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PREPARED BY AND UPON
RECORDATION RETURN TO:

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333 South Seventh Street, Suite 2600
Minneapolis, MN 55402
Attention: Rory O. Duggan, Esq.

CT-103058-CAM

VINE STREET TOWNHOMES, LLC,
a Utah limited liability company, as trustor
(Trustor)

to

COTTONWOOD TITLE INSURANCE AGENCY, INC.,
a Utah corporation, as trustee
(Trustee)

For the benefit of **COLLIERS FUNDING LLC,**
a Delaware limited liability company, as beneficiary
(Beneficiary)

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

Dated: May 11, 2023

Location: Tooele County, Utah

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

THIS DEED OF TRUST SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH MAY VARY FROM TIME TO TIME IN ACCORDANCE WITH THE PROMISSORY NOTE BETWEEN TRUSTOR AND BENEFICIARY.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

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 TRUSTOR 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). TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Deed of Trust"), is made and given as of this 11th day of May, 2023 by VINE STREET TOWNHOMES, LLC, a Utah limited liability company (the "Trustor"), whose address is 1265 E. Fort Union Blvd., Ste. 120, Cottonwood Heights, Utah 84047 to Cottonwood Title Insurance Agency, Inc., a Utah corporation (the "Trustee"), whose address is 1996 E. 6400 S., Ste. 120, Salt Lake City, Utah 84121, as trustee for the benefit of COLLIERS FUNDING LLC, a Delaware limited liability company (the "Beneficiary"), whose address is 90 South Seventh Street, Suite 4300, Minneapolis, Minnesota 55402.

PRELIMINARY RECITALS

A. Pursuant to a certain Construction and Term Loan Agreement between Trustor and Beneficiary dated of even date herewith (with all amendments, modifications and supplements, the "Loan Agreement"), Beneficiary has agreed to make a construction and term loan to Trustor in the sum of up to \$14,450,000.00 (the "Loan") to finance a portion of the costs of acquiring the Real Property described herein and constructing a 62-unit townhome-style multifamily apartment project and related amenities and improvements on such Real Property

described herein. Unless the context otherwise indicates, all capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Loan Agreement.

B. The Loan is evidenced by a Promissory Note dated of even date herewith, executed and delivered by Trustor payable to the order of Beneficiary in the original principal amount of \$14,450,000.00 (with all amendments, modifications, supplements, replacements and extensions, the "Note").

C. The Loan bears interest at a variable rate or rates as more fully set forth in the Note, except that during the period of and continuance of an Event of Default hereunder the Note shall bear interest at a per annum rate of interest equal to the "Default Rate" as defined under the Note; such rate as in effect from time to time pursuant to the Note is the "Interest Rate".

D. As security for the repayment of the Loan as evidenced by the Note, Trustor is executing and delivering this Deed of Trust.

E. The Loan is payable in installments with a final installment payment of the principal balance and all accrued and unpaid interest due on June 1, 2026, subject to an extension until June 1, 2027 pursuant to the terms of the Loan Agreement, or such earlier date on which the Note may be declared due and payable by Lender in accordance with its terms (the "Maturity Date").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, and for the purposes aforesaid, Trustor hereby irrevocably grants, bargains, sells, transfers, conveys and assigns to Trustee, as trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the following property, rights, interests and estates now owned, or hereafter acquired by Trustor (all of the following being hereinafter collectively referred to as the "Premises"):

A. REAL PROPERTY

All right, title and interest, whether fee, leasehold or otherwise in and to the tracts or parcels of real property lying and being in the County of Tooele, State of Utah, all as more fully described in Exhibit A attached hereto and made a part hereof, together with all the estates and rights in and to the real property and in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the real property; together with all water rights (whether riparian, appropriative or otherwise whether or not appurtenant) now or hereafter relating to or used in connection with the real property, and all shares of stock, if any, evidencing such rights (the "Real Property").

B. BUILDINGS

All buildings and improvements now or hereafter located on the Real Property (the "Buildings").

C. EQUIPMENT, INVENTORY, FIXTURES AND GOODS

All equipment, inventory, fixtures and goods, owned or hereafter acquired by Trustor and now or hereafter attached to, located at, or placed in the improvements on the Real Property including, without limitation (i) all machinery, fittings, fixtures, apparatus, appliances, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, (ii) all maintenance supplies and repair equipment, (iii) all draperies, carpeting, floor coverings, screens, storm windows and window coverings, blinds, awnings, shrubbery and plants, (iv) all elevators, escalators and shafts, motors, machinery, fittings and supplies necessary for their use, and (v) all building materials and supplies now or hereafter delivered to the Premises (it being understood that the enumeration of any specific articles of property shall in no way be held to exclude any items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Trustor in any such items hereafter acquired, as well as Trustor's interest in any lease or conditional sales agreement under which the same is acquired, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises (the "Equipment"), but excepting therefrom the trade fixtures, inventory, equipment and removable property owned by any tenant.

D. RENTS, LEASES AND PROFITS

All leasehold estate, right, title and interest of Trustor in and to all rents, including, but not limited to, "Rents" as defined in the Uniform Assignment of Rents Act, *Utah Code Annotated* § 57-08-101, et seq. (the "Act"), income, contract rights, leases and profits now due or which may hereafter become due under or by virtue of any lease, sublease, license or agreement, whether written or verbal, for the use or occupancy of the Premises or any part thereof, including, without limitation, any subsidy payments received from any source, together with all of Trustor's rights to all tenant security deposits with respect to any such leases, licenses and agreements and all interest thereon, whether now owned by Trustor or hereafter acquired or arising (the "Rents" and the "Lease" or "Leases," as applicable).

E. INSURANCE PROCEEDS

All awards, payments or proceeds now or hereafter payable under any policy of insurance insuring the Premises including, without limitation, to the proceeds of casualty insurance, title insurance, business interruption/rents insurance or other insurance maintained with respect to the Premises, whether now owned by Trustor or hereafter acquired or arising.

F. JUDGMENTS AND AWARDS

All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Premises, including, without limitation, any awards for damages sustained to the Premises, for a temporary taking, change of grade of streets or taking of access, whether now owned by Trustor or hereafter acquired or arising.

G. INTANGIBLES

All contracts, licenses, permits, management records, software, files, consents, governmental approvals and intangibles used, useful or required in the ownership, management, operation or development of the Premises, together with all soil reports, building permits, variances, licenses, utility permits and other permits and agreements relating to the construction or equipping of the improvements on the Premises, or the operation or maintenance of the Premises, including, without limitation, all warranties and contract rights, whether now owned by Trustor or hereafter acquired or arising.

H. CONSTRUCTION CONTRACTS

Each contract or agreement for the design, construction, furnishing and equipping of the improvements located or to be located on the Premises, together with all right, title and interest of Trustor in and to any existing or future changes, extensions, revisions, modifications, guarantees of performance or warranties of any kind thereunder, whether now owned by Trustor or hereafter acquired or arising.

I. PLANS AND SPECIFICATIONS

All plans and specifications, all surveys, site plans, soil reports, drawings and papers relating to the Premises and the design, construction, furnishing and equipping of the improvements on the Premises, whether now owned by Trustor or hereafter acquired or arising.

J. PERMITS AND LICENSES

All building permits, operating permits, variances, licenses, utility permits and other permits, licenses and agreements relating to the construction, equipping, operation or maintenance of the Premises including, without limitation, all warranties and contract rights, whether now owned by Trustor or hereafter acquired or arising.

K. BUILDING SUPPLIES

All building supplies and materials ordered or purchased for use in connection with the construction and equipping of the improvements on the Premises, whether now owned by Trustor or hereafter acquired or arising.

L. SERVICE AGREEMENTS

All rights and interests of Trustor in and under any and all service and other agreements relating to the operation, management, maintenance and repair of the Premises or the buildings

and improvements thereon, whether now owned by Trustor or hereafter acquired or arising, including, without limitation, all right, title and interest of Trustor in and to the Property Management Agreement.

M. DEPOSITS AND REVENUES

All rights and interests of Trustor, whether now owned or hereafter acquired or arising, in and to any and all deposits and revenues relating to the Premises, including, without limitation, security deposits, replacement revenue escrows, tax and insurance escrows and working capital reserves or escrows.

N. OTHER PERSONAL PROPERTY

All Accounts, Chattel Paper, Controlled Property, Deposit Accounts, Documents, Goods, General Intangibles, Instruments and Equipment, as such terms are defined in the Utah Uniform Commercial Code in effect from time to time (the "Code"), with respect to the Premises, now owned by Trustor or hereafter acquired or arising.

O. GREATER ESTATE

All right, title and interest of Trustor now owned or hereafter acquired by Trustor in and to any greater estate in the Real Property or the Buildings.

