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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

Recording Requested By and
When Recorded Mail To:

HomeStreet Bank
601 Union Street, Suite 2000
Seattle, Washington 98101-2326
Attention: Commercial Real Estate

Property Tax Account Nos. 14-32-201-066

CT- 163561-CAD

[HomeStreet] Bank

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of February 3, 2023, by **MWIC MAGNA, LLC**, a Utah limited liability company ("**Borrower**"), as Trustor, whose mailing address is 2925 River Road South, Suite 100, Salem, Oregon 97302; to **OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY** ("**Trustee**"), as Trustee, whose mailing address is 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121; for the benefit of **HOMESTREET BANK**, a Washington state chartered commercial bank ("**Lender**"), as Beneficiary, whose mailing address is 601 Union Street, Suite 2000, Seattle, Washington 98101-2326, Attention: Commercial Real Estate.

Capitalized terms used but not defined in this Deed of Trust are defined in the Construction Loan Agreement ("**Loan Agreement**") between Lender and Borrower of even date herewith.

In consideration of the loan ("**Loan**") evidenced by the Note described below, Borrower hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, all of Borrower's present and future estate, right, title, claim, and interest, either in law or in equity, in and to the following property ("**Property**"):

(a) The real property described on Exhibit A, all rights to the alleys, streets and roads adjoining or abutting the real property, all present and future easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, water, water rights and water stock, and all other rights, hereditaments, privileges, and appurtenances now or hereafter belonging or in any way appertaining to such real property ("**Realty**");

(b) All present and future buildings, improvements and tenements located on the Realty ("**Improvements**");

(c) All present and future fixtures and articles of property attached to, or used or adapted for use in the ownership, development, operation or maintenance of the Realty and Improvements (whether such items are leased, owned, or subject to any title-retaining or security instrument), including without limitation all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposers, refrigerators and other appliances; all escalators and elevators, baths, sinks, cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash; all carpeting, underpadding, floor covering, paneling, and draperies; and all shrubbery and plants. All such items shall be deemed part of the Realty and not severable wholly or in part without material injury to the freehold;

(d) All present and future rents, revenues, issues, profits and income from the Realty or the Improvements, and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty and Improvements, including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guarantees of tenants' or occupants' performance under such leases and agreements;

(e) All present and future tangible personal property ("**Personal Property**") used in connection with the ownership, development, operation or maintenance of the Realty and Improvements, including without limitation all furniture, furnishings, equipment, supplies and other goods, wherever located, whether in the possession of Borrower, warehousemen, bailee, or any other person;

(f) All present and future intangible personal property used in connection with the ownership, development, operation or maintenance of the Realty, Improvements, and Personal Property, including without limitation, all permits, licenses and franchises, contract rights (including, without limitation, architectural, engineering, consulting, and management contracts, the TIF Participation Agreement, and the ELPAs), accounts receivable, escrow accounts, the TIF Incentive, insurance policies, deposits, instruments, documents of title, general intangibles, business records and the exclusive right to the use of trade names;

(g) All present and future materials, supplies, and other goods, wherever located, whether in the possession of Borrower, warehouseman, bailee, or any other person, purchased for use in the construction, operation or furnishing of the Improvements, together with all documents, contract rights, and general intangibles relating thereto;

(h) All present and future site plans, plats, architectural plans and specifications, work drawings, surveys, engineering reports, test borings, market surveys, and other work products relating to the Realty and Improvements;

(i) All present and future construction contracts relating to the Improvements, together with all performance, payment, completion or other surety bonds in connection with or related to any such construction contracts which are transferable by Borrower;

(j) All present and future contracts and policies of insurance which insure any buildings, structures or improvements on the Realty, or any fixtures or personal property thereon, against casualty and theft, and all monies and proceeds and rights thereto which may become payable by virtue of any insurance contracts or policies;

(k) All claims, causes of action, warranties, accounts receivable, escrow accounts, insurance policies, deposits (including tax, insurance and other reserves), instruments, documents of title, and general intangibles;

(l) All present and future monetary deposits to any city, county, public body or agency, irrigation, sewer or water district or company, and any other body or agency, for the installation, or to secure the installation, of any utility pertaining to the Realty or the Improvements.

(m) All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally – registered credits (such as emissions reduction credits), other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a “**Governmental Agency**”) or (ii) any insurance or utility company relating to any or all of the Realty or Improvements or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Realty;

(n) All refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Agency for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Property or upon any or all of the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;

(o) All proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including without limitation all insurance proceeds and condemnation awards;

(p) All books and records pertaining to any and all of the property described above, including records stored on computer readable media, and a limited sublicense to use the computer hardware or software necessary to access such records; and

(q) All products and proceeds of the foregoing.

TO SECURE THE FOLLOWING (collectively the "**Secured Obligations**"):

(a) Payment of the sum of up to **Thirty-Nine Million Nine Hundred Thousand and 00/100 Dollars (\$39,900,000.00)**, or so much thereof as may be advanced, with interest thereon, according to the terms and provisions of a promissory note ("**Note**") of even date herewith, made by Borrower and payable to Lender, including any and all modifications, extensions, renewals and replacements thereof. The Note matures on March 1, 2026; provided that the Maturity Date may be extended to March 1, 2030 pursuant to the terms of the Loan Agreement; and

(b) Payment of all sums advanced to protect the security of this Deed of Trust, together with interest thereon as herein provided; and

(c) Payment of all other sums which are or which may become owing under the Loan Documents or which may be advanced by Lender pursuant to the Loan Documents; and

(d) Payment and performance of the other covenants and agreements of Borrower contained in the Loan Agreement and the other Loan Documents; and

(e) Payment and performance of any future obligations of Borrower or any Affiliate of Borrower to Lender if the documentation evidencing such future obligation expressly provides that it is secured by this Deed of Trust.

As used in this Deed of Trust, the term "**Loan Documents**" means the Note, the Loan Agreement, this Deed of Trust and all related documents and instruments, and any and all modifications, extensions, renewals and replacements thereof; provided, however, that notwithstanding any other provision of this Deed of Trust, the Loan Agreement or any other Loan Document, this Deed of Trust does not secure any of Borrower's or Guarantor's obligations under the Indemnity Agreement nor Guarantor's obligations under the Guaranty.

The Secured Obligations may be indexed, adjusted, renewed or renegotiated.

BORROWER REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

**ARTICLE I.
TITLE AND USE**

1.1 Warranty of Title. Borrower covenants and agrees that: (i) Borrower is lawfully seized of the estate hereby conveyed and has full right and power to grant, convey and assign the Property, (ii) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the exceptions listed in Lender's title insurance policy insuring this Deed of Trust or exceptions otherwise approved in writing by Lender ("**Permitted Exceptions**"), (iii) no other liens or encumbrances, whether superior or inferior to this Deed of Trust, shall be created or suffered to be created by Borrower without the prior written consent of Lender, (iv) no default on the part of Borrower or any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification, (v) complete and current copies of the Permitted Exceptions have been furnished to Lender, and none of them have been or will be modified by Borrower without Lender's prior written consent, (vi) Borrower shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Lender a copy of all notices delivered in connection with the Permitted Exceptions, (vii) Lender has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Borrower from time to time shall, at the request of Lender, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Lender may reasonably request, and (viii) Borrower shall forever warrant and defend the Property unto Lender against all claims and demands of any other person whatsoever, subject only to non-delinquent taxes and assessments and the Permitted Exceptions. None of the Permitted Exceptions, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Deed of Trust and the Loan Documents, materially and adversely affect the value of the Property, impair the use or operations of the Property or impair Borrower's ability to pay its obligations in a timely manner.

1.2 Business Use. Borrower warrants that the Loan proceeds shall be used exclusively for commercial, business or investment purposes.

**ARTICLE II.
BORROWER'S COVENANTS.**

2.1 Payment and Performance of Secured Obligations. Borrower shall pay when due all sums which are now or which may become owing under the Note, and shall pay and perform all other Secured Obligations in accordance with their terms.

2.2 Payment of Taxes, Utilities, Liens and Charges.

(a) Taxes and Assessments. Except as the same may otherwise be paid under Article III, Borrower shall pay when due directly to the payee thereof all taxes and

assessments (including without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Borrower shall promptly furnish to Lender all notices of amounts due under this subsection and all receipts evidencing such payments.

(b) Utilities. Borrower shall pay when due all utility charges and assessments for services furnished the Property.

(c) Labor and Materials. Borrower shall pay when due the claims of all persons supplying labor or materials to or in connection with the Property.

(d) Liens and Charges. Borrower shall promptly discharge any lien, encumbrance, or other charge, whether superior or inferior to this Deed of Trust, which may be claimed against the Property.

(e) Taxes, Assessments and Other Charges Imposed on Lender. If, at any time after the date of this Deed of Trust, any law is enacted or changed (including any interpretation thereof) which subjects Lender to any increase in any tax (except federal, state or local income taxes), assessments, or other charge, in any form measured by or based on any portion of the indebtedness secured by this Deed of Trust, Borrower shall pay such increased amount to Lender on demand; provided that if any such payment would be unlawful, Lender may declare all accrued interest and the entire principal balance of the Note immediately due and payable.

(f) Right to Contest. Notwithstanding anything set forth in this Section 2.2, so long as no Event of Default shall occur hereunder, Borrower shall have the right to contest the amount or validity in whole or in part of any lien, encumbrance or other charge against the Property by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, in which event Borrower, upon written notice to Lender, may defer payment of any such lien, encumbrance or other charge, so long as (i) Borrower shall have provided Lender with evidence satisfactory to Lender that such proceedings shall operate to prevent the sale of the Property or any portion thereof, or the imposition of any penalties on Borrower or the Property; (ii) neither the Property nor any part thereof will, by reason of such postponement or deferment, be in danger of being forfeited or lost; (iii) before the date such lien, encumbrance or other charge becomes delinquent, Borrower shall provide Lender with such security as Lender may require to insure payment thereof and prevent any forfeiture or loss of the Property or any part thereof; and (iv) on a final determination of such contest, which is not appealable or is not being appealed, Borrower shall pay the amount of the lien, encumbrance or other charge if and when due, and prior to the imposition of any penalties or delinquent interest. In lieu of the conditions outlined in (iii) and (iv) above, Borrower may post a statutory lien bond that removes such lien from title

to the Project within twenty (20) days after the earlier of (a) Borrower's knowledge that the lien exists or (b) written notice by Lender to Borrower of the existence of the lien.

