

E 3502641 B 8110 P 935-960
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/11/2022 3:29:00 PM
FEE \$40.00 Pgs: 26
DEP eCASH REC'D FOR COTTONWOOD TITLE INS AGEN

Record and return to:

Principal Real Estate Investors, LLC
801 Grand Avenue
Des Moines, IA 50392-1360
ATTN: Mark Pals

159170 MCB

Tax Parcel Number(s):

10-363-0125 (Parcel 4 Parcel A)
10-363-0126 (Parcel 4 Parcel B)
10-363-0127 (Private Streets, Phase 1)
10-364-0270 (Parcel 5 Parcel C)
10-364-0271 (Parcel 5 Parcel D)
10-364-0272 Parcel 5 (Parcel E)
10-364-0273 (Parcel 5 Parcel F)
10-364-0274 (Private Streets, Phase 2)

CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
FIXTURE FILING AND SECURITY AGREEMENT

A. THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND SECURITY AGREEMENT (as the same may from time to time hereafter be modified, supplemented or amended, this "**Deed of Trust**") is made as of October 11, 2022, by STONEBROOK TOWNHOMES MIXED USE HOA, INC. A UTAH NON-PROFIT CORPORATION, a Utah non-profit corporation, having its principal place of business and post office address at 45 E Center Street, Suite 103, North Salt Lake, Utah 84054, as "**Owner**," STONEBROOK TOWNHOMES LAYTON, LLC, a Utah limited liability company, having its principal place of business and post office address at 45 E Center Street, Suite 103, North Salt Lake, Utah 84054, as "**Borrower**" (Owner and Borrower are collectively referred to herein as ("**Trustor**,")) in favor of COTTONWOOD TITLE INSURANCE AGENCY, INC., a Utah corporation, having a post office address at 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, as "**Trustee**", for the benefit of PRINCIPAL REAL ESTATE PARTICIPATING LOAN FUND, LLC, a Delaware limited liability company, having its post office address at c/o Principal Real Estate Investors, LLC, 801 Grand Avenue, Des Moines, Iowa 50392-1450, together with its successors and assigns, as "**Lender**" or "**Beneficiary**."

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THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF UTAH CODE ANNOTATED §70A-9a-334(8) OR ANY SUCCESSOR STATUTE. THE PROCEEDS OF THE LOAN SECURED BY THIS DEED OF TRUST ARE TO BE USED BY BORROWER IN PART FOR THE PURPOSE OF FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF THE PROPERTY AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN DOCUMENTS (AS HEREINAFTER DEFINED). OWNER IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS INSTRUMENT IS A TRUST DEED WITHIN THE MEANING OF UTAH CODE ANNOTATED SECTION 57-1-19. THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AS A "FIXTURE FILING," AS DEFINED IN UTAH UNIFORM COMMERCIAL CODE SECTION 70A-9a-102(40), AND IS RECORDED IN ACCORDANCE WITH THE UTAH UNIFORM COMMERCIAL CODE SECTION 70A-9a-501(1), AND COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES.

THIS DOCUMENT IS ALSO A FIXTURE FILING IN ACCORDANCE WITH SECTIONS UTAH CODE ANNOTATED 70A-9a-501(1)(a) AND 70A-9a-502(2) AND (3) OF THE UTAH UNIFORM COMMERCIAL CODE.

THIS DEED OF TRUST IS ONE OF MULTIPLE DEEDS OF TRUST WHICH SECURE THE OBLIGATIONS DESCRIBED HEREIN (INCLUDING WITHOUT LIMITATION THAT CERTAIN CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND SECURITY AGREEMENT GIVEN BY BORROWER, AS TRUSTOR, IN FAVOR OF TRUSTEE, FOR THE BENEFIT OF LENDER, DATED AS OF EVEN DATE HERewith AND RECORDED IN THE OFFICIAL RECORDS OF DAVIS COUNTY SUBSTANTIALLY CONCURRENTLY HERewith, AND THESE DEEDS OF TRUST SHALL BE CROSS-DEFAULTED SO THAT A DEFAULT UNDER ANY ONE DEED OF TRUST SHALL CONSTITUTE A DEFAULT UNDER THE OTHER DEEDS OF TRUST.

WITNESSETH:

B. This Deed of Trust is given to secure a loan in the original principal sum of Thirty Million Two Hundred Fifteen Thousand and 00/100 Dollars (\$30,215,000.00) (the "**Loan Amount**") or so much thereof as may be advanced pursuant to that certain Loan Agreement dated of even date herewith between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Note (as defined in the Loan Agreement). This Deed of Trust is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, and the Note, including the rights, remedies,

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obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Deed of Trust (the Loan Agreement, the Note, this Deed of Trust, and all other documents evidencing or securing the Indebtedness, except the Environmental Indemnity, are hereinafter referred to collectively as the "**Loan Documents**"). Capitalized terms used herein and not otherwise defined shall have those meanings given to them in the Loan Agreement or the other Loan Documents. This Deed of Trust does not secure Borrower's obligations under the separate Environmental Indemnity Agreement of even date herewith executed by Borrower in favor of Lender.

C. NOW, THEREFORE, to secure the payment of the Indebtedness in accordance with the terms and conditions of the Loan Documents, and all extensions, modifications and renewals thereof and the performance of the covenants and agreements contained therein, and also to secure the payment of any and all other Indebtedness, direct or contingent, that may now or hereafter become owing from Borrower to Lender in connection with the Loan Documents, and in consideration of the Loan Amount in hand paid, receipt of which is hereby acknowledged:

Article I - GRANTS OF SECURITY

Section 1.1 Property Conveyed. Owner does by these presents irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Lender, unto Trustee, its successors and assigns forever, (i) the Land (as hereinafter defined); (ii) the Improvements (as hereinafter defined); and (iii) all of Owner's present and future estate, right, title and interest in, to and under the following described property now owned or held or hereafter acquired from time to time (collectively the "**Premises**"):

(a) Land. All that certain real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Owner for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Deed of Trust;

(c) Leases and Rents. All Lease(s) and all Rents, which are pledged and assigned absolutely and directly (and not merely collaterally);

(d) Easements/Intangibles/Licenses. All tenements, hereditaments, easements, appurtenances, passages, decreed or undecreed water rights, water courses, riparian rights, direct flow, ditch(es), reservoir, well, spring, seepage and pond rights and other types of water rights which are underlying, appurtenant to or customarily or historically used upon

or associated with the Premises, whether or not adjudicated, whether tributary or nontributary and whether evidenced by deed, water or ditch stock, permit or otherwise, sewer rights, all rights to naturally occurring oil, gas, minerals, geothermal resources, timber and crops under, through, upon or appurtenant to the Premises, all air rights and development rights, zoning rights, tax credits or appurtenances of any nature whatsoever in any way now or hereafter belonging, relating or pertaining to the Premises or any part thereof, all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles relating to or used in connection with the operation of the Premises, licenses, permits and contracts, and all other rights of any kind or character in any way now or hereafter appertaining to the Premises, including but not limited to, homestead and any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof and any and all strips and gores of land adjacent to and used in connection with the Premises and all the ways, streets, sidewalks and alleys adjoining the Premises;

(e) Improvements/Fixtures. (i) Any and all buildings and improvements of every kind and description now or hereafter erected or placed on the Land which are not subject to ground or "pad" leases (where Owner is the lessor); (ii) all right, title and interest of Owner in and to any and all buildings and improvements of every kind and description now or hereafter erected or placed on the Land which are subject to ground or "pad" leases (where Owner is the lessor); (iii) all materials intended for construction, reconstruction, alteration and repairs of such buildings and improvements now or hereafter erected on the Land, all of which materials shall be deemed to be included within the Land immediately upon the delivery thereof to the Land, (iv) all improvements in which Owner now or hereafter has any right, title and/or interest and attached to or contained in and used in connection with the Premises and appurtenances thereto; and (v) all items of furniture, furnishings, fixtures, machinery, engines, compressors, motors, elevators, pipes, pumps, tanks, fittings, conduit, wiring, radiators, awnings, shades, screens, all gas and electric fixtures, appliances (including without limitation, ranges, rangetops, ovens, stoves, cooking apparatus and appurtenances, dishwashers, refrigerators, trash compactors, microwaves, washers, dryers, and garbage disposals), water heaters, mirrors, mantels, carpeting and all other floor coverings, window coverings and treatments, cable television equipment, water softeners, storm sashes, plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning, lifting, cleaning, communications, fire prevention, fire extinguishing and sprinkler equipment and fixtures and appurtenances thereto, other equipment and personal property in which Owner now or hereafter has any right, title and/or interest and used or useful in the operation of the Premises or otherwise related to the Premises; and all renewals or replacements of all of the aforesaid property or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner and regardless of where situated, used, usable, or intended to be used in connection with any present or future use or operation of or upon said Land (the foregoing (i)-(v) collectively, the

"Improvements"); it being mutually agreed, intended and declared that all the aforesaid Improvements shall, so far as permitted by law, be deemed to form a part and parcel of the Land and for the purpose of this Deed of Trust to be Land and covered by this Deed of Trust, and as to any of the property aforesaid which does not form a part and parcel of the Land or does not constitute a "fixture" (as such term is defined in the UCC) this Deed of Trust and the other Loan Documents (the terms of which grant a security interest in personal property or real property, the proceeds of which may become personal property) are each hereby deemed to be, as well, a security agreement under the UCC for the purpose of creating a security interest in all items, including, but not limited to all property and rights which Owner may grant, assign, bargain, sell, transfer, set over, deliver, or otherwise convey to Lender, as secured party, under the terms of this Deed of Trust or any of the other Loan Documents, including any and all proceeds thereof (as used herein, Owner shall mean "Debtor" under the UCC and Lender shall mean "Secured Party" under the UCC), and this instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included in the Premises;

(f) Additional Security. All funds, monies, accounts, deposits, and all proceeds of the foregoing now or hereafter held by Lender pursuant to the Loan Documents, any collection account, reserve account or security deposit account required by Lender pursuant to the terms of the Loan Documents (including, without limitation, Reserve Funds), any property reserves agreement, escrow security agreement, any letter(s) of credit (and any proceeds derived from any letter(s) of credit) under any of the terms hereof or of the Loan Documents and all of Owner's payment intangibles, letter of credit rights, rights under interest rate cap agreements, tenant in common agreement rights, any and all tax and utility refunds or rebates related to the Premises (regardless of the time period in which they relate) and any contract rights of Owner related in any manner to the ownership, operation, or management of the Premises, as well as any and all supporting obligations, and all proceeds, renewals, replacements and substitutions thereof;

(g) Accounts/Proceeds/Awards. All funds, monies, accounts, deposits, now or hereafter granted by Owner to Lender under the Loan Documents (including any Reserve Funds) and proceeds of any of the foregoing whether or not such funds, monies, accounts, deposits, or proceeds thereof are held by Lender under the terms of any of the Loan Documents, including, but not limited to bankruptcy claims of Owner against any tenant at the Premises, and any proceeds thereof; all proceeds of any Rents, payments due under interest rate cap agreements, insurance proceeds from all insurance policies required to be maintained by Owner under the Loan Documents, and all awards, decrees, proceeds, settlements or claims for damage now or hereafter made to or for the benefit of Owner by reason of a Casualty or a Condemnation;

(h) Agreements. All agreements (including, without limitation, any contract of sale), contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein

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and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Owner therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Owner thereunder;

(i) Construction Contracts. All of Owner's right, title and interest in and to all contracts affecting the Premises, including but not limited to all construction contracts, construction subcontracts, architectural contracts, design professional contracts, engineering contracts, brokerage contracts, and accounting contracts, as well as all work products resulting from said contracts, including but not limited to, plans and specifications, drawings, licenses, financial projections, budgets, reports, test results and all items procured pursuant to those contracts or otherwise, including but not limited to all building permits, zoning variances, certificates of occupancy (whether permanent or otherwise), easements, and utility services or hook-ups);

(j) Community Association Rights. Any and all of Owner's rights, easements, rights of way, reservations and powers under the Community Act(s) and the Community Instrument(s) as well as any rights that Owner may have, in any capacity, under the Community Act(s) and the Community Instrument(s), specifically including but not limited to all rights to approve any amendments to the Community Instrument(s) and all rights to expand the community association structure of the Premises.

(k) Other Property. All other accounts, general intangibles, instruments, investment property, documents, chattel paper, goods, moneys, letters of credit, letter of credit rights, certificates of deposit, deposit accounts, commercial tort claims, oil, gas and minerals (all as defined in the UCC), and all other property and interests in property of the Owner whether tangible or intangible, in which Owner now or hereafter has any right, title and/or interest and is used or useful in the operation of the Premises or otherwise related to the Premises, together with proceeds thereof.

Further, Owner hereby grants a security interest in and to any of the Premises constituting personal property (collectively, the "Personal Property") to Lender and appoints Lender as its attorney-in-fact to execute such documents necessary to perfect Lender's security interest and Owner authorizes Lender at any time until the Indebtedness is paid in full, to prepare and file, at Owner's expense, any and all UCC financing statements, amendments, assignments, renewals, terminations and the like, necessary to create and/or maintain a prior security interest in such property all without Owner's execution of the same, including without limitation, financing statements describing the collateral as "all assets", "all personal property", or words of similar effect.

Section 1.2 Assignment of Leases and Rents.