P. PROCEEDS

All proceeds, products, accessions and supporting obligations thereto.

It is specifically understood that the enumeration of any specific articles of property shall not exclude or be held to exclude any items of property not specifically mentioned. At the option of Beneficiary, all of the Premises hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood and agreed and declared to be appropriated to the use of the Premises and shall for the purposes of this Deed of Trust be deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto Trustee and its successors, substitutes or assigns in trust for the benefit of Beneficiary for the uses and purposes herein set forth, together with all rights, privileges, hereditaments and appurtenances in anywise appertaining or belonging thereto, subject to the Permitted Exceptions, and Trustor, for Trustor and Trustor's successors, substitutes and assigns, hereby agrees to WARRANT AND FOREVER DEFEND, all and singular, the Premises unto Trustee, Beneficiary, and their respective successors, substitutes or assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof subject however as aforesaid, all for the purposes of securing the full payment and performance of the following obligations:

- (i) all sums due and owing on the Note or pursuant to the Loan Agreement (the terms and conditions of the Note and the Loan Agreement are incorporated herein by reference and made a part hereof), with interest thereon at the variable rate or rates set forth therein; the unpaid principal balance pursuant to the Note and all amounts advanced or to be advanced pursuant to the Note, together with interest thereon, payable to Beneficiary pursuant to the Note, if not sooner due, shall be due and payable in any event on the Maturity Date;
- (ii) subject to Section 10.8 of this Deed of Trust, all other obligations, liabilities, covenants and agreements, now existing or hereafter arising, of Trustor to Beneficiary hereunder, under the Note, under the Loan Agreement or under the other instruments which refer to or secure the Note, but specifically excluding the Environmental Indemnity (hereinafter collectively referred to as the "Loan Documents"; and individually referred to as a "Loan Document"); and
- (iii) all sums, with interest thereon at the same rate or rates as specified in the Note and the Loan Agreement, advanced in protecting the lien of this Deed of Trust or the Collateral (as defined herein), including taxes, assessments, charges, claims, fines, impositions, insurance premiums, amounts due upon prior or superior mortgages and other prior or superior liens, encumbrances and interests, Beneficiary's and Trustee's fees provided for herein or in the other Loan Documents and legal expenses and attorneys' fees and all sums advanced for any other purpose authorized herein (the Note and all such sums, together with interest thereon, and all such obligations being hereinafter collectively referred to as the "Indebtedness Secured Hereby").

Provided, nevertheless, that these presents are upon the express condition that, if Trustor shall pay or cause to be paid in full the Indebtedness Secured Hereby, and if Trustor shall strictly observe and perform all of the terms, covenants and conditions herein, in the Loan Agreement and in the other Loan Documents, this Deed of Trust shall become null and void and of no force and effect and Beneficiary will request that Trustee reconvey the Premises without warranty to the person or persons legally entitled thereto to Trustor at Trustor's expense. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts will be conclusive proof of the truthfulness thereof. As a condition to any such satisfaction or reconveyance, Borrower covenants and agrees to pay Beneficiary's and Trustee's reasonable fees and expenses (including attorneys' fees and expenses) in connection with reconveying the Premises.

AND TRUSTOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1

GENERAL COVENANTS, AGREEMENTS, WARRANTIES

1.1 **Payment of Indebtedness; Observance of Covenants.** Trustor shall duly and punctually pay each and every installment of principal, interest, and other payments due under the Note and all other Indebtedness Secured Hereby, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and

provisions contained herein, in the Note and any other instrument given as security for the payment of the Note.

1.2 Construction; Maintenance; Repairs. Trustor shall complete the improvements to be constructed on the Premises pursuant to the Loan Agreement, free and clear of any and all liens. Trustor shall not abandon the Premises, shall keep and maintain the Premises in good condition, repair, maintenance and operating condition free from any waste or misuse, and shall promptly repair and restore any buildings, improvements or structures now or hereafter on the Premises which may become damaged or destroyed to their condition prior to any such damage or destruction. Except for the construction to be undertaken pursuant to the Loan Agreement, without the prior consent of Beneficiary, Trustor agrees that it will not construct or expand any improvements on the Premises, erect any new improvements nor make any material alterations in any improvements which shall alter the basic structure, decrease the market value or change the existing architectural character of the Premises, nor remove or demolish any improvements and shall complete any buildings now or hereafter in the process of being erected on the Premises as required by the Loan Agreement.

1.3 Compliance with Laws. Trustor shall comply with all requirements of law, municipal ordinances, regulations, private restrictions and covenants affecting the Premises and shall not acquiesce in or seek any rezoning classification affecting the Premises.

1.4 Payment of Operating Costs; Prior Deeds of Trust and Liens.

- (a) Trustor shall pay all operating costs and expenses of the Premises (except as provided in Section 1.6) shall pay when due all indebtedness which may be secured by a mortgage, deed of trust, lien or charge on the Premises. Trustor will promptly pay all bills for labor and materials incurred in connection with the Premises and prevent the fixing of any lien ("Liens") against any part of the Premises, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Trustor agrees to furnish proof of such payment to Beneficiary after payment and before delinquency.
- (b) Trustor will timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices. Trustor will cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Premises in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-204. Trustor will also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Premises that are included in the State Construction Registry and received by Trustor.
- (c) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien)

except as disclosed to Beneficiary by Trustor or Beneficiary's title insurer in writing. Trustor further represents and warrants that, except as disclosed in a title commitment issued by Beneficiary's title insurer, no mechanic's lien claim, notice of lien, *lis pendens* or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Premises or recorded against the Premises.

- (d) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor will provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to *Utah Code Annotated* § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.
- (e) Trustor will cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by *Utah Code Annotated* § 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Premises secured hereby, the address of the Premises, and the County in which the Premises is located. Trustor shall timely file or cause to be filed as required by Utah law or at the request of Beneficiary, a Notice of intent to obtain final completion and a notice of final completion and if Beneficiary elects to file a notice of intent to finance under *Utah Code Annotated* § 38-1a-603, Trustor shall cause each subcontractor that has filed a preliminary notice pertaining to the Property to file with the State Construction Registry a final lien waiver.
- (f) Trustor will cause, as a condition precedent to the closing of the loan secured hereby, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust is a valid and existing first priority lien on the Premises free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2001 Form of ALTA Mortgagee's Title Insurance Policy.

- (g) Trustor will pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Premises (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Premises regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor will have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Premises from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.
- (h) If Trustor fails to remove and discharge any such lien, encumbrance or charge, or if Trustor disputes the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but will not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Premises from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor will, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

1.5 Payment of Impositions. Except as provided in Section 1.6, Trustor shall pay when due and in any event before any penalty or interest attaches, all taxes, installments of assessments, governmental charges, water charges, sewer charges and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein or accruing by reason of the operation of the Premises by Trustor, including, without limitation, sales, use, employment and other taxes based on such operations ("Impositions") and will on demand furnish Beneficiary proof of the payment

of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee the payment of the whole or any part of the Impositions herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of mortgages or deeds of trust or debts secured by mortgages or deeds of trust or a mortgagee's interest in mortgaged premises, so as to impose such Imposition on Beneficiary or on the interest of Beneficiary in the Premises, then, in any such event, Trustor shall bear and pay the full amount of such Impositions; provided, however, that if for any reason payment by Trustor of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness Secured Hereby wholly or partially usurious, Beneficiary, at its option, may declare the whole sum secured by this Deed of Trust with interest thereon to be immediately due and payable in accordance with the terms of the Note, or Beneficiary may, at its option, pay that amount or portion of such Imposition as renders the Indebtedness Secured Hereby unlawful or usurious, in which event Trustor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said Imposition.

1.6 Contest of Impositions. Trustor shall not be required to pay, discharge or remove any Imposition so long as Trustor shall in good faith contest the same or the validity thereof by appropriate legal proceedings so long as such proceedings operate to prevent the collection or enforcement of the Imposition so contested and the sale of the Premises, or any part thereof, to satisfy the same; provided, however, Trustor shall, as a condition of any such contest, have paid that portion of the Imposition as may be required by law, and shall, prior to the date such Imposition is originally due and payable without such contest, have given Beneficiary such reasonable security as may be demanded by Beneficiary to insure such payments plus interest or penalties thereon, and prevent any sale or forfeiture of the Premises by reason of such nonpayment or shall have caused any such Imposition to be discharged of record by posting a bond as permitted by law. Any such contest shall be prosecuted with due diligence and Trustor shall promptly after final determination thereof pay the amount of any such Imposition so determined, together with all interest and penalties which may be payable in connection therewith. Notwithstanding these provisions, Trustor shall (and if Trustor shall fail so to do, Beneficiary may but shall not be required to) pay any such Imposition notwithstanding such contest if in the reasonable opinion of Beneficiary, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed.

