

RESPA

Record and Return to:  
Mutual of Omaha Mortgage  
3131 Camino Del Rio N Suite 1100  
San Diego, CA 92108

ENT 146961: 2021 PG 1 of 16  
Andrea Allen  
Utah County Recorder  
2021 Aug 23 01:57 PM FEE 40.00 BY IP  
RECORDED FOR Title One  
ELECTRONICALLY RECORDED

Prepared By:  
Mutual of Omaha Mortgage, Inc.  
3131 Camino del Rio North, Suite 1100  
San Diego, CA 92108

21-90486

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State of UTAH

FHA Case No. 523-0929058-962  
Loan No. 4150034  
MIN: 1012096-0005016080-5

**ADJUSTABLE RATE  
HOME EQUITY CONVERSION SECOND DEED OF TRUST**

THIS DEED OF TRUST ("Security Instrument" or "Second Security Instrument") is made on August 18, 2021, and secures a revolving obligation, the balance of which can fluctuate between \$0.00 and the maximum principal amount listed below. The trustor is **STANLEY J. CUTLER AND MAXINE CUTLER, HUSBAND AND WIFE, AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP**, whose address is **435 SILVER LEAF DRIVE, ALPINE, Utah 84004** ("Borrower"). Borrower is a trustor who is an original borrower under the Loan Agreement and Note. The term "Borrower" does not include the Borrower's successors and assigns. Trustor is an original trustor under this Security Instrument. The term "Trustor" includes Trustor's heirs, executors, administrators, and assigns. The trustee is the **SENIOR OFFICIAL WITH RESPONSIBILITY FOR SINGLE FAMILY MORTGAGE INSURANCE PROGRAMS IN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FIELD OFFICE WITH JURISDICTION OVER THE PROPERTY DESCRIBED BELOW, OR A DESIGNEE OF THAT OFFICIAL ("Trustee")**. The beneficiary is the Federal Housing Commissioner, whose address is 451 Seventh Street, SW, Washington, DC 20410 ("Lender" or "Commissioner"). Borrower has agreed to repay to Lender amounts which Lender is obligated to advance, including future advances, under the terms of a Home Equity Conversion Mortgage Adjustable Rate Loan Agreement dated the same date as this Security

Instrument ("Loan Agreement"). The agreement to repay is evidenced by Borrower's Adjustable-Rate Note dated the same date as this Security Instrument ("Second Note"). This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Second Note, with interest at a rate subject to adjustment (interest), and all renewals, extensions and modifications of the Note, up to a maximum principal amount of **One Million, Eighty Four Thousand, Five Hundred Dollars and Zero Cents (U.S. \$1,084,500.00)**; (b) the payment of all other sums, with interest, advanced under Paragraph 5 to protect the security of this Security Instrument or otherwise due under the terms of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument, the Second Note and Loan Agreement. The full debt, including amounts described in (a), (b), and (c) above, if not due earlier, is due and payable on **October 13, 2092**. For this purpose, Borrower and Trustor irrevocably grant, convey and warrant to Trustee, in trust, with power of sale, for the benefit and security of Lender, the following described property located in UTAH County, UTAH:

**See legal description as Exhibit A attached hereto and made a part hereof for all intents and purposes**

which has the address of  
**435 SILVER LEAF DRIVE, ALPINE, Utah 84004, ("Property Address")**

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER AND TRUSTOR COVENANTS that each is lawfully seized of the estate hereby conveyed and has the right to grant, convey and warrant the Property and that the Property is only encumbered by a First Security Instrument given by Borrower and dated the same date as this Security Instrument ("First Security Instrument"). Borrower and Trustor warrant and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

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

**1. Payment of Principal and Interest.** Borrower shall pay when due the principal of \$1,084,500.00, and interest on, the debt evidenced by the Second Note.

**2. Payment of Property Charges.** Borrower shall pay all property charges consisting of property taxes, hazard insurance premiums, flood insurance premiums, ground rents, condominium fees, planned unit development fees, homeowner's association fees, and any other special assessments that may be required by local or state law in a timely manner, and shall provide evidence of payment to Lender, unless Lender pays property charges as provided for and in accordance with the Loan Agreement.

