

WHEN RECORDED RETURN TO:

AJG Law Group
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Tax Id. No. B-1117-0010-0000 and B-1117-1118-0001-2

164509. KVR

**DEED OF TRUST, ASSIGNMENT OF LEASES,
SECURITY AGREEMENT, AND FIXTURE FINANCING STATEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES, SECURITY AGREEMENT, AND FIXTURE FINANCING STATEMENT (this "*Deed of Trust*"), dated as of the 31st day of January, 2023 is made by Coal Creek Townhomes, LLC, a Utah limited liability company ("*Trustor*"), having its principal place of business at 181 S. 750 W., Suite 201, North Salt Lake, UT 84054, to Cottonwood Title Insurance Agency, Inc. ("*Trustee*"), having its principal place of business at 1544 North Woodland Park Drive, Suite 300, Layton, UT 84041 for the benefit of Grnobl, L.C. and Empire Ventures, LLC (collectively, "*Beneficiary*"), having their principal places of business at 181 S., 750 W., Suite 101, North Salt Lake, UT 84054 and 584 W. 620 N., Centerville, UT 84014, respectively. Trustee and Beneficiary are "Beneficiaries" for recordation purposes.

**ARTICLE 1
OBLIGATIONS; SECURITY**

1.1 ***Obligations; Financing Agreements.*** This Deed of Trust is made in trust and is executed, acknowledged and delivered by Trustor to secure and enforce the following obligations and liabilities (collectively, the "*Obligations*");

(a) The payment of (i) the principal sum of up to THREE HUNDRED AND FIVE THOUSAND AND 00/100 DOLLARS (\$305,000.00) to be paid with interest thereon, pursuant to the provisions of a certain Promissory Note, entered into by Trustor and Beneficiary dated January 31, 2023 (as the same may be amended, modified, supplemented or restated, the "*Note*") made by Trustor in favor of Beneficiary; and (ii) all sums now or in the future advanced or coming due or required to be paid under the Note or this Deed of Trust (as the same may be amended, modified, supplemented or restated, and together with the Note and other loan documents relating to the Obligations, the "*Financing Agreements*"), whether for principal, interest, fees, costs, charges, expenses, or other amounts owing under reimbursement or indemnification obligations under any of the Financing Agreements, whether such advances are voluntary or obligatory, presently existing or come into existence at some future time, made or incurred at the request of Trustor or Beneficiary; and

(b) The performance of all of the terms, covenants, conditions, agreements, obligations and liabilities of Trustor under (i) the Financing Agreements and any other document now or hereafter given to evidence, secure or facilitate the payment and performance of any of the Obligations; and (ii) all extensions, renewals, replacements or modifications of, or

amendments or additions to any of the foregoing. Trustor shall pay and perform the Obligations required of Trustor in accordance with the provisions of the Financing Agreements.

1.2 **Grant of Trust; Trust Property.** For the purpose of securing payment and performance of all Obligations, Trustor has granted, conveyed, bargained, sold, released, confirmed and granted a security interest in, and does hereby grant, convey, bargain, sell, release, confirm and grant a security interest unto Trustee in trust with power of sale, for the benefit of Beneficiary, its successors and assigns, to have and to hold, all and singular right, title and interest, of Trustor in and to all of the following whether presently in existence or to come into existence at some future time (collectively, the "**Trust Property**");

(a) The parcel(s) of land situated in Iron County, Utah more fully described in **Exhibit "A"** attached hereto and made a part hereof (the "**Lands**");

(b) All buildings, structures and improvements of every kind erected on, under or over the Lands (the "**Improvements**") (the Lands and the Improvements being hereinafter referred to as, collectively, the "**Real Estate**");

(c) All building materials, fixtures, building machinery and building equipment delivered on site to the Real Estate during the course of, or in connection with, the construction of, or reconstruction of, or remodeling of, any of the Real Estate from time to time during the term hereof;

(d) All fixtures, machinery, equipment and other articles of real, personal or mixed property attached to, situate or installed in or upon, or used in the operation or maintenance of, the Real Estate, whether or not such real, personal or mixed property is or shall be affixed to the same, and all replacements, substitutions, accretions and proceeds of the foregoing (collectively, "**Fixtures**") including:

(i) all furnishings, furniture, and appliances; all articles of interior decoration, floor, wall and window coverings, all supplies, tools, accessories, all storm and screen windows, shutters, doors, awnings, signs, trees, and other plantings; and