1.7 Protection of Security. Trustor shall promptly notify Beneficiary of and appear in and defend any suit, action or proceeding that affects Trustor or the Premises or the timely performance of any obligation of Trustor hereunder or under the other Loan Documents, or on the rights or interest of Beneficiary hereunder and Beneficiary may elect to appear in or defend any such action or proceeding with counsel selected by Trustor and approved by Beneficiary. Trustor agrees to indemnify and reimburse Beneficiary from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including, without limitation, costs of evidence of title and attorneys' fees incurred by Beneficiary and such amounts together with interest thereon at the Interest Rate in effect from time to time shall become additional "Indebtedness Secured Hereby" and shall become immediately due and payable.

1.8 Financial Statements. Trustor shall furnish to Beneficiary the Required Financial Reports of Trustor, Guarantors and the Premises as and when required by the Loan Agreement.

In the event Trustor or Guarantor fails to furnish any such statements when required by the Loan Agreement, and Trustor fails to cure such failure within thirty (30) days after written notice to Trustor, the same shall be an Event of Default hereunder and in addition to any other remedies available to Beneficiary, Beneficiary may cause an audit to be made of the books and records of Trustor pursuant to the terms of the Loan Agreement.

1.9 Additional Assurances. Trustor agrees upon the request by Beneficiary to execute and deliver such further instruments, deeds and assurances including, without limitation, financing statements under the Code and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Deed of Trust and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or intended by the parties so to be. Trustor agrees to pay any recording fees, filing fees, note taxes, mortgage registry taxes, documentary stamp taxes, intangible taxes, or other charges arising out of or incident to the filing or recording of this Deed of Trust, such further assurances and instruments and the issuance and delivery of the Note.

1.10 Current Compliance with Laws. To the best knowledge of Trustor, the Premises as improved on the date hereof complies with all material requirements of laws, including, without limitation, requirements of any Federal, State, County, City or other governmental authority having jurisdiction over Trustor or the Premises and including, without limitation, any applicable zoning, occupational safety and health, energy and environmental laws, ordinances and regulations; and Trustor has obtained, or will obtain in the ordinary course of business, and will maintain all necessary consents, permits and licenses to construct, occupy and operate the Premises for its intended purposes a multifamily apartment project.

1.11 Title. Trustor is the lawful owner of and has good and marketable title to the Premises. Trustor will warrant and defend title to the same free of all liens and encumbrances, other than Permitted Exceptions. Trustor has good right and lawful authority to grant, bargain, sell, convey, mortgage and grant a security interest in the Premises as provided herein.

1.12 Loan Agreement. This Deed of Trust secures an obligation incurred for the construction of an improvement on land and is a "construction mortgage" as that term is used in the Code. This Deed of Trust is the Deed of Trust referred to in, and is given as security for the due and punctual performance, observance and payment by Trustor of the terms and conditions set forth in, the Loan Agreement, the terms and conditions of which are incorporated herein by reference. In addition to its remedies hereunder during the continuance of an Event of Default, Beneficiary may, but shall not be required to, avail itself of any or all of the rights and remedies available to it under the Loan Agreement, and any sums expended by Beneficiary in availing itself of such rights and remedies shall bear interest thereon at the Interest Rate and shall be so much additional Indebtedness Secured Hereby, and shall be payable to Beneficiary immediately upon demand; provided, however, no such payment by Beneficiary shall be considered as waiving any such Event of Default.

1.13 Compliance with Americans with Disabilities Act and Fair Housing Act. Trustor covenants and agrees that it will construct the Project such that, upon Completion, the Premises will comply with the requirements of the Americans with Disabilities Act and the Fair Housing Act, as the same may be amended from time to time, during the entire term of this Deed of Trust

and that it will comply with any requirements applicable to the Premises established by any federal, state or local governmental authorities having jurisdiction over such matters. All future maintenance, renovation, repair and construction conducted on the Premises shall be completed in accordance with the Americans with Disabilities Act and the Fair Housing Act, as applicable. Failure to comply with the provisions of the Americans with Disabilities Act or the Fair Housing Act shall constitute an Event of Default under the terms of this Deed of Trust and shall entitle Beneficiary to exercise all remedies available to it hereunder and under the other Loan Documents.

ARTICLE 2 INSURANCE AND ESCROWS

2.1 Insurance. Trustor shall obtain, pay for and keep in full force and effect during the term of this Deed of Trust at its sole cost and expense the policies of insurance required by the Loan Agreement.

In the event of a foreclosure of this Deed of Trust or any acquisition of the Premises by Beneficiary, all such policies and all proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of Beneficiary to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance Trustor empowers Beneficiary to effect insurance upon the Premises at Trustor's expense and for the benefit of Beneficiary in the amounts and types provided in the Loan Agreement for a period of time covering the time of redemption from foreclosure sale and, if necessary therefor, to cancel any or all existing insurance policies. Trustor agrees to pay Beneficiary the costs incurred by Beneficiary in determining, from time to time, whether the Premises are located within an area having special flood hazards. Such fees shall include the fees charged by any organization providing such services.

2.2 Escrows. Subject to the terms of the Escrow Waiver Letter, Trustor shall deposit with Beneficiary, or at Beneficiary's request, with its servicing agent or a bank designated by Beneficiary, on the first (1st) day of each and every calendar month hereafter as a deposit to pay the costs of taxes, assessments and insurance premiums next due as to the Premises (the "Charges"):

- (a) Initially a sum such that the amounts to be deposited pursuant to Section 2.2 (b) and such initial sum shall be equal to the estimated Charges for the next due payment thereon; and
- (b) Thereafter an amount equal to one-twelfth (1/12th) of the estimated annual Charges due on the Premises.

Beneficiary will, upon the presentation to Beneficiary by Trustor of the bills therefor, pay the Charges from such deposits or will, upon presentation of receipted bills therefor, reimburse Trustor from such deposits and payments made by Trustor. No amount so paid to Beneficiary shall be deemed to be trust funds. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior

deposits shall be less than the currently estimated monthly amounts, then Trustor shall pay to Beneficiary on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited to subsequent payments to be made for such items. If an Event of Default shall occur under the terms of this Deed of Trust, Beneficiary may, at its option, without being required so to do, apply any deposits on hand to the Indebtedness Secured Hereby, in such order and manner as Beneficiary may elect. When the Indebtedness Secured Hereby has been fully paid, any remaining deposits shall be returned to Trustor as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness Secured Hereby, shall be held for the purposes for which made as herein provided, may be held by Beneficiary or its servicing agent or such designated bank and may be commingled with other funds of Beneficiary or its servicing agent or such designated bank, shall be held without any allowance of interest thereon and shall not be subject to the decision or control of Trustor. Any such agent or designated bank shall execute a control agreement to perfect the security interest of Beneficiary in such account, in form and substance satisfactory to Beneficiary. Neither Beneficiary nor its servicing agent or such designated bank shall be liable for any act or omission made or taken in good faith. In making any payments, Beneficiary or its servicing agent or such designated bank may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, then the amounts escrowed shall be based on the entire tax bill and Trustor shall have no right to require an apportionment and Beneficiary or its servicing agent may pay the entire tax bill notwithstanding that such taxes pertain in part to other property and Beneficiary shall be under no duty to seek a tax division or apportionment of the tax bill.

ARTICLE 3 UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

3.1 Security Agreement. This Deed of Trust shall constitute a security agreement as defined in the Code, with Trustor, as debtor, and Beneficiary as secured party, in any of the Premises that is determined to be personal property pursuant to the Code in which Trustor has an interest (the "Collateral"). Trustor hereby assigns to Beneficiary, and grants to Beneficiary a security interest in all of the Collateral to secure payment and performance of the Indebtedness Secured Hereby. Any Collateral installed in or used in the Premises is to be used by Trustor solely for Trustor's business purposes or as the equipment and fixtures leased or furnished by Trustor, as landlord, to tenants of the Premises and such Collateral will be kept at the Buildings and will not be removed therefrom without the consent of Beneficiary and may be affixed to such Buildings but will not be affixed to any other real estate. The remedies of Beneficiary hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other rights of Beneficiary, including, without limitation, having any Collateral deemed part of the realty upon any foreclosure thereof. If notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to Beneficiary. Neither the grant of a security interest pursuant to this Deed of Trust nor

the filing of a financing statement pursuant to the Code shall ever impair the stated intention of this Deed of Trust that all Collateral comprising the Premises and at all times and for all purposes in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement.

3.2 Authorization to File. Trustor expressly authorizes Beneficiary to file any and all financing statements required to perfect and continue the perfection of, any security interests hereunder without the debtor's signature. Trustor agrees to provide Beneficiary advance written notice of (i) any change of Trustor's name, and (ii) any change of Trustor's jurisdiction of its organization. Trustor shall pay all expenses incurred by Beneficiary in connection with the renewal, extensions or amendment of any financing statements with regard to Beneficiary's security interest in the Premises. Trustor shall not, without the prior written approval of Beneficiary, file any amendment or termination of any financing statement with regard to Beneficiary's security interest in the Premises.

3.3 Maintenance of Property. Subject to the provisions of this Section, provided no Event of Default has occurred and is continuing, in any instance where Trustor in its sound discretion determines that any item subject to a security interest under this Deed of Trust has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Premises, Trustor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function; provided, however, that such removal and substitution shall not impair the operating utility and unity of the Premises. All substituted items shall become a part of the Premises and subject to the lien of this Deed of Trust. Any amounts received or allowed Trustor upon the sale or other disposition of the removed items of property shall be applied first against the cost of acquisition and installation of the substituted items.

3.4 Fixture Filing. This Deed of Trust will be filed in the county where the Real Property is located and will also operate from the date of such filing as a fixture filing in accordance with Article 9a of the Uniform Commercial Code, as amended or recodified from time to time and other applicable provisions of the Uniform Commercial Code.

3.5 Required Information. FOR PURPOSES OF THE CODE, THE FOLLOWING INFORMATION IS FURNISHED:

- (a) The name and address of the Trustor ("Debtor") is:

Vine Street Townhomes, LLC
1265 E. Fort Union Blvd., Ste. 120
Cottonwood Heights, UT 84047
Attention: Project Manager

- (b) The name and address of the record owner of the Real Estate are:

Vine Street Townhomes, LLC
1265 E. Fort Union Blvd., Ste. 120
Cottonwood Heights, UT 84047

Attention: Project Manager

(c) Debtor is a limited liability company organized under the laws of the State of Utah.

(d) The name and address of the Beneficiary (as "Secured Party") is:

Colliers Funding LLC
Suite 4300
90 South Seventh Street
Minneapolis, MN 55402
Attention: Loan Servicing Department

(e) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its above address.

(f) This document covers goods which are or are to become fixtures.

ARTICLE 4

APPLICATION OF INSURANCE AND AWARDS

4.1 Damage or Destruction of the Premises. Trustor shall give Beneficiary prompt notice of any damage to or destruction of the Premises. In case of a loss covered by policies of insurance, Beneficiary (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom. Except as provided in the preceding sentence, Trustor may itself adjust and collect for any losses arising out of any such damage or destruction; provided, however, if any losses arising out of a single occurrence aggregate more than Fifty Thousand and No/100ths Dollars (\$50,000.00), Trustor shall obtain Beneficiary's prior written consent to any settlement. Any expense incurred by Beneficiary in the adjustment and collection of insurance proceeds (including, without limitation, the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to Beneficiary first out of any proceeds. Except as provided in Section 4.4, the proceeds or any part thereof from any damage or destruction shall be applied to reduction of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary.

4.2 Condemnation. Trustor shall give Beneficiary prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Premises and hereby assigns, transfers and sets over to Beneficiary the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Premises taken or damaged under such eminent domain or condemnation proceedings, Beneficiary being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Trustor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises or agreeing to a settlement unless prior written consent of Beneficiary is obtained. Any expenses incurred by Beneficiary in intervening in such action or collecting such proceeds, including, without

limitation, attorneys' fees incurred by Beneficiary, shall be reimbursed to Beneficiary first out of the proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary.

4.3 Disbursement of Insurance and Condemnation Proceeds.

- (a) Any restoration or repair shall be done under the supervision of an architect acceptable to Beneficiary and pursuant to plans and specifications approved by Beneficiary. In any case where Beneficiary may elect to apply the proceeds to repair or restoration or permit Trustor to so apply the proceeds they shall be held by Beneficiary for such purposes and will from time to time be disbursed by Beneficiary to defray the costs of such restoration or repair under such safeguards and controls as Beneficiary may establish to assure completion in accordance with the approved plans and specifications and free of liens or claims. Trustor shall on demand deposit with Beneficiary any sums necessary to make up any deficits between the actual cost of the work and the proceeds and provide such lien waivers and completion bonds as Beneficiary may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of Beneficiary be applied on account of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without application of any prepayment premium, or to the cost of any ongoing construction on the Premises or shall be returned to Trustor, the choice of application to be solely at the discretion of Beneficiary.
- (b) To the extent permitted by applicable law and except as otherwise expressly provided herein, Trustor hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under applicable law which provide for allocation of condemnation proceeds between a property owner and a lienholder.

4.4 Beneficiary to Make Proceeds Available. Notwithstanding the foregoing, in the event of an insured casualty to the Premises ("Casualty") such that the Improvements then located thereon or contemplated by the Loan Agreement have not been totally destroyed and may be repaired to their prior condition prior to the Completion Date, or with respect to a Casualty, occurring after the Completion Date, within six (6) months from the date of the Casualty, but not later than the Maturity Date, Beneficiary agrees, unless an Event of Default has occurred and is continuing, to make the proceeds payable from such event ("Insurance Proceeds") available to the restoration or repair of such Improvements under the following conditions:

- (a) The Improvements to be constructed on the Premises in accordance with the Loan Agreement can be restored to a complete architectural unit pursuant to the Approved Plans or other plans and specifications acceptable to Beneficiary so that such Improvements have the same use

and, in the case of Casualty, substantially the same value after restoration as that prior to the Casualty;

- (b) Trustor shall provide a sworn construction cost statement to Beneficiary itemizing the full cost of restoration and completion of the Improvements contemplated by the Loan Agreement;
- (c) The Insurance Proceeds are sufficient to complete such repair or restoration or Trustor shall deposit with Beneficiary prior to commencing repair or restoration such amount as is necessary to assure completion;
- (d) Disbursement of Insurance Proceeds shall be made not more frequently than once a month for restoration work completed and in place pursuant the terms of the Disbursing Agreement;
- (e) The Insurance Proceeds shall be held by Beneficiary or a bank designated by Beneficiary without interest;
- (f) Trustor shall provide to Beneficiary adequate evidence at the time of each disbursement that the cost of restoration has been paid or will be paid from such disbursement and Beneficiary shall be given such lien protection as Beneficiary shall require, including, without limitation, lien waivers and an endorsement to Beneficiary's title policy as provided in the Disbursing Agreement;
- (g) No Event of Default shall exist at the time of each disbursement of the Insurance Proceeds; and
- (h) Trustor shall pay any actual expense Beneficiary incurs, including, without limitation, any escrow expenses and any costs and expenses for title insurance.

ARTICLE 5 LEASES AND RENTS

5.1 Assignment of Leases and Rents. To further secure the Indebtedness Secured Hereby, Trustor does hereby sell, assign and transfer unto Beneficiary all of the Leases, and grants to Beneficiary a security interest in and to all of the Rents pursuant to the Act, now due and which may hereafter become due under or by virtue of any Lease, whether written or verbal, or any agreement for the use or occupancy of the Premises, it being the intention of this Deed of Trust to establish an absolute present transfer and assignment of all such Leases and agreements and a collateral assignment to secure the Indebtedness Secured Hereby with respect to all of the Rents from the Premises unto Beneficiary and Trustor does hereby appoint irrevocably Beneficiary its true and lawful attorney in its name and stead, which appointment is coupled with an interest, to collect all of the Rents and apply the Rents from the Premises to the costs and expenses of operation, management and collection, including, without limitation, attorneys' fees, to the payment of the fees and expenses of any agent, or receiver so acting, to the payment of

taxes, assessments, insurance premiums and expenditures for the management and upkeep of the Premises, to the performance of the landlord's obligation under the Leases and to any Indebtedness Secured Hereby all in such order as Beneficiary may determine. Notwithstanding the foregoing, subject to the terms of Section 7.2(j) of this Deed of Trust, Beneficiary grants to Trustor the right to collect, receive, use and enjoy the Rents. Trustor will hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness Secured Hereby, for use in the payment of such sums.

Upon the occurrence of an Event of Default, Beneficiary may, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Premises, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, enforce all rights under the Act with respect to Rents, including, but not limited to, the right to sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to the Indebtedness Secured Hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Premises, the collection of such Rents and the application thereof as aforesaid, will not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Premises or the collection, receipt and application of Rents, Trustee or Beneficiary will be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale contained herein.

It is the intention of the parties that this Article 5 shall confer upon Beneficiary the fullest rights, remedies and benefits available under the laws of the State of Utah for the appointment of a receiver, including those under Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101, the assignment of Rents and Leases as security for the Loan and the collection and application of Rents from the Premises.

