

When recorded, mail to:

Brian D. Cunningham, Esq.  
SNELL & WILMER L.L.P.  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

APN: 12-004-0035 and 12-004-0036

CTIA 143368-ETF

## ASSIGNMENT OF DECLARANT'S RIGHTS

THIS ASSIGNMENT OF DECLARANT'S RIGHTS (the "**Assignment**"), dated as of July 9, 2021, is made by **RIDGEVIEW TOWN INVESTMENT, L.C.**, a Utah limited liability company ("**Assignor**"), in favor of **KEYBANK NATIONAL ASSOCIATION**, a national banking association ("**Assignee**").

### RECITALS

A. Assignee has agreed to make a construction loan (the "**Loan**") available to Assignor in the original principal amount of up to Twenty-One Million and No/100 Dollars (\$21,000,000.00) pursuant to the terms of that certain Construction Loan Agreement of approximately even date herewith (the "**Loan Agreement**"). The Loan is secured by, among other things, certain improvements (the "**Improvements**") located on the real property located in Utah County, Utah owned by Assignor and more particularly described on **Exhibit A** (the "**Property**" and together with the Improvements, the "**Project**"). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Assignor has executed and delivered that certain Promissory Note of approximately even date herewith in the amount of the Loan, payment of which is secured by (i) a Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing of approximately even date herewith from Assignor, as trustor, in favor of the trustee named therein, for the benefit of Assignee, as beneficiary, which will be recorded in the Official Records of Utah County, Utah ( the "**Deed of Trust**"), and (ii) the other Loan Documents.

C. The Project is subject to that certain Declaration of Covenants, Conditions and Restrictions for Ridgeview Townhomes recorded May 13, 2021, as Document No. 89831:2021, in the official records of Utah County, Utah (as amended and modified from time to time, the "**Declaration**").

D. The execution and delivery of this Assignment is a condition precedent to Assignee's extension of the Loan to the Assignor.

### AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, Assignor agrees as follows:

1. As further security for Borrower's obligations under the Loan Documents (the "**Obligations**"), Assignor hereby grants, transfers and assigns to Assignee, and grants to Assignee a

security interest in, all the right, title and interest of Assignor now or hereafter acquired in and to all rights of "Declarant" under the Declaration, including all rights, privileges, options and exemptions of the "Declarant" under the Declaration and the Governing Documents (as defined in the Declaration) (collectively, the "**Declarant's Rights**"). Such assignment shall include all rights of "Declarant" under the Governing Documents whether or not affecting real property subject to the Deed of Trust and whether or not any other lender shall have a lien against property affected by the Governing Documents. Notwithstanding the foregoing, unless an Event of Default (as defined in the Loan Documents) has occurred and is continuing, Assignor shall have the right to exercise all of the Declarant's Rights and all other rights and obligations of Assignor under the Governing Documents subject to the limitations set forth herein or in the other Loan Documents.

2. Assignor represents and warrants to Assignee that there have been no prior assignments of the Declarant's Rights or Assignor's rights under the Declaration, except for assignments in favor of Assignee.

3. Except as expressly provided herein, neither this Assignment nor any action or actions on the part of Assignee shall constitute an assumption by Assignee of any of the obligations of Assignor under the Declarant's Rights or the Governing Documents, as the case may be, and Assignor shall continue to be liable for all such obligations. Assignor does hereby agree to protect, defend, indemnify and hold Assignee harmless from and against any and all actual, out-of-pocket loss, cost, liability or expense (including, but not limited to, reasonable attorneys' fees and expenses) resulting from any failure of Assignor to perform and observe such obligations.

