

WHEN RECORDED, RETURN TO:

Wade R. Budge
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

Affecting Serial Nos.: 22-29-202-064-0000;
22-29-202-065-0000

DECLARATION OF RECIPROCAL EASEMENTS

THIS DECLARATION OF RECIPROCAL EASEMENTS ("**Declaration**") is made as of February 8, 2019 (the "**Effective Date**"), by **UNION WOODS ACQUISITIONS PARTNERS LLC**, a Delaware limited liability company ("**Declarant**").

RECITALS

A. Declarant is the owner of "**Lot 1**", and "**Lot 2**", each more particularly described on the attached **Exhibit A**, and executes this Declaration in advance of selling Lot 1.

B. The Lots were created by subdivision pursuant to that certain Union Woods Subdivision No. 3 subdivision plat, recorded June 8, 2017 as Entry No. 12551789 in Book 2017P at Page 135 of the official records of the Salt Lake County Recorder.

C. The Lots are subject to that certain Declaration of Easements recorded in the Salt Lake County Recorder's Office on August 28, 1984 as Entry No. 3986120, providing, among other things, reciprocal access between public streets and parking areas on the Lots and certain adjacent property (as amended, modified, and supplemented, the "**Easement Declaration**").

D. The Lots are also subject to that certain Declaration of Covenants, Conditions, Easements and Restrictions of The Union Woods Office Park recorded in the Salt Lake County Recorder's Office on October 20, 1986 as Entry No. 4334320 (as amended, modified, and supplemented, the "**CC&Rs**"), providing, among other things, reciprocal access and parking with respect to the Lots and certain adjacent property, and that said CC&Rs shall not change, amend, or defeat any subsequent instrument by parties having an interest in the same parcel(s) subject to said CC&Rs.

E. The Lots are also subject to that certain Development Agreement dated July 18, 2017 between Declarant and Midvale City Corporation, a Utah municipal corporation ("**City**"), recorded in the Salt Lake County Recorder's Office on October 12, 2017 as Entry No. 1263552 (the "**Development Agreement**").

F. Declarant contemplates that the Lots will be further developed as a self-contained development, with professional office and parking located on Lot 1 and multifamily residential and parking on Lot 2, and that Lot 2 Owner [defined below] will construct for the exclusive use and benefit of Lot 1 and Lot 2, a commercial parking structure on Lot 1 (the "**Lot 1 Parking Structure**") and parking facilities below the multifamily residential project on Lot 2 (the "**Lot 2 Parking Facilities**") all as

generally depicted on the Site Plan attached **Exhibit B** (the “Site Plan”), and in accordance with the terms and conditions of this Declaration.

G. Declarant previously executed that certain Declaration of Easements recorded with the Salt Lake County Recorder on June 8, 2017 as Entry No. 12551790 (the “**2017 Easement Declaration**”), which Declarant now desires to terminate and to replace and supersede with this Declaration.

H. Declarant executes this Declaration in order to establish for the benefit of the Lots a reciprocal access easement on the Access Easement Area [defined below], a reciprocal access and parking easement over and on certain areas of Lot 1 and Lot 2, and covenants as more particularly described below.

DECLARATION AND GRANT

NOW, THEREFORE, in consideration of the foregoing premises, Declarant declares as follows:

1. **Definitions.** Lot 1 and Lot 2 are sometimes referred to collectively as the “**Lots**,” and individually as a “**Lot**.” The owner of Lot 1 is referred to herein as “**Lot 1 Owner**”. The owner of Lot 2 is referred to herein as “**Lot 2 Owner**”. Lot 1 Owner and Lot 2 Owner are collectively referred to herein as “**Owners**” and individually as an “**Owner**”. For purposes of this Declaration, “**Permittees**” shall mean the respective Owner’s successors and assigns, tenants, subtenants, and licensees to all or a portion of the Lots, and its and their respective agents, invitees, customers, employees, and contractors.

2. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into this Declaration and may be used in the interpretation of this Declaration.

3. **Termination of 2017 Easement Declaration.** Declarant, as the owner of the Lots as defined in the 2017 Easement Declaration, and in accordance with Section 5(b) of the 2017 Easement Declaration, hereby terminates the 2017 Easement Declaration and declares and states that this Declaration supersedes and replaces the 2017 Easement Declaration in its entirety.

4. **Declaration of Easements.**

(a) **Reciprocal Access Easement.** Declarant conveys, declares, and grants for the benefit of each of the Lots, the Owners, and each Owner’s respective Permittees, a perpetual, non-exclusive, and continuous easement and right-of-way (the “**Access Easement**”), in common with all Lots, their Owners and their respective Permittees, over, upon, and across the area generally depicted as the “Access Easement Area” on **Exhibit B** attached hereto (the “**Access Easement Area**”). The purposes of the Access Easement are limited to (i) vehicular and pedestrian ingress and egress to and from the Lots and the public streets or private roadways adjoining the Access Easement Area, (ii) access over, to, from, and across the roadways, driveways, and walkways located from time to time upon and within the Access Easement Area, (iii) vehicle parking in the parking stalls specifically identified and established within the Access Easement Area, which vehicle parking shall only be allowed as permitted under this Access Easement and the Parking Easement [defined below], and (iv) maintenance, repair, and replacement of the Access Easement Area as provided in this Declaration.

(b) **Reciprocal Parking Easement.** Declarant conveys, declares, and grants (i) for the benefit of Lot 2, Lot 2 Owner, and Lot 2 Owner’s Permittees, a perpetual access and parking

easement over and on the Lot 1 Parking Structure and the roadway adjoining the Lot 1 Parking Structure, and (ii) for the benefit of Lot 1, Lot 1 Owner, and Lot 1 Owner's Permittees a perpetual access and parking easement over and on the Lot 2 Parking Facilities (the "**Parking Easement**"). The use restrictions and requirements of the Parking Easement are set forth in Section 5(b).

5. **Construction and Use.**

(a) **Access Easement Area.**

i. **Relocation and Reconstruction.** If any private roads, curbs, gutters, walkways, and parking stalls within the Access Easement Area are disrupted or displaced by Lot 2 Owner's construction of the Lot 1 Parking Structure or the multifamily project on Lot 2, then at its cost, Lot 2 Owner will relocate and reconstruct such private roads, curb, gutter, walkways, and parking stalls within the Access Easement Area as depicted on the Site Plan.

ii. **Maintenance.** Prior to the development of Lot 2, Lot 1 Owner shall be responsible to maintain the Lots at its cost (including without limitation, ice and snow removal, restriping, resurfacing, and lighting of the surface parking, and watering and landscaping the adjacent areas). After the development of Lot 2, Lot 2 Owner, as the "Owner of the Improved Parcel" under the CC&Rs, shall be responsible to keep the Common Areas (as that term is defined in the CC&Rs, which includes surface parking and landscaped areas on the Lots) in a reasonably clean, orderly, attractive and usable condition and in a good state of maintenance, repair, and replacement, consistent with the provisions of the CC&Rs, for which Lot 2 Owner shall be reimbursed, as set forth in the CC&Rs. The Access Easement Area is located within what the CC&Rs define as the Common Areas.

(b) **Lot 1 Parking Structure.**

i. **Construction.** At its cost, Lot 2 Owner will locate and construct the Lot 1 Parking Structure generally as shown on the Site Plan, subject to the requirements, conditions, and approvals of the City pursuant to the Development Agreement, including any changes required by the City. The Lot 1 Parking Structure shall be constructed per City code requirements and with substantially similar finishes to other structures in Midvale City, utilizing materials consisting generally of reinforced concrete, cable rails around the perimeter, and non-painted CMU block or concrete enclosure for hydraulic elevators if required by the City. Lot 2 Owner will construct the Lot 1 Parking Structure prior to Lot 2 Owner's construction of the multifamily residential project to be located on Lot 2. During construction of the Lot 1 Parking Structure, Lot 2 Owner will provide Lot 1 Owner and its Permittees temporary use of parking stalls on Lot 2 within reasonable proximity of Lot 1 and in a specific number and location to be agreed upon by the Owners, not to exceed the number of stalls on Lot 1 that are made temporarily unusable by such construction or the number of stalls then-currently existing on Lot 2. Upon completion of the Lot 1 Parking Structure, Lot 2 Owner will provide for the benefit of Lot 1 Owner a warranty on the construction of the Lot 1 Parking Structure equal to the warranty that Lot 2 Owner obtains from its general contractor for the Lot 1 Parking Structure.

ii. Use. Lot 1 Owner shall own and control the Lot 1 Parking Structure. The Lot 1 Parking Structure shall be for the exclusive use and benefit of Lot 1, provided that Lot 2 shall have the non-exclusive right to use seventy (70) unreserved parking stalls in the Lot 1 Parking Structure seven (7) days a week, during the hours of 5:00 PM to 8:00 AM.

iii. Maintenance. The Lot 1 Parking Structure is not part of the "Common Areas" under the CC&Rs and after the initial completion of construction of the Lot 1 Parking Structure by Lot 2 Owner, all costs for the operation, maintenance, and repair of the Lot 1 Parking Structure shall be the sole obligation of Lot 1 Owner. Lot 1 Owner shall keep the Lot 1 Parking Structure, including, without limitation, the roof, exterior walls, parking surfaces, lighting, utilities, foundations, and building structure of the Lot 1 Parking Structure, in a good state of repair, and shall accomplish such repairs as may be needed promptly after receipt of written notice from Lot 2 Owner or as deemed necessary by Lot 1 Owner in the prevention of a hazard. Any restoration of the Lot 1 Parking Structure following casualty shall be at the sole cost and expense of Lot 1 Owner and Lot 1 Owner is responsible to maintain sufficient insurance on the Lot 1 Parking Structure to rebuild or restore it after an event of casualty.

(c) **Lot 2 Parking Facilities and Multifamily Project.**

i. Construction. At its cost, Lot 2 Owner will construct the multifamily project on Lot 2, including the Lot 2 Parking Facilities, generally as shown on the Site Plan and subject to the requirements, conditions, and approvals of the City pursuant to the Development Agreement, including any changes required by the City. During construction of the multifamily project on Lot 2, Lot 2 Owner shall ensure that Lot 1 has reasonable access to and from the surrounding public streets and/or private roadways.

ii. Use. Lot 2 Owner shall own and control the Lot 2 Parking Facilities. The Lot 2 Parking Facilities shall be for the exclusive use and benefit of Lot 2, provided that Lot 1 shall have the non-exclusive right to use seventy (70) unreserved parking stalls in the Lot 2 Parking Facilities Monday through Friday, during the hours of 8:00 AM to 5:00 PM. Lot 2 Owner may make certain areas of the Lot 2 Parking Facilities secure and only available to residents of the multifamily residential project, or other occupants of Lot 2. Although this Declaration contemplates that Lot 2 will be used for multifamily residential and parking purposes, this Declaration in no way restricts Lot 2 to such uses or requires that Lot 2 be developed for such uses; Lot 2 Owner shall be permitted to use Lot 2 for any purposes allowed under the CC&Rs, including without limitation, for office or other commercial purposes.

(d) **Parking Covenants.** By accepting title to any Lot, each Owner covenants to the other that it will not (1) permit or suffer the use of the Lot 1 Parking Structure or the Lot 2 Parking Facilities (collectively, the "**Parking Structure and Facilities**") for any business or purpose other than short term parking of automobiles, (2) do or permit anything to be done in or about the Parking Structure and Facilities nor bring or keep anything therein that will in any way increase the existing rate of, or affect any, fire or other insurance thereon or cause a cancellation of any insurance policy covering the Parking Structure and Facilities, (3) cause, maintain, or suffer or permit any nuisance in, on, or about the Parking Structure and Facilities, (4) commit or allow to be committed any waste in or upon the Parking Structure and Facilities, or (5) do or

permit anything to be done in or about the Parking Structure and Facilities, nor bring or keep anything thereon that is or will constitute or create a hazardous waste substance or violate any environmental law. Each Owner shall (a) promptly advise the other Owner in writing of any environmental concern related to use and occupancy of the Parking Structure and Facilities brought to such Owner's attention by any private party or governmental agency, (b) have the right to remedy any environmental problem and to conduct any environmental tests reasonably necessary to discover a hazardous waste or other environmental problem, and (c) indemnify and hold the other Owner harmless from any and all damages related to the indemnifying Owner's or its Permittees' introduction or creation of hazardous waste to the Parking Structure and Facilities.