5.2 Trustor to Comply with Leases. Trustor will, at its own cost and expense:

- (a) Upon Beneficiary's request, provide Beneficiary with a copy of all Leases of the Premises;
- (b) Use commercially reasonable efforts and its best business judgment to faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any Lease of the Premises to be performed by the landlord thereunder;
- (c) Use commercially reasonable efforts and its best business judgment to enforce or secure the performance of each and every obligation, covenant,

condition and agreement of the Leases by the tenants thereunder to be performed;

- (d) Not borrow against, pledge or further assign any Rents due under the Leases;
- (e) Not permit the prepayment of any Rents due under any Lease for more than one (1) month in advance nor for more than the next accruing installment of Rents, nor anticipate, discount, compromise, forgive or waive any such Rents;
- (f) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases; and
- (g) Not consent to a subordination of the interest of any tenant to any party other than Beneficiary and then only if specifically consented to by Beneficiary.

5.3 Beneficiary's Right to Perform Under Leases. Should Trustor fail to perform, comply with or discharge any obligations of Trustor under any Lease or should Beneficiary become aware of or be notified by any tenant under any Lease of a failure on the part of Trustor to so perform, comply with or discharge its obligations under said Lease, Beneficiary may, but shall not be obligated to, and without further demand upon Trustor, and without waiving or releasing Trustor from any obligation in this Deed of Trust contained, remedy such failure, and Trustor agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure together with interest at the Interest Rate in effect from time to time. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve Trustor from any default hereunder.

5.4 Utah Uniform Assignment of Rents Act. This Article 5 is subject to the Act and in the event of any conflict or inconsistency between the provisions of this Article 5 and the provisions of the Act, the provisions of the Act will control.

ARTICLE 6 RIGHTS OF BENEFICIARY

6.1 Right to Cure Default. If Trustor shall fail to comply with any of the covenants or obligations of this Deed of Trust, Beneficiary may, but shall not be obligated to, without further notice to Trustor and without waiving or releasing Trustor from any obligation in this Deed of Trust contained, remedy such failure, and Trustor agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure together with interest at the Interest Rate in effect from time to time. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve Trustor from any failure hereunder.

6.2 No Claim Against Beneficiary. Nothing contained in this Deed of Trust shall constitute any consent or request by Beneficiary, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving Trustor or any other party in interest with Trustor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against Beneficiary in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Deed of Trust.

6.3 Inspection. Beneficiary or its authorized representatives may enter the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same; provided, however, Beneficiary shall have no duty to make such inspections and shall not incur any liability or obligation (except for damage to persons or property caused by the gross negligence or willful misconduct of Beneficiary) for making or not making any such inspections.

6.4 Waivers; Releases; Resort to Other Security, Etc. Without affecting the liability of any party liable for payment of any Indebtedness Secured Hereby or performance of any obligation contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time, and without notice to or the consent of Trustor or any other party in interest with the Premises or the Note:

- (a) release any person liable for payment of all or any part of the Indebtedness Secured Hereby or for performance of any obligation herein;
- (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness Secured Hereby or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;
- (c) accept any additional security;
- (d) release or otherwise deal with any of the Premises, whether real or personal property, including, without limitation, making partial releases of the Premises; or
- (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. It shall be an "Event of Default" under this Deed of Trust upon the happening of any of the following:

- (a) any event designated as an "Event of Default" occurs under the Loan Agreement, the Note or any other Loan Document (other than this Deed of Trust); or
- (b) an Event of Default occurs pursuant to Sections 1.8, 1.13 or 7.7; or
- (c) Trustor fails to comply with or perform any material agreement, term, condition or covenant required to be performed or observed by Trustor under the terms of this Deed of Trust, the Loan Agreement or any other Loan Document, other than a default described in Section 7.1(a) or (b) above, and such default continues unremedied for a period of thirty (30) days after notice from Beneficiary to Trustor thereof or such longer period of time as may be necessary to remedy the same not to exceed an additional sixty (60) days, provided that Trustor promptly commences and diligently pursues such cure until completion.

7.2 Beneficiary's Remedies upon Default. If an Event of Default shall occur Beneficiary may exercise one or more of the following remedies:

- (a) declare the entire unpaid principal balance of the Note together with all other Indebtedness Secured Hereby to be immediately due and payable without any presentment, demand, protest or notice of any kind and thereupon all such unpaid principal balance of the Note together with all accrued interest thereon at the then applicable Interest Rate and all other Indebtedness Secured Hereby shall be and become immediately due and payable;
- (b) exercise any or all remedies specified herein and/or in the other Loan Documents (including, without limitation, the remedies provided in this Article 7) and any remedies which Beneficiary may have therefor at law, in equity or under statute;
- (c) cure the Event of Default on behalf of Trustor, and, in doing so, enter upon the Premises, and expend such sums as it may deem desirable, including, without limitation, attorneys' fees, all of which shall be deemed to be advances hereunder, even though causing the Loan to exceed the face amount of the Note, shall bear interest at the Default Rate and shall be payable to Beneficiary on demand;
- (d) declare an Event of Default under any agreement to which Beneficiary and Trustor are parties, whether or not such agreement concerns the Loan transaction contemplated by this Deed of Trust, and may effectuate any remedies provided for in such agreement;
- (e) exercise any or all of the remedies of a secured party under the Code with respect to any portion of the Premises which is personal property;
- (f) exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and

record a notice of default and election to cause Trustor's interest in the Premises to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law;

- (g) enforce all rights and remedies of an assignee of rents under the Act;
- (h) subject to *Utah Code Annotated* § 57-1-32, obtain a deficiency judgment if the net sale proceeds of any sale of the Property under the power of sale granted by this Deed of Trust are insufficient to pay in full all of the Indebtedness Secured Hereby;
- (i) set off any sum due to or incurred by Beneficiary against all deposits and credits of Trustor with, and any and all claims of Trustor against Beneficiary;
- (j) automatically revoke the right granted to Trustor under Section 5.1 hereof and Beneficiary and Trustee may enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Trustor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Trustor agrees to surrender possession of the Premises and of such books, records and accounts to Beneficiary and/or Trustee upon demand, and thereupon Beneficiary and/or Trustee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (ii) complete any construction on the Premises in such manner and form as Beneficiary and/or Trustee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Premises; (iv) exercise all rights and powers of Trustor with respect to the Premises, whether in the name of Trustor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Premises and every part thereof; (v) require Trustor to pay monthly in advance to Beneficiary and/or Trustee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be occupied by Trustor; (vi) require Trustor to vacate and surrender possession of the Premises to Beneficiary and/or Trustee or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Premises to the payment of the Indebtedness Secured Hereby, in such order, priority and proportions as Beneficiary and/or Trustee deems appropriate in its sole discretion after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, insurance premiums and other expenses in connection with the Premises, as well as just and reasonable compensation

for the services of Beneficiary and Trustee, their respective in-house and outside counsel(s), agents and employees; and/or

- (k) commence an action to foreclose the lien of this Security Instrument as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Section 7.5 or the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101, or specifically enforce any of the covenants hereof.

7.3 Foreclosure by Power of Sale.

- (a) After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Trustor, will sell the Premises on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the Real Property, if consisting of several known lots or parcels, will be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it is completed and, in every such case, notice of postponement will be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale will be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee will execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Premises so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts will be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee will apply the proceeds of the sale as follows:
 - (i) FIRST, to the 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.
 - (ii) SECOND, to payment of the Indebtedness Secured Hereby secured by the Deed of Trust.

- (iii) 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.
- (b) Upon any sale made under or by virtue of this Section 7.3, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Premises, whether by payment of cash or by credit bid in accordance with *Utah Annotated Code* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary may make settlement for the purchase price by crediting upon the Indebtedness Secured Hereby of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Premises or any part thereof, will be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.
- (c) For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note will constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Property, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Premises pursuant to this Deed of Trust.

7.4 Waiver of Appraisal, Homestead. Trustor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "moratorium law" or any homestead law now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or pursuant to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof.

7.5 Receiver. If an Event of Default shall occur, Beneficiary, as a matter of right and without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Premises or the interest of Trustor therein, will have all rights under the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101, including the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Premises, and Trustor hereby irrevocably consents to such appointment and waives notice of any

application therefor and consents to Beneficiary being appointed as such receiver if Beneficiary so elects. Any such receiver or receivers will have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and will continue as such and exercise all such powers until the later of the date of confirmation of sale of the Premises or the date of expiration of any redemption period, unless such receivership is sooner terminated. All expenses incurred by the receiver or his agents will constitute a part of the Indebtedness Secured Hereby. Any revenues collected by the receiver will be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Beneficiary, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance will be applied toward the Indebtedness Secured Hereby or in such other manner as the court may direct.

7.6 Rights under Uniform Commercial Code. In addition to the rights available to a mortgagee of real property, Beneficiary shall also have all the rights, remedies and recourse available to a secured party under the Code, including, without limitation, the right to proceed under the provisions of the Code governing default as to any property which is subject to the security interest created by this Deed of Trust or to proceed as to such personal property in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

7.7 Due on Sale. In the event of a Transfer (other than a Permitted Transfer) without the written consent of Beneficiary being first obtained, whether voluntarily, involuntarily, or by operation of law, then at the sole option of Beneficiary, Beneficiary may declare that an Event of Default has occurred and may declare the entire unpaid principal balance together with accrued interest, due and payable in full and call for payment of the same in full at once. Any such payment shall be subject to the requirements, if any, in the Note providing for the payment of a prepayment premium in the event of a non-permitted Transfer. A consent by Beneficiary as to any one Transfer shall not be deemed to be a waiver of the right to require consent to a future Transfer. As used herein, the term "Transfer" shall include any sale, grant, pledge, assignment, mortgage, deed of trust, encumbrance, security interest, consensual lien, hypothecation, lease (other than bona fide third party leases for actual occupancy by an unrelated, unaffiliated tenant), transfer or divesture, or otherwise, of or an interest in (i) the Premises or (ii) Trustor or (iii) any underlying ownership interest, either directly or indirectly, in Trustor or (iv) any entity controlling, managing or in control of Trustor. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises or Trustor, whether or not of record and whether or not for consideration, shall be deemed a Transfer.

7.8 Rights Cumulative. Each right, power or remedy herein conferred upon Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Beneficiary, at law or in equity, or under any other agreements, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by Beneficiary in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of Beneficiary to resort thereto at a later date or be construed to be a waiver of any Default or Event of Default. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, will

prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them are entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each is cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing under the law.

7.9 Right to Discontinue Proceedings. In the event Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under this Deed of Trust and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right to do so and in such event Trustor and Beneficiary shall be restored to their former positions with respect to the Indebtedness Secured Hereby. This Deed of Trust, the Premises and all rights, remedies and recourses of Beneficiary shall continue as if the same had not been invoked.

7.10 Setoff. In addition to the other remedies set forth herein and in the other Loan Documents, Trustor hereby irrevocably authorizes Beneficiary, upon an Event of Default, to set off any sum due to or incurred by Beneficiary against all deposits and credits of Trustor with, and any and all claims of Trustor against, Beneficiary. Such right shall exist whether or not Beneficiary shall have made any demand hereunder or under any other Loan Document, whether or not said sums, or any part thereof, or deposits and credits held for the account of Trustor is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to Beneficiary. Beneficiary agrees that, as promptly as is reasonably possible after the exercise of any such setoff right, it shall notify Trustor of its exercise of such setoff right; provided, however, that the failure of Beneficiary to provide such notice shall not affect the validity of the exercise of such setoff rights. Nothing herein shall be deemed a waiver or prohibition of or restriction on Beneficiary to all rights of banker's lien, setoff and counterclaim available pursuant to law.

7.11 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Uniform Commercial Code, Beneficiary, upon an Event of Default, may proceed under the Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by *Utah Code Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

7.12 Deficiency. Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, any Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law.

7.13 Reinstatement. If Trustor, Trustor's successor interest or any other person having a subordinate lien or encumbrance of record on the Premises, reinstates this Security Instrument and the Loan with three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party will pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee will record a notice of cancellation of the pending sale.

7.14 No Merger. In the event of a foreclosure of this Security Instrument or any other mortgage or deed of trust securing the Indebtedness Secured Hereby, the Indebtedness Secured Hereby then due Beneficiary will not be merged into any decree of foreclosure entered by the court, and Beneficiary may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Indebtedness Secured Hereby.

7.15 Request for Notice. Trustor hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder and under any other deed of trust affecting the Premises now or at any time in the future be mailed to it at the address set forth herein.

ARTICLE 8 RESERVED

ARTICLE 9 SPECIAL COVENANTS

9.1 Single Use. The Premises shall be used only for multifamily residential purposes and other uses incidental thereto, and for no other use without the prior written consent of Beneficiary, which consent may be withheld in Beneficiary's sole and absolute discretion. Trustor acknowledges that the stated purpose for which this Deed of Trust is given is to finance, refinance or construct residential rental property. Accordingly, to permit Beneficiary to comply with *Utah Code Annotated* § 57-1-25 and other applicable law, Trustor agrees that promptly upon Beneficiary's request, it will provide to a Beneficiary a written summary of the number of dwelling units within the improvements by unit or apartment number and the mailing address for each such unit or apartment. Trustor agrees to promptly update such written summary and provide the same to Beneficiary from time to time upon request from Beneficiary. To further allow Beneficiary to comply with *Utah Code Annotated* § 57-1-25 and other applicable law, Trustor agrees to provide a written roll, copies of all tenant leases, a summary list of tenants and addresses by unit or apartment number at least every six monthly and more frequently at any time upon the request of Beneficiary.

9.2 Single Purpose Entity. Trustor covenants and agrees that it has not and shall not:

- (a) engage in any business or activity other than the acquisition, construction, ownership, operation and maintenance of the Premises and activities incidental thereto;

- (b) acquire or own any material asset other than the Premises and such incidental personal property as may be necessary for the operation of the Premises;
- (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Beneficiary's consent;
- (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Beneficiary, amend, modify, terminate or fail to comply with the provisions of Trustor's articles of organization, operating agreement or similar organizational documents, as the case may be, which relate to Trustor's status as a single purpose entity;
- (e) own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of Beneficiary;
- (f) commingle its assets with the assets of any of its members or affiliates, or of any other person or entity;
- (g) incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than the Loan and unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Premises in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the principal amount of the Loan;
- (h) fail to pay its debts and liabilities from its own assets;
- (i) fail to maintain its records, books of account and bank accounts separate and apart from those of the members and affiliates of Trustor, the affiliates of a member of Trustor and any other person or entity;
- (j) enter into any contract or agreement with any member or affiliate of Trustor, any Guarantor, or any member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and similar to those that would be available on an arms-length basis with third parties other than any member or affiliate of Trustor or Guarantor, or any member, principal or affiliate thereof;

- (k) seek dissolution or winding up, in whole or in part;
- (l) fail to correct any known misunderstandings regarding the separate identity of Trustor;
- (m) hold itself out to be responsible (or pledge its assets as security) for the debts of another person;
- (n) make any loans or advances to any third party, including, without limitation, loans or advances to any member or affiliate of Trustor, or any member, principal or affiliate thereof;
- (o) fail to file its own tax returns or to use separate stationary, invoices and checks;
- (p) agree to, enter into or consummate any transaction which would render Trustor unable to furnish a certification or other evidence of compliance with the covenants referred to in Section 9.2(b);
- (q) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Trustor is responsible for the debts of any third party (including, without limitation, any member, shareholders or affiliate of Trustor, or any shareholders, principal or affiliate thereof);
- (r) fail to allocate fairly and reasonably among Trustor and any third party (including, without limitation, Guarantor) any overhead for shared office space;
- (s) fail to pay the salaries of its own employees (if any) and maintain a sufficient number of employees (if any) for its contemplated business operations;
- (t) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (u) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors, without the unanimous written consent of Trustor's members; or

- (v) share any common logo with or hold itself out as or be considered as a department or division of (i) any member or affiliate of Trustor, or (ii) any other person or entity.

ARTICLE 10 MISCELLANEOUS

10.1 Reconveyance. When all Indebtedness Secured Hereby has been paid, this Deed of Trust and all assignments herein contained shall be null and void and of no force and effect and Beneficiary will request that Trustee reconvey the Premises without warranty to the person or persons legally entitled thereto to Trustor at Trustor's expense. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts will be conclusive proof of the truthfulness thereof. As a condition to any such satisfaction or reconveyance, Borrower covenants and agrees to pay Beneficiary's and Trustee's reasonable fees and expenses (including attorneys' fees and expenses) in connection with reconveying the Premises.

10.2 Choice of Law. Notwithstanding the place of execution of this instrument, the parties to this instrument have contracted for Utah law to govern this instrument and it is agreed that this instrument is made pursuant to and shall be construed and governed by the laws of the State of Utah without regard to the principles of conflicts of law. THE LAW OF THE STATE OF UTAH SHALL APPLY TO THE GRANT OF THE DEED OF TRUST, ASSIGNMENTS AND SECURITY INTERESTS SET FORTH HEREIN AND THE EXERCISE OF REMEDIES BY BENEFICIARY UNDER THIS DEED OF TRUST THAT PERTAIN TO OR CONCERN THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE APPOINTMENT OF A RECEIVER OR THE FORECLOSURE OF THE SECURITY INTEREST AND LIENS GRANTED HEREIN, WHETHER JUDICIALLY OR PURSUANT TO THE EXERCISE OF THE POWER OF SALE GRANTED HEREIN.