(ii) all building service fixtures, machinery and equipment of any kind whatsoever, all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment, all elevators, escalators, lifts, cranes, hoists and platforms, all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors, all transformers, generators, and all parts, fittings, accessories, accessions, substitutions and replacements thereof;

(e) All leases, licenses, occupancy agreements or agreements to lease all or any part of the Real Estate and all extensions, renewals, amendments, and modifications thereof, and any options, rights of first refusal, or guarantees relating thereto (collectively, "**Leases**"); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards, and payments of any kind payable under the Leases or otherwise arising from the Real Estate (collectively, the "**Income**"); all contract rights, accounts receivable and general intangibles relating to the Real Estate or the use, occupancy, maintenance, construction, repair or

operation thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts, architect's agreements; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Real Estate;

(f) All estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting the Real Estate; all means of access to and from the Real Estate, whether public or private; all water and mineral rights; all rights of Trustor as declarant or unit owner under any declaration of condominium or association applicable to the Real Estate; and all other claims or demands of Trustor, either at law or in equity, in possession or expectancy, of, in, or to the Real Estate; and

(g) All "*Proceeds*" of any of the above-described property, which term shall have the meaning given to it in the Uniform Commercial Code of the state in which the Real Estate is located and shall additionally include whatever is received upon the use, lease, sale, exchange, collection, or other utilization or any disposition of any of the above-described property, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

TO HAVE AND TO HOLD the Trust Property unto the Trustee for the benefit of the Beneficiary in accordance with the provisions of this Deed of Trust.

ARTICLE 2 TITLE MATTERS

2.1 *Warranties.* Until the Obligations are fully satisfied, Trustor represents, warrants and covenants that:

(a) Trustor shall defend the validity, priority and enforceability of the lien of this Deed of Trust against the claims of all persons excepting only those claiming under the encumbrances existing on the Land as of the date hereof (the "Other Encumbrances");

(b) Trustor shall make, execute, acknowledge and deliver all such further or other deeds, documents, instruments or assurances and cause to be done all such further acts and things as may at any time be reasonably required by Beneficiary to confirm and fully protect the lien and priority of this Deed of Trust; and

(c) Trustor shall make such payments, all before the same shall become delinquent, and perform all obligations as are required under any Other Encumbrances affecting the Trust Property.

2.2 *Leases.* Trustor represents and warrants that there are no Leases affecting the Trust Property that are outside the ordinary course of business consistent with past practice except that certain lease by and between Trustor and Beneficiary which lease shall terminate upon conveyance of the Property from Beneficiary to Trustor. Trustor shall not enter into any

Leases outside the ordinary course of business without the prior written consent of Beneficiary being obtained in each instance.

2.3 **Full Reconveyance.** Upon the discharge, payment and performance in full by Trustor of all of the Obligations, Beneficiary shall promptly request the Trustee to reconvey, without warranty, all of the property encumbered hereby, provided that as of the date all Obligations are discharged in full, there is no judgment (whether final or not) obtained by Beneficiary against Trustor; and provided, further, that no such reconveyance shall be required if Beneficiary or Trustee forecloses on the Trust Property pursuant to the provisions of this Deed of Trust. Upon receipt of such request from Beneficiary, Trustee shall reconvey without warranty the property then held by it hereunder. The grantee in such reconveyance may be described in general terms as "the person or persons legally entitled thereto."

ARTICLE 3 OBLIGATIONS REGARDING TRUST PROPERTY

3.1 **Legal Requirements Generally.** Trustor shall comply with (but only as and when required by law), and cause the Trust Property to be kept in compliance with, all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, restrictions and requirements (collectively "**Legal Requirements**") of the United States of America, the State of Utah and any political subdivision thereof or any town, city, county or municipality in which the Real Estate is located or any agency, department, bureau, board, commission or instrumentality of any of the foregoing now existing or hereafter created (individually, a "**governmental authority**" and, collectively, "**governmental authorities**") having jurisdiction over Trustor or the Trust Property or the construction, use, occupancy, operation, maintenance, or improvement of the Trust Property, whether foreseen or unforeseen, ordinary or extraordinary, including without limitation all laws and regulations relating to the environment.