**3. Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including, but not limited to, fire and flood, for which Lender requires insurance. Such insurance shall be maintained in the amounts, and for the periods that Lender requires; Lender has the discretion to increase or decrease the amount of any insurance required at any time provided the amount is equal to or greater than any minimum required by the Commissioner. Whether or not Lender imposes a flood insurance requirement, Borrower shall at a minimum insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Commissioner. If the Lender imposes insurance requirements, all insurance shall be carried with companies approved by Lender, and the insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Lender, instead of to Borrower and Lender jointly. Insurance proceeds shall be applied to restoration or repair of the damaged Property, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied first to the reduction of any indebtedness under the Second Note and this Security Instrument and then to the reduction of the indebtedness under the First Note and the First Security Instrument. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Second Note and this Security Instrument and the First Note and the First Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

**4. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's Principal Residence after the execution of this Security Instrument and Borrower (or at least one Borrower, if initially more than one person are Borrowers) shall continue to occupy the Property as Borrower's Principal Residence for the term of this Security Instrument.

Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a Principal Residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and

fee title shall not be merged unless Lender agrees to the merger in writing.

**5. Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument in the manner provided in Paragraph 14(c).

If Borrower fails to make these payments or pay the property charges required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of property taxes, hazard insurance and other items mentioned in Paragraph 2.

To protect Lender's security in the Property, Lender shall advance and charge to Borrower all amounts due to the Commissioner for the Mortgage Insurance Premium as defined in the Loan Agreement as well as all sums due to the loan servicer for servicing activities as defined in the Loan Agreement. Any amounts disbursed by Lender under this Paragraph 5 shall become an additional debt of Borrower as provided for in the Loan Agreement and shall be secured by this Security Instrument.

**6. Inspection.** Lender or its agent may enter on, inspect or make appraisals of the Property in a reasonable manner and at reasonable times provided that Lender shall give the Borrower notice prior to any inspection or appraisal specifying a purpose for the inspection or appraisal which must be related to Lender's interest in the Property. If the Property is vacant or abandoned or the loan is in default, Lender may take reasonable action to protect and preserve such vacant or abandoned Property without notice to the Borrower, including but not limited to, entering the Property for the purpose of securing or protecting the Property.

**7. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, shall be paid to Lender. The proceeds shall be applied first to the reduction of any indebtedness under the Second Note and this Security Instrument, and then to the reduction of the indebtedness under the First Note and First Security Instrument. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Second Note and this Security Instrument and the First Note and First Security Instrument shall be paid to the entity legally entitled thereto.

**8. Fees.** Lender may collect fees and charges authorized by the Commissioner.

**9. Non-Borrowing Spouse.** Borrower, N/A is married under the laws of Utah to N/A ("Non-Borrowing Spouse"), who is not a Borrower under the terms of the "Second Note," "Loan Agreement" or this Security Instrument.

(a) Eligible Non-Borrowing Spouse - A Non-Borrowing Spouse identified by the Borrower who meets, and continues to meet, the Qualifying Attributes requirements established by the Commissioner that the Non-Borrowing Spouse must satisfy in order to be eligible for the Deferral Period.

(b) Ineligible Non-Borrowing Spouse - A Non-Borrowing Spouse who does not meet

the Qualifying Attributes requirements established by the Commissioner that the Non-Borrowing Spouse must satisfy in order to be eligible for the Deferral Period.

#### 10. Grounds for Acceleration of Debt.

##### (a) Due and Payable - Death.

(i) Except as provided in Paragraph 10(a)(ii), Lender may require immediate payment in full of all sums secured by this Security Instrument if a Borrower dies and the Property is not the Principal Residence of at least one surviving Borrower.