6. **Maintenance Generally; Compliance with Laws and Matters of Record**

(a) Except for the maintenance, repair, and replacement obligations expressly set forth in this Declaration, each Owner shall be responsible for the procurement, construction, maintenance, repair, and replacement of the buildings, improvements, and facilities within such Owner's respective Lot in accordance with the CC&Rs.

(b) All of the easement rights granted under this Declaration are subject to all easements, restrictions, conditions, reservations and rights of way, now of record, if any. The Owners, and all persons in possession or holding under each Owner, will conform to and will not violate the terms of any covenants, conditions or restrictions of record, which may now or hereafter encumber the Lots. Each of the Owners of the Lots shall, at its sole cost and expense, promptly comply with all local, state or federal laws, statutes, ordinances and governmental rules, regulations, or requirements now in force or which may hereafter be in force with respect to the use of the Access Easement and the Parking Easement.

7. **CC&Rs and Easement Declaration.** Declarant hereby declares and confirms that the uses and easements described herein are consistent with the CC&Rs and the Easement Declaration, and that the CC&Rs and Easement Declaration shall continue to apply to the Lots.

8. **Default; Remedies.** If any Owner fails to perform its obligations under this Declaration ("Defaulting Owner"), such failure shall constitute a default and legal action may thereafter be instituted against the Defaulting Owner for any remedy available under this Declaration or applicable law, including, without limitation, specific performance, injunction, or other equitable remedy of the rights and the obligations hereunder. In the event that any Defaulting Owner shall fail to perform its non-monetary obligations under this Declaration or otherwise breach the terms of this Declaration, any non-defaulting Owner may notify the Defaulting Owner and shall specify the breach. If such failure or breach is non-monetary, material, and is not cured within thirty (30) days after receipt of such notice, then such non-defaulting Owner shall have the right to cure the failure or breach, and recover all actual and reasonable costs and expenses related thereto from the Defaulting Owner. Notwithstanding the foregoing, in the event that the failure or breach creates an imminent danger of damage to persons or properties, or jeopardizes the access to any portion of the Lots, no notice shall be required prior to the non-defaulting Owner commencing such work to effect a cure. It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. Such limitation, however, shall not affect in any manner any other rights or remedies which an Owner may have hereunder by reason of such breach.

9. **No Interference.** No Owner or its Permittees shall interfere with the other Owner's and its Permittees' use of the easements granted in this Declaration.

10. **Insurance.** Each Owner shall carry and maintain commercial general liability insurance insuring against claims for personal injury, bodily injury or death, and property damage, with respect to its Lot, including the Parking Structure or Parking Facilities located thereon (as applicable), the Access Easement Area (as applicable), and the effect of this Declaration. The limits of liability of each insurance policy required under the preceding sentence shall be not less than \$1,000,000 for personal injury or bodily injury or death of any one person and \$2,000,000 for personal injury or bodily injury or death in the aggregate. The insurance policy required under this Section 10 shall insure the performance of such Owner's indemnity agreements and obligations contained herein and shall be written with an insurer licensed to do business in the State of Utah and shall name Declarant, so long as Declarant retains rights or obligations under this Declaration, and each Owner as an additional insured. Within thirty (30) days after written request, each Owner shall provide each other Owner with a certificate of insurance which shall indicate all insurance coverage required by the provisions herein. Such insurance policy shall contain a clause stating that there shall be no reduction, modification, cancellation, or non-renewal of coverage without giving the Owners thirty (30) days' prior written notice. Such insurance shall also be issued by insurers having an A.M. Best rating of at least A- VII, be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by the other Owners, and shall contain a severability of interest clause. By way of clarification, only Lot 1 Owner shall be responsible for property insurance for the Lot 1 Parking Structure as described in Subsection 5(b)(iii).

11. **Indemnification.** Each Owner shall indemnify, defend, and hold harmless the other Owner(s) burdened by an easement identified herein and their affiliates, members, managers, agents, tenants, and representatives for, from, and against all claims, damages, expenses (including, without limitation, reasonable attorney fees and reasonable investigative and discovery costs), liabilities, and judgments on account of injury to persons, loss of life, or damage to property resulting from the negligent or willful act or omission of the indemnifying Owner or its Permittees, the indemnifying Owner's or its Permittees' default in any of the obligations set forth in this Declaration, the indemnifying Owner's or its Permittees' use of the Access Easement Area and the non-indemnifying Owner's Parking Structure and Facilities (as applicable), except to the extent such claims are due solely to the gross negligence or willful act or omission of another Owner or its Permittees.