2.3 Insurance Provisions.

(a) Required Coverage. Borrower shall keep the insurance coverage required by the terms of the Loan Agreement in full force and effect.

(b) Security. As security for the Secured Obligations, Borrower hereby assigns to Lender and grants Lender a security interest in all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

(c) Application of Proceeds. The provisions of the Loan Agreement providing for the application of insurance proceeds are incorporated by this reference.

2.4 Preservation and Maintenance of Property; Right of Entry.

(a) Preservation and Maintenance. Borrower shall (i) not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) not abandon the Property, (iii) restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. Except as specifically permitted under the Loan Agreement, none of the Improvements shall be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability which is owned by Borrower free and clear of any lien or security interest.

(c) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property to determine Borrower's compliance with this Section 2.4.

2.5 Parking. If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are diminished for any other reason, Borrower shall take all actions as are necessary to provide parking facilities in kind, size and

location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Borrower shall furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations. This Deed of Trust shall constitute a first lien on all such substitute parking facilities.

2.6 Use of Property. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions applicable to the Property, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

2.7 Condemnation. The provisions of the Loan Agreement regarding condemnation actions and the application of condemnation proceeds are incorporated by this reference.

2.8 Protection of Lender's Security. Borrower shall give notice to Lender of and shall appear in and defend any action or proceeding that may affect the Property, the interests of Lender or Trustee therein, or the rights or remedies of Lender or Trustee under the Loan Documents. If any such action or proceeding is commenced, or Borrower fails to perform any obligation under the Loan Documents, Lender or Trustee may, at their option, make any appearances, disburse any sums, make any entries upon the Property, and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Deed of Trust, (ii) remedy Borrower's failure to perform its obligations under the Loan Documents (without waiving such default by Borrower), or (iii) otherwise protect Lender's or Trustee's interests. Borrower shall pay all losses, damages, fees, costs, and expenses incurred by Lender and Trustee in taking such actions, including without limitation reasonable legal fees.

2.9 Reimbursement of Lender's and Trustee's Expenses. All amounts disbursed by Lender and Trustee pursuant to Section 2.8 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. All such amounts shall be immediately due and payable and bear interest from the date of disbursement at the lesser of the default rate under the Note, or the maximum rate permitted by law.

2.10 Condominium Declaration. Borrower hereby covenants and agrees not to file or record any declaration or constituent condominium document which would subject the Property to any law now existing or hereafter enacted related to condominiums or common interest ownership communities (collectively, "**Condominium Laws**"), without Lender's prior written consent. As to any portion of the Property which becomes subject to Condominium Laws, this Deed of Trust shall continue in effect and extend to all of Borrower's right, title and interest in

and to any and all units and apartments created thereby and Borrower's interest in the underlying land and common elements, and all other interests and easements pertaining thereto, without further action.

ARTICLE III. RESERVES.

3.1 Deposits. Borrower shall, at the time of making each monthly installment payment under the Note, deposit with Lender an amount determined by Lender to be sufficient (when added to the monthly deposits described herein), to pay (i) the next due installment of taxes and special assessments on the Property (collectively, "**Taxes**") at least one (1) month prior to the due date or the delinquency date thereof (as Lender shall determine), and (ii) the next due annual premiums ("**Premiums**") on insurance policies required under the Loan Agreement at least one (1) month prior to the due date thereof. Lender may require Borrower to deposit with Lender, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Borrower or the Property as Lender reasonably deems necessary to protect Lender's interests ("**Other Impositions**" and together with Taxes and Premiums, the "**Impositions**"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Lender's option. If required by Lender, Borrower shall promptly deliver to Lender all bills and notices with respect to any Impositions. Lender shall not be required to pay Borrower any interest, earnings or profits on any sums deposited with Lender. All sums deposited with Lender under this Section 3.1 are hereby pledged as security for the Secured Obligations.

3.2 Application of Deposits. All such deposited sums shall be held by Lender and applied in such order as Lender elects to pay the Impositions or, upon any Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 3 is solely for the added protection of Lender and entails no responsibility on Lender's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Upon payment in full of the Secured Obligations, Lender shall promptly refund to Borrower the remaining balance of any deposits then held by Lender.

3.3 Adjustments to Deposits. If the total deposits held by Lender exceed the amount deemed necessary by Lender to provide for the payment of Impositions, provided there is no Default or Event of Default, such excess shall be credited by Lender on the next due installment or installments of such deposits. Such credit shall not be deemed a prepayment and shall not trigger any prepayment penalty with respect to the Loan. If at any time the total deposits held by Lender are less than the amount deemed necessary by Lender to provide for the payment of Impositions, Borrower shall deposit the deficiency with Lender within fifteen (15) days after receipt of written demand from Lender.

3.4 Conditional Waiver. Notwithstanding the foregoing, Lender shall not require the payment of reserves for Impositions as provided in this Article until a delinquency occurs in the payment of such taxes, assessments, premium and Other Impositions, or until the occurrence of a Default or Event of Default.

**ARTICLE IV.
RESTRICTIONS ON TRANSFER OR ENCUMBRANCE.**

The Loan Agreement contains certain restrictions on any transfer or encumbrance of the Property, any portion thereof or any interest therein, and on any direct or indirect transfer or encumbrance of direct or indirect ownership interests in Borrower. Those provisions are incorporated by this reference. The occurrence of any Transfer or attempted Transfer not permitted under the Loan Agreement shall be an immediate Event of Default whereupon the Secured Obligations shall be immediately due and payable in full without notice or demand from Lender.

**ARTICLE V.
UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

5.1 Grant of Security Interest. This Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code with respect to (a) any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust; and (b) any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property, any and all such other property constituting "Property" for purposes of this Deed of Trust. Borrower hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Borrower and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Deed of Trust, is and at all times shall be regarded as part of the Realty.

5.2 Status of Borrower; Financing Statements. Borrower's exact legal name is correctly set forth on the signature page of this Deed of Trust. If Borrower is not an individual, Borrower is an organization of the type specified in the introductory paragraph of this Deed of Trust. If Borrower is a registered entity, Borrower is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Borrower is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Borrower will not cause or permit any change to be made in its name, identity or corporate, company or partnership structure unless the Borrower shall have notified Lender in writing of such change at least

thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of further perfecting or protecting the lien and security interest of Lender in the Property. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writing, plans, specifications and schematics concerning the Property, has been for the preceding four (4) months (or less if for the entire existence of Borrower) and will continue to be the address of Borrower set forth in the first paragraph of this Deed of Trust (unless Borrower notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). If Borrower is an individual, Borrower's principal residence has been for the preceding four months and will continue to be the address of the principal residence of Borrower set forth at the end of this Deed of Trust (unless Borrower notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is 12490280-0160. Borrower shall promptly notify Lender of any change of its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender of such organizational identification number. Borrower agrees that Lender may file this Deed of Trust, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. Borrower hereby authorizes Lender (and Lender's representatives and agents) to file financing statements (and amendments thereto) relating to the Property. Borrower shall pay all costs of filing such financing statements and any extensions, continuations, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements which Lender may require.

5.3 Lender's Rights and Remedies. With respect to the Property subject to the foregoing security interest, Lender shall have all the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default hereunder, Borrower shall assemble any items of personal property and make them available to Lender at the Realty. Lender shall give Borrower at least fifteen (15) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law.

**ARTICLE VI.
ASSIGNMENT OF RENTS AND LEASES**

6.1 Assignment of Rents and Leases. As security for the Secured Obligations, Borrower assigns and transfers to Lender and grants Lender a security interest in and to all right, title and interest of Borrower in and to: (a) any and all present and future leases, subleases, and other agreements for the occupancy or use of all or any part of the Property, and any and all modifications, extensions, renewals and replacements thereof ("**Leases**"); (b) all cash or security deposits, advance rentals and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases; and (d) all rents, issues, profits and revenues ("**Rents**") now due or which may become due or to which Borrower may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period to the extent not prohibited by applicable law), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages and all rights to and proceeds of rental loss or business interruption insurance. The assignment of Rents and Leases in this Section constitutes an "assignment of rents" within the meaning of the Utah Uniform Assignment of Rents Act (Utah Code Section 57-26-101 et. seq.).

6.2 Collection of Rents. Prior to any Event of Default hereunder, Borrower shall have a license to, and shall, collect and receive all Rents of the Property as trustee for the benefit of Lender and Borrower, apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust, third to the costs of discharging any obligation or liability of Borrower under the Leases, and fourth to the Secured Obligations, with the balance, if any, to the account of Borrower provided there is no Event of Default. Upon delivery of written notice by Lender to Borrower of an Event of Default hereunder and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only. Upon delivery of such written notice by Lender, Borrower hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Lender on Lender's written demand therefor, without any liability on the part of said tenant or occupant to inquire further as to the existence of an Event of Default by Borrower. Borrower hereby authorizes Lender as Borrower's attorney-in-fact to make such direction to tenants and occupants upon Borrower's failure to do so as required herein. Payments made to Lender by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Borrower. Lender may exercise, in Lender's or Borrower's name, all rights and remedies available to Borrower with respect to collection of

Rents. Nothing herein contained shall be construed as obligating Lender to perform any of Borrower's obligations under any of the Leases.

6.3 Borrower's Representations and Warranties. Borrower hereby represents and warrants to Lender that Borrower has not executed and will not execute any other assignment of said Leases or Rents, and Borrower has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Lender from exercising its rights under this Article VI. Borrower shall execute and deliver to Lender such further assignments of rents and leases of the Property as Lender may from time to time request. Borrower represents, warrants, and covenants that: (a) Borrower is the absolute owner of all Leases and Rents, with full right and title to assign the same; (b) there is no outstanding assignment or pledge of any Leases or Rents; (c) no Lease will contain any provision permitting prepayment of more than one (1) month's rent in advance; and (d) Borrower will comply with all restrictions on leasing set forth in the Loan Agreement.

6.4 Lender in Possession; Appointment of Receiver. Upon any Event of Default hereunder, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Borrower could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect the security of this Deed of Trust. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure to do so Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default hereunder, Borrower hereby irrevocably consents and agrees that Lender shall be entitled (regardless of the adequacy of Lender's security) to the appointment of a custodial receiver or general receiver with power of sale. Said receiver may serve without bond, shall have the usual powers and duties of receivers in like or similar cases, all the powers and duties of Lender set forth in this Deed of Trust or any of the other Loan Documents, and, in the case of a general receiver, a right to sell the Property. Employment by Lender shall not disqualify a person from serving as receiver. The receiver shall be entitled to receive a reasonable fee for all its services rendered in connection with the receivership.

6.5 Application of Rents. All Rents collected subsequent to delivery of written notice by Lender to Borrower of an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and

repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower under the Leases, and then to the Secured Obligations. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Article.

6.6 Deficiencies. To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Borrower under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Deed of Trust. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the Default Rate.

6.7 Lender Not Mortgagee in Possession. Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

6.8 Enforcement. Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the Secured Obligations.

6.9 Lender Not Responsible. Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Property, Lender is not and shall not be deemed to be: (a) responsible for any waste committed by tenants or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; (b) responsible for any loss sustained by Borrower resulting from Lender's failure to lease the Property or from any other act or omission of Lender in managing the Property or administering the Leases; or (c) liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it. All risk of loss with respect to the Property is borne exclusively by Borrower and Lender shall have no responsibility for any decline in the value of the Property, for any failure by Borrower to maintain insurance coverage required under the Loan Agreement, for any inadequacy of the proceeds of any required insurance coverage or for any risk not insured against or not required to be insured against hereunder.

6.10 Indemnity. Borrower shall indemnify, defend with counsel selected by Lender in its sole discretion, and hold Lender harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, damages, costs and expenses, including, without limitation, attorneys' fees and costs, to which Lender may be exposed or which Lender may incur arising out of or resulting from this assignment of Leases and Rents, including, without limitation, claims or demands for security deposits from tenants deposited with Borrower, and all claims or demands whatsoever asserted against Lender to satisfy any obligations of the landlord under the

Leases; provided, however, that Borrower shall not be obligated to indemnify or defend Lender for Lender's intentional misconduct. This agreement by Borrower to indemnify Lender shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and or reconveyance of this Deed of Trust.

ARTICLE VII. EVENTS OF DEFAULT.

7.1 Events of Default. The occurrence of any Event of Default under the Loan Agreement shall constitute an Event of Default hereunder.

7.2 Remedies. Upon any Event of Default, Lender may, at its option and without notice to or demand upon Borrower, exercise any one or more of the following actions:

- (a) Declare all the Secured Obligations immediately due and payable.
- (b) Bring a court action to enforce the provisions of this Deed of Trust or any of the other Loan Documents.
- (c) Foreclose this Deed of Trust as a mortgage.
- (d) Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.
- (e) Elect to exercise its rights with respect to the Leases and the Rents.
- (f) Exercise any or all of the other rights and remedies under this Deed of Trust and the other Loan Documents.
- (g) Exercise any other right or remedy available under law or in equity.

7.3 Exercise of Power of Sale. For any sale under the power of sale granted by this Deed of Trust, Lender or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by Lender and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place notified for the sale. If the Property includes several lots or parcels, Lender in its discretion may designate their order of sale or may elect to sell all of them as an entirety (but subject to Borrower's statutory right under Utah Ann. Code § 57-1-27 to direct the order in which the Property, if consisting of several lots or parcels, shall be sold). The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by the Trustee is personal property, then Trustee shall be acting as the agent of the Lender in selling such Property. Any person permitted by law to do so may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or

deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

7.4 Application of Sale Proceeds. The proceeds of any sale under this Deed of Trust shall be applied in the following manner: (a) first to the payment of the costs and expenses of the sale, including without limitation Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the applicable interest rate under the Note from time to time or at the maximum rate permitted to be charged by Trustee under the applicable law if that is less; (b) second to the payment of all sums expended by Lender under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the applicable interest rate under the Note from time to time or the maximum rate permitted by applicable law if that is less; (c) third to the payment of all other Secured Obligations in any order that the Lender chooses; and (d) the remainder, if any, to the person or persons legally entitled to it.

7.5 Waiver of Order of Sale, Marshaling and Other Matters. Lender shall have the right to determine the order in which any or all portions of the secured indebtedness are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Borrower, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof and waives any and all right to require marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust. To the extent allowed by law, Borrower waives (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Property, (ii) all rights of valuation, appraisal, stay of execution, reinstatement and redemption laws in the event of foreclosure of the liens hereby created, (iii) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State where the Property is located pertaining to the rights and remedies of sureties, and (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

7.6 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7.7 Expenses During Redemption Period. If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the greater of the default rate under the Note, or the maximum rate permitted by law, shall be added to and become a part of the amount required to be paid for redemption from such sale.

7.8 Foreclosure Subject to Tenancies. Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

7.9 Evasion of Prepayment Terms. If any Event of Default has occurred, and Lender has elected to accelerate the Loan, a tender of payment of the indebtedness secured hereby at any time prior to or at a judicial or non-judicial foreclosure sale of the Property by Borrower, or anyone on behalf of Borrower, shall constitute an evasion of any prepayment terms of the Loan Documents, if any, and shall constitute a voluntary prepayment thereunder, and any such tender shall include any prepayment premium required under the Loan Documents, if any.

7.10 Lender's and Trustee's Expenses. Borrower shall pay all of Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any suit is filed, including without limitation legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the greater of the default rate under the Note, or the maximum rate permitted by law.

ARTICLE VIII. GENERAL PROVISIONS

8.1 No Offset. Borrower's obligation to timely pay and perform all obligations under the Note, the Loan Agreement, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Borrower or any guarantor may have or claim against Lender or any other person or entity.

8.2 Application of Payments. Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Lender under the Note or this Deed of Trust shall be applied by Lender in the following order of priority: (a) Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust; (b) interest payable on advances made to protect the security of this Deed of Trust; (c) principal of such advances; (d) amounts payable to Lender by Borrower under Section 3 for reserves; (e) interest and late charges payable

on the Note; (f) principal of the Note; and (g) any other Secured Obligations in such order as Lender, at its option, may determine; provided, however, that Lender may, at its option, apply any such payments received to interest on or principal of the Note prior to applying such payments to interest on and principal of advances made to protect the security of this Deed of Trust.

8.3 Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

8.4 Successor Trustee. In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

8.5 Lender's Powers. Without affecting the liability of any person for payment or performance of the Secured Obligations or any of Lender's rights or remedies, Lender, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or creating any restriction on the property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

8.6 Subrogation. Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured thereby.

8.7 Limitation on Interest and Charges. The interest, fees and charges under the Loan Documents shall not exceed the maximum amounts permitted by any applicable law. If any such interest, fee or charge exceeds the maximum, the interest, fee or charge shall be reduced by the excess and any excess amounts already collected from Borrower shall be refunded. Lender may refund such excess either by treating the excess as a prepayment of principal under the Note

or by making a direct payment to Borrower. If Lender elects to treat the excess as a prepayment of principal, Borrower shall not be obligated to pay any prepayment premium required under the Note. The provisions of this paragraph shall control over any inconsistent provision in the Loan Documents.

8.8 Additional Documents; Power of Attorney. Borrower, from time to time, shall execute, acknowledge and deliver to Lender upon request, and hereby irrevocably appoints Lender its attorney-in-fact to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Borrower shall pay to Lender upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

8.9 Waiver of Statute of Limitations. To the full extent Borrower may do so, Borrower hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Loan Documents or any other obligation secured by this Deed of Trust.

8.10 Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default shall constitute a waiver of any other default or of any similar default in the future. Furthermore, no waiver of Lender's rights or remedies in one or more instances shall establish a course of dealing or other agreement that will bind Lender or prohibit Lender from enforcing the terms of the Loan Documents in another instance. Without limiting the generality of the foregoing, the acceptance by Lender of payment of any sum secured by this Deed of Trust after the due date thereof shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Lender's receipt of any awards, proceeds or damages under Sections 2.3 and 2.7 hereof operate to cure or waive Borrower's default in payment of sums secured by this Deed of Trust.

8.11 Modifications and Waivers. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

8.12 Notice. Any notice to Borrower under this Deed of Trust shall be given in accordance with the notice provisions in the Loan Agreement.

8.13 Governing Law. The creation, perfection, and enforcement of the lien of this Deed of Trust shall be governed by the Laws of the state of Utah. In all other respects, this Deed of Trust shall be governed by the substantive Laws of the jurisdiction governing the Loan Agreement.

(a) Lender and Borrower have significant ties to the State of Washington, and Lender and Borrower have specifically negotiated and entered into this choice of law provision selecting the substantive law of Washington to provide for certainty in the law governing (a) the creation, perfection and enforcement of the lien of this Deed of Trust against any property described herein that is or is deemed to be personal property and (b) the other Loan Documents. Borrower specifically acknowledges and agrees (i) that it is aware that the laws of the State of Washington where the Property is located may provide certain rights and defenses to Borrower that are not available under the laws of the State of Utah; (ii) that under Washington law Borrower may not be entitled to the benefits of any "security first," "one-form-of-action," "fair value," or "anti-deficiency" statutes of the State of Utah in the context of judicial or non-judicial foreclosure proceedings or an action on the Note; (iii) that if an Event of Default occurs under the Loan, Lender shall be entitled under Washington law to bring any action in any order against Borrower, any guarantor, any indemnitor, and any of the Property encumbered by the Deed of Trust made by Borrower securing the Note; and (iv) that Lender would not be willing to make the Loan if Borrower did not agree to this choice of law provision.

(b) Insofar as Borrower, in the absence of this choice of law provision, may have had rights and defenses under certain state laws disallowing deficiency judgments, requiring a Lender to proceed against property securing a loan before proceeding in person against Borrower, requiring a fair-value hearing in foreclosure proceedings, requiring all property securing a loan to be included in a single action, or other similar requirements, and such rights are not available under the laws of Washington, Borrower knowingly, intentionally, unconditionally, and irrevocably waives any and all such rights, defenses, or other benefits it may have had under or pursuant to such state laws.

(c) The invalidity, illegality or unenforceability of any provision of this Section 8.13 shall not affect or impair the validity, legality or enforceability of the remainder of this Deed of Trust as a whole, and to this end, the provisions of this Section 8.13 are declared to be severable.

8.14 Severability; Captions. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are

declared to be severable. If any provision of this Deed of Trust or of any of the other Loan Documents are declared invalid for any reason by a court of competent jurisdiction, the invalid provision shall be deemed omitted and the remaining terms of this Deed of Trust and of all of the other Loan Documents shall remain in full force and effect. The captions and headings of the paragraphs and articles of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

8.15 Construction. This Deed of Trust is the result of substantial negotiations between Borrower and Lender and shall be construed in accordance with the fair intent of the language contained herein in its entirety and not for or against either party, regardless of which party was responsible for its preparation. Borrower and Lender each represent to the other that each has consulted with its own legal counsel in connection with this Deed of Trust.

8.16 Definitions. As used herein: the term "**Borrower**" means the Borrower herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "**Trustee**" means the Trustee herein named, together with any successor Trustee; and the term "**Lender**" means the Lender herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

8.17 Successors and Assigns; Joint and Several Liability; Agents. This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Section 4 hereof. Each person executing this Deed of Trust as Borrower shall be jointly and severally liable for all obligations of Borrower hereunder. In exercising any rights hereunder or taking actions provided for herein, Lender and Trustee may act through their respective employees, agents or independent contractors as authorized by Lender and Trustee. Upon the occurrence of any Event of Default, Lender may proceed against any Borrower, any guarantor, or any of Lender's security for the Loan in such order and manner as Lender may elect in its sole discretion.

8.18 Further Assurances; Clerical Errors. Borrower agrees to execute and acknowledge such additional documents as may be necessary or desirable in order to carry out the intent and purpose of this Deed of Trust and the other Loan Documents, to confirm or establish the lien hereof, or to correct any clerical errors or legal deficiencies. Without limiting the foregoing, unless and until the Note is fully paid or cancelled, Borrower agrees to execute a replacement Note in the event the Note is lost or destroyed and to execute an amended and restated substitute Note to correct any clerical or other errors which may be discovered in the original Note. Failure of Borrower to comply with any request by Lender pursuant to this Section within ten (10) days after written request by Lender shall constitute a material Event of Default hereunder.

8.19 Time. Time is of the essence in connection with all obligations of Borrower herein.

8.20 Estoppel Certificate. Borrower shall, within ten (10) days of a written request from Lender and at no charge to Lender, furnish Lender, or any other party designated by Lender, with a written statement, duly acknowledged, setting forth the sums secured hereby and any right of set-off, counterclaim or other defense that may exist with regard to the Secured Obligations.

8.21 Request for Notice. Borrower hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Deed of Trust.

8.22 Assignment of Loan Documents. Lender may assign the Loan Documents in whole or in part. Lender may make available to any proposed assignee or participant all credit and financial data with respect to Borrower and any guarantor as may be in the possession of Lender. Borrower agrees to provide any additional information that any proposed assignee or participant may reasonably request, provided that prior to any such delivery or communication, any such prospective assignee or participant shall agree to preserve the confidentiality of any of the foregoing to the same extent that Lender has agreed or is required by law to preserve such confidentiality.

8.23 Certain Obligations Unsecured. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"): (a) any obligations evidenced by or arising under the Indemnity Agreement, and (b) any obligations arising under the Guaranty or any other guaranty. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this Section shall, in itself, impair or limit Lender's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.

8.24 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same original.