(ii) Lender shall defer the due and payable requirement under Paragraph 10(a)(i) above for any period of time ("Deferral Period") in which a Non-Borrowing Spouse identified in Paragraph 9 qualifies as an Eligible Non-Borrowing Spouse resides in the Property as [his/her] Principal Residence and certifies all of the following conditions are, and continue to be, met:

- a. Such Eligible Non-Borrowing Spouse remained the spouse of the identified Borrower for the duration of such Borrower's lifetime;
- b. Such Eligible Non-Borrowing Spouse has occupied, and continues to occupy, the Property as [his/her] Principal Residence;
- c. Such Eligible Non-Borrowing Spouse has established legal ownership or other ongoing legal right to remain in the Property;
- d. All other obligations of the Borrower under the Second Note, the Loan Agreement and this Security Instrument continue to be satisfied;
- e. The Second Note is not eligible to be called due and payable for any other reason; and
- f. Such Eligible Non-Borrowing Spouse agrees that the statute of limitations applicable to the enforcement of the Second Note or this Security Instrument, including but not limited to claims for any breach or claims to foreclose upon Lender's secured interests in real property, should be tolled or suspended for the duration of the Duration Period, and, if requested by Lender, such Eligible Non-Borrowing Spouse shall sign and agree to be bound by any documents or agreements Lender deems necessary to effectuate such tolling of applicable limitations period or to preserve (I) the priority of Lender's lien on the Property, (II) Lender's right to foreclose the security interests in the Property, and (III) Lender's right to exercise its default remedies available under the Second Note and this Security Instrument.

This sub paragraph (ii) is inapplicable or null and void if an Eligible Non-Borrowing Spouse is or becomes an Ineligible Non-Borrowing Spouse at any time. Further, during a deferral of the due and payable status, should any of the conditions for deferral cease to be met, such a deferral shall immediately cease and the Note will become immediately due and payable in accordance with the provisions of Paragraph 7(A)(i) of the Second Note.

**(b) Due and Payable - Sale.** Lender may require immediate payment in full of all sums secured by this Security Instrument if all of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains title to the Property in fee simple or retains a leasehold under a lease for not less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest Borrower or retains a life estate (or retaining a beneficial interest in a trust with such an interest in the Property). A deferral of due and payable status is not permitted when a Lender requires immediate payment in full under this Paragraph.

**(c) Due and Payable with Commissioner Approval.** Lender may require immediate payment in full of all sums secured by this Security Instrument, upon approval of the Commissioner, if:

- (i) The Property ceases to be the Principal Residence of a Borrower for reasons other than death and the Property is not the Principal Residence of at least one other Borrower; or
- (ii) For a period of longer than twelve (12) consecutive months, a Borrower fails to occupy the Property because of physical or mental illness and the Property is not the Principal Residence of at least one other Borrower ; or
- (iii) An obligation of the Borrower under this Security Instrument is not performed.

A deferral of due and payable status is not permitted when a Lender requires immediate payment in full under this Paragraph 10(c).

**(d) Notice and Certification to Lender.** Borrower shall complete and provide to the Lender on an annual basis a certification, in a form prescribed by the Lender, stating whether the Property remains the Borrower's Principal Residence and, if applicable, the Principal Residence of his or her Non-Borrowing Spouse. Where a Borrower has identified a Non-Borrowing Spouse in Paragraph 9 and the identified Non-Borrowing Spouse qualifies as an Eligible Non-Borrowing Spouse, the Borrower shall also complete and provide to the Lender on an annual basis a Non-Borrowing Spouse certification, in a form prescribed by the Lender, certifying that all requirements for the application of a Deferral Period continue to apply and continue to be met. During a Deferral Period, the Borrower's annual certifications, required by this paragraph, must continue to be completed and provided to the Lender by the Eligible Non-Borrowing Spouse. The Borrower shall also notify Lender whenever any of the events listed in Paragraph 10 (b) and (c) occur.

**(e) Notice to Borrower.** Lender shall notify Borrower whenever the loan becomes due and

payable under Paragraph 10 (b) and (c). Lender shall not have the right to commence foreclosure until Borrower has had thirty (30) days after notice to either:

- (i) Correct the matter which resulted in the Security Instrument coming due and payable; or
- (ii) Pay the balance in full; or
- (iii) Sell the Property for the lesser of the balance or ninety-five percent (95%) of the appraised value and apply the net proceeds of the sale toward the balance; or
- (iv) Provide the Lender with a deed-in-lieu of foreclosure.