3.2 **Land Use Approvals.** Trustor shall not, without the prior written consent of Beneficiary, submit or cause to be submitted to any Governmental Authority an application for zoning, subdivision or development approval affecting the Real Estate if any of the following would result from such proposed zoning change, subdivision or development: (a) the separate transfer, use and ownership of the Real Estate is not permitted as a matter of right under applicable Legal Requirements; (b) the use of the Real Estate as of the date of this Deed of Trust is no longer permitted as a matter of right under applicable Legal Requirements; or (c) any portion of the Real Estate is used to fulfill a Legal Requirement of other property not subject to the lien of this Deed of Trust.

3.3 **General Obligations.** Until the Obligations are fully satisfied, Trustor shall:

(a) Perform all maintenance, repair, restoration and rebuilding required to keep the Trust Property in good repair, order and condition in full compliance with the requirements of any agreements relating to such matters to which Trustor is a party, any Leases affecting the Trust Property and all Legal Requirements;

(b) Pay all charges for water, sewer, gas, electric and other utility services provided to the Trust Property promptly as and when due;

(c) Complete any improvements to the Trust Property required under any agreements to which Trustor is a party relating to the Trust Property, any Leases affecting the Trust Property, or required by any Governmental Authority or insurer insuring the Trust Property, in a good and workmanlike manner and free of mechanics' liens;

(d) Permit, and cause any lessee or occupant of the Trust Property to permit, Beneficiary and its agents and representatives, to enter upon the Trust Property upon reasonable notice and at any reasonable time to appraise and photograph the Trust Property and to inspect for compliance with Legal Requirements (including subsurface investigations to determine compliance with applicable laws), insurance requirements, and the Obligations of Trustor under this Deed of Trust; and

3.4 **General Restrictions.** Until the Obligations are fully satisfied, Trustor shall not, without the prior written consent of Beneficiary being obtained in each instance, which consent may be withheld in Beneficiary's sole discretion:

(a) Commit or suffer waste with respect to the Trust Property;

(b) Impair or diminish the priority or security of the lien of this Deed of Trust;

or

(c) Make, suffer or permit any nuisance to exist on the Trust Property or any portion thereof.

3.5 **Required Notices.** Trustor shall use its best efforts to notify Beneficiary of the occurrence of any of the following:

(a) A fire or other casualty causing damage to the Trust Property, for which Trustor shall notify Beneficiary immediately following Trustor's knowledge of the same;

(b) A pending or threatened condemnation of the Trust Property, for which Trustor shall notify Beneficiary immediately following Trustor's knowledge of the same;

(c) A violation of a legal requirement or other notice from or to a governmental authority relating to the Trust Property, for which Trustor shall notify Beneficiary following Trustor's knowledge of the same;

(d) Receipt or giving of any notice of default or cancellation under any Lease of all or a material portion of the Trust Property, for which Trustor shall notify Beneficiary within a reasonable time following Trustor's knowledge of the same;

(e) Commencement of any litigation affecting the Trust Property, for which Trustor shall notify Beneficiary within a reasonable time following Trustor's knowledge of the same;

(f) Discovery, discharge or release of any hazardous material for which Trustor is or may be responsible under any environmental laws, for which Trustor shall notify Beneficiary within a reasonable time following Trustor's knowledge of the same; or

(g) The existence of any event or condition which presents a risk of creating material liability of Trustor under ERISA (Public Law 93-406, as amended), for which Trustor shall notify Beneficiary within a reasonable time following Trustor's knowledge of the same.

ARTICLE 4 TAXES AND INSURANCE

4.1 *Real Estate Taxes and Assessments.*

(a) Trustor shall pay when due and before interest or penalties commence to accrue thereon, all taxes, assessments, water and sewer rents, levies, encumbrances and all other charges or claims of any nature and kind, whether public or private, which may be assessed, levied, imposed, suffered, placed or filed at any time against the Trust Property or any part thereof or which by any present or future law may have priority (either in lien or in distribution out of the proceeds of any sale) over the lien of this Deed of Trust (individually, an "***Imposition***" and, collectively, "***Impositions***").

4.2 *Taxes on Trustee or Beneficiary.* If any governmental authority shall levy, assess or charge any tax, assessment or imposition upon this Deed of Trust (including any requirement to have affixed to this Deed of Trust any revenue, documentary or similar stamps) or upon the interest of Trustee or Beneficiary in the Trust Property by reason of this Deed of Trust Trustor shall pay the same directly to such governmental authority as an Imposition. If Trustor is not legally permitted to pay such Imposition or to reimburse Trustee or Beneficiary for amounts advanced on account of such payment, then Beneficiary may declare the entire amount of the Obligations immediately due and payable on demand.

4.3 *Reserved.*

4.4 *Insurance Coverages.* Until the Obligations are fully satisfied, Trustor shall maintain and keep in force all of the insurance required under Article 4 of the Loan Agreement dated of even date herewith between Trustor and Beneficiary, together with such other insurance, and in such amounts, as may from time to time be reasonably required by Beneficiary.

4.5 *Policy Requirements.* The insurance coverages required above shall be insured under policies: (a) in form reasonably satisfactory to Beneficiary; (b) issued by companies reasonably satisfactory to Beneficiary; (c) endorsed with a standard mortgagee clause in favor of the Beneficiary providing not less than thirty days' notice to Beneficiary of any cancellation or change in coverage; (d) endorsed to name Beneficiary, as the case may be, as an additional insured and, subject only to the Other Encumbrances (if any), as loss payee; and (e) not subject to contribution or co-insurance. If any insurance required under this Deed of Trust is canceled, expires, becomes void or voidable or otherwise becomes unsatisfactory to Beneficiary, Trustor shall place or cause to be placed new insurance on the Trust Property reasonably satisfactory to Beneficiary. In the event of any loss, Beneficiary may make proof of loss if not made promptly by Trustor.

ARTICLE 5
CASUALTY; CONDEMNATION

5.1 **Casualty.** If the Trust Property is damaged by fire or other casualty, Trustor shall promptly repair and restore the same to its condition prior to the damage. If, and only for so long as, the following terms and conditions are fully satisfied by Trustor, Beneficiary shall release (to the extent held by Beneficiary) insurance proceeds for repair and restoration of the Trust Property; otherwise, and to the extent of any excess proceeds, Beneficiary shall have the right to apply the proceeds toward reduction of the Obligations:

(a) No default under this or the Note shall have occurred and be continuing uncured;

(b) Trustor shall have delivered evidence satisfactory to Beneficiary that the Trust Property can be fully repaired and restored within a period of time during which all payments coming due under the Obligations are fully covered by the proceeds of business interruption or rental loss insurance applicable to the loss or damage to the Trust Property;

(c) No holder of any Other Encumbrance has a right to apply insurance proceeds to the obligations secured by such permitted encumbrance or, if it does, the holder has waived in writing its right to do so;

(d) No Lease is cancelable by the lessee on account of the casualty or, if it is, the lessee has waived in writing its right to cancel;

(e) The work is performed by a reputable general contractor satisfactory to Beneficiary under a fixed price or guaranteed maximum contract satisfactory to Beneficiary, in accordance with plans and specifications satisfactory to Beneficiary and in compliance with all Legal Requirements, and no work shall commence until appropriate insurance, bonds and waivers of mechanics' liens have been filed by the general contractor and all those claiming by, through, or under the general contractor; and

(f) Trustor shall have deposited with Beneficiary for disbursement in connection with the restoration the sum of the applicable deductible under the insurance policies covering the loss.

5.2 **Condemnation.**

(a) In the event of any condemnation or taking of any part of the Trust Property by eminent domain, alteration of the grade of any street, or other injury to or decrease in the value of the Trust Property by any public or quasi-public authority or corporation, all Proceeds (including the award or agreed compensation for the damages sustained) allocable to Trustor, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit) including attorney's fees incurred by Beneficiary in connection with the collection of such Proceeds, shall be paid to Trustor and applied, (i) toward restoration of the Trust Property (in which case the terms and conditions set forth in Section 5.1 in the case of casualty shall apply). No settlement for damages sustained shall be made by Trustor without Beneficiary's prior written approval.

ARTICLE 6
DEFAULTS; REMEDIES

6.1 ***Right to Make Advances.*** If Trustor should fail to pay or perform any of its Obligations with respect to the Trust Property as required under Article 3 and Article 4 of this Deed of Trust, or otherwise fails to pay or perform any of its other Obligations under this or any of the other Financing Agreements, then Beneficiary, at its election, shall have the right, but not the obligation, to make any payment or expenditure and to take any action which Trustor should have made or taken or which Beneficiary reasonably deems advisable to protect the security of this Deed of Trust or the Trust Property. Such action shall be without prejudice to any of Beneficiary's rights or remedies available under this Deed of Trust or any of the other Financing Agreements or otherwise at law or in equity. All such sums, as well as costs and expenses, advanced by Beneficiary shall be due immediately from Trustor to Beneficiary, shall become part of the Obligations secured by this Deed of Trust and the other Financing Agreements, and shall bear interest (including any judgment obtained on account of any of the Obligations) at the applicable rate provided in the Note in effect after maturity or default (the "***Default Rate***") until repayment in full to Beneficiary.