8.25 Jury Trial Waiver. BORROWER WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE LOAN OR THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER, AND BORROWER ACKNOWLEDGES THAT NO PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT BORROWER HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE

SIGNING OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF BORROWER'S OWN FREE WILL, AND THAT BORROWER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

8.26 State Specific Provisions - Utah.

(a) **Construction Registry.** Borrower shall timely comply with all requirements of Utah Code Sections 38-1a-101 et seq. Borrower agrees that Lender may file a notice of completion as contemplated by Utah Code Section 38-1a-507 in the State Construction Registry of the State of Utah (the "**State Construction Registry**"). Borrower shall cause Lender to be named as a person interested in receiving electronic notices of all filings with respect to the construction of the Improvements in the State Construction Registry in accordance with Utah Code Section 38-1a-204. Borrower shall also provide to Lender copies of all preliminary notices or other notices filed by any contactor, subcontractor or supplier with respect to the construction of the Improvements. Borrower shall file a notice of intent to obtain completion in the State Construction Registry when and if required by Utah Code Section 38-1a-506, and upon completion of the Improvements, Borrower shall promptly file a notice of completion in the State Construction Registry as permitted by Utah Code Section 38-1a-507. In addition, Borrower shall take all other steps necessary under the laws of the state of Utah to prevent or shorten the time for the assertion of claims or liens against the collateral or any part thereof or right or interest appurtenant thereto, or of claims against Lender or any disbursements made hereunder.

(b) **Construction Lien Notices.** Borrower shall file a notice of intent to obtain completion in the State Construction Registry when and if required by Utah Code Section 38-1a-506 and, upon completion of the Improvements, Borrower shall promptly file a notice of completion in the State Construction Registry as permitted by Utah Code Section 38-1a-507. Borrower shall take all other steps necessary under the laws of Utah to prevent the assertion of claims or liens against the Realty or Improvements or any part thereof or right or interest appurtenant thereto, Lender, or the Loan funds.

8.27 NO ORAL AGREEMENTS

UTAH

PURSUANT TO UTAH CODE SECTION §25-5-4, BORROWER IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS, THE INDEMNITY AGREEMENT, AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

WASHINGTON

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

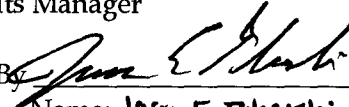
[Remainder of page intentionally left blank; signatures appear on the following page.]

Dated as of the day and year first written above.

BORROWER:

MWIC MAGNA, LLC,
a Utah limited liability company

By Mountain West Investment Corporation,
an Oregon corporation
Its Manager

By 

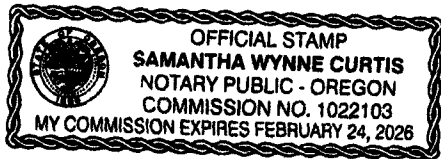
Name: Jason E. Tukarski

Title: Vice President

STATE OF Oregon)
) ss.
COUNTY OF Marion)

I certify that I know or have satisfactory evidence that Jason Tokarski is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice president of MOUNTAIN WEST INVESTMENT CORPORATION, an Oregon corporation, the manager of MWIC MAGNA, LLC, a Utah limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1/25/23



SWC
Signature
Samantha W. Curtis
Print Name
NOTARY PUBLIC in and for the State of
Oregon
My commission expires 2/24/26

EXHIBIT A

LEGAL DESCRIPTION OF REALTY

PARCEL 1:

Beginning at a point on the East right-of-way line of 8400 West Street which is South 734.30 feet and East 68.88 feet from the North quarter corner of Section 32, Township 1 South, Range 2 West, Salt Lake Base and Meridian basis of bearing being the North line of said Section 32 which bears South 89°49'24" East; thence South 89°44'24" East 511.98 feet; thence South 00°15'36" West 111.18 feet; thence South 89°39'43" East 391.33 feet; thence South 63°22'42" East 13.48 feet; thence South 39°23'31" East 48.27 feet; thence South 00°10'36" West 353.67 feet to a point on the North line of the Utah and Salt Lake Canal and to a point on a 604.45 foot radius curve to the left, the chord of which bears South 89°03'18" West; thence Westerly along said North line and said curve through a central angle of 38°36'34" a distance of 407.31 feet; thence South 69°45'01" West along said North line 127.78 feet; thence North 00°44'30" East 190.73 feet; thence North 82°16'05" West 8.58 feet; thence North 14°25'04" West 35.16 feet; thence South 87°12'47" West 411.49 feet to the East right-of-way line of 8400 West Street; thence North 00°08'25" East along said East line 357.74 feet to the point of beginning.

PARCEL 1A:

Reciprocal pedestrian and vehicular ingress and egress easements as more particularly defined in those certain following instruments: (i) recorded February 7, 1986 as Entry Nos. 4199263 and 4199264 in Book 5734 at Pages 1380 and 1384; (ii) recorded November 3, 1986 as Entry Nos. 4342468 and 4342469 in Book 5835 at Pages 1265 and 1268; and (iii) recorded December 14, 1994 as Entry No. 5985382 in Book 7071 at Page 183 of official records.

PARCEL 1B:

Landscape Easement dated May 20, 2022, by and between MWIC Magna Apartments, LLC, as Parcel 1 Owner, and Trisha Smith, an individual, John Gust, an individual, Tami R. Lund, an individual, Gailyn Lund, an individual, and Arbor Commercial Real Estate L.L.C., collectively as the Parcel 2 Owner, as more particularly described in the instrument recorded September 23, 2022, as Entry No. 14020732 in Book 11374 at Page 7977 of official records.