(a) Owner unconditionally and absolutely assigns to Lender all of Owner's right, title and interest as lessor in and to the Leases and Rents. It is intended hereby to establish a present and complete transfer of all the Leases and all rights of the lessor thereunder and all the Rents unto Lender, subject to the terms and conditions of this Section 1.2, with the right, but without the obligation, to collect all of said Rents, which may become due during the life of the Loan. Owner hereby appoints Lender the true and lawful attorney of Owner with full power of substitution and with power for it and in its name, place and stead, to demand, collect, give receipts and releases for any and all Rents herein assigned which may be or become due and payable by the lessees and other occupants of the Premises, and at its discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Owner or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of any and all Rents. Lessees of the Premises, or any part thereof, are hereby expressly authorized and directed to pay all Rents herein assigned to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Owner in respect of all payments so made. Notwithstanding anything to the contrary set forth herein, prior to an Event of Default, Lender grants Owner a revocable license to enforce all provisions contained in the Leases and collect and use (subject to the terms and conditions of the Loan Agreement), all Rents. Upon the occurrence of an Event of Default, unless the same has been specifically waived in writing, all Rents collected or received by Owner or any agent of Owner shall be deemed to have been accepted and held for Lender in trust and shall not be commingled with the funds and property of Owner, but shall be promptly paid or caused to be paid over to Lender.

(b) It is the intention of Lender and Owner that the assignment effectuated hereby with respect to the Rents and other amounts due under the Leases shall be a direct, absolute and currently effective assignment and shall not constitute merely the granting of a lien, collateral assignment or a security interest or pledge for the purpose of securing the Indebtedness secured by this Deed of Trust and is effective whether or not a default occurs hereunder or under the Loan Documents. The terms of the Utah Uniform Assignment of Rents Act are incorporated herein by reference, with the parties acknowledging that the assignment contained herein is a present and absolute assignment and not a collateral assignment of Owner's interest in the Rents (as defined herein and within the meaning of the Utah Uniform Assignment of Rents Act, *Utah Code Annotated* Section 57-26-101, et seq.) described therein. In the event that a court of competent jurisdiction determines that, notwithstanding such expressed intent of the parties, Lender's interest in the Rents or other amounts payable under the Leases constitutes a lien on or security interest in or pledge thereof, it is agreed and understood that the forwarding of a notice to Owner after the occurrence of an Event of Default, advising Owner of the revocation of Owner's license to collect such Rents shall be sufficient action by Lender to

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(i) perfect such lien on or security interest in or pledge of the Rents, (ii) take possession thereof, and (iii) entitle Lender to immediate and direct payment of the Rents for application as provided in the Loan Documents, all without the necessity of any further action by Lender, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Premises. Notwithstanding the direct and absolute assignment of the Rents, there shall be no partial reduction of any portion of the Indebtedness secured by this Deed of Trust except with respect to Rents actually received by Lender and applied by Lender toward payment of such Indebtedness.

(c) Without limitation of the absolute nature of the assignment of the Rents, Owner and Lender agree that (i) this Deed of Trust shall constitute a "security agreement" for purposes of 11 U.S.C. Section 552(b), (ii) the security interest created by this Deed of Trust extends to property of Owner acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents (including, without limitation, any Extraordinary Rental Payments), and (iii) such security interest shall extend to all Rents (including, without limitation, any Extraordinary Rental Payments) acquired by the estate after the commencement of any case in bankruptcy. Without limitation of the absolute nature of the assignment of the Rents, to the extent Owner (or Owner's bankruptcy estate) shall be deemed to hold any interest in the Rents (including, without limitation, any Extraordinary Rental Payments) after the commencement of a voluntary or involuntary bankruptcy case, Owner hereby acknowledges and agrees that such Rents (including, without limitation, any Extraordinary Rental Payments) are and shall be deemed to be "cash collateral" under Section 363 of the Bankruptcy Code. During the pendency of such bankruptcy case, Owner may not use the cash collateral without the consent of Lender and/or an order of any bankruptcy court pursuant to 11 U.S.C. 363(c)(2), and Owner hereby waives any right it may have to assert that such Rents (including, without limitation, any Extraordinary Rental Payments) do not constitute cash collateral. No consent by Lender to the use of cash collateral by Owner shall be deemed to constitute Lender's approval, as the case may be, of the purpose for which such cash collateral was expended.

(d) Owner acknowledges and agrees that, upon recordation of the Deed of Trust, Lender's interest in the Rents shall be deemed to be fully perfected, and enforced as to Owner and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of (a) commencing a foreclosure action with respect to this Deed of Trust, (b) furnishing notice to Owner or tenants under the Leases, (c) making formal demand for the Rents, (d) taking possession of the Premises as a lender-in-possession, (e) obtaining the appointment of a receiver of the Rents and profits of the Premises, (f) sequestering or impounding the Rents, or (g) taking any other affirmative action.

(e) The collection of Rents and the application thereof as set forth in the Loan Documents shall not cure or waive any Event of Default or notice of default under the

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Loan Documents or invalidate any act done pursuant to such notice, except to the extent any such Event of Default is specifically waived in writing. Failure or discontinuance of Lender at any time, or from time to time, to collect any Rents shall not impair in any manner the subsequent enforcement by Lender of the right, power and authority herein conferred on Lender. Nothing contained herein, including the exercise of any right, power or authority herein granted to Lender, shall be, or be construed to be, an affirmation by Lender of any tenancy, Lease or option or right to possession otherwise, or an assumption of liability under, or the subordination of the lien or charge of this Deed of Trust to any such tenancy, Lease or option or right to possession otherwise. Owner hereby agrees that, in the event Lender exercises its rights as provided for in this Deed of Trust, Owner waives any right to compensation for the use of Owner's furniture, furnishings or equipment in the Premises for the period such assignment of rents or receivership is in effect, it being understood that the Rents derived from the use of any such items shall be applied to Owner's obligations hereunder as provided for herein.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the same unto the Lender, its successors and assigns forever, for the purposes and uses expressed herein or in the Loan Agreement.

IN TRUST, WITH POWER OF SALE, to secure payment of the Indebtedness at the time and in the manner provided for its payment in the Note, the Loan Agreement and this Deed of Trust.

PROVIDED, HOWEVER, these presents are upon the express condition that, if the Indebtedness shall be paid in full to Lender at the time and in the manner provided in the Note, the Loan Agreement and this Deed of Trust, and if the Other Obligations as set forth in this Deed of Trust shall be satisfied (exclusive of any contingent obligations not yet due or accrued), then these presents and the estate hereby granted shall cease, terminate and be void with respect to the Premises, provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions of the Loan Documents and the Environmental Indemnity with respect to matters relating to any period of time during which this Deed of Trust was in effect shall survive any such payment or release to the extent set forth in the Loan Documents or the Environmental Indemnity.

Article II - DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Deed of Trust and the grants, assignments and transfers made in Article I are given for the purpose of securing the Indebtedness.

Section 2.2 Other Obligations. This Deed of Trust and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (the "**Other Obligations**"):

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- (a) the performance of all other obligations of Trustor contained herein;
- (b) the performance of each obligation of Trustor contained in the Loan Agreement and any other Loan Document; and
- (c) the performance of each obligation of Trustor contained in any renewal, extension, amendment, modification, consolidation, change of, substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Article III - DUE ON SALE/ENCUMBRANCE

Section 3.1 No Sale/Encumbrance. Subject to and in accordance with Section 7.1(a)(vi) and Section 4.2.3 of the Loan Agreement, it shall be an Event of Default if Trustor or any Person(s) owning an interest in Trustor shall, in violation of the terms of the Loan Agreement, without the prior written consent of Lender, permit, acquiesce to or allow any of the following to occur: (A) a sale, conveyance, option to sell, assignment, transfer, encumbrance (other than (i) the Permitted Encumbrances, or (ii) any lien affecting the Premises for which Borrower is contesting and has complied with the Contest Requirements provided the same does not result in a Transfer of title to or interest in the Premises), including any mortgage, hypothecation, lien or conveyance of security title, alienation, pledge, forfeiture or other disposition (whether directly or indirectly, voluntary or involuntary, or by operation of law) of all or any portion of the Premises or an interest in the Premises or direct or indirect ownership interests in the Trustor; (B) the reconstitution or conversion of Trustor and/or any Person(s) owning an interest in Trustor from one entity type to another entity type, including (i) any change in the state of formation or organization or incorporation of Trustor, (ii) any change in the name of Trustor, (iii) the conversion of any general partnership interest in Trustor to a limited partnership interest if Trustor is a partnership, or any change, removal, or resignation of any general partner of Trustor if Trustor is a partnership, (iv) the admission of an Interest Owner as, or conversion of an existing Interest Owner into, a holder of any "preferred equity" in Trustor (obligating the Trustor to make payments to such Interest Owner without regard to cash flow of the Premises), and (v) a partial or complete liquidation, dissolution or termination of Trustor and/or any general partner of Trustor; (C) the issuance or other creation of ownership interests in the Trustor and/or any Person(s) owning an interest in Trustor; (D) a merger, consolidation, reorganization or any other business combination with respect to Trustor and/or any Person(s) owning an interest in Trustor; (E) a conversion to or operation of all or any portion of the Premises as a cooperative or condominium form of ownership, except as to the Community Instrument(s) only; (F) a Division of the following listed entities or their assets and liabilities: Trustor, any Guarantor or any managing member or general partner of the Trustor or any Guarantor; (G) if Trustor or Guarantor (if any) is a trust, or if a trust Controls Trustor or Guarantor (if any), the revocation, termination or expiration of such trust; (H) if Trustor or Guarantor (if any) is a trust, or if a trust Controls Trustor or Guarantor (if any), the addition,

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deletion or substitution of a trustee of such trust; (I) the acknowledgement or consent by Trustor to an encumbrance on, or an assessment against, all or any portion of the Premises to any Governmental Incentive Financing; or (J) a change in Control of Trustor. In the event of any inconsistencies between the terms and conditions of this Article III and the terms and conditions of Section 4.2.3 of the Loan Agreement, the terms and conditions of Section 4.2.3 of the Loan Agreement shall control and be binding.

Article IV - LENDER RIGHTS AND REMEDIES UPON EVENT OF DEFAULT

Section 4.1 Remedies.

(a) Upon the occurrence and continuance of any Event of Default, Lender may declare all sums secured by this Deed of Trust immediately due and payable without any presentment, demand, protest or notice of any kind, as provided in the Note.

(b) (i) Upon the occurrence of any Event of Default, Lender may elect to declare the principal of the Note and all of the sums hereby secured, including any Prepayment Premium, Late Charge or other amount provided for herein or in said Note, to be immediately due and payable, whereupon at all times thereafter interest shall accrue on all such sums until paid at the Default Rate, and to cause the Premises hereby granted to be sold in order to accomplish the object of these trust(s); and, upon such election, on demand by Lender, and without demand by Trustor, Trustee shall file for record, in the office of the recorder of each County wherein the Premises or some part or parcel thereof is situated, a notice of default, containing such information as is required by law, and such notice of default shall be delivered or mailed as required by law. After such time has elapsed as required by law, Trustee, on demand of Lender, shall give written Notice of the time and place of sale in the manner, for the time period, and containing the information required by Utah law. Trustee then, on demand of Lender, shall sell said Premises, or such part thereof as in its discretion it shall find necessary in order to accomplish the object of the Trust, in the manner required by law. Lender or the holder or holders of said Note, or their agents, may bid and purchase at any foreclosure sale.

(ii) Trustee, from time to time, may postpone such sale for the time periods and in the manner allowed by law.

(iii) Trustee in conducting said sale may act either in person or through its attorney, and shall establish as one of the conditions of such sale that all bids and payments for said Premises shall be in cash or upon such other terms as set forth in the notice of sale.

(c) (i) Upon such sale, Trustee shall make, execute and, after due payment made, shall deliver to the purchaser or purchasers a deed or deeds of the Premises so sold, and shall apply the proceeds of sale thereof in payment, FIRST: to the

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costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed; SECOND: to payment of the obligations secured by the trust deed; and THIRD: the balance, if any, to the Person or Persons legally entitled to the proceeds, or the Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the County in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

(ii) Lender, on demand, and without demand of Trustor, upon the occurrence of any Event of Default, may choose to foreclose this Deed of Trust in the manner provided for foreclosure of mortgages under Utah law.

(iii) Nothing contained in this Deed of Trust shall prevent Lender from exercising any and all other remedies available to Lender under Utah law in connection with a default or occurrence of an Event of Default hereunder. Any and all such remedies available to Lender pursuant to this Deed of Trust and/or under Utah law shall be cumulative.

(d) Upon the occurrence and continuance of an Event of Default, Owner shall forthwith upon demand of Lender surrender to Trustee or Lender possession of the Premises, and Lender shall be entitled to take actual possession of the Premises or any part thereof personally or by its agents or attorneys, and Lender in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the Premises together with all documents, books, records, papers and accounts of the Trustor or the then owner of the Premises relating thereto, and may exclude Trustor, its agents or assigns wholly therefrom, and may as attorney-in-fact or agent of the Trustor, or in its own name as Lender and under the powers herein granted:

(i) hold, operate, maintain, repair, rebuild, replace, alter, improve, manage or control the Premises as it deems judicious, insure and reinsure the same and any risks related to Lender's possession and operation thereof and receive all Rents, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion it deems necessary to enforce the payment or security of the Rents, including actions for the recovery of Rent, actions in forcible detainer and actions in distress for Rents, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Trustor; and

(ii) conduct leasing activity pursuant to the provisions of the Loan Agreement.

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Trustee and Lender shall not be obligated to perform or discharge, nor does either hereby undertake to perform or discharge, any obligation, duty or liability under any Lease. Except to the extent that the same is caused solely by Lender's gross negligence or willful misconduct, should Trustee or Lender incur any liability, loss or damage under any Leases, or under or by reason of the assignment of Leases contained herein, or in the defense of any claims or demands whatsoever which may be asserted against Trustee or Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements in any Lease, the amount thereof, including costs, expenses and reasonable attorneys' fees and costs, shall be added to the Indebtedness and secured hereby.

(e) Upon the occurrence and continuance of an Event of Default, Trustee and Lender in the exercise of the rights and powers conferred upon them shall have the full power to use and apply the Rents, less costs and expenses of collection to the payment of or on account of the items listed in (i) – (iii) below, at the election of Lender and in such order as Lender may determine as follows:

(i) to the payment of (A) the expenses of operating and maintaining the Premises, (B) premiums on insurance as hereinabove authorized, (C) taxes and special assessments now due or which may hereafter become due on the Premises, and (D) expenses of placing the Premises in such condition as will, in the sole judgment of Lender, make it readily rentable;

(ii) to the payment of any principal, interest or any other Indebtedness secured hereby or any deficiency which may result from any foreclosure sale;

(iii) to the payment of established claims for damages, if any, and reasonable attorneys' fees and costs.

The manner of the application of Rents, the reasonableness of the costs and charges to which such Rents are applied and the item or items which shall be credited thereby shall be within the sole and unlimited discretion of Lender. To the extent that the costs and expenses in (i) and (iii) above exceed the amounts collected, the excess shall be added to the Indebtedness and secured hereby.

(f) Upon the occurrence and continuance of an Event of Default, Lender may proceed at its election, in any sequence to dispose: (1) of any Personal Property separately from the sale of any real property in accordance with the UCC or other applicable law; or (2) of some or all of the Premises and the Personal Property in any combination consisting of both real and personal property together in one or more sales to be held in accordance with the provisions of the UCC or other applicable law. The expenses of retaking, holding, preparing for sale or the like as provided in the UCC shall include

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reasonable attorneys' fees and other expenses of Lender and Trustee and shall be additionally secured by this Deed of Trust.

Section 4.2 Appointment of a Receiver. Upon the occurrence and continuance of any Event of Default, unless the same has been specifically waived in writing, Lender may apply to any court having jurisdiction for the appointment of a receiver of the Premises. Such appointment shall be a matter of right and may be made either before or after sale, without notice, without regard to the solvency or insolvency of Trustor at the time of application for such receiver and without regard to the then value of the Premises or the adequacy of Lender's security. Lender may be appointed as such receiver. The receiver shall have power to collect the Rents during the pendency of any foreclosure proceedings and, in case of a sale, during the full statutory period of redemption, if any, as well as during any further times when Owner, except for the intervention of such receiver, would be entitled to collect such Rents. In addition, the receiver shall have all other powers which shall be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its possession at Lender's election and in such order as Lender may determine in payment in full or in part of those items listed in the section above.

Section 4.3 Application of Proceeds After Foreclosure or Sale. The proceeds of any foreclosure sale, or other sale of the Premises in accordance with the terms hereof or as permitted by law, shall be distributed and applied in the following order of priority: first, to the payment of all costs and expenses incident to the foreclosure and/or sale proceedings; second, to the payment of all items which under the terms hereof constitute secured Indebtedness in such order as Lender may elect in its sole and absolute discretion; third, then any surplus to such parties as are entitled thereto under any applicable legal requirements; and then the remainder, if any, to the Owner or Owner's successors or assigns, as their rights may appear. In any suit to foreclose the lien of the Deed of Trust, and in any sale proceedings of the Premises, there shall be allowed and included as additional Indebtedness payable by Trustor to Lender and secured hereby all expenditures and expenses which may be paid or incurred by or on behalf of Lender for the reasonable expenses of the trust or the Trustee and the reasonable fees and costs of any attorneys for the trust, reasonable attorneys' fees and costs, appraisers' fees, expenditures for documentary and expert evidence, stenographer's charges, publication and advertising costs, survey costs, environmental audits and costs of procuring appropriate evidence of title, as Lender deems reasonably necessary either to prosecute such suit or to consummate such sale or to evidence to bidders at any sale the true condition of the title to or the value of the Premises.

Article V - Miscellaneous

Section 5.1 Invalidity of Provisions. In the event one or more provisions of the Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the Loan Documents shall be construed as if any such provision had never been contained herein.

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Section 5.2 Release on Payment in Full. On payment in full of the Indebtedness, and satisfaction of the Other Obligations (exclusive of any contingent liabilities not yet due or accrued), these presents shall be null and void, and Trustee shall release this Deed of Trust and the lien hereof by proper instrument executed in recordable form; however, Borrower's indemnification and hold harmless obligations described in the Loan Documents and Environmental Indemnity shall survive payment of the Indebtedness and release of the lien of the Deed of Trust to the extent expressly set forth in such instruments.

Section 5.3 Successors and/or Assigns. This Deed of Trust and all provisions hereof shall inure to the benefit of the heirs, successors and assigns of Lender and shall bind the heirs and successors and assigns of Trustor and shall run with the Land and be binding on any successor owners of the Land. If the ownership of the Premises or any portion thereof becomes vested in a person other than Owner, Lender, without notice to Trustor, may deal with such person with reference to this Deed of Trust and the Indebtedness secured hereby in the same manner as with Trustor without in any way releasing Trustor from its obligations hereunder. Trustor will give immediate written notice to Lender of any conveyance, transfer or change of ownership of the Premises, but nothing in this section shall vary the provisions of Section 4.2.3 of the Loan Agreement.

Section 5.4 Conflict/Construction of Documents. The terms of the Loan Documents and the Environmental Indemnity shall be construed and interpreted without any presumption, inference, or rule requiring construction or interpretation of any provision of the Loan Documents and the Environmental Indemnity against the interest of the party causing the Loan Documents and the Environmental Indemnity or any portion of it to be drafted. In the event of any conflict or inconsistency between the terms of this Deed of Trust and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail. Trustor is entering into the Loan Documents and the Environmental Indemnity freely and voluntarily without any duress, economic or otherwise.

Section 5.5 Limitation on Lender's Responsibility. No provision of the Loan Documents shall operate to place any obligation or liability for the control, care, management or repair of the Premises upon Lender, nor shall it operate to make Lender liable for carrying out any of the terms and conditions of any of the Leases, nor shall it operate to make Lender responsible or liable for any waste committed on the Premises by the tenants or any other Person, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Section 5.6 Governing Law. This Deed of Trust shall be governed by, and construed in accordance with, the laws of the state where the Premises is located, without regard to its conflicts of law principles.

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Section 5.7 Waiver of Trial by Jury. TRUSTOR AND LENDER (BY ITS ACCEPTANCE HEREOF) EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, TO THE EXTENT NOT PROHIBITED BY LAW, TRIAL BY JURY IN ANY ACTIONS BROUGHT BY TRUSTOR, TRUSTEE OR LENDER IN CONNECTION WITH THIS DEED OF TRUST, ANY OF THE LOAN DOCUMENTS, THE INDEBTEDNESS SECURED HEREBY, OR ANY OTHER STATEMENTS OR ACTIONS OF LENDER.

Section 5.8 Joint and Several. If more than one party is obligated for any obligations hereunder, then all obligations and agreements of such parties, as applicable, shall be joint and several.

Section 5.9 Disbursements. At all times, regardless of whether any portion of the Loan has been disbursed, this Deed of Trust secures as part of the Indebtedness the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Lender in connection with the Indebtedness secured hereby, all in accordance with the Loan Documents provided, however, that in no event shall the total amount of the Indebtedness secured hereby, including any portion of the Loan disbursed, plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note.

Section 5.10 Prior Encumbrances. If any part of the Indebtedness secured hereby is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

Section 5.11 Subordination. At the option of Lender, this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to Insurance Proceeds or any Award) to any and all Leases upon the execution by Lender and recording thereof, at any time hereafter, in the office of the recorder of deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

Section 5.12 No Joint Venture. Trustor acknowledges that the relationship between Borrower and Lender is that of borrower and lender and that in no event shall Lender be deemed to be a partner or joint venturer with Trustor. Lender shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to the Deed of Trust or any other of the Loan Documents.

Section 5.13 Headings, etc. The headings and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

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Section 5.14 Counterparts. This Deed of Trust may be executed in counterparts, each of which shall be deemed an original; and such counterparts when taken together shall constitute but one agreement.

Section 5.15 Trustee Provisions.

(a) Trustee shall not be liable or responsible for its acts or omissions hereunder, except for Trustee's own gross negligence or willful default, or be liable or responsible for any acts or omissions of any agent, attorney or employee by Trustee employed hereunder, if selected with reasonable care. Trustee accepts this trust when this Deed of Trust executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Lender, or Trustee shall be a party unless brought by Trustee.

(b) Substitution of Trustee. Lender may, from time to time, appoint a successor Trustee in place of the Trustee named herein as provided by applicable law.

(c) Upon the occurrence and continuance of an Event of Default, Trustee at any time, at Trustee's option, may commence and maintain suit in any court of competent jurisdiction and obtain the aid and direction of said court in the execution by it of the trusts or any of them, herein expressed or contained, and, in such suit, may obtain the orders or decrees, interlocutory or final of said court directing the execution of said trusts, and confirming and approving Trustee's acts, or any of them, or any sales or conveyances made by Trustee, and adjudging the validity thereof, and directing that the purchasers of the property sold and conveyed be let into immediate possession thereof, and providing for orders of court or other process requiring the Sheriff of the county in which said property is situated to place and maintain said purchasers in quiet and peaceable possession of the property so purchased by them, and the whole thereof.

(d) Upon the occurrence and continuance of an Event of Default, Trustor, forthwith upon request, at the expense of Trustor, will cause to be made, executed, acknowledged and delivered to Trustee, any and every deed or assurance in law which Trustee or counsel of Trustee shall reasonably advise or require for the more sure, effectual and satisfactory granting and confirming of said Premises unto Trustee.

Section 5.16 Recourse Obligations. The terms of Article X of the Loan Agreement are incorporated herein by reference as if fully set forth herein.

Section 5.17 Attorney-in-Fact. Owner hereby irrevocably constitutes and appoints Lender as Owner's proxy and attorney-in-fact (which appointment shall be deemed coupled with an interest) for and in its behalf to perform all of the obligations of Owner and to exercise all of the rights and powers of Owner under the Community Instrument(s) without any liability therefor

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or thereunder. Owner hereby instructs and grants and gives to Lender full power and authority to do and perform all and every act and thing whatsoever authorized, permitted, requisite or necessary to be done by Owner under the provisions of the Community Instrument(s) to all intents and purposes the same as Owner might do, hereby ratifying and confirming as such attorney shall lawfully do or choose to do or be done by virtue hereof, it being understood and agreed that the aforesaid provisions impose no burden or obligation on Lender to do or perform any act whatsoever. It shall be a default under the Loan Documents if (i) Owner terminates or revokes or attempts to terminate or revoke the aforesaid appointment of Lender as Owner's proxy or attorney-in-fact either permanently or as to any election in the Community Act(s) or Community Instrument(s), or (ii) Owner attempts to modify the terms of the Community Instrument(s) without the prior written consent of Lender. Notwithstanding anything in this paragraph to the contrary, the rights and powers of Owner granted in this paragraph may not be exercised by Lender prior to the occurrence of an Event of Default. From and after an Event of Default, Lender may exercise the rights and powers of Owner granted in this paragraph, notwithstanding whether Lender has exercised its rights under that certain Assignment of Rights Under Covenants, Conditions and Restricts, Sales Agreements, Permits and Development Documents from Borrower to Lender as of even date herewith, and recorded in the Official Records of Davis County substantially concurrently with this Deed of Trust.

Section 5.18 Not a "Declarant", Owner, Etc. Nothing contained herein is intended to or shall be construed to constitute Lender as the "Declarant" under the Community Act(s) and/or the Community Instrument(s) or as owner of any residential townhome unit or common element, or a partner or joint venturer of Borrower or Owner.

Article VI - SPECIAL LOCAL PROVISIONS

Section 6.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article VI and the terms and conditions of this Deed of Trust, the terms and conditions of this Article VI shall control and be binding.

Section 6.2 Effect of Utah Deed Statute. Trustor's rights and obligations, Trustee's rights and obligations, and Lender's rights and obligations hereunder shall be subject to Utah Code Annotated 57-1-1 et seq., as amended from time to time.

Article VII – ADDITIONAL COVENANTS OF TRUSTOR

Section 7.1 Relationship of Owner to Loan Transaction. The parties acknowledge and agree that Owner is not a "guarantor" or "surety" for any obligation of Borrower to Beneficiary under the Loan Documents, and no provision herein is intended to create or be construed as creating any such guaranty or surety relationship between the parties. Owner warrants and acknowledges a financial interest in and relationship to Borrower such that Owner agrees to enter into this Deed of Trust and pledge its interest in the Premises encumbered by the lien of this Deed of Trust to induce Beneficiary to enter into the Loan as described in the Loan Documents,

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and Owner further warrants and acknowledges that it will receive substantial benefit from the making and funding of such Loan to Borrower. Notwithstanding the foregoing, and in consideration of the Loan extended by Beneficiary to Borrower, but subject to the provisions of Section 7.2 below, Owner agrees as follows:

(a) At any time and in such manner, upon such terms and at such times as it deems advisable, and with or without notice to Owner, Beneficiary and Borrower may alter, compromise, accelerate, extend, change the time or manner for the payment of the Loan, increase or reduce the rate of interest thereon, release or add any one or more obligors, guarantors, endorsers, accept additional or substituted security therefor, or release or subordinate any security therefor.

(b) Owner waives any right to require Beneficiary to proceed against Borrower or any other person, firm or corporation or to proceed against or exhaust any other security held by it at any time or to pursue any other remedy in its powers, and Owner agrees that Beneficiary shall not be obligated to resort to any other security, including security given by Borrower, with any priority in any particular order or at all even if such action destroys, alters or otherwise impairs subrogation rights of Owner or the rights of Owner to proceed against Borrower for reimbursement, or both.

(c) Owner waives and agrees not to assert or take advantage of:

(i) the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby;

(ii) any defense or right based upon election of remedies by the Beneficiary, including without limitation, an election to proceed by non-judicial rather than judicial foreclosure, even if such election destroys, alters or otherwise impairs subrogation rights of Owner or the right of Owner to proceed against Borrower for reimbursement, or both.

(iii) any defense or right based upon the acceptance by Beneficiary or an affiliate of Beneficiary of a deed in lieu of foreclosure, without extinguishing the debt, even if such acceptance destroys, alters or otherwise impairs subrogation rights of Owner or the right of Owner to proceed against Borrower for reimbursement, or both.

(iv) all rights and remedies that Owner may have or be able to assert by reason of the laws of the State of Utah pertaining to the rights and remedies of sureties.

(v) all rights and benefits under Utah Code Ann. § 78B-6-901 (the Utah one-action rule).

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(d) Upon the occurrence of any default hereunder, Beneficiary may maintain an action upon this Deed of Trust whether or not action is brought against Borrower and whether or not Borrower is joined in any such action. Beneficiary may maintain successive actions for other Events of Default, and Beneficiary's rights hereunder shall not be exhausted or waived, and Beneficiary shall not be estopped to proceed against Owner pursuant to this Deed of Trust by the exercise of any of Beneficiary's rights or remedies or by any such action or by any number of successive actions, until and unless the Loan secured by this Deed of Trust has been paid in full and each of Trustor's obligations hereunder has been fully performed or otherwise satisfied.

(e) Any action, whether judicial or non-judicial or in pursuit of any provisional remedy, taken by Beneficiary against Borrower or against any collateral or security held by Beneficiary which shall impair or destroy any rights Owner may have against Borrower shall not act as a waiver or an estoppel of Beneficiary's rights to proceed against and initiate any action against Owner to enforce the terms of this Deed of Trust and until the Loan has been paid in full.

(f) Owner expressly waives any defense or benefits arising out of any voluntary or involuntary filing by or on behalf of Borrower for protection under any federal or state bankruptcy, insolvency, or debtor relief laws, including without limitation under Sections 364 or 1111(b)(2) of the United States Bankruptcy Code.

(g) Owner, by execution hereof, represents to Beneficiary that the relationship between Owner and Borrower is such that Owner has access to all relevant facts and information concerning the Loan and the Property and that Beneficiary can rely upon Owner having such access. Owner waives and agrees not to assert any duty on the part of Beneficiary to disclose to Owner any facts that it may now or hereafter know about Borrower, regardless of whether Beneficiary has reason to believe that any such facts materially increase the risk beyond that which Owner intends to assume or has reason to believe that such facts are unknown to Owner or has a reasonable opportunity to communicate such facts to Owner. Owner is fully responsible for being and keeping informed of the financial condition of Borrower and all circumstances bearing on the risk of non-payment of any indebtedness hereby secured.

(h) Owner waives demand, protest and notice of any kind including, without limiting the generality of the foregoing notice of the existence, creation or incurring of new or additional indebtedness or of any action or non-action on the part of Borrower, Beneficiary, any endorser, any creditor of Borrower or Owner under this or any other instrument, or any other person whatsoever in connection with any obligation or evidence of indebtedness held by Beneficiary as collateral or in connection with any indebtedness secured hereby.

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(i) Until the Loan has been paid in full, Owner waives the right of subrogation and waives any right to enforce any remedy which Beneficiary now has or may hereafter have against Owner or Borrower and any benefit of, and any right to participate in, any security now or hereafter held by Beneficiary. Owner specifically agrees that Owner shall not be released from liability hereunder by any action taken by Beneficiary, including without limitation a nonjudicial sale under the Deed of Trust, that would afford Borrower a defense based on Utah's anti-deficiency laws. Without limiting the foregoing, Owner expressly understands, acknowledges and agrees as follows:

(i) In the event of a non-judicial foreclosure (through the exercise of the power of sale under the Deed of Trust): (i) Borrower would not be liable for any deficiency on the Note, (ii) Owner's subrogation rights against the Borrower would thereby be destroyed, and (iii) Owner would thereby be deprived of the anti-deficiency protections of Utah law;

(ii) Were it not for Owner's knowing and intentional waivers contained herein, the destruction of Owner's subrogation rights and anti-deficiency protections would afford Owner a defense to an action against Owner hereunder; and

(iii) Notwithstanding the foregoing, Owner expressly waives any such defense to any action against Owner hereunder following a nonjudicial foreclosure sale or in any other circumstance under which Owner's subrogation rights against Borrower have been destroyed.

(iv) Owner waives all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Owner's rights of subrogation and reimbursement against Borrower.

(v) Owner waives all rights and defenses that Owner may have because Borrower's debt is secured by real property. This means, among other things:

(1) Beneficiary may collect from Owner without first foreclosing on any real or personal property collateral pledged by Borrower.

(2) If Beneficiary forecloses on any real property collateral pledged by Borrower:

(A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

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(B) Beneficiary may collect from Owner even if Beneficiary, by foreclosing on the real property collateral, has destroyed any right Owner may have to collect from Borrower.

This is an unconditional and irrevocable waiver of any rights and defenses Owner may have because Borrower's debt is secured by real property.

(j) With or without notice to Owner, Beneficiary, in its sole discretion, at any time and from time to time, in such manner and upon such terms as it considers best, may (a) apply any and all payments or recoveries from Borrower, from Owner, from any guarantor or endorser, or realized from any security, in such manner, order and priority as Beneficiary elects, to any indebtedness of Borrower, and (b) refund to Borrower any payment received by Beneficiary upon any indebtedness hereby secured and payment of the amount refunded shall be fully secured hereby.

(k) No exercise or non-exercise by Beneficiary of any right hereby given it, no dealing by Beneficiary with Borrower or any other person, and no change, impairment or suspension of any right or remedy of Beneficiary shall in any way affect any of the obligations of Owner hereunder or give Owner any recourse against Beneficiary.

