Prepared by, and after recording

return to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**MULTIFAMILY DEED OF TRUST,**

**ASSIGNMENT OF RENTS,**

**SECURITY AGREEMENT AND FIXTURE FILING**

**ARIZONA**

**(Revised 10-10-2023)**

**MULTIFAMILY DEED OF TRUST,**

**ASSIGNMENT OF RENTS,**

**SECURITY AGREEMENT AND FIXTURE FILING**

**ARIZONA**

**(Revised 10-10-2023)**

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Instrument**”) is made to be effective this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as trustor (“**Borrower**”), to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as trustee (“**Trustee**”), for the benefit of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

as beneficiary (“**Lender**”). Borrower’s organizational identification number, if applicable, is .

**RECITAL**

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in County, State of Arizona and described in Exhibit A attached to this Instrument.

**AGREEMENT**

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower’s Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on

\_\_\_\_\_\_, \_\_\_\_ ( “**Maturity Date**”), in the principal amount of $ , and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Agreement or any other Loan Document.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender’s interest in the Mortgaged Property (“**Schedule of Title Exceptions**”). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

**[INSERT CURRENT FORM OF UNIFORM COVENANTS]**

**21-30. Reserved.**

**31. Acceleration; Remedies.**

(a) At any time during the existence of an Event of Default, Lender, at Lender’s option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by Arizona law or provided in this Instrument, the Loan Agreement or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys’ Fees and Costs and costs of documentary evidence, abstracts and title reports.

(b) If Lender invokes the power of sale, Lender will give written notice to Trustee of the occurrence of an Event of Default and of Lender’s election to cause the Mortgaged Property to be sold. Trustee will record a notice of sale in each county in which the Mortgaged Property or some part of the Mortgaged Property is located and will mail copies of the notices in the manner required by Arizona law to Borrower and to all other persons entitled to receive such notice under Arizona law. Trustee will give public notice of the sale and will sell the Mortgaged Property according to Arizona law. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender’s designee may purchase the Mortgaged Property at any sale.

(c) Trustee will deliver to the purchaser at the sale, within the time periods required by Arizona law, a deed conveying the Mortgaged Property so sold without any expressed or implied covenant or warranty. The recitals in Trustee’s deed will be prima facie evidence of the truth of the statements made in those recitals. Trustee will apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including Trustee’s fees not to exceed 5% of the gross sales price, Attorneys’ Fees and Costs and costs of documentary evidence, abstracts and title reports; (ii) to the Indebtedness in such order as Lender, in Lender’s discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled to the excess, or to the clerk of the superior court of the county in which the sale took place, or as provided in Arizona Revised Statutes § 33-812 or any similar or successor statute.

**32. Release.** Upon payment of the Indebtedness, Lender will release this Instrument. Borrower will pay Lender’s reasonable costs incurred in releasing this Instrument.

**33. Substitute Trustee.** Lender, at Lender’s option, may from time to time remove Trustee and appoint a successor trustee. Without conveyance of the Mortgaged Property, the successor trustee will succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by applicable law.

**34. Time Of Essence.** Time is of the essence of each covenant of this Instrument.

**35. Waivers By Surety.** Any party who has signed this Instrument as a surety or accommodation party, or who has subjected such party’s property to this Instrument to secure the indebtedness of another, expressly waives, to the fullest extent allowed by applicable law, all of the benefits under Arizona Revised Statutes §§ 12‑1641, 12‑1642, 12‑1643, 12‑1644, 33‑814, 44‑141, 44‑142 and 47‑3605, and Rule 17(f) of the Arizona Rules of Civil Procedure, as now in effect or as modified or amended in the future, together with any similar provision, tenet or theory under Arizona law pertaining to the rights of sureties and/or guarantors.

**36. Usury Savings**.Borrower agrees to pay an effective contracted rate of interest equal to the rate of interest resulting from all interest payable as provided in the Note, plus an additional rate of interest resulting from all Other Sums. “**Other Sums**” will consist of all fees, charges, or any other sums (other than interest payable as provided in the Note) paid or payable by Borrower, whether pursuant to the Note, this Instrument or any of the other Loan Documents, or any other document or instrument in any way pertaining to this lending transaction that may be deemed to be interest for the purpose of any law of the State of Arizona that may limit the maximum amount of interest to be charged with respect to this lending transaction. Other Sums will be deemed to be interest for the purposes of any such law only.

**37. WAIVER OF TRIAL BY JURY.**

(a) **BORROWER AND LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY.**

(b) **BORROWER AND LENDER EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**38. Attached Riders.** The following Riders are attached to this Instrument:

**[LIST EACH RIDER ATTACHED OR STATE “NONE”]**

**39. Attached Exhibits.** The following Exhibits, if marked with an “X” in the space provided, are attached to this Instrument:

 |X| Exhibit A Description of the Land (required)

 | | Exhibit B Modifications to Instrument

 | | Exhibit C Ground Lease Description (if applicable)

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

**[INSERT SIGNATURES AND ACKNOWLEDGMENTS]**

**[INSERT RIDER(S) IF APPLICABLE]**

**EXHIBIT A**

DESCRIPTION OF THE LAND

**EXHIBIT B**

MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit: