

**RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:**

D.R. Horton, Inc.
Attn: Robert B. Hartshorn
12351 Gateway Park Place, Suite D-100
Draper, Utah 84020

02-123-0-0043

Tax Parcels: 12-082-0-0001, ~~02-126-0-0029~~, ~~02-123-0-0018~~, ~~02-123-0-0033~~, ~~02-123-0-0032~~,
~~02-123-0-0031~~

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (this "*Agreement*") is entered into this 22 day of April, 2021 (the "*Effective Date*"), by and between OVERPASS POINT MHC, LLC, a Delaware limited liability company, whose address is 31200 Northwestern Highway, Farmington Hills, Michigan 48334 ("*Grantor*"), and GRNOBL WESTERN ACRES, LLC, a Utah limited liability company, whose address is 181 South 750 West, North Salt Lake, UT 84054 ("*Grantee*"). Grantor and Grantee shall also be referred to hereinafter individually as a "*Party*," and collectively as the "*Parties*."

RECITALS

A. Grantor is the owner of that certain real property located in Tooele County, Utah, being more particularly described in attached Exhibit A (the "*Grantor Property*").

B. Grantee owns that certain real property located in Tooele County, Utah, being more particularly described in attached Exhibit B (the "*Grantee Property*").

C. To facilitate the development of the Grantee Property and to remove the Grantor Property from the flood plain to which the Grantor Property is subject as of the Effective Date, Grantee requires, and Grantor has agreed to grant, a perpetual, non-exclusive easement across the portion of the Grantor Property more particularly described in attached Exhibit C (the "*Easement Area*") to provide for the relocation of a portion of the Middle Canyon Creek onto the Easement Area and the construction of certain improvements thereon, subject to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms, conditions, covenants, agreements and restrictions in this Agreement, the Parties hereby agree as follows:

1. Drainage Easement. Grantor hereby grants to Grantee, for the benefit of the Grantee Property, a perpetual, non-exclusive easement over, across, and under the Easement Area for (i) community drainage (including, without limitation, the drainage of storm water

flows, diffused surface water, and directed storm water), including drainage from the Grantee Property, in both its natural state and as now or hereafter developed in accordance with applicable law and all development entitlements and approvals issued by applicable governmental authorities, (ii) within the Easement Area, the construction, installation, use and enjoyment, repair, replacement, and maintenance of flood control channels, storm drainage improvements, drainage channels, drainage facilities, slopes, basins, retention/detention improvements, and all other facilities or improvements related to any of the foregoing, and roadway improvements as may be necessary to provide access to such improvements and facilities (collectively, the "**Improvements**"); and (iii) such access, ingress and egress rights as may be necessary to enjoy the foregoing rights.

2. **Construction; Maintenance.** Grantee shall be solely responsible for all costs and expenses associated with the construction, installation and maintenance of the Improvements, including, without limitation, the cost for any and all permits, approvals, or consents, necessary or appropriate for the Improvements. Grantee shall maintain the Improvements and the Easement Area in good condition and repair. Grantee's construction, installation, maintenance and/or repair of the Improvements shall not unreasonably interfere with the operation of Grantor's business on the Grantor Property or unreasonably disturb the peaceful and quiet enjoyment of the tenants and occupants of the Grantor Property. Grantee shall comply with any and all applicable laws, rules, regulations, ordinances and orders of governmental entities in exercising its rights and performing its obligations under this Agreement.

3. **Flood Plain.** Upon the completion of the Improvements, Grantee shall use commercially reasonable efforts to obtain a Letter of Map Revision ("**LOMR**") from the United States Army Corps of Engineers that removes the Grantor Property from the flood plain to which the Grantor Property is subject as of the Effective Date due to the existing location of Middle Canyon Creek. Grantor shall reasonably cooperate with Grantee in obtaining the LOMR.

4. **Liens.** Grantee has no right to cause, and shall not permit, any mechanics' or materialmen's liens to be filed against the Grantor Property as a result of Grantee's activities upon the Easement Area. In the event a lien is filed, then Grantee, within thirty (30) days after it receives notice of the lien, shall provide a bond or other security or otherwise remove such lien from the Grantor Property pursuant to applicable law.

5. **Indemnity.** Except to the extent due to the negligence or willful misconduct of the other Party (the "**Indemnified Party**") or its employees, agents, lessees, visitors, invitees, contractors, or licensees, each Party (the "**Indemnifying Party**") shall defend, indemnify and hold the Indemnified Party harmless from and against any and all claims, actions, proceedings, demands, damages, liabilities, costs, and expenses, including, without limitation, reasonable attorneys' fees, to the extent resulting from the use of the Easement Area by the Indemnifying Party or its employees, agents, lessees, visitors, invitees, contractors, or licensees. The provisions of this Section shall survive the termination of this Agreement.

6. **Insurance.** Grantee shall maintain commercial general liability insurance as to the Easement Area in an amount of no less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate, naming Grantor as additional insured. Grantee shall provide Grantor with a certificate of insurance evidencing such coverage within five (5) days of request from Grantor.

7. **No Interference.** Grantor reserves the right to utilize the Easement Area, provided, that Grantor's activities and any grant of rights Grantor makes to any person or entity, whether located on the Grantor Property or elsewhere, shall not, currently or in the future, unreasonably impede or interfere with the exercise of Grantee's rights granted under this Agreement. No other easement or rights shall be granted on, under, or over the Easement Area by Grantor to any person or entity without the prior written consent of Grantee, which consent shall not be unreasonably withheld, conditioned or delayed so long as such other easements do not materially affect Grantee's use of the Easement Area.

8. **Court Costs and Attorneys' Fees.** In the event of any legal action or proceeding between the Parties, reasonable attorneys' fees and expenses of the substantially prevailing party in any such action or proceeding will be added to the judgment therein.

9. **No Third-Party Beneficiaries.** There is no intent by either Party to create or establish third party beneficiary status or rights in any third party. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a party hereto, and Grantee and Grantor expressly disclaim any such third-party benefit.

10. **Subordination.** Grantor shall take all action that is necessary to cause this Agreement to be and remain at all times superior in priority to (a) the lien of any mortgage or mortgages which may now or hereafter affect the Grantor Property, and to all advances made or hereafter to be made upon the security thereof and to the interest thereon, and to any agreements at any time made modifying, supplementing, extending or replacing any such mortgages, (b) any ground or underlying lease which may now or hereafter affect the Grantor Property, and (c) any easements or other matters of record which may now or hereafter affect the Grantor Property, including all amendments, renewals, modifications, consolidations, replacements and extensions of any of the foregoing documents. The obligations of Grantor under this Section 10 shall include the obligation of Grantor to cause to be executed and recorded a subordination, non-disturbance and attornment agreement, in a form acceptable to Grantee, by the mortgagees under any existing mortgage, the trustees and beneficiaries under any existing deeds of trust, the lessees or tenants under any existing leases, and any other parties to any existing recorded documents that affect the Grantor Property and that may be deemed to be superior in priority to this Agreement without the execution and recording of such subordination, non-disturbance and attornment agreements.

11. **Counterparts; Incorporation.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Signatures hereon may be delivered by electronic mail or facsimile, and the delivery of such signatures shall be deemed originals for all purposes. The recitals set forth above and exhibits attached hereto are incorporated herein by this reference.

12. **Governing Law; Venue.** This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Utah. Venue for any action, suit, or proceeding relating to this Agreement shall lie in the state and federal courts located in Salt Lake County, Utah.

13. No Waiver; Severability. The failure of any Party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that such Party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein. Invalidation of any one of the covenants or restrictions set forth in this Agreement by judgment or court order shall in no way affect all other provisions, which shall remain in full force and effect.

14. Covenant Running with the Land. This Agreement shall be a covenant running with the land and shall be binding upon the Grantor Property for the benefit of the Grantee Property and each of their respective successors and assigns.

15. Entire Agreement. This Agreement contains the entire agreement between Grantor and Grantee with respect to the subject matter of this Agreement.

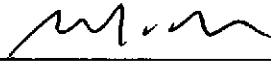
16. Amendment; Termination. This Agreement may not be amended, changed, or modified in any way except in a writing executed by Grantor and Grantee. Grantee may elect to terminate its use of the Easement Area and this Agreement at any time upon providing written notice to Grantor of the same.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.


OVERPASS POINT MHC, LLC,
a Delaware limited liability company

By: Newbury Management Company,
a Michigan corporation
Its: Authorized Agent

By 
Name: Joel K. Brown
Title: Authorized Representative

STATE OF MICHIGAN)
 : ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on April 22, 2021, by Joel K. Brown, the Authorized Representative of Newbury Management Company, the Authorized Agent of Overpass Point MHC, LLC, a Delaware limited liability company, on behalf of the limited liability company.


NOTARY PUBLIC
Residing at: _____

My Commission Expires:

MICHELLE CHAKLOS
Notary Public, State of Michigan
County of Oakland
My Commission Expires Apr. 22, 2026
Acting in the County of Oakland



GRNOBL WESTERN ACRES, LLC,
a Utah limited liability company

By: AJG
Name: A.J. Green
Title: Manager

STATE OF Utah)
 : ss
COUNTY OF Davis)

The foregoing instrument was acknowledged before me on November 16 2021, by A.J. Green as Manager of GRNOBL Western Acres, LLC, a Utah limited liability company.

Trevan Thomas
NOTARY PUBLIC
Residing at: Davis County, Utah

My Commission Expires:
7/2/2022



Exhibit A

Legal Description of the Grantor Property

LOT 1, OVERPASS POINT SUBDIVISION, A SUBDIVISION OF TOOELE CITY, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND RECORDED JUNE 9, 1998 AS ENTRY NO. 112891 IN BOOK 510 AT PAGE 620 OF OFFICIAL RECORDS IN THE OFFICE OF THE TOOELE COUNTY RECORDER.

Exhibit B

Legal Description of the Grantee Property

Western Acres aggregate description (From ALTA Survey)

A TRACT OF LAND BEING SITUATE IN THE WEST HALF OF SECTION 15, AND THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER OF SAID SECTION 15, AND RUNNING THENCE NORTH 00°01'31" WEST ALONG THE SECTION LINE A DISTANCE OF 30.00 FEET TO THE SOUTH LINE OF OVERPASS POINT SUBDIVISION, BEING ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER; THENCE ALONG THE BOUNDARY OF SAID SUBDIVISION THE FOLLOWING THREE (3) COURSES, 1) NORTH 89°53'10" EAST 350.73 FEET, 2) NORTH 00°00'05" EAST 1747.81 FEET, 3) NORTH 65°42'31" WEST 457.88 FEET; THENCE NORTH 43°58'38" EAST 927.02 FEET TO THE NORTH LINE OF SAID SECTION 15; THENCE NORTH 89°44'13" EAST ALONG SAID SECTION LINE A DISTANCE OF 570.50 FEET TO THE WEST RIGHT-OF-WAY LINE OF COPPER CANYON DRIVE; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES, 1) SOUTH 775.73 FEET TO THE POINT OF A TANGENT 462.00 FOOT RADIUS CURVE TO THE RIGHT, 2) ALONG SAID CURVE A DISTANCE OF 306.35 FEET THROUGH A CENTRAL ANGLE OF 37°59'34" (CHORD BEARS SOUTH 18°59'47" WEST 300.77 FEET), 3) SOUTH 37°59'34" WEST 271.42 FEET, 4) SOUTH 52°00'26" EAST 76.00 FEET TO THE POINT OF A NON-TANGENT 29.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE A DISTANCE OF 46.34 FEET THROUGH A CENTRAL ANGLE OF 90°00'00" (CHORD BEARS NORTH 82°59'34" EAST 41.72 FEET) TO THE WESTERLY LINE OF BROADWAY AVENUE; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES, 1) SOUTH 52°00'26" EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 35.01 FEET TO THE POINT OF A TANGENT 367.00 FOOT RADIUS CURVE TO THE RIGHT 2) ALONG SAID CURVE A DISTANCE OF 9.23 FEET THROUGH A CENTRAL ANGLE OF 01°26'26" (CHORD BEARS SOUTH 51°17'13" EAST 9.23 FEET) TO THE NORTHERNMOST CORNER OF LOT 1, CANYON VILLAGE SUBDIVISION, PHASE 4, ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER; THENCE ALONG THE BOUNDARY OF SAID SUBDIVISION THE FOLLOWING FIVE (5) COURSES, 1) SOUTH 39°26'05" WEST 100.00 FEET, 2) SOUTH 44°06'59" EAST 59.99 FEET, 3) SOUTH 31°13'00" EAST 59.99 FEET, 4) SOUTH 18°19'00" EAST 59.99 FEET, 5) SOUTH 05°26'31" EAST 60.18 FEET TO A POINT ON THE WEST LINE OF SAID SUBDIVISION AND A PROLONGATION OF THE WEST LINE OF CANYON VILLAGE SUBDIVISION, PHASE 3, ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER; THENCE SOUTH ALONG THE WEST LINE OF SAID SUBDIVISIONS A DISTANCE OF 496.84 FEET TO THE NORTHWEST CORNER OF LOT 6 OF SAID CANYON VILLAGE SUBDIVISION, PHASE 3; THENCE ALONG THE BOUNDARY OF SAID SUBDIVISION THE FOLLOWING SEVEN (7) COURSES, 1) SOUTH 04°35'20" EAST 80.11 FEET, 2) SOUTH 15°54'31" EAST 80.28 FEET, 3) SOUTH 26°31'08" EAST 80.23 FEET, 4) SOUTH 35°42'53" EAST 73.47 FEET, 5) SOUTH 10°46'00" EAST 129.32 FEET, 6) NORTH 24°25'00" EAST 111.67 FEET, 7) NORTH 60°00'00" EAST 58.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF BROADWAY AVENUE; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES, 1) SOUTH 35°42'58" EAST 39.00 FEET TO THE POINT OF A NON-TANGENT 267.00 FOOT RADIUS CURVE TO THE RIGHT, 2) ALONG SAID CURVE A DISTANCE OF 165.90 FEET THROUGH A CENTRAL ANGLE OF 35°36'02" (CHORD BEARS SOUTH 17°54'56" EAST 163.24 FEET), 3) SOUTH 00°06'55" EAST 33.67 FEET TO THE SOUTHWEST CORNER OF CANYON VILLAGE SUBDIVISION, PHASE 1, ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER; THENCE NORTH 89°53'05" EAST ALONG THE SOUTH LINE OF SAID SUBDIVISION A DISTANCE OF 220.33 FEET TO THE NORTHWEST CORNER OF EASTLAND ESTATES SUBDIVISION PLAT "B", AMENDED NO. 1, ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER; THENCE SOUTH 00°16'04" EAST ALONG THE WEST LINE OF SAID SUBDIVISION AND THE WEST LINE OF EASTLAND ESTATES SUBDIVISION "B", ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER AND THE WEST LINE OF EASTLAND ESTATES SUBDIVISION "A" PLATS 1, PLAT 3, AND PLAT 4 ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER A DISTANCE OF 1652.54 FEET; THENCE SOUTH 89°43'56" WEST 384.99 FEET; THENCE NORTH 00°16'04" WEST 570.69 FEET; THENCE SOUTH 89°43'56" WEST 540.74 FEET; THENCE NORTH 00°18'59" WEST 354.34 FEET; THENCE SOUTH 89°53'01" WEST 647.01 FEET TO THE SECTION LINE; THENCE NORTH 00°18'59" WEST ALONG THE SECTION LINE A DISTANCE OF 729.99 FEET TO THE POINT OF BEGINNING.

CONTAINS 3,777,147 SQUARE FEET OR 86.711 ACRES, MORE OR LESS.

Exhibit C

Legal Description and Depiction of the Easement Area

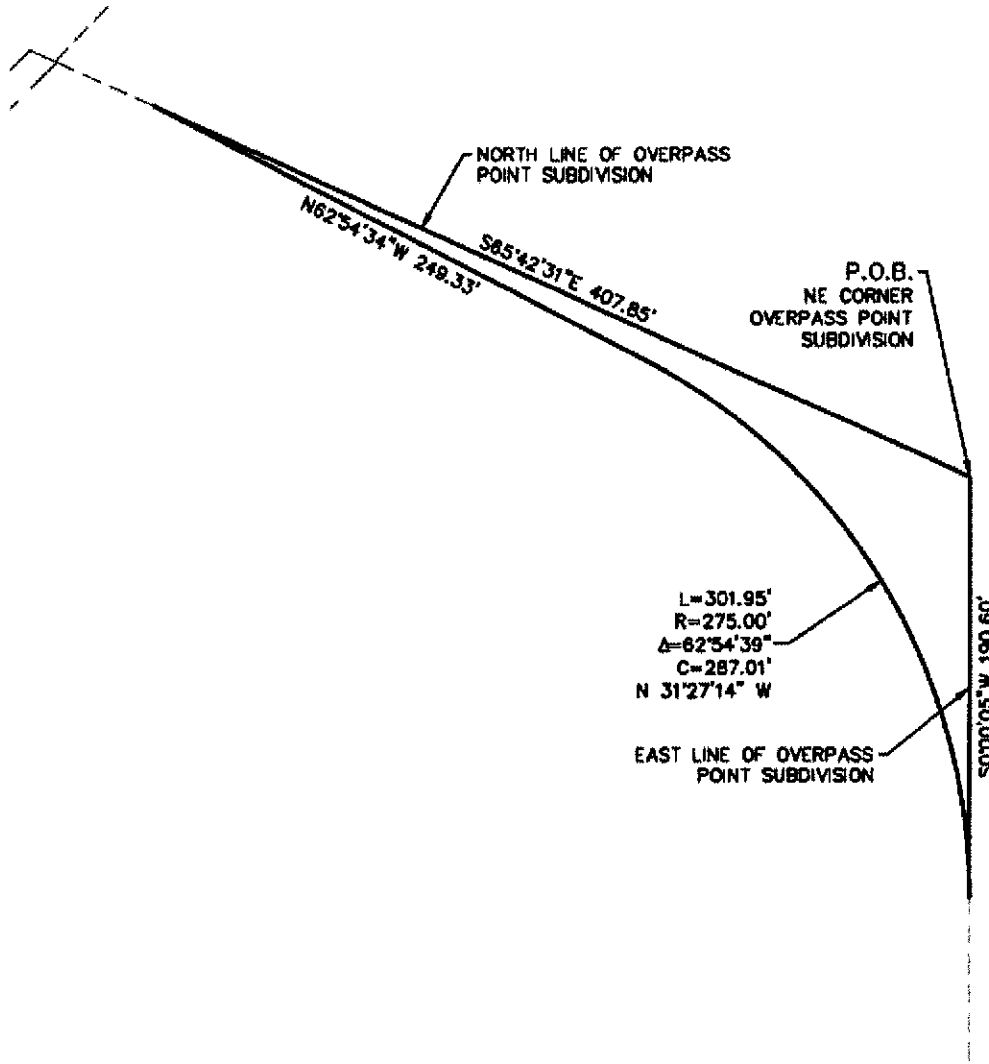
BEGINNING AT A POINT WHICH IS SOUTH 00°01'31" EAST ALONG THE SECTION LINE A DISTANCE OF 852.80 FEET AND EAST 351.55 FEET; FROM THE NORTHWEST CORNER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING THE NORTHEAST CORNER OF OVERPASS POINT SUBDIVISION, BEING ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER, AND RUNNING THENCE SOUTH 00°00'05" WEST ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 190.60 FEET TO THE POINT OF A NON-TANGENT 275.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID CURVE A DISTANCE OF 301.95 FEET THROUGH A CENTRAL ANGLE OF 62°54'39" (CHORD BEARS NORTH 31°27'14" WEST 287.01 FEET); THENCE NORTH 62°54'34" WEST 249.33 FEET TO THE NORTH LINE OF SAID SUBDIVISION; THENCE SOUTH 65°42'31" EAST ALONG SAID NORTH LINE A DISTANCE OF 407.85 FEET TO THE POINT OF BEGINNING.

CONTAINS 8,902 SQUARE FEET OR 0.204 ACRES, MORE OR LESS.

DRAINAGE EASEMENT EXHIBIT



SCALE 1" = 70'



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PLOT DATE: Jan 26, 2021



CONSENT AND SUBORDINATION OF LENDER

Citi Real Estate Funding Inc., a New York corporation, DBR Investments Co. Limited, a Cayman Islands corporation, Morgan Stanley Bank, N.A., a national banking association and Wells Fargo Bank, National Association, a national banking association, collectively, as the lender (collectively, "Lender") pursuant to that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated April 1, 2021, and recorded April 5, 2021, in Book 540380, records of Tooele County, Utah (as the same may have been modified or amended, the "Security Deed"), and related loan documents, hereby (a) acknowledges and consents to the terms and conditions of that certain Drainage Easement Agreement by and between Overpass Point MHC, LLC, a Delaware limited liability company and D.R. Horton, Inc., a Delaware corporation, to which this Consent and Subordination of Lender is attached (the "Easement"); (b) subordinates all interests pursuant to the Security Deed and related loan documents to the terms and conditions of the Easement; and (c) agrees that all interests pursuant to the Security Deed and related loan documents are subject thereto, and any party foreclosing on the property subject to the Security Deed by deed under power of sale contained therein shall acquire title subject to all of the terms and provisions of the Easement.

IN WITNESS WHEREOF, Lender has caused this Consent and Subordination of Lender to be executed as of the 14th day of April, 2021.

[Signature and Acknowledgement Pages Follow]

[SIGNATURE PAGE TO CONSENT AND SUBORDINATION OF LENDER]

LENDER:

MORGAN STANLEY BANK, N.A., a national banking association

By: [Signature]
Name: Cynthia Eckes
Title: Authorized Signatory

STATE OF NY)
) ss.
COUNTY OF NY)

ACKNOWLEDGMENT

On this 19 day of April, 2021, personally appeared before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, for the state and county aforesaid, Cynthia Eckes, with whom I am personally acquainted, and who, upon oath, acknowledged that he executed the within instrument for the consideration, uses, and purposes therein contained, and who further acknowledged that she is the Authorized Signatory of MSBNA, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and on behalf of said company.

Given under my hand and seal of office this 19 day of April, 2021.

[Signature]
Notary Public
My Commission Expires: 10-30-21

[NOTARY SEAL]

Rosalie J. Nester
Notary Public, State of New York
No. 01NE636636B
Qualified in New York County
Commission Expires 10/30/2021

