

When recorded mail to:
Indicate Capital Fund 1, LLC
Attn: Loan Closing Dept.
2828 N. Speer Blvd. #210
Denver, CO 80211



ENT 58739:2021 PG 1 of 9
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Mar 29 4:23 pm FEE 70.00 BY JR
RECORDED FOR COTTONWOOD TITLE

Escrow 141327-DMF

Deed of Trust

Tax Id No.:

67-088-0001
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**DEED OF TRUST,
SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS
AND FINANCING STATEMENT**

This Deed of Trust secures a loan facility in a maximum principal amount of Four Million Dollars plus additional advances made pursuant to this Deed of Trust and Utah Code 57-1.

1. **Grantor:** Montdella Townhomes, LLC, a Utah limited liability company
1192 E Draper Parkway #305
Draper, UT 84020
Attention Name: David Wilkes

2. **Beneficiary:** Indicate Capital Fund 1, LLC
2828 N. Speer Blvd. #210-5
Denver, CO 80211
Phone: 801-505-6554
Attention: Loan Closing Department

3. **Trustee:** Cottonwood Title Insurance Agency, Inc., a Utah Corporation.

4. **Property:** The real property located in the City of Alpine, and County of Utah, Utah, and described on Exhibit A attached hereto, together with (i) all buildings, structures and other improvements now or hereafter constructed thereon; (ii) all fixtures, easements, minerals, crops, landscaping features, development rights, water, ditch, reservoir, well or spring rights, groundwater rights, leases, rents, issues, profits, income, revenues and condemnation awards and insurance proceeds, however evidenced, relating or appertaining in any way to the real property; and (iii) all other appurtenances and hereditaments now or hereafter appertaining to, located on or used in connection with the real property.

5. **Obligations:** (a) All indebtedness evidenced and created by the Promissory Note of even date herewith (the "Note") in the principal face amount of \$4,000,000 from Grantor in favor of Beneficiary and payable in full on or before March 25, 2022 (unless extended pursuant to Note), and all renewals, extensions, modifications amendments and restatements thereof and substitutions therefor;

(b) future advances made by Beneficiary plus interest thereon at the Default Rate; and

(c) all other indebtedness due under the Note, this Deed of Trust, the Assignment of Leases and Rents dated of even date herewith from Grantor in favor of Beneficiary (the "Assignment of Rents"), and any other documents or instruments evidencing, securing or otherwise executed in connection with the Loan defined and described in the Note, together with all amendments, modifications, extensions, replacements and substitutions to any of the foregoing documents and instruments (collectively, the "Loan Documents").

6. **Grant.** As security for the Obligations, Grantor hereby grants, bargain, sells, mortgages and conveys the Property to Trustee in trust for the use and benefit of Beneficiary. As additional security for the Obligations, Grantor hereby grants Beneficiary a security interest in the Property. This Deed of Trust constitutes a security agreement and fixture filing under the Uniform Commercial Code in effect in the State of Utah (the "Code").

7. **Representations.** Grantor warrants the title to the Property, subject only to those matters set forth on Exhibit B attached hereto. Grantor warrants that no financing statement covering any of the Property or proceeds thereof has been filed in a public office except as shown on Exhibit B. Grantor warrants that the person signing this Deed of Trust on behalf of Grantor has been fully and properly authorized to do so and that this Deed of Trust constitutes the valid, binding and enforceable obligation of Grantor.

8. **Covenants of Grantor.** Grantor covenants and agrees: (a) to cause to be paid and satisfied all the Obligations on or before the date the Obligations are due and to comply with and perform according to their terms all of the covenants and agreements contained in this Deed of Trust; (b) to pay and satisfy when due all general and special taxes and general and special assessments and other claims or encumbrances in connection with or affecting the Property; (c) to obtain and maintain at all times policies of insurance in an amount equal to the full replacement cost of all improvements on the Property insuring against all risk of loss, damage, destruction, theft or any other casualty (without Beneficiary or Grantor being deemed a co-insurer), and to obtain and maintain comprehensive general liability insurance covering the Property and Grantor in reasonably acceptable amounts but in no event less than \$500,000 per occurrence and combined annual aggregate. All such insurance shall be written on an occurrence basis, shall name Beneficiary as an additional insured, loss payee or mortgage, as its interests may appear, shall be annually renewed at least 30 days prior to expiration with evidence of renewal certificates provided to Beneficiary prior to such deadline, and shall provide that such insurance may not be cancelled or materially modified without providing Beneficiary at least 30 days' prior written notice of such cancellation or modification. Reference is made to the Hazardous Insurance Requirements Acknowledgment and Agreement of even date herewith from Grantor in favor of Beneficiary for additional terms and provisions regarding insurance; (d) to keep the Property and any improvements which may at any time be on the Property in good condition and repair and not to commit any material waste; (e) not to commit destruction or removal of all or any material part of the Property without the prior consent of Beneficiary, other than in the normal course of business, development or maintenance of the Property; (f) to comply with applicable insurance policy provisions and all laws, ordinances, rules and regulations of governmental authorities governing or applicable to the Property or its use; and (g) to appear in and defend any action or proceeding purporting to affect the Property.

9. **Assignment of Leases and Rents.** As additional security for Grantor's Obligations, and under the terms of the Assignment of Leases and Rents (which terms shall control), Grantor hereby assigns and transfers to Beneficiary all of the leases and occupancy agreements, rents, issues, profits, income and revenues of or from the Property, and hereby gives to and confers upon Beneficiary the right, power, and authority to collect such rents, issues, profits, income and revenues. Grantor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of the Beneficiary at any time and from time to time, to demand, receive, and enforce payment, to give receipts, releases, and satisfactions, and to sue in the name of Grantor or Beneficiary, for all such rents, issues, profits, income and revenues and to apply the same to the indebtedness secured hereby, provided that Grantor shall have the right to collect such rents, issues, profits, income and revenues but not in advance of their due date and with regard to any payments received by Grantor arising from any settlement or compromise reached with any tenant under any lease of the Property or any portion thereof prior to or any time there is not an Event of Default (hereinafter defined) hereunder. The assignment of leases, rents, issues, profits, income and revenues of the Property in this Section 9 is intended to be a present assignment from Grantor to Beneficiary and not merely the passing of a security interest. The leases, rents, issues, profits, income and revenues are hereby assigned by Grantor to Beneficiary contingent only upon the occurrence of an Event of Default hereunder. Upon the occurrence of an Event of Default hereunder, Beneficiary may, either in person, by agent, or by a receiver appointed by a court, enter upon and take possession of the Property, or any part thereof, in its own name sue for or otherwise collect such rents, issues, profits, income and revenues, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The collection of such rents, issues, profits, income and revenues or the entering upon and taking possession of the Property, or the application thereof as aforesaid, shall not cure or waive any Event of Default hereunder or notice of such Event of Default or invalidate any act done in response to such Event of Default or pursuant to a notice of such Event of Default. The assignment contained in this Section 9 shall be construed consistently with the Assignment of Rents; provided, however, that in the event of any conflict between this Section 9 and the Assignment of Rents, the Assignment of Rents shall govern and control.

10. **Indemnity.** In addition to the payment of various costs, fees and expenses pursuant to the terms hereof and the other indemnities set forth herein and in the other Loan Documents, Grantor agrees to indemnify, defend and hold harmless Beneficiary, and any of its participants, parent corporations, subsidiary corporations, affiliated corporations, successor corporations, all now or hereafter affiliated trusts, partnerships and limited liability companies and all present and future members, managers, officers, directors, employees and agents of the foregoing (the "Indemnitees"), from and against (i) any and all transfer taxes, documentary taxes, assessments or charges made by any governmental authority by reason of the execution and delivery of the Note, this Deed of Trust and the other Loan Documents or the

