Prepared by, and after recording

return to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tax Map ID/Tax Parcel Number:

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

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

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**MULTIFAMILY DEED OF TRUST,**

**ASSIGNMENT OF RENTS,**

**SECURITY AGREEMENT AND FIXTURE FILING**

**VIRGINIA**

**(Revised 6-13-2023)**

**MULTIFAMILY DEED OF TRUST,**

**ASSIGNMENT OF RENTS,**

**SECURITY AGREEMENT AND FIXTURE FILING**

**VIRGINIA**

**(Revised 6-13-2023)**

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as beneficiary (“**Lender**”) index as a grantee. Borrower’s organizational identification number, if applicable, is .

Borrower, in consideration of the Indebtedness, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, for the benefit of Lender, the Mortgaged Property, including the Land located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City/County, Commonwealth of Virginia and described in Exhibit A attached to this Instrument 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**”), 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 Documents.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property, 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 VERSION 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 Virginia law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that Lender may exercise the power of sale granted by this Instrument without prior judicial hearing to the extent allowed by Virginia law. Borrower has the right to bring an action to assert that an Event of Default does not exist or to raise any other defense Borrower may have to acceleration and sale. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including fees and out-of-pocket costs of attorneys, including Lender’s in-house counsel, and costs of documentary evidence, abstracts and title reports.

(b) If Lender invokes the power of sale, Lender or Trustee will deliver a copy of a notice of sale to Borrower and such other parties as required, and in the manner prescribed by Virginia law. Trustee will give public notice of the sale in the manner prescribed by Virginia law and will sell the Mortgaged Property in accordance with Virginia law. Trustee, without demand on Borrower, will sell the Mortgaged Property at public auction to the highest bidder 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 in accordance with Virginia law. Lender or Lender’s designee may purchase the Mortgaged Property at any sale.

(c) Trustee will deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold with special warranty of title. The recitals in Trustee’s deed will be prima facie evidence of the truth of the statements made in the recitals. Trustee will apply the proceeds of the sale in the following order unless Virginia law recites a different order of distribution:

(i) To all costs and expenses of the sale, including Trustee’s fees in an amount prescribed by Virginia law, or if Trustee’s fees are not so prescribed, in an amount equal to 5 % of the gross sale price, Attorneys’ Fees and Costs.

(ii) to the discharge of all Taxes, if any, with costs and interest if they have priority on the Lien of this Instrument including the due pro rate thereof for the current year, as provided by Virginia law.

(iii) To the Indebtedness in the order of their priority, if any, and any Liens of record inferior to this Instrument with lawful interest.

(iv) The residue to Borrower or his assigns, provided that Trustee as to such residue will not be bound by any inheritance, devise, conveyance, assignment or Lien of, or upon, Borrower’s equity without actual notice thereof prior to distribution.

(d) Trustee will not be required to take possession of the Mortgaged Property before the sale or to deliver possession of the Mortgaged Property to the purchaser at the sale.

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

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

**34. Statutory Provisions.**

(a) The following provisions of Section 55.1-325, Code of Virginia (1950), as amended, are made applicable to this Instrument:

Exemptions waived

Subject to call upon default

Renewal or extension permitted

Substitution of trustee permitted

Any trustee may act

 (b) Pursuant to Section 55.1-322 of the Code of Virginia (1950), as amended, advertisement will be required once a day for 5 consecutive days.

**35. FIXTURE FILING. THIS INSTRUMENT WILL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND AND IMPROVEMENTS. FOR PURPOSES OF THE CODE OF VIRGINIA (1950), AS AMENDED, THE FOLLOWING INFORMATION FURNISHED:**

(a) The name and address of debtor are those of the Borrower and are set forth on page one of this Instrument.

(b) The Borrower is a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized solely under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and is a registered organization, whose organizational identification number is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ within the meaning of the code of Virginia (1950), as amended.

(c) The name and address of the secured party are those of the Lender and are set forth on page 1 of this Instrument.

(d) This Instrument covers goods that are or are to become Fixtures to the Land described in Exhibit A, attached hereto, and/or the Improvements.

**36. Assignment of Rents.** The assignment of Rents set forth in this Instrument constitutes an assignment of Borrower’s interest in leases, rents and profits arising from the Mortgaged Property described in this Instrument for purposes of Section 55.1-1403 of the Code of Virginia (1950), as amended.

**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: