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RASHELLE HOBBS
Recorder, Salt Lake County, UT
INTEGRATED TITLE INS SERVICES
BY: eCASH, DEPUTY - EF 8 P.

WHEN RECORDED RETURN TO:

BB NAC Apartments, LLC
2319 S Foothill Drive, Suite 265
Salt Lake City, Utah 84109

DECLARATION REGARDING RESTRICTIONS ON SALE OF UNITS

This Declaration Regarding Restrictions on Sale of Units (the "Agreement") is made and executed this 23d day of June, 2020 by BB NAC APARTMENTS, LLC (the "Declarant"), whose address is 2319 S Foothill Drive, Suite 265, Salt Lake City, Utah 84109, with reference to the facts set forth below:

RECITALS

A. Declarant currently holds fee title to that certain real property located in the Salt Lake City, County of Salt Lake County, State of Utah more particularly described in **Exhibit A** attached hereto and by this reference incorporated herein (the "Property"). Declarant desires to construct multifamily residential buildings (the "Project") intended to contain a number of units (the "Units") and to use the Project as a rental apartment project and to rent the Units as apartments.

B. Declarant has retained Big-D Construction Corp. (the "Contractor") to complete the construction of the Project and the Units. The Contractor has agreed to do so, but only if Owner covenants and agrees, during the Restriction Period, not to sell any of the Units as condominium units to residential purchasers unless and until commercial general liability insurance is provided for the benefit of Contractor with coverage for residential claims as provided herein.

C. Based upon the terms in this Agreement, the Declarant has retained the Contractor under the construction contract dated March 23, 2020 (the "Construction Contract").

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Declarant hereby declares that during the Restriction Period, as hereinafter defined, the Property is and shall be held, sold, conveyed, encumbered, leased, rented, used, occupied and improved, subject to the restrictions, covenants and conditions set forth as follows:

Article 1 DEFINITIONS

The terms set forth below shall have the indicated meanings.

1.1 "Owner" means the record owner, whether one or more persons or entities of the Units. The term Owner shall include a contract purchaser under a recorded installment land sales contract and

shall also include the holder of a long-term ground lease or leasehold interest that provides such holder with operational control over the land and improvements constituting the Units. The term Owner shall not include a residential tenant of a Unit, nor any party holding only a lien or other interest as security for the performance of an obligation.

1.2 "Conversion Restriction" means the covenants, conditions and restrictions set forth in Article 2 of this Agreement.

Article 2 COVENANTS OF OWNER

2.1 Restriction on Conversion. Subject to the provisions of Paragraph 2 hereof, commencing with the date of recordation of this Declaration, and continuing for a period of nine (9) years following the Completion Date (the "Restriction Period"), the Property shall not be sold as a residential condominium project, a mixed-use residential condominium project or any other form of residential condominium ownership, or any conversion as defined by Utah Code Ann. § 57-8-3 or addressed in Utah Code Ann. § 57-8-1 *et seq.* in which ownership in any individual residential unit or units in the Project is sold, conveyed or offered for sale (the "Conversion Restriction"). The Conversion Restriction shall include but not be limited to a prohibition of recording for the Project within the Restriction Period either (a) a declaration of the condominium project on the Property (as defined and described in Utah Code Ann. §§ 57-8-3 & 57-8-10), which would allow or permit ownership in any individual residential unit or units in the Project, or (b) a Condominium Plat (as defined and described in Utah Code Ann. §§ 57-8-3 & 57-8-13) which would allow or permit ownership in any individual residential unit or units in the Project. Owner acknowledges that the Conversion Restriction set forth herein is a material inducement in Contractor's agreement to complete the construction of the Project and the Units, respectively. Each successor Owner of the Units also acknowledges and agrees that such Owner will not do any of the actions described in the first sentence of this Section 2.1 during the Restriction Period. The Conversion Restriction shall apply only to prevent any individual residential unit or units in the Project from being sold, conveyed or offered for sale, but shall not restrict or otherwise limit Declarant from recording a declaration of the condominium project or a Condominium Plat which would allow or permit separate ownership in any non-residential unit or units within the Project.

2.2 Covenants Run with the Land. This Declaration and all other rights, privileges, covenants, conditions and restrictions contained herein, shall be deemed to be covenants running with the land, and shall inure to the benefit of and be binding upon the owners, lessees or occupants of the Property or the Units, or portions thereof on which any portion of the Project is located, and their respective successors and assigns. This Declaration shall be recorded with the Office of the Salt Lake County Recorder and indexed to the Property. Nothing herein contained shall prohibit Declarant or any successor in interest owner of the Property (such successor is who is then the owner of the Property is referred to herein as a "Successor") from encumbering the Property with a mortgage or deed of trust to secure the repayment of any loan.