making of advances, and (ii) any and all liabilities, losses, damages, penalties, judgments, suits, claims, costs and expenses of any kind or nature whatsoever, including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceedings, whether or not such Indemnitee shall be designated a party thereto, which may be imposed on, incurred by or asserted against such Indemnitee, in any manner relating to or arising out of or in connection with the Obligations or the use or intended use of the proceeds of the Loan ("Indemnified Liabilities"). If any investigative, judicial, or administrative proceeding arising from any of the foregoing is brought against any Indemnitee, upon request of such Indemnitee, Grantor, or counsel designated by Grantor and satisfactory to the Indemnitee and Grantor's insurer, shall resist and defend such action, suit or proceeding to the extent and in the manner directed by the Indemnitee, at Grantor's sole cost and expense. Each Indemnitee shall use its best efforts to cooperate in the defense of any such action, suit or proceeding. If the foregoing undertaking to indemnify, defend and hold harmless may be held to be unenforceable because it violates any law, rule, regulation or public policy, Grantor shall nevertheless make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. The obligations of Grantor under this Section shall survive the release and termination of this Deed of Trust and payment and the discharge of the Obligations.

11. **Environmental Representations, Warranties and Covenants.** Grantor hereby represents and warrants to, and covenants with and for the benefit of Lender that:

(a) Grantor shall deliver to Beneficiary within 24 hours of receipt, copies of any notice of any violations of any environmental laws governing the use, storage, treatment, transportation, release, manufacture, refinement, handling, production, or disposal of Hazardous Materials;

(b) Grantor shall keep or cause the Property to be kept free of Hazardous Materials; and without limiting the foregoing, Grantor shall not cause or permit the Property to be used to generate, manufacture, refine, transport, release, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable environmental laws, nor shall Grantor cause or permit, as a result of any intentional or unintentional act or omission on the part of Grantor or any tenant, subtenant, or occupant, a release of Hazardous Materials onto the Property or onto any other property; and

(c) The use which Grantor or any tenants or licensees of Grantor will make of the Property will not result in the use or release of any Hazardous Materials on, about, under, near or onto the Property nor give rise to any liability or liens under the environmental laws; and

(d) Grantor shall (i) upon Beneficiary's request and at Grantor's sole cost and expense, conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, under, from, or affecting the Property in accordance with all applicable environmental laws to the satisfaction of Beneficiary, and in accordance with the orders and directives of all federal, state, and local governmental authorities, and (ii) defend, indemnify, and hold harmless Beneficiary, its employees, agents, members, managers, officers, and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (1) the presence, disposal, release, or threatened release of any Hazardous Materials on, over, under, from, or affecting the Property or the soil, water, vegetation, buildings, personal property, persons, or animals thereon; (2) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (3) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (4) any violation of any environmental laws or demands of government authorities, or any policies or requirements of Beneficiary, which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs, and litigation expenses.

In the event this Deed of Trust is foreclosed or Grantor tenders a deed in lieu of foreclosure, Grantor shall deliver the Property to Beneficiary free from any and all Hazardous Materials so that the condition of the Property shall conform with all applicable environmental laws affecting the Property.

For purposes of this Section, the term "environmental laws" means any current or future federal, state or local laws, rules, regulations, ordinances, codes, orders or decrees pertaining to health or the environment or which concern the management, control, discharge, treatment, containment and/or removal of substances or materials that are or may

become a threat to public health or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. § 9601 *et seq.*); the Superfund and Reauthorization Act, as amended (42 U.S.C. § 9601 *et seq.*); the Resource Conservation Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*); the Solid Waste Disposal Act, as amended (42 U.S.C. § 6901 *et seq.*); the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*); and the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*).

For purposes of this Section, the term "Hazardous Materials" means (A) any hazardous substance, extremely hazardous substance, solid waste, hazardous waste, regulated substance, hazardous material, conventional pollutant, toxic pollutant, air pollutant or pesticide, as such terms are defined in the environmental laws, and (B) any other substance, material or matter which is now or hereafter prohibited, regulated, classified, considered hazardous or toxic or which may give rise to any liability under any environmental laws.

For purposes of this Section, the term "release" means any spilling, leaking, abandoning, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, seepage or disposing of any Hazardous Materials on, under, near, or from the Property.

The representations, warranties, indemnities and covenants of Grantor set forth in this Section shall survive the release and termination of this Deed of Trust and payment, satisfaction and performance of the Obligations and shall continue in full force and effect until terminated by written agreement of the parties. The obligations of Grantor and the rights of Beneficiary as expressly provided in this Section shall be in addition to any other rights available to Beneficiary and obligations of Grantor at common law, under statute or otherwise.

12. **Actions by Beneficiary to Preserve Property.** Should Grantor fail to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary in its sole discretion, without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Beneficiary shall have and is hereby given the right, but not the obligation, (a) to enter upon and take possession of the Property; (b) to make additions, alterations, repairs, and improvements to the Property which Beneficiary may consider necessary or proper to keep the Property in good condition and repair or to comply with applicable laws, statutes, regulations, rules and ordinances; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary; (d) to pay, purchase, contest, or compromise any encumbrance, claim, charge, lien, or debt which in its judgment may affect or appears to affect the security of its Deed of Trust or be prior or superior hereto; and (e) in exercising such powers, to pay all expenses in connection therewith, including, without limitation, employment of counsel and/or other consultants, engineers, contractors, and other professionals. Grantor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys, and attorneys' fees, together with interest thereon at the Default Rate.

13. **Transfer.** If Grantor shall lease, sell, contract to sell, pledge, mortgage, assign, encumber, hypothecate or otherwise transfer all or any part of the Property without the prior written consent of Beneficiary, all Obligations shall be immediately due and payable at the election of the Beneficiary. Beneficiary may require the transferee to assume the Obligations as a condition to its consent to the transfer and impose any other conditions permitted by law.

14. **Events of Default.** The occurrence of any one or more of the following events or existence of one or more of the following conditions shall each constitute an "Event of Default" under this Deed of Trust:

- (a) Borrower fails to make any payment of principal or interest on the Promissory Note or under this Agreement within ten (10) days after the same becomes due.
- (b) Any representation or warranty made by Borrower in this Agreement, the Promissory Note, or in connection with any borrowing or request for a disbursement of Loan proceeds, or in any certificate, financial statement, or other statement furnished by Borrower to Lender is untrue in any material respect at the time when made.

- (c) Borrower defaults in the observance or performance of any other covenant or agreement contained in this Agreement, other than a default constituting a separate and distinct Event of Default under this Paragraph 14, and such default continues unremedied for a period of fifteen (15) days after notice thereof is given to Borrower.
- (d) Borrower defaults in the observance or performance of any other covenant or agreement contained in any other Loan Document or other document or agreement made and given in connection with this Agreement, other than a default constituting a separate and distinct Event of Default under this Paragraph 14, and the continuance of the same unremedied for a period of fifteen (15) days after notice thereof is given to Borrower.
- (e) Any of the Loan Documents or other instruments executed and delivered in connection herewith for any reason ceases to be valid or in full force and effect or the validity or enforceability of which is challenged or disputed by any signer thereof, other than Lender.
- (f) Borrower defaults in the payment of principal or interest on any other obligation for borrowed money other than hereunder, or defaults in the payment of the deferred purchase price of property beyond the period of grace, if any, provided with respect thereto, or defaults in the performance or observance of any obligation or in any agreement relating thereto, if the effect of such default is to cause or permit the holder or holders of such obligation (or trustee on behalf of such holder or holders) to cause such obligation to become due prior to the fulfillment of all obligations incurred herein.
- (g) Borrower or a Guarantor files a voluntary petition in bankruptcy seeking reorganization, arrangement or readjustment of debts, or any other relief under the Bankruptcy Code as amended or under any other insolvency act or law, state or federal, now or hereafter existing.
- (h) An involuntary petition is filed against Borrower or a Guarantor in bankruptcy seeking reorganization, arrangement or readjustment of debts, or any other relief under the Bankruptcy Code as amended, or under any other insolvency act or law, state or federal, now or hereafter existing, and the continuance thereof for sixty (60) days undismissed, unbonded, or undischarged.
- (i) All or any substantial part of the property of Borrower or a Guarantor shall be condemned, seized, or otherwise appropriated, or custody or control of such property is assumed by any governmental agency or any court of competent jurisdiction, and is retained for a period of thirty (30) days.
- (j) A default shall occur in connection with any guaranty or other obligation or undertaking made by a Guarantor to Lender.
- (k) Lender otherwise in good faith deems itself to be insecure, or the value of the Collateral to have significantly declined from the date hereof, or the prospect of timely payment or performance to be impaired; provided, however, Lender shall have given Borrower written notice of the grounds thereof, and Borrower shall have failed to correct such matter or given Lender other assurance satisfactory to Lender within twenty (20) days thereof.

15. **Remedies Upon Default.** Upon the occurrence of any Event of Default, Beneficiary shall have the following rights and remedies which shall be cumulative and which must be exercised with notice, and which may be exercised separately, independently or concurrently and in any order, and without any election of remedies to be deemed made, and without affecting the right of Beneficiary to exercise any other remedy hereunder or which Beneficiary may have in law or in equity, and without regard to other remedies then, theretofore or thereafter pursued or being pursued: (a) to exercise all remedies under the Note and other Loan Documents, including, but not limited to, acceleration of the indebtedness evidenced by the Note; (b) to collect and receive any and all rents, issues, profits, income and revenues from the Property and to apply the same to the Obligations or to the repair or maintenance of the Property, or both; (c) to apply for and obtain, ex parte and without notice, the appointment of a receiver for the Property or of the rents, issues, profits, income and revenues thereof, or both, and to have such receivers appointed as a matter of right without

regard to the solvency of any person or the adequacy of any security or the existence of waste with Grantor hereby specifically waiving any right to any hearing or notice of hearing prior to the appointment of a receiver, and to have sums received by such receivers, after deducting and paying costs and expenses of such receiverships, including attorneys' fees of Beneficiary, applied to the Obligations in such manner and order as Beneficiary may request; (d) to foreclose this Deed of Trust through the Trustee or through the courts as the Beneficiary may desire and to become the purchaser of the Property at any foreclosure sale; and/or (f) with respect to any of the Property that constitutes personal Property or fixtures subject to the Code, Beneficiary shall have the remedies of a secured party under the Code. If foreclosure is made through the Trustee, such foreclosure shall be conducted in the manner provided by the laws of the State of Utah.

The proceeds of any foreclosure sale shall first be applied to reimburse Beneficiary for (a) reasonable costs and expenses of foreclosure and (b) attorneys' fees, and (c) the balance of the proceeds shall be paid first to Beneficiary to pay the Obligations, with the surplus, if any, to be paid to the owner of the Property on the date of the foreclosure sale.

16. **Miscellaneous.** (a) This Deed of Trust constitutes a fixture filing. (b) This Deed of Trust and each of its provisions shall be binding upon the heirs, personal representatives, successors and assigns of Grantor and shall inure to the benefit of the Trustee, the Beneficiary and his and its successors and assigns. (c) This Deed of Trust may be amended or modified only by an instrument in writing signed by the party charged with such amendment or waiver. (d) The terms "Grantor," "Beneficiary," "Trustee," and "Property" are defined in Sections 1 through 4, respectively, and the terms "Note", "Obligations" and "Loan Documents" are defined in Section 5. (e) If there is more than one Grantor, each Grantor shall be jointly and severally liable for the payment, observance and performance of all of Grantor's indebtedness, covenants, duties, indemnities, liabilities and other obligations under this Deed of Trust and the other Loan Documents and this Deed of Trust shall affect their jointly and severally owned properties and assets. (f) The Trustee may release parts of the Property from the lien of this Deed of Trust upon the request of Beneficiary without impairing any rights or priority Beneficiary may have in the remainder of the Property or against Grantor. Upon Grantor's complete payment and discharge of the Obligations, Grantor shall be entitled to a release of this Deed of Trust and the Assignment of Rents upon payment of all trustee processing fees and payment of all recording fees and other costs and expenses incurred by Beneficiary (including, but not limited to, its attorney's fees and costs) in reviewing and processing such payoff request. (g) Failure on the Beneficiary's part to exercise its rights in the event of any one default shall not constitute a waiver of such rights in the event of any subsequent default. (h) Any consent, notice or other communications required or contemplated by this Deed of Trust shall be in writing and shall be given and deemed received in accordance with the terms and provisions of the Note. (i) All the rights of Beneficiary under this Deed of Trust shall be cumulative. (j) Where the Grantor and an obligor on the Obligations are not the same, the term "Grantor" means the owner of the Property in any provision dealing with the Property, the obligor in any provision dealing with the Obligations, and both where the context so requires. (k) Time is of the essence of this Deed of Trust and all duties and obligations to be performed by Grantor under this Deed of Trust. (l) This Deed of Trust shall be governed by, and construed in accordance with, the laws of the State of Utah. (m) Grantor agrees to execute and deliver such additional documents and instruments and undertake such further actions as may be necessary to effectuate the transactions contemplated in this Deed of Trust, the Note and other Loan Documents. (n) Capitalized terms used herein but not defined herein shall have the meanings given them in the Note and other Loan Documents.

[signature page to follow]

Date: March 26, 2021.

ASSIGNOR:

Montdella Townhomes, LLC, a Utah limited liability company
By DSD Development, LLC, a Utah limited liability company,
its Manager

By: *David Wilkes*
Name: David Wilkes
Title: Manager

STATE OF UTAH)

COUNTY OF Salt Lake) ss.

The foregoing instrument was acknowledged before me this 26th Day of March, 2021, by David Wilkes, as Manager of DSD Development, LLC, a Utah limited liability company Manager of Montdella Townhomes, LLC, a Utah limited liability company.

Witness my hand and official seal.

[SEAL]

My commission expires: 10/18/22

Darlag Milovich
Notary Public

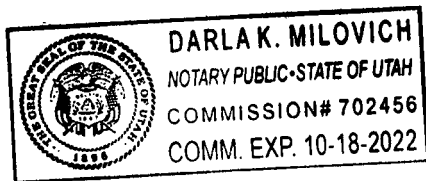


EXHIBIT A

Attached to and forming part of the Deed of Trust, Security Agreement, Assignment of Leases and Rents and Financing Statement, dated March 26, 2021, from Montdella Townhomes, LLC, a Utah limited liability company as Grantor, to the Trustee, for the use and benefit of Indicate Capital Fund 1 LLC, a Colorado limited liability company, as Beneficiary.

Description of Property:

PARCEL 1:

All of Units 1 through 25, inclusive, MONTDELLA TOWNHOMES AMENDED SUBDIVISION, Amending Montdella Subdivision, according to the official plat thereof on file and of record in the office of the Utah County Recorder, recorded July 14, 2020 as Entry No. 100155:2020.

PARCEL 1A:

A right of easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions, recorded December 17, 2019 as Entry No. 133919:2019, which include, without limitation, an easement for vehicular ingress and egress over and across said Common Areas and Private Roads to and from said Units to a physically open and legally dedicated public street.

Also Known As:

250 South Main Street
Alpine, UT 84004