

**DEED OF TRUST**

[property description/address]

**BASIC INFORMATION**

**DATE:** [Date]

**GRANTOR:** Hawthorne Land, LLC, a Texas limited liability company

**GRANTOR'S MAILING ADDRESS:**

Hawthorne Land, LLC, a Texas limited liability company  
P.O. Box 667243  
Houston, Texas 77266

**TRUSTEE:** [Name]

**TRUSTEE'S MAILING ADDRESS:**

[Address]  
[Address 2]

**LENDER:** Hawthorne Income Fund, LLC, a Texas limited liability company

**LENDER'S MAILING ADDRESS:**

Hawthorne Income Fund, LLC, a Texas limited liability company  
P.O. Box 667243  
Houston, Texas 77266

**OBLIGATION**

**NOTE:**

**DATE:** [Loan date]

**ORIGINAL PRINCIPAL AMOUNT:**

[amount written (\$)]

**BORROWER:** Hawthorne Land, LLC, a Texas limited liability company

**LENDER:** Hawthorne Income Fund, LLC, a Texas limited liability company

**MATURITY DATE:** [Date]

**TERMS OF PAYMENT:**

As provided in the note.

**OTHER DEBT:**

This deed of trust also secures payment of any debt that Grantor may subsequently owe to Lender; when it accrues, any such future debt will bear interest at the rates provided in the Note, will be payable to Lender at the same place provided in the Note, and in all respects will be deemed a part of the debt secured by this deed of trust.

Furthermore, this deed of trust also secures payment of any debt that Grantor currently or subsequently owes to Lender under any other promissory notes or other debt instruments that are secured by properties under than the property described below.

Property (including any improvements):

See attached Exhibit A.

Commonly known as: [address]

Together with the following personal property:

All fixtures, supplies, building materials, and other goods of every nature now or hereafter located, used, or intended to be located or used on the Property;  
All plans and specifications for development of or construction of improvements on the Property;  
All contracts and subcontracts relating to the construction of improvements on the Property;  
All accounts, contract rights, instruments, documents, general intangibles, and chattel paper arising from or by virtue of any transactions relating to the Property;  
All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property;  
All proceeds payable or to be payable under each policy of insurance relating to the Property;  
and  
All products and proceeds of the foregoing.

In addition to creating a deed-of-trust lien on all the real and other property described above, Grantor also grants to Lender a security interest in all of the above-described personal property pursuant to and to the extent permitted by the Texas Uniform Commercial Code.

**PRIOR LIEN:**

None.

**OTHER EXCEPTIONS TO CONVEYANCE AND WARRANTY:**

None.

**CLAUSES AND COVENANTS**

**A. GRANTING CLAUSE**

For value received and to secure payment of the Obligation, Grantor conveys the

Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Obligation and all other amounts secured by this deed of trust, this deed of trust will have no further effect, and Lender will release it at Grantor's expense.

## **B. GRANTOR'S OBLIGATIONS**

*B.1.* Grantor agrees to maintain all property and liability insurance coverages with respect to the Property, revenues generated by the Property, and operations on the Property that Lender reasonably requires ("Required Insurance Coverages"), issued by insurers and written on policy forms acceptable to Lender, and as to property loss, that are payable to Lender under policies containing standard mortgage clauses, and deliver evidence of the Required Insurance Coverages in a form acceptable to Lender before execution of this deed of trust and again at least ten days before the expiration of the Required Insurance Coverages.

*B.2* Grantor agrees to-

- a. keep the Property in good repair and condition;
  - b. pay all taxes and assessments on the Property before delinquency, not authorize a taxing entity to transfer its tax lien on the Property to anyone other than Lender, and not request a deferral of the collection of taxes pursuant to section 33.06 of the Texas Tax Code;
  - c. defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established in this deed of trust;
  - d. obey all laws, ordinances, and restrictive covenants applicable to the Property;
  - e. keep any buildings occupied as required by the Required Insurance Coverages;
- and
- g. notify Lender of any change of address.

## **C. LENDER'S RIGHTS**

*C.1.* Lender or Lender's mortgage servicer may appoint in writing one or more substitute trustees, succeeding to all rights and responsibilities of Trustee, without cost or charge by the Trustee as of the date hereof.

*C.2.* If the proceeds of the Obligation are used to pay any debt secured by prior liens, Lender is subrogated to all the rights and liens of the holders of any debt so paid.

*C.3.* Lender may apply any proceeds received under the property insurance policies covering the Property either to reduce the Obligation or to repair or replace damaged or destroyed improvements covered by the policy.

*C.4.* Notwithstanding the terms of the Note to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor with respect to the Obligation or this deed of trust may, at

Lender's discretion, be applied first to amounts payable under this deed of trust and then to amounts due and payable to Lender with respect to the Obligation, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.

C.5. If Grantor fails to perform any of Grantor's obligations, Lender may perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The amount to be reimbursed will be secured by this deed of trust.

**C.6. COLLATERAL PROTECTION INSURANCE NOTICE**

**In accordance with the provisions of Section 307.052(a) of the Texas Finance Code, the Beneficiary hereby notifies the Grantor as follows:**

**(A) the Grantor is required to:**

- (i) keep the collateral insured against damage in the amount the Lender specifies;**
- (ii) purchase the insurance from an insurer that is authorized to do business in the state of Texas or an eligible surplus lines insurer; and**
- (iii) name the Lender as the persons to be paid under the policy in the event of a loss;**

**(B) the Grantor must, if required by the Lender, deliver to the Lender a copy of the policy and proof of the payment of premiums; and**

**(C) if the Grantor fails to meet any requirement listed in Paragraph (A) or (B), the Lender may obtain collateral protection insurance on behalf of the Grantor at the Grantor's expense.**

C.7. If a default exists in payment of the Obligation or performance of Grantor obligations and the default continues after any required notice of the default and the time allowed to cure, Lender may:

- a. declare the unpaid principal balance and earned interest on the Obligation immediately due;
- b. exercise Lender's rights with respect to rent under the Texas Property Code as then in effect;
- c. direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and
- d. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.

C.8. Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

**D. TRUSTEE'S RIGHTS AND DUTIES**

If directed by Lender to foreclose this lien, Trustee will-

*D.1.* either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;

*D.2.* sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;

*D.3.* from the proceeds of the sale, pay, in this order-

- a. expenses of foreclosure;
- b. to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
- c. any amounts required by law to be paid before payment to Grantor; and
- d. to Grantor, any balance; and

*D.4.* be indemnified, held harmless, and defended by Lender against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this deed of trust, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity.

**E. GENERAL PROVISIONS**

*E.1.* If any of the Property is sold under this deed of trust, Grantor must immediately surrender possession to the purchaser. If Grantor does not, Grantor will be a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

*E.2.* Recitals in any trustee's deed conveying the Property will be presumed to be true.

*E.3.* Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

*E.4.* This lien will remain superior to liens later created even if the time of payment of all or part of the Obligation is extended or part of the Property is released.

*E.5.* If any portion of the Obligation cannot be lawfully secured by this deed of trust, payments will be applied first to discharge that portion.

*E.6.* Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Obligation. Lender will not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.

*E.7.* Grantor collaterally assigns to Lender all present and future rent, income and receipts from the Property and its proceeds. Grantor warrants the validity and enforceability of the assignment. Grantor will apply all rent, income and receipts to payment of the Obligation and performance of this deed of trust, but if the rent, income and receipts exceeds the amount due with respect to the Obligation and the deed of trust, Grantor may retain the excess. If a default exists in payment of the Obligation or performance of this deed of trust, Lender may exercise Lender's rights with respect to rent under the Texas Property Code as then in effect. Lender neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the Property. Lender may exercise Lender's rights and remedies under this paragraph without taking possession of the Property. Lender will apply all rent collected under this paragraph as required by the Texas Property Code as then in effect. Lender is not required to act under this paragraph, and acting under this paragraph does not waive any of Lender's other rights or remedies.

*E.8.* Interest on the debt secured by this deed of trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.

*E.9.* In no event may this deed of trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

*E.10.* When the context requires, singular nouns and pronouns include the plural.

*E.11.* The term *Note* includes all extensions, modifications, and renewals of the Note and all amounts secured by this deed of trust.

*E.12.* Grantor agrees to furnish on Lender's request evidence satisfactory to such Lender that all taxes and assessments on the Property have been paid when due.

*E.13.* If the Property is transferred by foreclosure, the transferee will acquire title to all insurance policies on the Property, including all paid but unearned premiums.

*E.14.* GRANTOR MAY FURNISH ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY GRANTOR OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

*E.15.* If Grantor transfers any part of the Property without Lender's prior written consent, Lender may declare the debt secured by this deed of trust immediately payable and invoke any remedies provided in this deed of trust for default. If the Property is residential real property containing fewer than five dwelling units or a residential manufactured home occupied by Grantor, exceptions to this provision are limited to (a) a subordinate lien or encumbrance that does not transfer rights of occupancy of the Property; (b) creation of a purchase-money security interest for household appliances; (c) transfer by devise, descent, or operation of law on the death of a co-Grantor; (d) grant of a leasehold interest of three years or less without an option to purchase; (e) transfer to a spouse or children of Grantor or between co-Grantors; (f) transfer to a relative of Grantor on Grantor's death; and (g) transfer to an inter vivos trust in which Grantor is and remains a beneficiary and occupant of the Property. **NOTWITHSTANDING ANYTHING IN THIS PARAGRAPH TO THE CONTRARY, LENDER ACKNOWLEDGES THAT GRANTOR**

**MAY SELL AND TRANSFER THE PROPERTY PURSUANT TO A WRAPAROUND TRANSACTION (I.E. WHEREBY GRANTOR SELLS THE PROPERTY TO A PURCHASER WITH SELLER FINANCING WHEREBY GRANTOR IS THE LENDER THEREUNDER). LENDER HEREBY AGREES TO SUCH SALE OR TRANSFER OF THE PROPERTY UNDER A WRAPAROUND TRANSACTION, WHICH SALE SHALL NOT BE CONSTRUED AS A SALE, TRANSFER OR CONVEYANCE OF THE PROPERTY IN VIOLATION OF THIS PROVISION. THE PERMITTED WRAPAROUND TRANSACTION IS SUBJECT TO THE FOLLOWING REQUIREMENTS:**

- (a) Grantor and the applicable guarantors remain liable for all amounts due and for the performance of all obligations under the Note, this deed of trust and all related loan documents; and
- (b) Any such wraparound transaction shall not release any of the obligations of the Grantor or the applicable guarantors or waive or release any rights or liens of the Lender.

*E.16.* This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

*E.17.* If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.

*E.18.* Grantor and each surety, endorser, and guarantor of the Obligation waive, to the extent permitted by law, all (a) demand for payment, (b) presentation for payment, (c) notice of intention to accelerate maturity, (d) notice of acceleration of maturity, (e) protest, (f) notice of protest and (g) rights under sections 51.003, 51.004, and 51.005 of the Texas Property Code.

Alternatively, in the event the waiver provided for in clause (g) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of facts determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings, governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Property shall be valued in an “as is” condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve 12 months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, brokerage commissions, title insurance, a survey of the d Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational, and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

*E.19.* Grantor will have full recourse liability for repayment of the principal and interest of the Note and the performance of all covenants and agreements of Grantor in this Deed of Trust.

*E.20.* Grantor agrees to pay attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this deed of trust if an attorney is retained for its enforcement.

*E.21.* If any provision of this deed of trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

*E.22.* The term Lender includes any mortgage servicer for Lender.

*E.23.* Grantor hereby grants Lender a right of first refusal with respect to Grantor's power to authorize any third party (other than Lender pursuant to its rights as set forth in this instrument) to pay ad valorem taxes on the Property and authorize a taxing entity to transfer its tax lien on the Property to that third party. Grantor's authorization to any third party (other than Lender) to pay the ad valorem taxes and receive transfer of a taxing entity's lien for ad valorem taxes shall be null and void and of no force and effect unless Lender, within ten days after receiving written notice from Grantor, fails to pay the ad valorem taxes pursuant to Lender's rights as set forth in this instrument.

*E.24.* Grantor represents that this deed of trust and the Note are given for the following purposes:

The debt evidenced by the Note is in part payment of the purchase price of the Property; the debt is secured by this deed of trust and by a vendor's lien on the Property, which is expressly retained in a deed to Grantor of even date. The vendor's lien is transferred to Lender by the deed. This deed of trust does not waive the vendor's lien, and the two liens and the rights created by this deed of trust are cumulative. Lender may elect to foreclose either of the liens without waiving the other or may foreclose both.

Hawthorne Land LLC, a Texas limited liability company

By: \_\_\_\_\_  
Douglas Lee Smith, Manager



**Acknowledgment**

STATE OF TEXAS )

COUNTY OF )

\_\_\_\_\_ )

Before me, \_\_\_\_\_, on this day personally appeared Douglas Lee Smith, proved to me through Texas Driver's License to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that Douglas Lee Smith executed the same as the act of Hawthorne Land LLC, as its Manager, for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires: \_\_\_\_\_

After recording return to:

**Hawthorne Income Fund, LLC**  
**PO Box 667243**  
**Houston, TX 77266**