

RECORDATION REQUESTED BY:

Umpqua Bank
c/o Loan Support Services
P.O. Box 1580
Roseburg, OR 97470

WHEN RECORDED MAIL TO:

UMPQUA BANK
c/o CRED/Attn: Linda Gudjonson
1111 Third Avenue, Suite 2900
Seattle, WA 98101

#62330-MB

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING IS DATED July 2, 2021, among MWIC Turner Road UT, LLC, a Utah limited liability company, MWIC Parkway UT, LLC, a Utah limited liability company, and MWIC Kelton, LLC, a Utah limited liability company (individually and collectively, "Borrower"), whose address is 201 Ferry Street SE, Suite 400, Salem, OR 97301 (referred to below individually and collectively, as "Grantor"); Umpqua Bank, whose address is c/o Loan Support Services, P.O. Box 1580, Roseburg, OR 97470 (referred to below as "Lender" or "Beneficiary"); and Vanguard Title Insurance Agency, whose address is 321 E. State Road #200, American Fork, UT 84003 (referred to below as "Trustee").

THIS DEED OF TRUST IS INTENDED ALSO AS A FIXTURE FILING AND IS TO BE INDEXED NOT ONLY AS A DEED OF TRUST BUT ALSO AS A FIXTURE FILING. THIS DEED OF TRUST IS A CONSTRUCTION MORTGAGE PURSUANT TO THE UNIFORM COMMERCIAL CODE, WHICH SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND. THE LEGAL DESCRIPTION OF THE REAL PROPERTY COVERED IS SET FORTH ON EXHIBIT A. GRANTOR IS THE DEBTOR UNDER THIS FINANCING STATEMENT AND IS THE RECORD OWNER OF THE REAL PROPERTY. GRANTOR'S ADDRESS IS SET FORTH IN THE PRECEDEING PARAGRAPH. GRANTOR SHALL NOT CHANGE ITS LEGAL NAME WITHOUT GIVING LENDER AT LEAST 30 DAYS ADVANCE WRITTEN NOTICE.

1. **CONVEYANCE AND GRANT.** For valuable consideration, Grantor grants, bargains, sells, conveys, assigns and transfers to Trustee in trust with power of sale, right of entry and possession and for the benefit of Lender as Beneficiary all of Grantor's present and future right, title, and interest in and to (a) the real property located in Utah County, Utah, and described on attached Exhibit A which is hereby incorporated herein, together with all existing or subsequently erected or affixed buildings, improvements

and fixtures; all appliances, furniture and furnishings affixed to the real property; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, and all requisite approvals, licenses, permits, variances, cooperative agreements, tax credits (if applicable), tax abatement benefits (if applicable), and land-use entitlements (the "Real Property"); (b) all Personal Property, Improvements, Leases and Rents; and (c) any and all leasehold rights in the Real Property, Leases and Rents, Personal Property and Improvements..

Grantor hereby assigns as security to Lender, all of Grantor's right, title, and interest in and to all present and future Leases, Rents, and profits of the Property. Grantor further grants to Lender a security interest in all Rents and Personal Property.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF LEASES AND RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THE LOAN DOCUMENTS, AND THIS DEED OF TRUST.

2. **DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust and defined therein shall have the meanings attributed to such terms in the Uniform Commercial Code as now or hereafter in effect. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

"Deed of Trust" means this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, and includes without limitation all assignment and security interest provisions relating to the Personal Property, Leases, and Rents.

"Guarantor" means and includes without limitation, any and all guarantors, sureties, and accommodation parties in connection with the Indebtedness, including without limitation Lawrence E. Tokarski, an individual, Lawrence E. Tokarski, Trustee of the Lawrence E. Tokarski Revocable Living Trust, dated June 11, 1996, as restated, and Tokarski Family, LLC, an Oregon limited liability company.

"Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions and other construction on the Real Property.

"Indebtedness" means all principal, interest and other amounts payable by Grantor under the Note and Loan Documents and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Trustee or Lender to enforce obligations of Grantor under this Deed of Trust, together with interest on such amounts as provided in the Note and the other Loan Documents.

"Leases" means all present and future leases, subleases, rental agreements, and other agreements for the use and occupancy of all or any part of the Real Property, whether written or oral, and any amendments, extensions, renewals, and replacements thereof.

“Loan Agreement” means the Construction Loan Agreement between Grantor, Lender, and Guarantors dated as of the same date as this Deed of Trust, together with any amendments, addenda, extensions, supplements, renewals, replacements or restatements thereof or therefor.

“Loan Documents” means and includes without limitation this Deed of Trust, the Loan Agreement, the Note, and all promissory notes, credit agreements, loan agreements, guaranties, security agreements, subordination agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed by any person or entity (“Person”) in connection with the indebtedness secured by this Deed of Trust.

“Loan Party” or **“Loan Parties”** means Grantor, each Guarantor, and each Person providing any collateral security for the Indebtedness and each Person signing any Loan Document.

“Note” means the Promissory Note dated the same date as this Deed of Trust, in the principal amount of Thirty Six Million Three Hundred Seventy Thousand and 00/100 Dollars (\$36,370,000.00) payable by Grantor to Lender, together with all renewals, extensions, modifications, amendments, supplements, replacements, and restatements thereof or therefor. The interest rate on the Note may change in accordance with the formula set forth in the Note, which terms are hereby incorporated herein. The Note evidences a non-revolving line of credit for the construction of improvements on the Real Property.

“Note Rate” means the rate of interest from time to time payable under the Note.

“Personal Property” means Grantor's interest in all of the following, whether now owned or hereafter acquired or arising (a) all equipment, fixtures, inventory, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter located on or used in connection with all or any part of the Real Property, any construction thereon or any business operated thereon, together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; (b) all inventory, equipment, materials, supplies and other goods, wherever located, whether in the possession of Grantor, a warehouseman, bailee or any other Person, purchased for use in the construction or furnishing of any improvements on the Real Property; (c) all accounts, general intangibles, chattel paper and instruments arising from or relating to the Property or any business operated by Grantor thereon; (d) all construction, service, engineering, consulting, leasing, architectural and other similar contracts of any nature (including, without limitation, those of any general contractors and subcontractors), as such may be modified, amended or supplemented from time to time, concerning the design, construction, management, operation, occupancy, use, and/or disposition of any portion of or all of the Property; (e) all architectural drawings, plans, specification, soil tests, feasibility studies, appraisals, engineering reports and similar materials relating to any portion of or all of the Property; (f) all payment and performance bonds or guarantees and any and all modifications and extensions thereof relating to the Property; (g) all deposits and deposit accounts relating to the Indebtedness or the Property, including without limitation security deposits, deposits relating to utility services and deposits, deposit accounts and reserves established with Lender for taxes, insurance or otherwise; (h) to the extent it is deemed to be personal property, the Real Property; (i) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Real Property as a result of the exercise of the right of eminent domain or any other injury to or decrease in the value of the Real Property; and (j) all proceeds (including without limitation all condemnation awards and settlements, insurance proceeds and refunds of premiums) of any of the foregoing and any other Property.

“Property” means collectively the Real Property, the Improvements and the Personal Property and except where the context otherwise requires, the Leases and Rents.

“Rents” means all present and future rents, revenues, fees, charges, income, issues, royalties, profits and other income, benefits, or payments of any nature arising from or out of the Leases or from or out of all or any part of the Property.

3. **PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Grantor shall strictly perform all of Grantor's obligations under the Note, this Deed of Trust, and the Loan Documents.

4. **POSSESSION AND MAINTENANCE OF THE PROPERTY.**

4.1 **Possession and Use.** Until the occurrence of an Event of Default, Grantor may (a) remain in possession and control of the Property (b) use, operate or manage the Property, and (c) collect any Rents from the Property.

4.2 **Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

4.3 **Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Specifically without limitation, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, scoria, soil, gravel or rock products without the prior written consent of Lender.

4.4 **Removal of Improvements.** Except for any buildings or improvements that will be altered, demolished and/or removed as necessary in connection with construction of the Project (as that term is defined in the Loan Agreement), Grantor shall not alter, demolish, or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the alteration, demolition, or removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

4.5 **Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

4.6 **Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

4.7 **Duty to Protect.** Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

4.8 **Access Laws.** (a) Grantor agrees that Grantor and the Property shall at all times strictly comply with the requirements of the federal Americans with Disabilities Act of 1990 (“ADA”); the federal Fair Housing Amendments Act of 1988; any other federal, state or local laws or ordinances relating to accessibility to facilities or properties for disabled, handicapped and/or physically challenged persons, or other persons covered by the ADA; or any statute, rule, regulation, ordinance, order of governmental bodies and regulatory agencies, or order or decree of any court adopted or enacted with respect thereto, as now existing or hereafter amended or adopted (collectively, the “Access Laws”). At reasonable times, Lender may require a certificate of compliance with the Access Laws in a form reasonably acceptable to Lender. Lender may also require a certificate of compliance with the Access Laws from an architect, engineer, or other third party acceptable to Lender. (b) Notwithstanding any provisions set forth herein or in any other document, Grantor shall not alter or permit any tenant or other Person to alter the Property in any manner which would materially increase Grantor’s responsibilities for compliance with the Access Laws without the prior written approval of Lender. In connection with such approval, Lender may require a certificate of compliance with the Access Laws from an architect, engineer, or other Person acceptable to Lender. (c) Grantor agrees to give prompt written notice to Lender of the receipt by Grantor of any claims of violation of any of the Access Laws and of the commencement of any proceedings or investigations which relate to compliance with any of the Access Laws. (d) Grantor shall indemnify, defend, and hold harmless Lender from and against any and all claims, demands, damages, costs, expenses, losses, liabilities, penalties, fines, and other proceedings including without limitation reasonable attorney fees and expenses arising directly or indirectly from or out of or in any way connected with any failure of the Property to comply with any of the Access Laws during the time that Grantor owns the Property only and shall not apply otherwise. The obligations and liabilities of Grantor under this section shall survive any termination, satisfaction, assignment, judicial or nonjudicial foreclosure proceeding, or delivery of a deed in lieu of foreclosure.

4.9 **Reappraisals.** Lender shall have the right to obtain at Grantor’s cost and expense reappraisals of the Property from any licensed or certified appraiser designated by Lender, from time to time (a) whenever such reappraisal may be required by any law, rule, or regulation applicable to the conduct of Lender’s business, or may be requested or directed by any governmental authority charged with the administration of such law, rule, or regulation or Lender’s compliance therewith, (b) whenever deemed necessary by Lender to determine whether the then-current loan-to-value ratio applicable to the loan or loans secured by the Property exceeds the loan-to-value ratio required or approved by Lender with respect to such loan or loans, (c) whenever required to comply with Lender’s policies concerning appraisals, or (d) whenever reasonably deemed appropriate by Lender following the occurrence or during the continuation of an Event of Default.

5. HAZARDOUS SUBSTANCES.

5.1 **Representations and Warranties.** Except as disclosed to and acknowledged by Lender in writing, Grantor continuously represents and warrants that: (a) during the period of its ownership or operation of the Real Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any Person on, under, about or from the Property, except such use and storage as is necessary and customary in the operation of the apartments on the Real Property and has been conducted in accordance with all applicable federal, state and local, laws, regulations and ordinances; (b) it has no knowledge of, or reason to believe that there has been (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (ii) any actual or threatened litigation or claims of any kind by any Person relating to such matters. The representations and warranties contained herein are based on the Grantor’s knowledge and

investigation with regard to the Hazardous Substances, including any Phase I or other environmental report(s) obtained by and for the benefit of Grantor, as applicable.

5.2 **Activities.** Except as agreed to by Lender in writing, Grantor agrees that it will not, and will not permit any tenant, contractor, agent or other authorized user of the Property to use, generate, manufacture, store, treat, dispose of, or release any Hazardous Substance on, under, about or from the Property.

5.3 **Inspections.** Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with the provisions relating to Hazardous Substances. Any inspections or tests made by Lender shall be at the expense of Grantor and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or any other Person or entity.

5.4 **Notice.** Grantor agrees to immediately notify Lender if Grantor becomes aware of (a) any Hazardous Substances or other environmental problem or liability with respect to the Property, or any adjacent property, or (b) any lien, action or notice of any governmental authority related to Hazardous Substances. At its own cost, Grantor will take all actions which are necessary or desirable to clean up any Hazardous Substances affecting the Property, including removal, containment, or any other remedial action required by applicable governmental authorities.

5.5 **Unsecured Indemnity.** Notwithstanding anything to the contrary set forth herein or in any other Loan Document, this Deed of Trust shall not secure the obligations of Grantor or any other party thereto under the Certificate and Indemnity Regarding Hazardous Substances of even date herewith executed by Grantor and certain other Persons in favor of Lender (together with any amendments, supplements or replacements and any similar agreements, the "Indemnity Agreement") or the substantial equivalent of the obligations arising under the Indemnity Agreement. All of such obligations (and the substantial equivalents thereof) shall constitute the separate, unsecured full recourse obligations of Grantor and any other parties except Bank signing the Indemnity Agreement and shall not be deemed to be evidenced by the Note or secured by this Deed of Trust. None of the obligations of Grantor hereunder shall be deemed to be the substantial equivalent of obligations of Grantor, or any other party thereto under the Indemnity Agreement.

5.6 **Definitions.** As used herein:

"**Environmental Laws**" means all federal, state, regional, county and local statutes, regulations, ordinances, rules, regulations and policies, all court and administrative orders and decrees and arbitration awards, and the common law, which pertain to environmental matters or contamination of any type whatsoever, including but not limited to those relating to the presence, manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Substances; air, water (including surface water, groundwater, and stormwater) or soil (including subsoil) contamination or pollution; the presence or release of Hazardous Substances, protection of wildlife, endangered species, wetlands or natural resources; health and safety of employees and other persons; and notification requirements relating to the foregoing, including, without limitation, the following statutes, and regulations adopted thereunder: the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq. ("RCRA"); the Federal Water Pollution Control Act, as amended by the Clean Water Act of

1977, 33 U.S.C. § 1251 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (“TSCA”); the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; and the Occupational Safety and Health Act, 19 U.S.C. § 6251 et seq., as each of the foregoing may be amended from time to time.

“**Hazardous Substances**” means (a) any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant, or material now or hereafter regulated by any Environmental Law or defined or designated as a hazardous, infectious, toxic or radioactive material, waste or substance, or as a pollutant or contaminant (or designated by any other similar term), by any Environmental Law now or hereafter in effect; (b) asbestos and any substance or compound containing asbestos; (c) petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (d) urea formaldehyde foam insulation; (e) polychlorinated biphenyls (PCBs); (f) radon; (g) mold; and (h) any other chemical, material, or substance, exposure to which (because of its quantity, concentration, or physical or chemical characteristics) is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

6. **DUE ON SALE - CONSENT BY LENDER.** Grantor shall not sell or transfer all or any part of the Real Property, or any interest in the Real Property. Lender may, at its option, (a) declare immediately due and payable all sums secured by this Deed of Trust or (b) impose such conditions as Lender deems appropriate, upon the sale or transfer, without the Lender’s prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A “sale or transfer” or to “sell or transfer” means the conveyance of the Real Property or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest, except that it shall not include any lease or rental of the Property, or any easement or license necessary for access to and from the Property or otherwise required by any governmental agency in order to construct the Improvements pursuant to the Plans and Specifications. If any Grantor is a corporation, partnership, limited liability company or other entity, transfer also includes any change in ownership of more than twenty-five (25%) of the voting stock, partnership interests, membership interests or other ownership interests, as the case may be, of Grantor. Notwithstanding the foregoing, there shall be no transfer if after the change in ownership, Lawrence Tokarski, Jason Tokarski or a replacement owner continues to directly or indirectly have a controlling interest in Grantor; provided however, that Jason Tokarski and any replacement owner shall provide satisfactory financial statements to meet all applicable creditworthiness standards of Lender and be acceptable to Lender in its reasonable discretion. However, this option shall not be exercised by Lender if such exercise is prohibited by law.

7. **TAXES AND LIENS.**

7.1 **Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens and

encumbrances except Permitted Encumbrances (as defined below), the lien of taxes and assessments not due, and except as otherwise provided in this Deed of Trust.

7.2 Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within thirty (30) days after the lien arises or, if a lien is filed, within thirty (30) days after Grantor has notice of the filing, secure the discharge of the lien, or provide Lender with a surety bond issued by a surety acceptable to Lender to release the claim of lien under applicable law, deposit with Lender 150% of the amount of the claim or lien plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien, or otherwise take any action under applicable law sufficient to remove the lien from title to the Property. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

7.3 Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

7.4 Notice of Construction. Except for the construction of the improvements being financed with the proceeds of the Note, Grantor shall notify Lender at least thirty (30) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$25,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

8. INSURANCE.

8.1 Maintenance of Insurance. Grantor shall obtain and maintain such policies of insurance as follows: (a) property insurance with respect to all Improvements, Personal Property and any other insurable Property, covering loss by fire, theft and such other hazards as are now or hereafter covered by Special Form (also known as "all-risk") coverage, including earth movement (if required by Lender), in an amount equal to 100% of the full replacement cost value and sufficient to avoid application of any coinsurance clause, and with an acceptable mortgagee and/or lender loss payable clause in favor of Lender, which insurance shall, during the course of any construction be in a "builder's risk" completed value (non reporting) form; (b) commercial general liability insurance on an occurrence basis, with limits of not less than \$1,000,000.00 per occurrence combined single limit and \$2,000,000.00 in the aggregate until all obligations under the Loan shall have been satisfied including payment in full of the Loan, which names Lender as an additional insured; (c) if the Real Property at any time becomes located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, flood insurance in such amounts as Lender requires; and (d) all insurance required by law, such insurance as is customarily maintained by Persons similarly situated or engaged in the same or similar business, including but not limited to hazard, business interruption, loss of rents coverage for materials stored off-site and in transit and boiler insurance, as Lender may reasonably require.

8.2 Form of Policies. All policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and shall be issued by a company or companies reasonably acceptable to Lender. All policies shall include a provision that such policies will not be cancelled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least ten (10) days prior written notice to Lender. Each policy also shall include an endorsement providing that

coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other Person and shall include the agreement of the insurer waiving all rights of setoff, counterclaim, and/or deduction against Grantor.

8.3 Delivery of Policies. Grantor shall furnish to Lender an original duplicate policy or, at Lender's option, a certificate of insurance in a form acceptable to Lender. At least ten (10) days prior to the expiration date of each policy, Grantor shall furnish Lender a renewal policy, together with evidence that the renewal premium has been paid.

8.4 Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$25,000.00. Lender may make proof of loss if Grantor fails to do so within thirty (30) days of the casualty. In the event of any loss under any of said policies of insurance covering the Property, and said loss or damage is \$35,000 or less, all sums paid under said insurance policy shall be directly to Grantor and the Grantor will promptly restore the Property. In the event of any loss under any of said policies of insurance covering the Property and said loss or damage exceeds \$35,000, the proceeds received from any policy of insurance shall be paid directly to Lender and applied against the outstanding balance of principal, interest and other charges owing under the Note, the other Loan Documents and this Deed of Trust, provided, however, if (i) Grantor desires to restore the Property to its prior good condition, (ii) Grantor is not in Default hereunder, (iii) said amount owing will not be more than 75 percent of the value of the Property as restored (as may be determined by an independent appraisal satisfactory to Lender completed at Grantor's expense), and (iv) any funds in excess of insurance proceeds necessary to complete the restoration work in accordance with plans and specifications and budgets as approved by Lender shall have been deposited by Grantor with Lender prior to repairs and restoration being commenced by Grantor, then the insurance proceeds shall be held by Lender for restoration of the Property. Lender shall disburse so much of the proceeds to Grantor as restoration progresses, in accordance with its usual practices for construction loans. Should the insurance proceeds which are actually held by Lender be less than the sum required to complete said restoration, Grantor shall deposit the difference with Lender prior to starting repairs and restoration. Upon payment of such sum to Lender, the same shall be held by Lender in a Lender-controlled interest-bearing account until disbursement. Should said proceeds, including the interest payable thereon, exceed the cost of completing said restoration, any balance remaining shall be paid to Grantor. Grantor shall pay to Lender any reasonable expenses incurred by Lender in making such disbursements and reasonable building inspections.

8.5 Unexpired Insurance at Sale. Any unexpired insurance as of the date of the sale of the Property shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

8.6 Grantor's Report on Insurance. Upon request of Lender, Grantor shall furnish to Lender policies of insurance and a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy.

8.7 Insurance Disclosure.

WARNING

Unless Grantor provides Lender with evidence of the insurance coverage as required herein, Lender may purchase insurance at Grantor's expense to protect Lender's interest. This insurance may, but need not, also protect Grantor's interest. If the Property becomes damaged, the coverage Lender purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.

Grantor is responsible for the cost of any insurance purchased by Lender. The cost of this insurance may be added to the Note balance. If the cost is added to the Note balance, the interest rate on the Note will apply to this added amount. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.

The coverage Lender purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

9. **TAX AND INSURANCE RESERVES.** Subject to any limitations imposed by applicable law if any Event of Default has occurred or if Grantor fails to pay any taxes, assessments or insurance when due, Lender may require Grantor to maintain with Lender reserves for payment of annual taxes, assessments, and insurance premiums, which reserves shall be created by advance payment or monthly payments of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before due, amounts at least equal to the taxes, assessments, and insurance premiums to be paid. If fifteen (15) days before payment is due the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit from Grantor, which Lender may satisfy by payment of the taxes, assessments, and insurance premiums required to be paid by Grantor as they become due. Lender shall have the right to draw upon the reserve funds to pay such items, and Lender shall not be required to determine the validity or accuracy of any item before paying it. Nothing in the Deed of Trust shall be construed as requiring Lender to advance other monies for such purposes, and Lender shall not incur any liability for anything it may do or omit to do with respect to the reserve account. Subject to any limitations set by applicable law, if the reserve funds disclose a shortage or deficiency, Grantor shall pay such shortage or deficiency as required by Lender. All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Lender is hereby authorized to withdraw and apply such amounts on the Indebtedness upon the occurrence of an Event of Default. Lender shall not be required to pay any interest or earnings on the reserve funds unless required by law or agreed to by Lender in writing. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

10. **EXPENDITURES BY LENDER.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Loan Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Loan Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests,

encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the Note Rate from the date incurred or paid by Lender to the date of repayment. All such expenses will become a part of the Indebtedness and will be payable on demand. The Property also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

11. **WARRANTY; DEFENSE OF TITLE.**

11.1 **Title.** Grantor warrants that: (a) MWIC TURNER ROAD UT, LLC, a Utah limited liability company and MWIC PARKWAY UT, LLC, a Utah limited liability company hold good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those existing on the date hereof which are accepted by Lender in writing (collectively, "Permitted Encumbrances"), and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

11.2 **Defense of Title.** Except for Permitted Encumbrances, Grantor warrants and will forever defend the title to the Property against the lawful claims of all Persons and agrees that there shall be no other liens or encumbrances against the Property, even if such liens or encumbrances are subordinate to the lien of this Deed of Trust. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

11.3 **Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

12. **CONDEMNATION.**

12.1 **Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, the net proceeds received shall be paid directly to Lender and applied against the outstanding balance of principal, interest and other charges owing under the Note, the other Loan Documents and this Deed of Trust, provided, however, at the sole discretion of Lender, if (i) Grantor desires to use such proceeds for repair or restoration of the Property, (ii) Grantor is not in Default hereunder, and (iii) any funds in excess of the proceeds necessary to complete the restoration work in accordance with plans and specifications and budgets as approved by Lender shall have been deposited by Grantor with Lender, then the insurance proceeds shall be held by Lender for restoration of the Property. Lender shall disburse so much of the proceeds to Grantor as restoration progresses, in accordance with its usual practices for construction loans. Should the proceeds which are actually being held by Lender be less than the sum required to complete said restoration, Grantor shall deposit the difference with Lender prior to commencing restoration. Upon payment of such sum to Lender, the same shall be held by Lender in a bank controlled interest-bearing account until disbursement. Should said proceeds, including the interest payable thereon, exceed the cost of completing said restoration, any balance remaining shall be paid to Grantor. Grantor shall pay to Lender any

reasonable expenses incurred by Lender in making such disbursements and reasonable building inspections. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees, of both the Trustee and Lender in connection with the condemnation.

12.2 Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

13. IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.

13.1 Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

13.2 Taxes. The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (b) a specific tax on Grantor which it is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (c) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

13.3 Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

14. SECURITY AGREEMENT; FINANCING STATEMENTS.

14.1 Security Agreement. This instrument shall constitute a security agreement to the extent any of the Property constitutes inventory, equipment, fixtures, accounts, general intangibles, instruments, chattel paper, deposit accounts or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

14.2 Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to evidence, perfect, protect, enforce and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor authorizes Lender to file any financing statements and to take all other actions which Lender deems advisable to evidence, perfect or continue its security interest in any collateral for the Indebtedness. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall

assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

14.3 UCC Financing Statement Information. The names of Grantor (debtor) and Lender (secured party) and their mailing addresses from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Deed of Trust. Each Grantor is an organization.

15. ASSIGNMENT OF LEASES AND RENTS. Grantor assigns and conveys to Lender all of Grantor's right, title, and interest in and to all present and future Leases and Rents. Lender grants to Grantor a license to collect the Rents and profits, which license may be revoked after the occurrence of an Event of Default and shall be automatically revoked upon Lender's acceleration of the Indebtedness.

15.1 Grantor's Representations and Warranties. Grantor continuously represents and warrants that: (a) Grantor has good right, title, and interest to the Leases and Rents, free of all liens, encumbrances, and claims except those disclosed to and accepted by Lender in writing; (b) Grantor has full right, power, and authority to enter into and perform this assignment; (c) to the extent the Leases exist, such Leases are in full force and effect and have not been modified or amended without the prior written consent of Lender; and (d) there are no other assignments, transfers, pledges or encumbrances of any Leases or Rents. Notwithstanding the above, Grantor may enter into new Leases on a form previous agreed to by Lender, and without Lender's further consent or approval, and Grantor may extend the term of any Lease, on substantially the same terms otherwise in the existing lease, without Lender's prior consent or approval.

15.2 Grantor's Agreements. Grantor shall (a) fulfill or perform each and every term, covenant and provision of the Leases to be fulfilled or performed by the lessor thereunder; (b) give prompt notice to Lender of any notice received by Grantor of default under any commercial Lease or of any alleged default or failure of performance that could become a default thereunder, together with a complete copy of any such notice; and (c) enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of each Lease to be performed or observed by the lessees and tenants thereunder. Grantor, without the prior written consent of Lender, shall not: (d) assign, transfer, pledge or encumber, the whole or any part of the Leases and Rents to anyone other than Lender; (e) accept any Rents more than one month in advance of the accrual thereof; or (f) do or permit anything to be done, the doing of which, or omit or refrain from doing anything, the omission of which, could be a breach or default under the terms of any Lease or a basis for termination thereof.

15.3 Lender Not Liable. Lender does not assume and shall not be liable for any obligation of the lessor under any of the Leases and all such obligations shall continue to rest upon Grantor as though this assignment had not been made. Neither the assignment of the Leases and Rents nor the exercise by Lender of any of its rights or remedies hereunder or in connection herewith, prior to Lender obtaining actual possession of the Property, shall constitute Lender a "mortgagee in possession" or otherwise make Lender responsible or liable in any manner with respect to the Property or the occupancy, operation or use thereof.

15.4 Lender's Rights to Collect Rents. In addition to the other remedies available to Lender, Lender shall have the right at any time, if an Event of Default has occurred, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority: (a) Lender may send notices to any and all tenants of the Property advising them of the assignment and directing all Rents to be paid directly to Lender or Lender's agent; (b) Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other Persons liable

therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other Persons from the Property; (c) Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property; (d) Lender may do any and all things to execute and comply with applicable state laws and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property; (e) Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate; (f) Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents; and (g) Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing. Without limiting the generality of the foregoing, Lender may exercise all rights available to Lender under the Utah Uniform Assignment of Rents Act.

15.5 **Application of Rents.** All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Deed of Trust, and shall be payable on demand, with interest at the Note Rate from date of expenditure until paid.

16. **FURTHER ASSURANCES; ATTORNEY-IN-FACT.**

16.1 **Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor under the Note, this Deed of Trust, and the Loan Documents, and (b) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

16.2 **Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph. This power of attorney is irrevocable and is coupled with an interest.

17. **RECONVEYANCE.**

17.1 **Full Performance.** If Grantor pays all the Indebtedness when due, terminates availability of advances, and Grantor otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor shall pay Trustee a reasonable reconveyance fee for said reconveyance. The grantee in any such reconveyance may be described as the "person or persons legally entitled thereto."

17.2 **Partial Release.** Lender agrees to release Lot 1 of the real property legally described on Exhibit A, upon the satisfaction of either of the following conditions precedent and payment of all Lender's fees incurred with respect to such partial release: (a) Grantor delivers to Lender the final certificates of occupancy issued by the City of American Fork on all 240 residential units being constructed on Lots 2-15, inclusive, of the real property; or (b) Borrower agrees or is required to transfer or dedicate Lot 1 to or for the benefit of the City of American Fork because of or consistent with the City's requirement or decision to waive or release the requirement for to construct a commercial building on Lot 1, or (c) as otherwise allowed under the terms of the Loan Documents.

18. **DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Deed of Trust and each of the other Loan Documents:

18.1 **Default on Indebtedness.** Any Loan Party fails to pay any principal, interest, fees or any other amount when due under the Note or any other Loan Document.

18.2 **Other Payments.** Grantor fails to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien within the time required by this Deed of Trust.

18.3 **Performance Default.** Any default or event of default occurs under or any Loan Party fails to pay, perform or comply with any term, condition, covenant or obligation in the Loan Agreement, this Deed of Trust, or any other Loan Document; (other than an Event of Default specified in Sections 18.1 or 18.2); provided however, (except for failure to perform a particular covenant within a time period set forth for compliance therein) if any default under this Section 18.3 is reasonably capable of being cured and if Grantor or other Loan Party, as the case may be, has not been given a notice of the same default within the preceding twelve (12) months, it may be cured if Grantor or such other Loan Party, as the case may be, after Lender sends written notice to Grantor or such other Loan Party, as the case may be, demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical; provided, however, that nothing contained in this Section 18.3 shall limit Lender's right to cease making advances during such cure period.

18.4 **Security Documents.** Any default or event of default occurs under any security agreement, pledge agreement, mortgage, deed of trust, assignment or any other document or instrument securing any indebtedness or obligation of Grantor to Lender (each, a "Security Document") or any security interest or lien created or purported to be created by any Security Document shall cease to be, or shall be asserted by any Person not to be, a valid, perfected, first priority security interest or lien.

18.5 **Guaranties.** Any guaranty ("Guaranty") executed by any Guarantor or any other Loan Document shall cease to be, or shall be asserted by any Person not to be, in full force and effect, or any Guarantor shall attempt to revoke, repudiate or limit any Guaranty.

18.6 **Representations and Warranties.** Any warranty, representation, statement, or information made or furnished to Lender by or on behalf of any Loan Party proves to have been false or misleading in any material respect when made or furnished or when deemed made or furnished, or becomes false or misleading at any time thereafter.

18.7 **Bankruptcy, Insolvency, Etc.** Any proceeding under any bankruptcy or insolvency laws is commenced by or against, a receiver is appointed for any part of the property of, or any attachment, seizure or levy is made on any property of, any Loan Party, or any Loan Party makes an assignment for the benefit of creditors, enters into any type of creditor workout, or admits in writing its inability to pay its debts as they mature, or becomes insolvent.

18.8 **Death or Dissolution.** Any individual Loan Party dies; the trustor of any Loan Party which is a revocable trust dies; any Loan Party which is a corporation, partnership, limited liability company or other type of entity is dissolved or liquidated or takes any action to authorize a dissolution or liquidation; or the trustee or trustor of any Loan Party which is a trust (or trustee acting with respect to property held in trust) revokes, or terminates such trust or the agreement governing such trust. Notwithstanding the foregoing, there shall be no Event of Default, if a replacement Guarantor acceptable to Lender in its reasonable discretion meeting all applicable credit worthiness standards is accepted by Lender within thirty (30) days of the death.

18.9 **Judgments.** Any judgment, writ of attachment or similar process shall be entered or filed against any Loan Party or any property of any Loan Party and shall remain unpaid, unvacated, unbonded or unstayed for a period of 30 days or more.

18.10 **Material Adverse Change.** Lender determines that there has been a material adverse change in the value of any such collateral or Lender reasonably deems itself insecure with respect to the payment or performance of any obligations of any Loan Party to Lender.

18.11 **Foreclosure, Etc.** Any foreclosure or forfeiture proceeding is commenced, whether by judicial or non-judicial proceeding, self-help, repossession or any other method, by any Person or any governmental agency against any of the Property or any event occurs which gives any creditor the right to take such action.

19. **RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

19.1 **Accelerate Indebtedness.** Lender shall have the right at its option to cease making advances and declare the entire Indebtedness immediately due and payable, including any prepayment fee or penalty which Grantor would be required to pay; provided, however, if any proceeding under any bankruptcy or insolvency laws is commenced by or against Grantor or any other Loan Party, the Indebtedness shall automatically become due and payable in full without notice.

19.2 **Foreclosure.** With respect to all or any part of the Real Property, the Trustee and Lender shall have the right to foreclose by notice and sale or advertisement and sale, and to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. If this

Deed of Trust is foreclosed (whether by judicial foreclosure or otherwise), Lender will, to the fullest extent permitted by applicable law, be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount of the unpaid balance of the judgment.

19.3 UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code, including without limitation the right to recover any deficiency in the manner and to the full extent provided by applicable law.

19.4 Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. This power of attorney is irrevocable and is coupled with an interest. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

19.5 Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a Person from serving as a receiver.

19.6 Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (a) pay a reasonable rental for the use of the Property, or (b) vacate the Property immediately upon the demand of Lender, and after the passage of any applicable statutory time period allowing for possession of the Property by Grantor after foreclosure.

19.7 Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust, the Note, the other Loan Documents, or by law including, without limitation, the right to take possession of the Property and to take any and all actions necessary to complete construction of the improvements being constructed with the proceeds of the Note.

19.8 Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least twenty (20) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.

19.9 Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or

Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

19.10 Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy provided in this Deed of Trust, the Note, in any Loan Document, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect Lender's right to declare a default and to exercise any of its remedies.

19.11 Attorney Fees; Expenses. The undersigned agrees to pay on demand all of Lender's costs and expenses, including Lender's reasonable attorney fees and legal expenses, incurred in connection with enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement. Lender may also use attorneys who are salaried employees of Lender to enforce this Agreement. The undersigned shall pay all costs and expenses of all such enforcement. In the event arbitration, suit, action or other legal proceeding is brought to interpret or enforce this Agreement, the undersigned agrees to pay all additional sums as the arbitrator or court may adjudge reasonable as Lender's costs, disbursements, and attorney fees at hearing, trial, and on any and all appeals. As used in this paragraph "Agreement" means the loan agreement, promissory note, guaranty, security agreement, or other agreement, document, or instrument in which this paragraph is found, even if this document is also described by another name. Whether or not an arbitration or court action is filed, all reasonable attorney fees and expenses Lender incurs in protecting its interests and/or enforcing this Agreement shall become part of the Indebtedness evidenced or secured by this Agreement, shall bear interest at the highest applicable rate under the promissory note or credit agreement, and shall be paid to Lender by the other party or parties signing this Agreement on demand. The attorney fees and expenses covered by this paragraph include without limitation all of Lender's attorney fees (including the reasonable fees charged by Lender's in-house attorneys, calculated at hourly rates charged by attorneys in private practice with comparable skill and experience), Lender's reasonable fees and expenses for bankruptcy proceedings (including efforts to modify, vacate, or obtain relief from any automatic stay), reasonable fees and expenses for Lender's post-judgment collection activities, Lender's cost of searching lien records, searching public record databases, on-line computer legal research, title reports, surveyor reports, appraisal reports, collateral inspection reports, title insurance, and bonds issued to protect Lender's collateral, all to the fullest extent allowed by law.

19.12 Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

20. POWERS AND OBLIGATIONS OF TRUSTEE.

20.1 Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

20.2 Obligation to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

20.3 **Trustee.** Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

20.4 **Successor Trustee.** Lender, at Lender's option, may from time to time appoint a successor Trustee in accordance with the requirements of applicable law. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law.

21. **NOTICES TO GRANTOR AND OTHER PARTIES.** Any notice under this Deed of Trust shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective when deposited in the United States mail first class, certified or registered mail, postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. For notice purposes, Grantor agrees to keep Lender and Trustee informed at all times of Grantor's current address.

22. **ANTI-DEFICIENCY WAIVERS.** To the extent permitted by applicable law, Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

23. **MISCELLANEOUS PROVISIONS.**

23.1 **Amendments.** This Deed of Trust, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

23.2 **Subrogation.** If, and to the extent that, the proceeds of the Note are used to pay, satisfy or discharge any existing lien on the Property, Lender shall be subrogated to the rights, including the lien priority, of the holder of such existing lien, whether or not such existing lien is released.

23.3 **Accounts and Records.** Grantor will maintain a standard system of accounting administered in accordance with generally accepted accounting principles. Lender shall have the right to examine the books of account of Grantor, and to discuss the affairs, finances, and accounts of Grantor with Grantor's representatives, all at such reasonable times and intervals as Lender may desire. Grantor will furnish to Lender from time to time such financial and other information as Lender requests regarding any Loan Party and the Property.

23.4 **Applicable Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Oregon, except for procedural matters related to the protection and enforcement by Lender of its rights and remedies against the Property, which matters shall be governed by the laws of the State of Utah. However, in the event that the enforceability or validity of any provision of this Deed of Trust is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned

provision. The loan transaction which is evidenced by the Note and this Deed of Trust (which secures the Note) has been applied for, considered, approved, and made in the State of Oregon. **IF THERE IS A LAWSUIT, GRANTOR, AT LENDER'S OPTION, AGREES TO SUBMIT TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED IN OR HAVING JURISDICTION OVER MULTNOMAH COUNTY, OREGON OR UTAH COUNTY, UTAH; PROVIDED, HOWEVER, THAT THIS SHALL NOT AFFECT LENDER'S RIGHT TO BRING PROCEEDINGS AGAINST GRANTOR IN THE COMPETENT COURTS OF ANY OTHER JURISDICTION. TO THE FULLEST EXTENT THAT IT CAN LEGALLY DO SO, GRANTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUCH COURT, INCLUDING WITHOUT LIMITATION ANY OBJECTION BASED ON THE DOCTRINE OF *FORUM NON CONVENIENS*.**

23.5 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR HEREBY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE INDEBTEDNESS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. GRANTOR ACKNOWLEDGES AND AGREES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

23.6 Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

23.7 Assignments and Participations. Lender may at any time sell, assign, transfer, negotiate, grant participations in, or otherwise dispose of, to any one or more other lenders all or any part of the indebtedness of Grantor at any time outstanding under the Note, this Deed of Trust, or any of the Loan Documents and in connection therewith disclose any information Lender may have concerning Grantor.

23.8 Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

23.9 Multiple Parties. If Grantor consists of more than one Person, all obligations of Grantor under this Deed of Trust shall be joint and several, and all references to Grantor shall mean each and every Grantor. Where any one or more of the parties are corporations, partnerships, limited liability companies, or other entities, it is not necessary for Lender to inquire into the powers of any of the parties or of the officers, directors, partners, agents, managers or members acting or purporting to act on their behalf.

23.10 Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any Person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other Persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust in all other respects shall remain valid and enforceable.

23.11 Successors and Assigns. Subject to the limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a Person other than

Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

23.12 Time Is of the Essence. Time is of the essence in the performance of this Deed of Trust.

23.13 Waivers and Consents. Lender shall not be deemed to have waived any rights under this Deed of Trust (or under the Loan Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or any of Grantor's obligations as to any future transactions. Whenever consent by Lender is required in this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

23.14 Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Oregon as to all Indebtedness secured hereby.

23.15 Continuing Representations and Warranties. All representations and warranties made by Grantor in this Deed of Trust or any of the other Loan Documents shall survive the execution and delivery of this Deed of Trust and the other Loan Documents, and shall remain in full force and effect and shall be deemed made continuously until payment and performance in full of all obligations of each Loan Party under the Loan Documents.

23.16 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one document.

23.17 CLASS ACTION WAIVER. EACH PARTY WAIVES THE RIGHT TO LITIGATE IN COURT ANY CLAIM OR DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.

24. COMMERCIAL PROPERTY. The Property is used exclusively for business or commercial purposes. The Property shall not at any time be occupied as the principal residence of Grantor, Grantor's spouse or Grantor's minor or dependent child.

25. Utah Specific Provisions.

25.1 The legal description of the Land to which the fixtures relate is set forth on Exhibit A. This Deed of Trust is to be recorded in the real estate records in the County Recorder's office of the county in which the Real Estate is located.

25.2 THIS DEED OF TRUST IS A FINAL EXPRESSION OF THE AGREEMENT BETWEEN THE LENDER, AS CREDITOR, AND THE BORROWER, AS DEBTOR, AND THE WRITTEN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

25.3 Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Grantor at the address for Grantor specified in the first paragraph of this Deed of Trust.

[Signature page follows]

Signature Page to Deed of Trust

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

MWIC KELTON, LLC, a Utah
limited liability company

By: Mountain West Investment Corporation
Its: Manager

By: *L. E. Tokarski*
Lawrence E. Tokarski, President

MWIC TURNER ROAD UT, LLC, a Utah limited liability company

By: Mountain West Investment Corporation
Its: Manager

By: *L. E. Tokarski*
Lawrence E. Tokarski, President

MWIC PARKWAY UT, LLC, a Utah limited liability company

By: Mountain West Investment Corporation
Its: Manager

By: *L. E. Tokarski*
Lawrence E. Tokarski, President

STATE OF OREGON
County of manion

This instrument was acknowledged before me on July 7, 2021, by Lawrence E. Tokarski, President of Mountain West Investment Corporation, the Manager of MWIC Turner Road UT, LLC, a Utah limited liability company, MWIC Parkway UT, LLC, a Utah limited liability company, and MWIC Kelton, LLC, a Utah limited liability company.

Samantha Wynne Curtis
Notary Public – State of Oregon

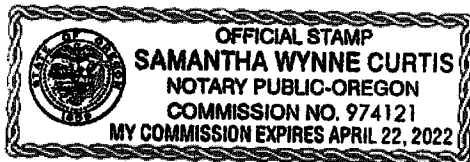


EXHIBIT A
Legal Description

The following real property located in Utah County, Utah:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, KELTON APARTMENTS PHASE 1 PLAT SUBDIVISION, American Fork, Utah, according to the official plat thereof on file in the office of the Utah County Recorder.

Tax Parcel No.: 44-238-0001, 44-238-0002, 44-238-0003, 44-238-0004, 44-238-0005, 44-238-0006, 44-238-0007, 44-238-0008, 44-238-0009, 44-238-0010, 44-238-0011, 44-238-0012, 44-238-0013, 44-238-0014 and 44-238-0015
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