**(f) Notice to Commissioner and Eligible Non-Borrowing Spouse.** Lender shall notify the Commissioner and any Non-Borrowing Spouse identified in Paragraph 9 who qualifies as an Eligible Non-Borrowing Spouse whenever any event listed in Paragraph 10 (b) and (c) occurs during a Deferral Period.

**(g) Trusts.** Conveyance of a Borrower's interest in the Property to a trust which meets the requirements of the Commissioner, or conveyance of a trust's interests in the Property to a Borrower, shall not be considered a conveyance for purposes of this Paragraph 10. A trust shall not be considered an occupant or be considered as having a Principal Residence for purposes of this Paragraph 10.

**11. No Deficiency Judgments.** Borrower shall have no personal liability for payment of the debt secured by this Security Instrument. Lender may enforce the debt only through sale of the Property. Lender shall not be permitted to obtain a deficiency judgment against Borrower if the Security Instrument is foreclosed.

**12. Reinstatement.** Subject to applicable law, Borrower has a right to be reinstated if Lender has required immediate payment in full. This right applies even after foreclosure proceedings are instituted. To reinstate this Security Instrument, Borrower shall correct the condition which resulted in the requirement for immediate payment in full. Foreclosure costs and reasonable and customary attorney's and trustee's fees as applicable by, and expenses properly associated with the foreclosure proceeding shall be added to the Principal Balance. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two (2) years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the Security Instrument.

**13. Deferral Period Reinstatement.** If a Deferral Period ceases or becomes unavailable because a Non-Borrowing Spouse no longer satisfies the Qualifying Attributes for a Deferral Period and has become an Ineligible Non-Borrowing Spouse, neither the Deferral Period nor the Security Instrument may be reinstated. In the event a Deferral Period ceases because an obligation of the Note, the Loan Agreement, or this Security Instrument has not been met or the Note has become eligible to be called due and payable and is in default for a reason other than death, an Eligible Non-Borrowing Spouse may have a Deferral Period and this Security Instrument reinstated provided that the condition which resulted

in the Deferral Period ceasing is corrected within thirty (30) days. A Lender may require the Eligible Non-Borrowing Spouse to pay for foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding, such costs may not be added to the Principal Balance. Upon reinstatement by an Eligible Non-Borrowing Spouse, the Deferral Period and this Security Instrument and the obligations that it secures shall remain in effect as if the Deferral Period had not ceased and the Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) the Lender has accepted a reinstatement of either the Deferral Period or this Security Instrument within the past two (2) years immediately preceding the current notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable; (ii) reinstatement of either the Deferral Period or this Security Instrument will preclude foreclosure in the future, or (iii) reinstatement of either the Deferral Period or Security Instrument will adversely affect the priority of this Security Instrument.

#### **14. Lien Status.**

##### **(a) Modification.**

Borrower and Trustor agree to extend this Security Instrument in accordance with this Paragraph 14(a). If Lender determines that the original lien status of this Security Instrument is jeopardized under state law (including but not limited to situations where the amount secured by this Security Instrument equals or exceeds the maximum principal amount stated to be secured by the lien of this Security Instrument or the maximum period under which loan advances retain the same lien priority initially granted to loan advances has expired) and state law permits the original lien status to be maintained for future loan advances through the execution and recordation of one or more documents, then Lender shall obtain title evidence at Borrower's expense. If the title evidence indicates that the Property is not encumbered by any liens (except the First Security Instrument described in Paragraph 15(a), this Second Security Instrument and any subordinate liens that the Lender determines will also be subordinate to any future loan advances), Lender shall request the Borrower and Trustor to execute any documents necessary to protect the lien status of future loan advances. Borrower and Trustor agree to execute such documents. If state law does not permit the original lien status to be extended to future loan advances, Borrower will be deemed to have failed to have performed an obligation under this Security Instrument.

##### **(b) Tax Deferral Programs.**

Borrower shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to this Security Instrument.

##### **(c) Prior Liens.**

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to all amounts secured by this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of



the actions set forth above within ten (10) days of the giving of notice.

**15. Relationship to First Security Instrument.**

**(a) Second Security Instrument.** In order to secure payments which the Commissioner may make to or on behalf of Borrower pursuant to Section 255(i)(1)(A) of the National Housing Act and the Loan Agreement, the Commissioner has required Borrower to execute a Second Note and this Second Security Instrument. Borrower also has executed a First Note and First Security Instrument.