4. All rights, benefits and privileges in favor of the Assignor arising from or related to the Governing Documents shall inure to the benefit of Assignee or a receiver or third-party purchaser in the event of foreclosure of the Deed of Trust or a deed given in lieu of foreclosure of such Deed of Trust. In addition, Assignor hereby irrevocably appoints Assignee as its attorney-in-fact, and as such, Assignee shall have the right at any time (but shall have no obligation) upon the occurrence and during the continuance of an Event of Default in its name or in the name of Assignor or Assignee: (a) to do all acts and to execute, acknowledge, obtain and deliver any and all instruments, documents, items or things necessary, proper or required as a term, condition or provision of the Governing Documents in order to exercise any rights of Assignor under the Governing Documents or to receive and enforce any performance due Assignor under the Governing Documents; (b) to give any notices, instructions or other communications in connection with the Governing Documents; (c) to exercise all voting, approval and other rights of Assignor under and with respect to the Governing Documents; (d) to demand and receive all performances due under or with respect to the Governing Documents and to take all lawful ways and means for the enforcement thereof and to compromise and settle any claim or cause of action arising from or related to the Governing Documents and give acquittances and other sufficient discharges relating thereto; and (e) to file any claim or proceeding or to take any other action, either in its own name, in that of its nominee, in the name of Assignor, or otherwise, to enforce performance under or related to the Governing Documents or protect and preserve the right, title and interest of Assignee thereunder. Assignee shall incur no liability on account of any action taken by it or on its behalf in good faith pursuant to the foregoing sentence or otherwise hereunder, whether or not the same shall prove to be improper, inadequate or invalid, in whole or in part, and Assignor agrees to indemnify and hold Assignee harmless from and against any and all actual, out-of-pocket loss, cost, liability or expense (including but not limited to reasonable attorneys' fees and expenses) except for Assignee's gross negligence or willful misconduct in connection with any such action or actions. The power of attorney given herein is a power coupled with an interest and shall be irrevocable as long as any part of the Obligations remain unpaid or unperformed.

5. Assignor shall send to Assignee any written notice of default or breach of or under the Governing Documents that Assignor either sends to (such notice to Assignee to be sent simultaneously therewith) or receives (such notice to Assignee to be sent promptly upon receipt by Assignor thereof) with respect to the Governing Documents.

6. Notwithstanding anything to the contrary in the Governing Documents, no amendment to the Declaration or other Governing Documents shall be effective without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed. Assignor hereby covenants and agrees that it will not, without the prior written consent of Assignee, modify, amend or change the Declaration or the other Governing Documents or further assign or create any further encumbrance or hypothecation of Assignor's interest in the Declarant's Rights. Declarant shall not surrender or otherwise cause its rights pursuant to the Governing Documents to be terminated or impaired. Assignor shall at all times be and remain the Declarant pursuant to the Declaration.

7. Assignor agrees, on request of Assignee, to furnish to Assignee such further information, to execute and deliver to Assignee such documents and instruments (including Uniform Commercial Code financing statements) and to do such other acts and things as Assignee may at any time reasonably request relating to the perfection or protection of the security interest in, and assignment of, the Declarant's Rights created by this Agreement or for the purpose of carrying out the intent of this Agreement. Without limiting the foregoing, Assignor shall cooperate and do all acts deemed necessary or advisable by Assignee to continue in Assignee a perfected first security interest in the Declarant's Rights and shall obtain and furnish to Assignee any subordinations, releases, landlord, lessor, bailee or mortgagee waivers, control agreements, and similar documents as may be from time to time requested by, and in form and substance satisfactory to, Assignee. Assignor will warrant and defend the Declarant's Rights and Assignee against all claims by all persons in connection with the Obligations.

8. Assignor authorizes Assignee to file financing statements, continuations, and amendments thereto describing the Declarant's Rights and containing any other information required by the Uniform Commercial Code as in effect in the State of Utah, in such form and substance as Assignee, in its sole discretion, may determine.

9. Assignee shall not be required to marshal any present or future collateral security (including but not limited to the Declarant's Rights) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Assignor agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of Assignee's rights and remedies under this Agreement or under of the other Loan Documents, and, to the extent that it lawfully may, Assignor irrevocably waives the benefits of all such laws.

10. Assignor shall pay to Assignee on demand any and all documented, reasonable out-of-pocket expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Assignee in protecting, preserving or enforcing Assignee's rights and remedies under or in respect of any of the Obligations or any of the Declarant's Rights. After deducting all of the foregoing expenses, the residue of any proceeds of collection or sale or other disposition of the Declarant's Rights shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Assignee may determine. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the Uniform Commercial Code as in effect in the State of Utah, any excess shall be returned to Assignor. In the

absence of final payment and satisfaction in full of all of the Obligations, Assignor shall remain liable for any deficiency.

11. The provisions of this Agreement supplement the provisions of any real estate mortgage or deed of trust and any security agreement granted by Assignor to Assignee which secures the payment or performance of any of the Obligations. Nothing contained in any such real estate mortgage or deed of trust or security agreement shall derogate from any of the rights or remedies of Assignee hereunder. All property and rights assigned or granted to Assignee pursuant to this Agreement is also included as Collateral as described in the Loan Agreement and each other Loan Document and all rights and remedies of Assignee with respect to Collateral shall be cumulative. In addition to the rights and remedies of Assignee hereunder, Assignee shall have all of the rights and remedies pursuant to the Uniform Commercial Code as in effect in the State of Utah and such other rights and remedies as may be provided with respect to Collateral pursuant to the other Loan Documents.

12. No course of dealing on the part of Assignee, and no delay or failure by Assignee to exercise any right which Assignee may have hereunder shall be deemed a waiver thereof or otherwise prejudice any of its rights, remedies or powers hereunder unless so agreed in writing by Assignee, and the waiver by Assignee of a default by Assignor hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any other occasion.

13. Assignor acknowledges that the making of said Loan by Assignee to Assignor shall be made by Assignee in full reliance upon this Assignment. This instrument is for the sole benefit of Assignee and shall not be construed for the benefit of any other third party or parties.

14. All notices, demands, requests and other communications required under this Assignment shall be given in writing, by telex, telegram, or telecopy, or in writing delivered by hand or mail and shall be delivered in accordance with the Loan Agreement.

15. No agreement unless in writing and signed by an authorized officer of Assignee and no course of dealing between the parties hereto shall be effective to change, waive, terminate, modify, discharge, or release in whole or in part any provision of this Assignment. No waiver of any rights or powers of Assignee or consent by it shall be valid unless in writing signed by an authorized officer of Assignee and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**16. ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE OF THIS ASSIGNMENT), MUTUALLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ASSIGNOR AND ASSIGNEE MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS ASSIGNMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS ASSIGNMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY ASSIGNOR AND ASSIGNEE, AND ASSIGNOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. ASSIGNOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS ASSIGNMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT**

**LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ASSIGNOR AND ASSIGNEE ENTERING INTO THE SUBJECT LOAN TRANSACTION.**

17. If any provision of this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provision of this Assignment or of any documents related thereto.

18. This Assignment shall be binding upon Assignor and its successors and assigns, and shall inure to the benefit of Assignee and each of the Assignees and their respective successors and assigns. Assignee may assign all or any portion of its interest in the Declarant's Rights and, in such event, Assignor, at its sole expense, shall promptly execute, acknowledge and deliver such additional documents, instruments and agreements as may be required by Assignee in connection with any such assignment.

19. This Assignment shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Utah, excluding the principles thereof governing conflicts of law.

20. This Assignment may be executed in counterparts, each of which shall be deemed an original and all of such counterparts shall together constitute one and the same instrument.

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EXECUTED as of the date first set forth above.

**ASSIGNOR:**

**RIDGEVIEW TOWN INVESTMENT, L.C.**

a Utah limited liability company

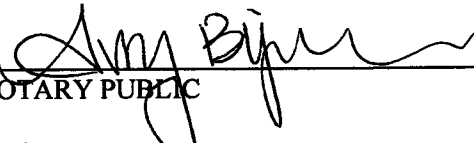
By: **THE BOYER COMPANY, L.C.**  
a Utah limited liability company  
its manager

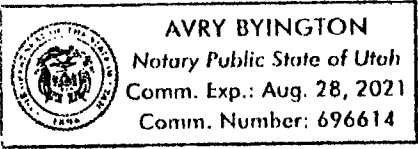


By: \_\_\_\_\_  
Name: BRIAN GOCHNOUR  
Title: Manager

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

On this 10 day of June, in the year 2021, before me Avery Byington a notary public, personally appeared Brian Gochnour, a Manager of THE BOYER COMPANY, L.C., a Utah limited liability company, the Manager of RIDGEVIEW TOWN INVESTMENT, L.C., a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC  
(seal)



**EXHIBIT A**

**PROPERTY DESCRIPTION**

That certain real property owned by Assignor and situated in the Utah County, Utah and described as follows:

**PARCEL 1:**

All of Units 101 through 196, inclusive, contained within RIDGEVIEW PLAT E, a Planned Unit Development, according to the official plat thereof recorded April 26, 2021 as Entry No. 78325:2021 in the office of the Utah County Recorder.

**PARCEL 1A:**

An easement for the nonexclusive use and enjoyment of the common areas, as set forth and defined in that certain Declaration of Covenants, Conditions, and Restrictions for Ridgeview Townhomes, recorded May 13, 2021 as Entry No. 89831:2021 in the office of the Utah County Recorder.