(l) If any term or provision of this Deed of Trust, or the application thereof to any person, entity or circumstances shall to any extent be invalid or unenforceable the remainder of this Deed of Trust, or the application of such or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

(m) In the event any other terms or provisions of this Deed of Trust differ from or are in any way inconsistent with the terms and provisions of this Article 7, the terms and provisions of this Article 7 shall be deemed to govern the obligations, rights and relationship of the parties.

Section 7.2 Recourse for the Loan Documents. The obligations of Borrower under the Loan Documents shall be fully recourse as to Borrower. Notwithstanding anything to the contrary contained herein and in any of the other Loan Documents, the obligations under the Loan Documents shall be non-recourse to Owner, who is giving this Deed of Trust as an accommodation to Borrower and to secure Borrower's obligations under the Loan Documents. As a result, Beneficiary's sole recourse against Owner shall be to foreclose, judicially or non-judicially, against the Property identified herein and to exercise all other remedies herein, but Beneficiary shall seek no personal money judgment for any deficiency against Owner.

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Section 7.3 Cross Default. The Loan is also secured by, among other things, a Construction Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement given by Borrower, as Trustor, in favor of Trustee, for the benefit of Lender, dated as of even date herewith, and recorded on or about even date herewith in the Official Records of Davis County, Utah ("**Stonebrook Homes Deed of Trust**"). The Stonebrook Homes Deed of Trust is cross-defaulted with this Deed of Trust meaning, (i) a default under the Stonebrook Homes Deed of Trust shall be a default under this Deed of Trust and (ii) a default under this Deed of Trust shall be a default under the Stonebrook Homes Deed of Trust.

Section 7.4 Insurance. Borrower and Owner shall at all times maintain insurance for the Borrower, Owner and the Premises providing coverage to satisfy the insurance requirements as set forth in Article VIII of the Community Declaration and Section 5.1 of the Loan Agreement. Borrower and Owner expressly agree that any violation of the insurance requirements as set forth in Article VIII of the Community Declaration and Section 5.1 of the Loan Agreement shall constitute an Event of Default and shall cause the then outstanding principal balance and interest on the Note, as well as any other sums due and owing under the Loan Documents, at the option of Lender, to immediately become due and payable.

Section 7.5 Inspection Rights. Owner hereby grants to Lender and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to enter upon and inspect the Premises and all facilities located thereon and to conduct such inspection of the Premises at reasonable times. Provided no Event of Default then exists, Lender will provide Borrower with reasonable notice of Lender's intent to enter and inspect as provided for in this Section 7.5. In addition, Lender shall conduct such inspections during normal business hours and use commercially reasonable efforts to ensure that the quiet enjoyment of the tenants is not disrupted. The foregoing license and authorization are intended to be only a means of protection of Lender's security interest in the Premises and nothing further.

PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

(Signatures on next page)

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed and delivered as of the date first above written.

OWNER

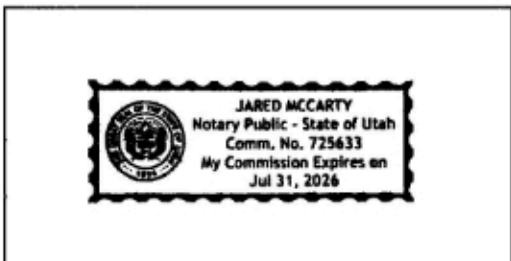
STONEBROOK TOWNHOMES MIXED USE
HOA, INC. A UTAH NON-PROFIT
CORPORATION, a Utah non-profit corporation

By: *Nathan W. Pugsley*
Name: Nathan W. Pugsley
Title: President

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On this 7 day of OCTOBER, 2022, personally appeared before me, Nathan W. Pugsley, whose identity is personally known to me (or proved on the basis of satisfactory evidence) and who by me being by me duly sworn, did say that he is the President of STONEBROOK TOWNHOMES MIXED USE HOA, INC. A UTAH NON-PROFIT CORPORATION, a Utah non-profit corporation, and that said document was signed by him in behalf of said entity by authority of a resolution of its members and board of directors, and said Nathan W. Pugsley acknowledged to me that said entity executed the same.

Witness my hand and official seal.



Jared McCarty
Notary Public

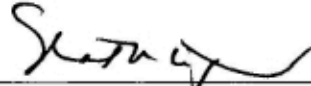
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[Signatures continued on next page.]

SIGNATURE PAGE FOR DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
FIXTURE FILING AND SECURITY AGREEMENT

BORROWER

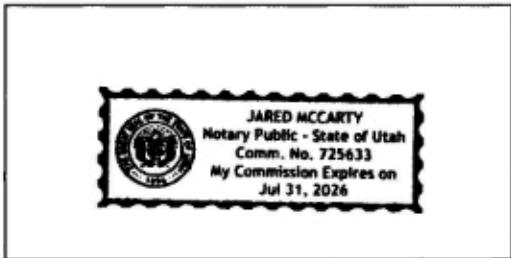
STONEBROOK TOWNHOMES LAYTON, LLC,
a Utah limited liability company

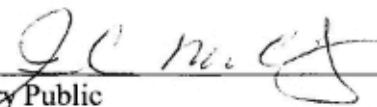
By: 
Name: Nathan W. Pugsley
Title: Manager

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On this 7 day of OCTOBER, 2022, personally appeared before me, Nathan W. Pugsley, whose identity is personally known to me (or proved on the basis of satisfactory evidence) and who by me being by me duly sworn, did say that he is the Manager of STONEBROOK TOWNHOMES LAYTON, LLC, a Utah limited liability company, and that said document was signed by him in behalf of said entity by authority of a resolution of its members and manager, and said Nathan W. Pugsley acknowledged to me that said entity executed the same.

Witness my hand and official seal.




Notary Public

(Use this space for notarial stamp/seal)

EXHIBIT A

LEGAL DESCRIPTION

County Tax Parcel Number(s):

- 10-363-0125 (Parcel 4 Parcel A)
- 10-363-0126 (Parcel 4 Parcel B)
- 10-363-0127 (Private Streets, Phase 1)
- 10-364-0270 (Parcel 5 Parcel C)
- 10-364-0271 (Parcel 5 Parcel D)
- 10-364-0272 Parcel 5 (Parcel E)
- 10-364-0273 (Parcel 5 Parcel F)
- 10-364-0274 (Private Streets, Phase 2)

All that certain real property situated in the County of Davis, State of Utah and described as follows:

PARCEL 4:

Parcel A, Parcel B, and all private streets contained within STONEBROOK TOWNS PHASE 1, according to the official plat thereof as recorded in the office of the Davis County Recorder on August 4, 2022 as Entry No. 3491202 in Book 8064 at Page 285.

PARCEL 5:

Parcel C, Parcel D, Parcel E, Parcel F, and all private streets contained within STONEBROOK TOWNS PHASE 2, according to the official plat thereof as recorded in the office of the Davis County Recorder on August 4, 2022 as Entry No. 3491203 in Book 8064 at Page 286.