**(b) Relationship of First and Second Security Instruments.** Payments made by the Commissioner shall not be included in the debt under the First Note unless:

(i) The First Security Instrument is assigned to the Commissioner; or

(ii) The Commissioner accepts reimbursement by the holder of the First Note for all payments made by the Commissioner.

If the circumstances described in (i) or (ii) occur, then all payments by the Commissioner, including interest on the payments but excluding late charges paid by the Commissioner, shall be included in the debt under the First Note.

**(c) Effect on Borrower.** Where there is no assignment or reimbursement as described in (b)(i) or (ii) and the Commissioner makes payments to Borrower, then Borrower shall not:

(i) Be required to pay amounts owed under the First Note, or pay any rents and revenues of the Property under Paragraph 24 to the holder of the First Note or a receiver of the Property, until the Commissioner has required payment-in-full of all outstanding principal and accrued interest under the Second Note; or

(ii) Be obligated to pay interest or shared appreciation under the First Note at any time, whether accrued before or after the payments by the Commissioner, and whether or not accrued interest has been included in the Principal Balance under the First Note.

**(d) No Duty of the Commissioner.** The Commissioner has no duty to the holder of the First Note to enforce covenants of the Second Security Instrument or to take actions to preserve the value of the Property, even though the holder of the First Note may be unable to collect amounts owed under the First Note because of restrictions in this Paragraph 15.

**16. Restrictions on Enforcement.** Notwithstanding anything else in this Security Instrument, the Borrower shall not be obligated to comply with the covenants hereof, and Paragraph 24 shall have no force and effect, whenever there is no outstanding balance under the Second Note.

**17. Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**18. Successors and Assigns Bound; Joint and Several Liability.** Borrower may not assign any rights or obligations under this Security Instrument or the Second Note, except to a trust that meets the requirements of the Commissioner. Borrower's covenants and agreements shall be joint and several. Notwithstanding anything to the contrary herein, upon the death of the last surviving Borrower, the

Borrower's successors and assigns will be bound to perform Borrower's obligations under this Security Instrument.

**19. Notices.** Any notice to Borrower or Trustor provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address all Borrowers jointly designate. Notices to Trustor shall be given at the address provided by Trustor to Lender. Any notice to the Commissioner shall be given by first class mail to the HUD Field Office with jurisdiction over the Property or any other address designated by the Commissioner. Any notice to Non-Borrowing Spouse provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower, Lender, Trustor or Non-Borrowing Spouse when given as provided in this Paragraph 19.

**20. Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Second Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Second Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Second Note are declared to be severable.

**21. Borrower's and Trustor's Copy.** Borrower shall be given one conformed copy of the Second Note and this Security Instrument and Trustor shall be given one conformed copy of this Security Instrument.

**22. Third-Party Beneficiary.** Except as set forth in Paragraph 10(a)(ii) and only for an Eligible Non-Borrowing Spouse, this Security Instrument does not and is not intended to confer any rights or remedies upon any person other than the parties Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and the holder of the First Note.

**23. Capitalized Terms.** Capitalized terms not defined in this Security Instrument shall have the meanings ascribed to them in the Loan Agreement.

NON-UNIFORM COVENANTS. Borrower, Trustor and Lender further covenant and agree as follows:

**24. Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in this Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by this Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 24, except as provided in the First Security Instrument.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by this Security Instrument is paid in full.

**25. Foreclosure Procedure.** If Lender requires immediate payment in full under Paragraph 10, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 25, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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 any part of the Property 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. In the event Borrower does not cure the default within the period then prescribed by applicable law, Trustee shall give public notice of the sale to the persons and in the manner prescribed by applicable law. After the time 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 any order Trustee determines (but subject to any statutory right of Borrower to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold). Trustee may in accordance with applicable law, 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 its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property 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 expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the county clerk of the county in which the sale took place.

**26. Lien Priority.** The full amount secured by this Security Instrument shall have a lien priority subordinate only to the full amount secured by the First Security Instrument.