10.3 Successors and Assigns. This Deed of Trust and each and every covenant, agreement and other provision hereof shall be binding upon Trustor and its successors and assigns including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein, shall run with the land and shall inure to the benefit of Beneficiary and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is or becomes a party to this Deed of Trust. In the event that the ownership of the Premises becomes vested in a person or persons other than Trustor, Beneficiary shall not have any obligation to deal with such successor or successors in interest unless such transfer is permitted by this Deed of Trust and then only upon being notified in writing of such change of ownership. Upon such notification, Beneficiary may thereafter deal with such successor in place of Trustor without any obligation to thereafter deal with Trustor and without waiving any liability of Trustor hereunder, under the Note or under any of the other Loan Documents. No change of ownership shall in any way operate to release or discharge the liability of Trustor hereunder unless such release or discharge is expressly agreed to in writing by Beneficiary.

10.4 Unenforceability of Certain Clauses. The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

10.5 Captions and Headings. The captions and headings of the various sections of this Deed of Trust are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

10.6 Notices. Any notices and other communications permitted or required by the provisions of this Deed of Trust shall be in writing and shall be deemed to have been properly given or served by (i) personal delivery, (ii) depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or (iii) depositing the same with a reputable private courier or overnight delivery service, in each case addressed as hereinafter provided. Each such notice shall be effective (a) immediately upon personal delivery, (b) three (3) days after being deposited in the U.S. Mail, or (c) one (1) business day after delivery to such courier or delivery service. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time and at any time during the term of this Deed of Trust to change its address and shall have the right to specify as its address and shall have the right to specify as its address any other address within the United States of America.

Each notice to Beneficiary shall be addressed as follows:

Colliers Funding LLC
90 South Seventh Street
Suite 4300
Minneapolis, MN 55402
Attention: Loan Servicing Department

With a copy to:

Fabyanske, Westra, Hart & Thomson, P.A.
333 South Seventh Street
Suite 2600
Minneapolis, MN 55402
Attention: Rory O. Duggan, Esq.

Each notice to Trustor shall be addressed as follows:

Vine Street Townhomes, LLC
1265 E. Fort Union Blvd., Ste. 120

Cottonwood Heights, UT 84047
Attention: Project Manager

With a copy to:

Cheney Law Group
10808 South River Front Parkway, Suite 365
South Jordan, UT 84095
Attention: Brian Cheney, Esq.

Each notice to Trustee shall be addressed as follows:

Cottonwood Title Insurance Agency
1996 E. 6400 S., Ste. 120
Salt Lake City, UT 84121
Attention: Cort Ashton

10.7 Savings Clause. It is expressly stipulated and agreed to be the intent of Trustor and Beneficiary at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in the Note, this Deed of Trust and any other Loan Document. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note, this Deed of Trust or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Indebtedness Secured Hereby, or if Beneficiary's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Trustor results in Trustor having paid any interest in excess of that permitted by applicable law, then it is Trustor's and Beneficiary's express intent that all excess amounts theretofore collected by Beneficiary shall be credited on the principal balance of the Note and all other Indebtedness Secured Hereby (or, if the Note and all other Indebtedness Secured Hereby have been or would thereby be paid in full, refunded to Trustor), and the provisions of the Note, this Deed of Trust and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Beneficiary for the use, forbearance or detention of the Indebtedness Secured Hereby shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness Secured Hereby until payment in full so that the rate or amount of interest on account of the Indebtedness Secured Hereby does not exceed the maximum lawful rate from time to time in effect and applicable to the Indebtedness Secured Hereby for so long as the Indebtedness Secured Hereby is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

10.8 Obligations of Environmental Indemnity. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust does not and will not secure the obligations evidenced by or arising under any environmental indemnity, including the Environmental Indemnity, made by Trustor with respect to the Premises.

10.9 Consent to Jurisdiction. Trustor submits and consents to personal jurisdiction of the courts of the county where the Premises is located and the courts of the United States of America located in such state for the enforcement of this instrument and waives any and all personal rights under the laws of any state or the United States of America to object to jurisdiction in such courts. Litigation may be commenced in the state court of general jurisdiction for such county or in the United States District Court located in such state, at the election of Beneficiary. Nothing contained herein shall prevent Beneficiary from bringing any action in any other state or jurisdiction against any other person or exercising any rights against any security given to Beneficiary or against Trustor or Guarantor personally, or against any property of Trustor in any other state or jurisdiction. Commencement of any such action or proceeding in any other state or jurisdiction shall not constitute a waiver of consent to jurisdiction of or the submission made by Trustor to personal jurisdiction in any of such courts. In the event an action is commenced in another jurisdiction or venue under any tort or contract theory arising directly or indirectly from the relationship created by this Deed of Trust, Beneficiary, at its option, shall be entitled to have the case transferred to one of the jurisdictions and venues above described or any other jurisdiction, or if such transfer cannot be accomplished under applicable law, to have such case dismissed without prejudice.

10.10 Waiver of Jury Trial. TRUSTOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH ANY PARTIES TO THIS DEED OF TRUST ARE INVOLVED DIRECTLY OR INDIRECTLY AND ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS DEED OF TRUST OR THE RELATIONSHIP ESTABLISHED HEREUNDER, AND WHETHER ARISING OR ASSERTED BEFORE OR AFTER THE DATE OF THIS DEED OF TRUST.

10.11 Indemnity. Trustor agrees to indemnify, protect, hold harmless and defend Beneficiary from and against any and all losses, liabilities, claims (including, without limitation, attorneys' fees, disbursements and court costs prior to trial, at trial and on appeal) which may be imposed on, incurred or paid by, or asserted against Beneficiary by reason or on account of, or in connection with, (i) any misconduct of Trustor or any Default or Event of Default hereunder, (ii) the construction, reconstruction or alteration of the Premises, (iii) any negligence of Trustor or any negligence or willful misconduct of any lessee of the Premises or any part thereof, or any of their respective agents, contractors, subcontractors, servants, directors, officers, employees, licenses or invitees, or (iv) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or any street, drive, sidewalk, curb or passageway adjacent thereto, except to the extent that the same results directly from the gross negligence or willful misconduct of Beneficiary or its agents, contractors, subcontractors, servants, directors, officers, employees, licenses or invitees. Any amount payable to Beneficiary under this Section 10.11 shall be due and payable upon demand therefor and receipt by Trustor of a statement from Beneficiary setting forth in reasonable detail the amount claimed and the basis therefor and upon reasonable opportunity for Trustor to verify and/or challenge same. Trustor's obligations under this Section 10.11 shall survive the repayment or any other satisfaction of the Note and shall not

be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought against Beneficiary which is subject to the indemnity set forth in this Section 10.11, Trustor shall resist or defend against the same, in its own name or, if necessary, in the name of Beneficiary, by attorneys for Trustor's insurance carrier (if the same is covered by insurance) approved by Beneficiary (which approval shall not unreasonably be withheld) or otherwise by attorneys retained by Trustor and approved by Beneficiary (which approval shall not be unreasonably withheld). If Beneficiary has approved of the attorneys provided by Trustor or Trustor's attorney and nevertheless elects to retain separate counsel, Beneficiary shall do so at its sole cost and expense. TRUSTOR ACKNOWLEDGES AND CONFIRMS THAT CERTAIN PROVISIONS OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS IMPOSE UPON TRUSTOR CERTAIN OBLIGATIONS AND INDEMNITIES FOR CLAIMS RESULTING FROM THE NEGLIGENCE OR ALLEGED NEGLIGENCE OF BENEFICIARY OR THE OTHER INDEMNIFIED PARTIES.

10.12 Litigation. Trustor, at its sole cost and expense, shall appear in and defend any dispute, action, suit or proceeding purporting to relate to or affect the Note, the Loan Agreement or the security therefor, including, without limitation, this Deed of Trust or the Premises. If any action or proceeding relating to or affecting the Note, this Deed of Trust, the Loan Agreement or the Premises is commenced or threatened, to which action or proceeding Beneficiary is made a party, or in which it becomes necessary or desirable, in Beneficiary's reasonable opinion, to defend or uphold, or to consider defending or upholding, the lien of this Deed of Trust, or to protect the Premises or any part thereof, or to exercise, or to obtain the right to exercise, any of Beneficiary's rights, powers and remedies hereunder, including, without limitation, any foreclosure or commencement of foreclosure proceedings, probate proceedings and bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceedings, or with respect to which Beneficiary otherwise incurs costs or expenses, all sums paid by Beneficiary in order to determine the merits thereof, to establish or defend the rights and liens of this Deed of Trust, to protect the Premises or any part thereof and to exercise, or to obtain the right to exercise, any of Beneficiary's rights, powers and remedies hereunder, and/or otherwise incurred by Beneficiary in connection therewith (including, without limitation, attorneys' fees and costs and allowances prior to trial, at trial and on appeal) and whether suit be brought or not, and whether or not Beneficiary prevails therein, shall be paid, upon demand, to Beneficiary by Trustor, together with interest thereon at the Interest Rate from the date incurred, and any such sum or sums shall be secured hereby.

10.13 Acts of Beneficiary. In the event Beneficiary (a) grants any extensions of time or forbearance with respect to the payment of any Indebtedness Secured Hereby; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right, power or remedy granted herein, in the Note, in the Loan Agreement or in any other Loan Documents; (d) grants any release, with or without consideration, of the whole or any part of the security for the payment of the Indebtedness Secured Hereby or the release of any person, party or entity liable for payment of said Indebtedness Secured Hereby; and/or (e) amends or modifies in any respect any of the terms and provisions hereof, of the Note (including, without limitation, substitution of another note), of the Loan Agreement or of any other Loan Document; then, and in any such event, such act or omission to act shall not release Trustor under any covenant of this Deed of

Trust, of the Note, of the Loan Agreement or of any other Loan Document, nor preclude Beneficiary from exercising any right, power or privilege herein or therein granted or intended to be granted, and shall not in any way impair or affect the lien or priority of this Deed of Trust. In the event any additional real property, improvements, leases, fixtures or personal property not herein specifically identified shall be or become a part of the Premises, then this Deed of Trust shall immediately attach to and constitute a lien against or security interest in such additional items, as appropriate, without further act or deed of either party hereto.

10.14 Time of the Essence. Trustor agrees that where, by the terms hereof or of the Note, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, that time is of the essence.

10.15 Business Loan. Trustor certifies and agrees that (a) the property is not used primarily for agricultural purposes, the proceeds of the Note will not be used for personal, family or leasehold purposes and that the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of applicable law and (b) that the Loan is an exempted transaction under the Truth-in-Lending Act, 15. U.S.C. Sec. 1601 et seq.

10.16 Future Advances; Maximum Principal Amount. At all times, regardless of whether any Loan Proceeds have been disbursed, this Deed of Trust secures as part of the Indebtedness Secured Hereby the payment of any and all loan finance charges, commissions, service charges, liquidated damages, attorneys' fees, expenses and future advances due to or incurred by Beneficiary in connection with the Indebtedness Secured Hereby, all in accordance with the Loan Documents. All future advances shall be a lien on the Premises at and from the time of the recording of this Deed of Trust in accordance with applicable law. All persons who may have or acquire an interest in the Premises are hereby deemed to have notice of the terms of the Indebtedness Secured Hereby and that this Deed of Trust secures future advances, and to have notice, if provided therein, that the rate of interest on the Note or any other Indebtedness Secured Hereby may vary from time to time. Without limiting the application of applicable law, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete the Improvements to the Real Property or to protect Beneficiary's security are to be deemed obligatory advances hereunder and will be added to the total indebtedness evidenced by the Note and secured by this Deed of Trust and the Indebtedness Secured Hereby will be increased accordingly.

10.17 Trustee.

- (a) Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county in which the Premises is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder; and said successor will, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of said predecessor.
- (b) At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and without affecting the

personal liability of any person for payment of the Indebtedness Secured Hereby or the effect of this Deed of Trust upon the remainder of said Premises, Trustee may (a) reconvey any part of said Premises, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

- (c) Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

10.18 Conflict with Loan Agreement. In the event of any conflict between the terms and conditions hereof and the terms and conditions of the Loan Agreement, the terms and conditions of the Loan Agreement shall control.


10.19 Entire Agreement. 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 LOAN REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

[Remainder of Page Intentionally Left Blank]

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

VINE STREET TOWNHOMES, LLC,
a Utah limited liability company

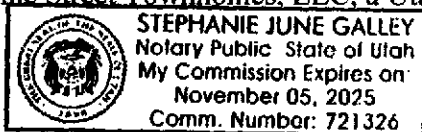
By: AIMField, LLC, a Utah limited liability company
Its: Manager

By: 
Name: Bradley P. Miles
Its: Authorized Representative

ACKNOWLEDGMENT

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

This instrument was acknowledged before me on this 2 day of May, 2023, by Bradley P. Miles, an individual, as Authorized Representative of AIMField, LLC, the Manager of Vine Street Townhomes, LLC, a Utah limited liability company, on behalf of said company.



(Stamp)

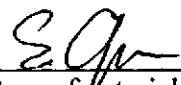

(Signature of Notarial officer)

Exhibit A

Legal Description

PARCEL 1:

LOT 101, TOOELE CITY VINE STREET MINOR SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE TOOELE COUNTY RECORDER'S OFFICE, RECORDED MARCH 15, 2016 AS ENTRY NO. 426075 IN BOOK 19 AT PAGE 35.

PARCEL 2:

A PARCEL OF LAND, SITUATE IN THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, AND IN TOOELE CITY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF VINE STREET, WHICH IS LOCATED SOUTH 0°21'38" EAST 2251.43 FEET ALONG THE QUARTER SECTION LINE AND EAST 7.67 FEET TO THE INTERSECTION OF THE NORTH LINE OF VINE STREET WITH THE EAST LINE OF 7TH STREET, AND NORTH 80°54'19" EAST 676.10 FEET ALONG SAID NORTH LINE FROM THE NORTH QUARTER CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTHEASTERLY 41.92 FEET ALONG THE ARC OF A 29.50-FOOT RADIUS TANGENT CURVE TO THE LEFT (CENTER BEARS NORTH 9°05'41" WEST, AND THE LONG CHORD BEARS NORTH 40°11'31" EAST 38.48 FEET, THROUGH A CENTRAL ANGLE OF 81°25'36"); THENCE NORTH 0°31'17" WEST 351.29 FEET TO THE NORTH LINE OF THE OLD RAILROAD RIGHT-OF-WAY; THENCE NORTH 82°27'36" EAST 327.50 FEET ALONG SAID RIGHT-OF-WAY; THENCE SOUTH 14°16'55" EAST 42.76 FEET ALONG AN EXISTING CHAINLINK FENCE, TO A CORNER THEREOF; THENCE NORTH 83°00'06" EAST 109.04 FEET ALONG SAID FENCE LINE TO THE RECORDED TOOELE CITY VINE MINOR SUBDIVISION, ENTRY NO. 426075; THENCE SOUTH 0°21'59" EAST 320.72 FEET ALONG SAID RECORDED PLAT TO THE NORTH LINE OF VINE STREET; THENCE SOUTH 80°54'19" WEST 473.08 FEET ALONG SAID NORTH LINE, TO THE POINT OF BEGINNING.

PARCEL 2A:

A NON-EXCLUSIVE SANITARY SEWER EASEMENT AS GRANTED IN THAT CERTAIN SANITARY SEWER EASEMENT RECORDED MARCH 6, 2023 AS ENTRY NO. 586188, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AN EASEMENT, SITUATE IN THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, SAID EASEMENT ALSO LOCATED IN TOOELE, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTH 0°20'13" WEST 859.18 FEET ALONG THE SECTION LINE, AND WEST 1954.53 FEET FROM THE EAST QUARTER CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING: THENCE SOUTH 82°55'00" WEST 464.78 FEET; THENCE NORTH 1°10'50" WEST 322.20 FEET MORE OR LESS FOLLOWING AN EXISTING FENCE LINE TO A POINT ON THE SOUTH LINE OF 110 NORTH STREET (GOLF COURSE ROAD); THENCE NORTH 89°59'34" EAST 20.00 FEET ALONG SAID SOUTH LINE OF 110 NORTH STREET (GOLF COURSE ROAD); THENCE SOUTH 1°10'50" EAST 294.59 FEET MORE OR LESS FOLLOWING AN EXISTING FENCE LINE TO A CORNER THEREOF; THENCE NORTH 82°55'00" EAST 444.97 FEET MORE OR LESS ALONG AN EXISTING FENCE LINE TO THE NORTH WEST CORNER OF THE FUTURE 'PAR 4 ESTATES' PUD PHASE 1; THENCE SOUTH 0°31'17" EAST 25.16 FEET ALONG THE WEST BOUNDARY LINE OF SAID FUTURE 'PAR 4 ESTATES' PUD PHASE 1 TO THE POINT OF BEGINNING.