2.3 **Modification of Declaration.** This Declaration may not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the prior written consent of Declarant, Contractor and any Successor, and then only by written instrument duly executed and acknowledged by Declarant, Contractor and any applicable Successor and recorded in the Office of the Salt Lake County Recorder.

Article 3 TERMINATION

The Conversion Restriction will expire automatically at the end of the Restriction Period without any further action required by Declarant, Contractor or any Successor; provided, however, at the end of the Restriction Period, upon the request of the Declarant or any Successor ("Requesting Party"), in order to further evidence the termination of the Conversion Restriction, Contractor shall execute, acknowledge and record a quit claim or other instrument in form reasonably acceptable to the Requesting Party to confirm the termination of the Conversion Restriction and this Declaration. Notwithstanding anything to the contrary contained in this Declaration, in the event that the Contractor is adjudicated a bankrupt or declared insolvent in any bankruptcy or an arrangement or reorganization under any federal or state bankruptcy, insolvency or debtor relief law, or in the event the Contractor shall be dissolved or its existence terminated and shall not, within two (2) years of such termination, be reconstituted or merged into another entity, this Declaration may be thereafter amended by the sole action of Declarant and any applicable Successor.

Article 4 EARLY TERMINATION

4.1 At the request of Owner, Contractor agrees to terminate the Conversion Restriction and thus allow sales of Units to residential purchasers, provided that Owner furnishes, for the benefit of the Contractor and its subcontractors, a general liability insurance policy including completed operations/construction defect coverage acceptable in form and scope by the Architect and Contractor with limits of not less than \$50,000,000 and providing defense and indemnity coverage for claims against Contractor and its subcontractors with respect to the construction of the Project and the Units (with defense costs outside the policy limits), including but not limited to bodily injury, third party property damage and construction defects. Such insurance shall include "tail" or completed operations coverage until the expiration of the Restriction Period. If Owner provides such insurance, Contractor agrees to promptly execute and record a notice of termination confirming that this Agreement and the Conversion Restriction set forth in Article 2 above has been terminated (the "Early Termination").

4.2 The general liability/completed operations insurance policy furnished by Owner shall be primary and non-contributory as to any insurance policy Contractor may have potentially affording coverage for the Project and the Units. Exclusions for subsidence, EFIS, Terrorism (TRIA) and punitive damages shall not be permitted to be included in the policy furnished by Owner.

4.3 In the event of Early Termination, the rights of Owner and other Owner parties that were included as additional insured's on Contractor's general liability insurance shall automatically terminate effective on the Early Termination and Owner and other Owner parties shall be deleted from such policy. Also, in the event of Early Termination, unless Contractor approves in writing the general liability insurance policy required in Section 4.1 above (which approval shall not be unreasonably

withheld, conditioned or delayed), no rights under the Construction Contract will be enforceable against the Contactor by the Owner and, effective upon such Early Termination, Owner waives and releases any and all claims against Contractor and its subcontractors, and suppliers of every tier for liability arising out of the Project and the Units.

4.4 This restriction of rights, waiver and release of claims shall not apply to claims that have already been brought against Contractor prior to the Early Termination.

Article 5 ENFORCEMENT

5.1 If Owner or any successor or assign of Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner and its successors or assigns set forth in this Agreement, Contractor may declare an "Event of Default" to have occurred hereunder and, at its option, it may take any one or more of the following steps:

(a) by mandamus or other suit, action or proceeding at law or in equity, to require Owner or its successors and assigns to perform its or their obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of Contractor hereunder;

(b) have access to and inspect, examine and make copies of all of the books and records of Owner pertaining to the Project and the Units; or

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder.

5.2 All rights and remedies as set forth in this Agreement shall be cumulative and non-exclusive to the extent permitted by law. Any action taken in violation of this Agreement by Owner or its successor or assigns shall be void.

Article 6 GENERAL PROVISIONS

6.1 In the event that a party to this Agreement brings an action against any other party to this Agreement by reason of the breach of any condition or covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees to be fixed by the court which shall render a judgment, as well as the costs of the suit.

6.2 All notices, consents, approvals to or demands desired or required to be given under the provisions hereof, shall be in writing. Any notices or demands shall be deemed to have been duly and sufficiently given if a copy thereof has been personally served or delivered by expedited messenger or recognized overnight courier service with evidence of delivery to Declarant or Contractor at the address set forth in this Declaration and to a Successor at the address of the Successor on the then most recent real estate tax bill for such portion of the Property, or at such other address as directed by written notice to Declarant, Contractor or Successor. The effective date of such notice shall be the date of actual

delivery, except that if delivery is refused, the effective date of notice shall be the date delivery is refused.