12. **Taxes and Assessments.** Each Owner shall at all times be solely responsible for the property taxes and assessments levied against its Lot and shall not suffer or permit such taxes and assessments to become delinquent. Any increase in property taxes and/or assessments levied against a Lot as a result of the construction of the Parking Structure and Facilities or other improvements and/or the easements granted herein shall be the responsibility of the respective Owner of the underlying real property.

13. **Liabilities and Obligations/Running of Benefits and Burdens.** Except as otherwise specifically provided, the obligations and liabilities of Declarant and any successor Owner hereunder shall apply only to obligations and liabilities that arise while such entity is an Owner and each of such entities shall be released from any further future obligations or liabilities arising with respect to any portion of the Lots, as applicable, after any transfer by it of such portion of the Lots, as applicable. All provisions of this Declaration, including the burdens stated and implied, touch, concern, and run with the Lots and are a benefit to the Lots, and are binding upon and inure to the benefit of the successors-in-title.

14. **No Public Dedication; No Merger.** The provisions of this Declaration do not constitute a dedication for public use of any portion of the easements created hereby. Commons ownership of the Lots described herein shall not effect a merger or termination of the interests created hereby.

15. **Entire Declaration/Amendment.** This Declaration constitutes the entire declaration of the Declarant pertaining to the subject matter contained in this Declaration. No modification, waiver, or amendment of this Declaration shall be made except by written agreement signed and acknowledged by the Declarant, or if Declarant has conveyed all or a portion of the Lots, by all Owners and recorded in the Salt Lake County Recorder's Office. For purposes of consent to the modification, waiver, or amendment of this Declaration under this Section 15, in the event a Lot is owned by more than one (1) Owner, the majority consent of such multiple Owners of such Lot shall constitute affirmative consent to the modification, waiver, or amendment of this Declaration on behalf of the ownership interests of such Lot.

16. **Severability.** If any term, provision or condition contained in this Declaration shall to any extent be deemed invalid or unenforceable, the remainder of the Declaration shall not be affected thereby, and each remaining term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

17. **Attorney Fees.** In the event of any action to enforce the provisions of this Declaration, the prevailing party shall be entitled to receive its reasonable costs and attorney fees.

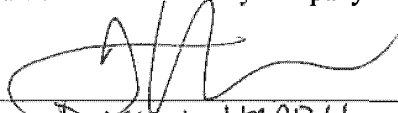
18. **Applicable Law; Construction.** This Declaration shall be construed and interpreted under, and governed and enforced according to, the laws of the State of Utah. This Declaration shall be given a reasonable construction so that the Declarant's intention to provide the Lots access to public roads is implemented.

[Signature and Acknowledgement Follow]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the Effective Date.

DECLARANT:

**UNION WOODS ACQUISITIONS
PARTNERS LLC,**
a Delaware limited liability company

By: 
Name: DUSTIN HARRIS
Its: SR MANAGING DIRECTOR

ACKNOWLEDGMENT

STATE OF Utah)
 : ss.
COUNTY of Salt Lake County)

The foregoing instrument was acknowledged before me this 9th day of Feb., 2019,
by Dustin S. Harris, the Senior Managing Director of **UNION WOODS ACQUISITIONS PARTNERS
LLC**, a Delaware limited liability company, on behalf of such company.



NOTARY PUBLIC
Residing at Salt Lake City, Utah

EXHIBIT A

LEGAL DESCRIPTION OF THE LOTS

LOT 1:

Lot 1, Union Woods Subdivision No. 3, according to the official plat thereof, recorded June 8, 2017 as Entry No. 12551789 in Book 2017P at Page 135 of the official records of the Salt Lake County Recorder.

LOT 2:

Lot 2, Union Woods Subdivision No. 3, according to the official plat thereof, recorded June 8, 2017 as Entry No. 12551789 in Book 2017P at Page 135 of the official records of the Salt Lake County Recorder.

EXHIBIT B

SITE PLAN