**27. Adjustable-Rate Feature.** Under the Second Note, the initial stated interest rate of **1.830%** which accrues on the unpaid principal balance ("Initial Interest Rate") is subject to change, as described below. When the interest rate changes, the new adjusted interest rate will be applied to the total outstanding principal balance. Each adjustment to the interest rate will be based upon the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year ("Index") plus a margin. The Index is published in the Federal Reserve Bulletin and made available by the United States Treasury Department in Statistical Release H.15 (519). If the Index is no longer available, Lender will be required to use any index prescribed by the Commissioner will give Borrower notice of new index

Lender will perform the calculations described below to determine the new adjusted interest rate. The interest rate may change on **October 1, 2021** and **on the first day of each succeeding month**. "Change Date" means each date in which the interest rate could change.

The value of the Index will be determined, using the most recent Index figure available thirty (30) days before the Change Date ("Current Index"). Before each Change Date, the new interest rate will be calculated by adding a margin to the Current Index, then rounded to the nearest one-eighth of one percentage point (0.125%). This rounded sum of the margin plus the Current Index will be called the "Calculated Interest Rate" for each Change Date. The Calculated Interest Rate will be compared to the interest rate in effect immediately prior to the current Change Date (the "Existing Interest Rate").

The Calculated Interest Rate will never increase above **6.830%**

The Calculated Interest Rate will be adjusted if necessary to comply with the rate limitation(s) described above and will be in effect until the next Change Date. At any change date, if the Calculated Interest Rate equals the Existing Interest Rate, the interest rate will not change.

**28. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

**29. Substitute Trustee.** Lender, at its option, may from time to time and subject to the requirements of Utah Code Section 57-1-22 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 Trustee herein and by applicable law.

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

**31. Riders to this Security Instrument.** If one or more riders are executed by Borrower and Trustor, and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es).]

Condominium Rider

Planned Unit Development Rider

Other [Specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Stanley J. Cutler (SEAL)  
STANLEY J. CUTLER

8/18/21  
Date

Maxine Cutler (SEAL)  
MAXINE CUTLER

8/18/21  
Date

\_\_\_\_\_ [Space Below This Line For Acknowledgment] \_\_\_\_\_

STATE OF UTAH

SS:

COUNTY OF UTAH

The foregoing instrument was acknowledged before me this 8-18-2021 (date) by

Stanley J. Cutler and Maxine Cutler (person acknowledging, title or

representative capacity, if any).

Michael S. De La Mare  
(Signature of Person Taking Acknowledgment)



(Seal) (Title)

My commission expires: 3-16-2023 Residing at: Salt Lake

**Loan Originator Organization**

Mortgage Loan Originator Organization: **Abide Retirement**

Nationwide Mortgage Licensing system and Registry Identification Number: **1791641**

**Individual Loan Originator**

Mortgage Loan Originator: **Brian Thompson**

Nationwide Mortgage Licensing system and Registry Identification Number: **224476**

**EXHIBIT A**

Exhibit A to the Security Instrument made on **August 18, 2021**, by **STANLEY J. CUTLER AND MAXINE CUTLER, HUSBAND AND WIFE, AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP** ("Borrower") to the Federal Housing Commissioner, and whose address is 451 Seventh Street, S.W., Washington, D.C. 20410, ("Lender" or "Commissioner"). The Property is located in the county of **UTAH**, state of **Utah**, described as follows:

**Description of Property**

See Exhibit "A" Attached.  
APN: 52-597-0041

**EXHIBIT "A"  
LEGAL DESCRIPTION**

File No.: 21-90486

Lot 41, PLAT "B", SILVERLEAF, a Planned Residential Development, as the same is identified in the Recorded Survey Map in Utah County, Utah, as Entry No. 32431, and Map Filing No. 6561, (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Protective Covenants, Conditions, and Restrictions recorded in Utah County, Utah, as Entry No. 41672 in Book 3972 at Page 570 (as said Declaration may have heretofore been amended or supplemented.)

Together with the pertinent easements over and rights of use and enjoyment of said Project's Common Areas as established in the above mentioned Declaration of Protective Covenants, Conditions, and Restrictions.

Parcel No. 52-597-0041