restated, or supplemented from time to time, the “Covenant”), and (ii) **DOWNTOWN DAYBREAK OWNERS ASSOCIATION, INC.**, a Utah nonprofit corporation (the “Association”), as “Association” (as defined in the Covenant) under the Covenant, hereby certify to and agree for the benefit of **BANK OF AMERICA, N.A.**, a national banking association and its successors and assigns (“Lender”) as follows:

1. Lender’s failure to respond to any request for a response or consent to any action in connection with that certain property owned by **DTDB 5, LLC**, a Utah limited liability company (“DTDB 5”), and more particularly described on Schedule 1 attached hereto and incorporated herein by reference (the “DTDB 5 Property”), shall not be deemed to be approval or consent for purposes of Section 12.3 or any other purposes of the Covenant.

2. Declarant and Association agree that they will not exercise their rights under the Covenant to (i) restrict access, (ii) grant/declare or exercise easements, or, (iii) in the case of Declarant, unilaterally amend or consent to an amendment of the Covenant or reallocate entitlements in a way that would prohibit or materially impair the construction or operation of the DTDB 5 Property as a retail and office project consisting of approximately 17,000 square feet, including but not limited to restricting access to Private Streets (as defined in the Covenant) or any paths, sidewalks, or walkways; provided that Declarant and Association may completely restrict access to Private Streets in connection with Events (as defined in the Covenant) or as otherwise permitted under the terms of the Covenant, provided further, however, that in no event shall Declarant or Association materially impair DTDB 5’s or its Permittees’ (as defined in the Covenant) pedestrian access to the DTDB 5 Property during business hours.

3. To Declarant’s and Association’s knowledge, as of the date hereof, (a) all fees and assessments, if any, required to be paid by DTDB 5 under the Covenant are current, and (b) DTDB

5 is not in breach or default of any of its obligations under the Covenant in connection with the DTDB 5 Property.

This estoppel and agreement (as the same may be amended, modified, or supplemented from time to time, the "Agreement") (i) shall be binding on the successors and assigns of Declarant and Association and inure to the benefit of Lender's successors and assigns, as well as any transferee of the DTDB 5 Property pursuant to the foreclosure (whether judicial, or nonjudicial pursuant to the exercise of the power of sale arising thereunder) or deed-in-lieu thereof of the DTDB 5 Property pursuant to that certain Deed of Trust, Assignment, Security Agreement and Fixture Filing executed or to be executed by DTDB 5 in favor of Lender, and recorded or to be recorded, against the DTDB 5 Property, as the same may be amended, modified, or supplemented from time to time (the "Lender Security Instrument"), (ii) shall be governed and construed by and in accordance with the laws of the State of Utah, and (iii) may be executed in counterparts, and all counterparts shall constitute but one and the same document.

Provided that there has been no foreclosure (whether judicial, or nonjudicial pursuant to the exercise of the power of sale arising thereunder) or deed-in-lieu of foreclosure of the Lender Security Instrument, this Agreement shall automatically terminate upon the reconveyance (through the trustee thereof) of the Lender Security Instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Declarant and Association have executed this Agreement as of the date first set forth above.

**DECLARANT:**

**DTDB OPERATIONS, LLC**  
a Utah limited liability company

By: LHMRE, LLC  
Its: Manager

By: \_\_\_\_\_  
Name: Brad Holmes  
Title: President

STATE OF UTAH )  
 )  
COUNTY OF SALT LAKE ) SS.

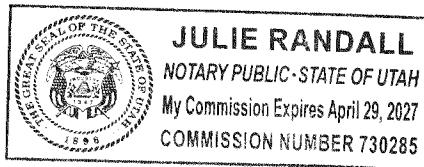
On April 30, 2025, personally appeared before me, a Notary Public, Brad Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Manager of DTDB OPERATIONS, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB OPERATIONS, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Julie Randall  
Notary Public in and for said State

My commission expires: April 29, 2027

[SEAL]



*[Signatures Continue on Following Page]*

**ASSOCIATION:**

**DOWNTOWN DAYBREAK OWNERS  
ASSOCIATION, INC.,**  
a Utah nonprofit corporation

By: 

Name: Brad Holmes

Title: President

STATE OF UTAH

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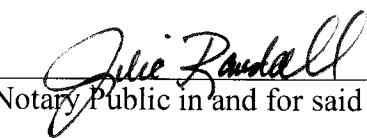
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COUNTY OF SALT LAKE

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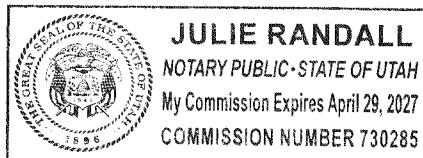
On April 30, 2025, personally appeared before me, a Notary Public, Brad Holmes, the President of DOWNTOWN DAYBREAK OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DOWNTOWN DAYBREAK OWNERS ASSOCIATION, INC., a Utah nonprofit corporation.

WITNESS my hand and official Seal.

  
\_\_\_\_\_  
Notary Public in and for said State

My commission expires: April 29, 2027

[SEAL]



**SCHEDULE 1  
TO  
ESTOPPEL AND AGREEMENT**

**Description of DTDB 5 Property**

Lot C-110, DAYBREAK URBAN CENTER PLAT 1, according to the official plat thereof recorded March 8, 2024 as Entry No. 14214053 in Book 2024P at Page 58 in the office of the Salt Lake County Recorder.