6.3 Unless otherwise indicated therein, all statutory references to Utah Code Annotated ("Utah Code Ann.") contained herein shall be read and interpreted to have the meaning associated with them as of the date of June 2020. This Agreement shall be governed by the laws of the State of Utah.

6.4 If any covenant condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Agreement will not be affected by such holding and will remain valid and in force to the fullest extent allowed by law.

6.5 The waiver of the breach of this Agreement by a party does not constitute a waiver of the right to enforce this Agreement by such party or a waiver of any subsequent breach. No waiver is effective unless contained in an express written document signed by the party against whom enforcement is sought.

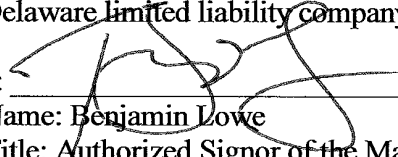
6.6 This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute on and the same instrument, and each of which shall be deemed to be an original.

6.7 This Agreement shall automatically terminate without any action by either party hereto on the first business day after the expiration of the Restriction Period.

[Remainder of Page Intentionally Left Blank.]

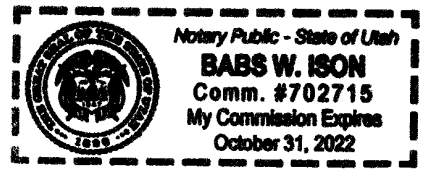
IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.


BB NAC APARTMENTS, LLC,
a Delaware limited liability company

By: 
Name: Benjamin Lowe
Title: Authorized Signor of the Manager
of the Operating Member

STATE OF UTAH)
 ss.
COUNTY OF SALT LAKE)

On the 25th day of June, 2020, personally appeared before me Benjamin Lowe, who being by me duly sworn did say that he is the Authorized Signor of the Manager of BB NAC Apartments, LLC, a Delaware limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by proper authority, and said person acknowledged to me that said limited liability company executed the same.




Notary Public

Approval of Contractor

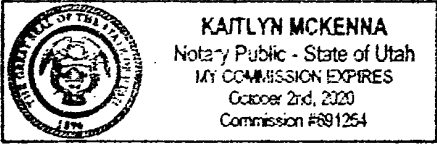
The foregoing Declaration of Restrictions on Sale of Units is accepted and approved by Contractor as of the date first above written.

BIG-D CONSTRUCTION CORP.

By: _____
Name: **ROBERT S. MOORE**
Title: **C.E.O.**

STATE OF UTAH)
SS.
COUNTY OF SALT LAKE)

On the 24 day of June, 2020, personally appeared before me **Robert S. Moore**, who being by me duly sworn did say that he is the Chief Executive Officer of **BIG-D CONSTRUCTION CORP.**





Notary Public

Exhibit A
Legal Description

LOT 1

BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 30, PLAT "A", SALT LAKE CITY SURVEY; THENCE SOUTH 89°59'18" WEST ALONG THE SOUTH LINE OF SAID BLOCK 30 A DISTANCE OF 331.28 FEET; THENCE NORTH 660.42 FEET TO A POINT ON THE NORTH LINE OF SAID BLOCK 30; THENCE NORTH 89°58'14" EAST ALONG SAID NORTH LINE 331.37 FEET TO THE NORTHEAST CORNER OF SAID BLOCK 30; THENCE SOUTH 00°00'30" WEST ALONG THE EAST OF SAID BLOCK 30 A DISTANCE OF 660.52 FEET TO THE POINT OF BEGINNING.

Being Tax Parcel No.

15-01-451-001
15-01-451-005
15-01-451-006
15-01-451-007
15-01-451-002
15-01-451-003
15-01-451-008
15-01-451-009
15-01-451-010
15-01-451-011
15-01-451-012

LOT 5

BEGINNING AT A POINT ON THE WEST LINE OF BLOCK 30, PLAT "A", SALT LAKE CITY SURVEY, SAID POINT BEING SOUTH 89°59'18" WEST ALONG THE SOUTH LINE OF SAID BLOCK 30 A DISTANCE OF 660.13 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK 30 AND NORTH 0°00'59" WEST ALONG THE WEST LINE OF SAID BLOCK 30 A DISTANCE OF 125.06 FEET FROM THE SOUTHEAST CORNER OF SAID BLOCK 30, AND RUNNING THENCE NORTH 0°00'59" WEST ALONG SAID WEST LINE 122.56 FEET; THENCE NORTH 89°58'20" EAST 157.66 FEET; THENCE SOUTH 122.59 FEET; THENCE SOUTH 89°58'57" WEST 157.63 FEET TO THE POINT OF BEGINNING.

Being Part of Tax Parcel No's.

15-01-378-026
15-01-378-025