6.2 ***Events of Default.*** The occurrence of any one or more of the following events shall, at the election of Beneficiary, constitute an Event of Default under this Deed of Trust:

- (a) Any Event of Default under or breach of the Note;
- (b) Failure to pay any sum required to be paid under this Deed of Trust as and when due;
- (c) Any material breach of warranty or other violation of any provision contained in Article 2 of this Deed of Trust; or
- (d) Nonperformance of, or noncompliance with, any of the agreements, covenants, conditions, warranties, representations or other provisions contained in this Deed of Trust (if and only to the extent not included in any of the occurrences listed above), which nonperformance or noncompliance is not cured and remedied within thirty (30) days after notice thereof is given to Trustor.

6.3 ***Remedies; Execution.***

(a) Upon the occurrence of an Event of Default, and at all times thereafter, Beneficiary shall have the right to accelerate all Obligations (including interest thereon at the Default Rate) pursuant to the terms of the Note and to enforce its rights under this Deed of Trust and the Note by exercising such remedies as are available to Beneficiary under applicable law, whether by suit in equity, action at law, or through the power of sale granted herein, whether for specific performance of any provision contained in this Deed of Trust or the Note or in aid of the exercise of any power granted in this Deed of Trust or the Note.

(b) Subject to the requirements of applicable law, Beneficiary shall have the right to obtain judgment for the Obligations (including all amounts advanced or to be advanced by Beneficiary under Section 6.1 above, all costs and expenses of collection and suit, including

any bankruptcy or insolvency proceeding affecting Trustor, and reasonable attorneys' fees incurred in connection with any of the foregoing) together with interest on such judgment at the default rate until payment in full is received by Beneficiary, and Beneficiary shall have the right to obtain execution upon the Trust Property on account of such judgment.

(c) Beneficiary shall have the right to institute foreclosure in the manner provided by law for the foreclosure of mortgages on real property, including power of sale, against the Trust Property or take such other action for realization on the security intended to be provided under Article 1 of this Deed of Trust as applicable law or the provisions of the Note may allow.

(d) Upon the occurrence of an Event of Default, Beneficiary may execute or cause Trustee to execute, a written notice of default and of election to cause the Real Estate to be sold to satisfy the obligations hereof. Trustee shall file such notice for record in each county wherein the Real Estate or some part or parcel thereof is situated. After the lapse of not less than three months, or such time as may then be required by law following the recordation of said notice of default, Trustee shall give written notice of the time and place of sale and particularly describing the property to be sold: (i) by publication of the notice, at least three times, once a week for three consecutive weeks, the last publication to be at least ten days but not more than 30 days prior to the sale, in some newspaper having a general circulation in each county in which the property to be sold, or some part thereof, is situated; and (ii) by posting the notice, at least 20 days before the date of sale, in some conspicuous place on the property to be sold and also in at least three public places of each city or county in which the property to be sold, or some part thereof, is situated. The sale shall be held at the time and place designated in the notice of sale which shall be between the hours of 9 a.m. and 5 p.m. After the notice of default and notice of sale, having been given as then required by law, Trustee, without demand on Trustor, shall sell the Real Estate on the date and time and place designated in said notice of sale, at public auction to the highest bidder at the courthouse of the county in which the Real Estate is situated, the purchase price payable in lawful money of the United States at the time of sale. Trustee shall apply the proceeds of the sale to payment of (i) 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; and (ii) the Obligations secured by this Trust Deed or any of the other Financing Agreements, and the balance, if any, to the person or persons legally entitled to the proceeds, or the Trustee, in its discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place.

The Trustee may, for any cause it considers expedient, postpone the sale up to a period not to exceed 72 hours. If the last hour of the postponement falls on a Saturday, a Sunday, or a legal holiday, the sale may be postponed until the same hour of the next day which is not a Saturday, a Sunday, or a legal holiday. The person conducting the sale shall give notice of the postponement by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale is required, unless the sale is postponed for longer than 72 hours beyond the date designated in the notice of sale. In the event of a longer postponement, the sale shall be cancelled and renoticed in the same manner as the original notice of sale is required to be given.

A copy of any notice of default or notice of sale under this Deed of Trust shall be served on Trustor, within ten days of recordation of the notice of default, by certified mail, return receipt requested, directed to Trustor at the address stated above or such other address given to Beneficiary in writing by Trustor, subsequent to the execution and delivery of this Deed of Trust. A copy of the notice of trustee's sale shall be served at least twenty days prior to sale. In addition, a copy of any notice of default or notice of sale under this Deed of Trust shall be served by certified mail upon any person who has previously recorded a request for notice.

(e) In the event that foreclosure proceedings are initiated hereunder, but are not completed, Trustee shall be entitled to be reimbursed for all fees, costs and expenses in commencing such proceedings, and all fees, costs and expenses so incurred, together with interest thereon until paid at the default rate, shall be payable by Trustor on demand, and shall become a part of the Obligations secured by this Deed of Trust.

6.4 Remedies; Collection of Income. Upon the occurrence of an Event of Default and at all times thereafter, Beneficiary and/or Trustee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon the Trust Property and, with or without taking possession of the Trust Property, and with or without legal action, collect all Income (which term shall also include amounts determined by Beneficiary as fair rental value for use and occupation of the Trust Property by any person, including Trustor) and, after deducting all costs of collection and administration expense including attorneys' fees and reasonable reserves, apply the net Income to any of the Obligations in such order and amounts as Beneficiary in its sole discretion may determine, or any of the following in such order and amounts as Beneficiary in its sole discretion may elect: the payment of any sums due, or accumulation of necessary reserves for, payment of all costs and expenses arising from or incurred in connection with (a) the preservation and protection of the validity and priority of the lien of this Deed of Trust; (b) the preservation and protection of the Trust Property; (c) compliance with Legal Requirements; and (d) fulfilling any obligations of Trustor or any other obligor or guarantor under the Permitted Encumbrances, the Leases, this Deed of Trust or the Note. Beneficiary shall not be accountable for more monies than it actually receives from the Trust Property nor shall it be liable for failure to collect the Income. Beneficiary shall have the right to determine the method of collection and the extent to which enforcement of collection of Income shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable.

6.5 Remedies; Possession. Upon the occurrence of an Event of Default and at all times thereafter, Beneficiary may, with or without legal action, take possession and control of the Trust Property to the exclusion of Trustor and all others excepting only those claiming under the Other Encumbrances. Beneficiary shall have the authority while so in possession to insure (at Trustor's expense) against all risks by reason of having taken such possession and Trustor will transfer and deliver to the Beneficiary all policies of insurance upon the Trust Property not theretofore transferred and delivered to Beneficiary.

6.6 Remedies; Repossession. Upon the occurrence of an Event of Default and at all times thereafter, Beneficiary shall have the right to take possession of any portion of the Trust Property constituting fixtures or other personal property subject to the UCC, and any records pertaining thereto. Beneficiary shall have the right to use, operate, manage, lease or otherwise

control the Trust Property in any lawful manner and, in its sole discretion but without any obligation to do so, insure, maintain, repair, renovate, alter or remove such Trust Property; use, in connection with any assembly, use or disposition of such Trust Property any trade mark, trade name, trade style, copyright, brand, patent right or technical process used or utilized by Trustor; sell or otherwise dispose of all or any of such Trust Property at any public or private sale at any time or times without advertisement or demand upon or notice to Trustor, all of which are expressly waived to the extent permitted by law, with the right of Beneficiary or its nominee to become purchaser at any sale (unless prohibited by statute) free from any equity of redemption and from all other claims, and after deducting all legal and other expenses for maintaining or selling such Trust Property, and all attorneys' fees, legal or other expenses for collection, sale and delivery, apply the remaining proceeds of any sale to pay (or hold as a reserve against) the Obligations and exercise all rights and remedies of a secured party under the Uniform Commercial Code of the state in which the Real Estate is located or any other applicable law.

6.7 Remedies; Appointment of Receiver. Upon the occurrence of an Event of Default and at all times thereafter, Beneficiary may, without notice, obtain appointment of a receiver for the Trust Property without regard to the adequacy of any security for the Obligations.

6.8 Remedies; Actions Prior to Acceleration. Beneficiary shall have the right, from time to time, to bring an appropriate action or actions to recover any sums required to be paid by Trustor under the terms of this Deed of Trust, as they become due, without regard to whether or not the Obligations shall be due and payable in full, and without prejudice to the right of Beneficiary or Trustee thereafter to take any action for any default by Trustor existing at the time the earlier action was commenced.

6.9 No Marshalling. Any of the collateral under any of the Financing Agreements sold pursuant to any judicial or non-judicial proceedings relating to the Financing Agreements or this Deed of Trust, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Trustee, in Trustee's sole discretion, may elect (but subject to any statutory right of Trustor to direct the order in which such property shall be sold).

6.10 Rights and Remedies Cumulative.

(a) All rights and remedies of Beneficiary or Trustee as provided in this Deed of Trust and the Note shall be cumulative and concurrent, may be pursued separately, successively or together against Trustor or the Trust Property, or both, at the sole discretion of Beneficiary and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

(b) Any failure by Beneficiary or Trustee to insist upon strict performance by Trustor of any of the terms and provisions of this Deed of Trust or the Note shall not be deemed to be a waiver of any of the terms or provisions of this Deed of Trust or the Note and Beneficiary or Trustee shall have the right thereafter to insist upon strict performance by Trustor of any and all of them.

6.11 **Resignation of Trustee.** Trustee may resign and be discharged of the trusts by giving written notice thereof to Beneficiary (or any subsequent owner of the beneficiary's interest in the Trust Property) specifying the date (not less than thirty (30) days after such notice) when such resignation shall take effect. Such resignation shall take effect on the earlier of the date so specified or the appointment and acceptance of the trust by the successor Trustee pursuant to Section 6.12 below.

6.12 **Successor Trustee.**

(a) Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee, with like effect as if originally named as Trustee herein (provided, however, that on the written request of Trustor, Beneficiary or the successor Trustee, such predecessor shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts expressed in this Deed of Trust, such estates, properties, rights, powers and trusts and shall duly assign, transfer, deliver and pay over to such successor any property and money subject to the lien hereof held by such predecessor). Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

(b) Each such appointment shall: identify this Deed of Trust by stating the names of the parties hereto, the date of recordation, and the book and page where the same is recorded or the entry number; include the legal description of the Trust Property; state the name of the new trustee; and be executed and acknowledged by all of the beneficiaries under this Deed of Trust or their successors in interest. Trustor hereby ratifies and confirms any and all acts which Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof.

**ARTICLE 7
MISCELLANEOUS**

7.1 **Costs and Expenses.** If the Beneficiary or Trustee becomes a party to any suit or proceeding affecting the Trust Property, title thereto, the lien created by this Deed of Trust or Beneficiary's or Trustee's interest therein, or in the event of the commencement of any bankruptcy or insolvency proceedings involving Trustor, or if Beneficiary engages counsel to collect or to enforce performance of the Obligations, or if Beneficiary or Trustee incurs any other costs and expenses in perfecting, protecting or enforcing its rights hereunder or in responding to any request of Trustor for any consent, waiver, approval, modification or release in connection with this Deed of Trust or the Trust Property, Beneficiary's and Trustee's reasonable counsel fees, and all other costs and expenses paid or incurred by Beneficiary and Trustee, including reasonable fees of appraisers, accountants, consultants, and other professionals, title premiums, title report and work charges, filing fees, and deed of trust, deed of trust registration, transfer, stamp and other excise taxes, whether or not an Event of Default shall have occurred, shall be

paid to Beneficiary or Trustee, as applicable, on demand, with interest at the Default Rate and until paid they shall be deemed to be part of the Obligations secured by this Deed of Trust.

7.2 Indemnity. Trustor shall indemnify, defend and hold Beneficiary and Trustee harmless from and against any claims, expenses, demands, losses, costs, fines or liabilities of any kind (including those involving death, personal injury or property damage and including reasonable attorneys' fees and costs) arising from or in any way related to the failure of Trustor to comply with, or the failure of the Trust Property to be kept in compliance with, the Legal Requirements, applicable environmental laws, the Leases and the Other Encumbrances. The indemnification of Trustor under this section shall survive the release or termination of this Deed of Trust and shall remain effective notwithstanding any sale of the Trust Property under the powers granted in this Deed of Trust or other execution against the Trust Property or acceptance of a deed in lieu of foreclosure. The indemnification of Trustor under this Section is specifically excepted from any limitation of liability provision contained in this or any of the other Financing Agreements.

7.3 Declaration of No Set-Off. Within ten (10) days after requested to do so by Beneficiary, Trustor shall certify to Beneficiary or to any proposed assignee of this Deed of Trust or participant in the Obligations in a writing duly acknowledged, the amount of principal, interest and other charges then owing on the Obligations secured by this Deed of Trust and whether there are set-offs or defenses against them.

7.4 Notices. Except as otherwise provided herein, all notices required to be given to any of the parties hereunder shall be in writing and shall be delivered (a) by personal delivery, with receipt acknowledged; (b) by facsimile or e-mail (with original copy to follow); (c) by reputable overnight commercial courier service; or (d) by United States registered or certified mail, return receipt requested, postage prepaid, to the parties addressed to Trustor or Beneficiary as set forth in the Note. Any notice so given by United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail as registered or certified mail, addressed as above provided, with postage thereon fully prepaid. Any notice given personally, by facsimile or e-mail, or by reputable overnight commercial courier service, shall be deemed to be given upon receipt of the same by the party to whom the same is to be given. Whenever the giving of notice is required, the giving of such notice may be waived in writing by the party entitled to receive such notice.

7.5 Covenant Running with the Land. Any act or agreement specified herein to be done or performed by Trustor shall be construed as a covenant running with the land and shall be binding upon Trustor and its successors and assigns as if each had personally made such agreement.

7.6 Amendment. Any amendment, modification, consent or waiver which may be hereafter requested by Trustor or otherwise required must be in writing and signed by both Trustor and Beneficiary.

7.7 Severability. Any term or provision of this Deed of Trust that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and

provisions or the validity or enforceability of the invalid, void or unenforceable term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision of this Deed of Trust is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to and shall, subject to the discretion of such court, reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

7.8 ***Successors and Assigns.*** This Deed of Trust inures to the benefit of Beneficiary and Trustee and binds Trustor, and its respective successors and assigns, and the words “Beneficiary,” “Trustee” and “Trustor” whenever occurring herein shall be deemed and construed to include such respective successors and assigns.


7.9 ***Governing Law.*** This Deed of Trust shall be governed by the laws of the State of Utah, without giving effect to any choice or conflict of law, rule or regulation, whether of the State of Utah or other jurisdiction, which would cause the application of any law, rule or regulation other than of the State of Utah.

7.10 ***Waiver of Jury Trial.*** THE TRUSTOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE OR ANY COLLATERAL SECURITY DOCUMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF LENDER.

[Signatures on following page]

IN WITNESS WHEREOF, Trustor, intending to be legally bound hereby, has duly executed this Deed of Trust as of the date first above written.

COAL CREEK TOWNHOMES, LLC, a
Utah limited liability company
By: Alchemy Manager, LLC
Its: Manager

By: 

Josh Green, Manager

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

The foregoing instrument was acknowledged before me this 31st day of January, 2023, by Josh Green, the Manager of Alchemy Manager, LLC, which is the Manager of Coal Creek Townhomes, LLC.





Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

REAL PROPERTY

That certain real property located in Iron County, State of Utah, more particularly described as:

Beginning South 89°59'02" West 650.98 feet and South 123.61 feet from the Northeast corner of the Southeast quarter of the Northwest quarter of Section 15, Township 36 South, Range 11 West, Salt Lake Base and Meridian and said point being on the vacated centerline of 200 South Street; thence North 89°22'48" East along said vacated centerline 219.80 feet; thence South 00°25'16" East 33.00 feet; thence North 89°22'48" East 20.00 feet to the Westerly right-of-way line of I-15; thence South 00°25'54" East along said Westerly right-of-way line 147.97 feet; thence South 89°58'20" West 247.06 feet to the Easterly right-of-way line of 1400 West Street; thence North 00°33'26" West along said Easterly right-of-way line 145.42 feet to a point of curve; thence along the arc of a curve to the right with a radius of 75.00 feet a distance of 34.18 feet (the chord of said curve bears North 12°29'59" East 33.88 feet) to the point of beginning.]

Tax Parcel Nos. B-1117-0010-0000 and B-1117-1118-0001-2