



W3203064

PREPARED BY AND UPON
RECORDATION RETURN TO:

Frost Brown Todd LLC
400 West Market Street, Suite 3200
Louisville, Kentucky 40202
Attention: Colin C. Stouffer, Esq.

E# 3203064 PG 1 OF 11
Leann H. Kilts, WEBER COUNTY RECORDER
09-Dec-21 0428 PM FEE \$40.00 DEP TN
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

Tax Parcel Number: 08-103-0076

147792 - MCH

NWI DAWN, LLC, as assignor

(Borrower)

to

HGI COMMERCIAL FUNDING II, LLC, as assignee

(Lender)

**ABSOLUTE ASSIGNMENT
OF LEASES AND RENTS**

Dated: As of December 9, 2021

Location: 1775 W 4800 S
Roy, Utah 84067

County: Weber

ABSOLUTE ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS

THIS ABSOLUTE ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS (this "Assignment"), is made this 9 day of December 2021, by and between NWI DAWN, LLC, a Delaware limited liability company, having a mailing address located at 101 S. El Camino Real, Suite 202, San Clemente, California 92672 ("Borrower"), and HGI COMMERCIAL FUNDING II, LLC, a Delaware limited liability company (together with its successors and/or assigns, "Lender"), whose address is c/o Harbor Group International, LLC, 999 Waterside Drive, Suite 2300, Norfolk, Virginia 23510, Attention: General Counsel.

WITNESSETH:

FOR VALUE RECEIVED, Borrower hereby grants, transfers, assigns, sets over and delivers unto Lender all the rights, title and interests of Borrower in, under or by virtue of any of the following:

1.1. Any and all leases, tenancies, rental arrangements, licenses and other agreements between Borrower, as landlord, and any other person or entity, as Tenant (as defined below), whether now existing or entered into after the date hereof (the "Leases"), with respect to the use, occupancy, management, or ownership of any portion of the real property located in the County of Weber State of Utah as more particularly described on Exhibit A attached hereto and made a part hereof (the "Real Property"), and the rents, issues, and profits of the Real Property, including, without limitation, all amounts payable and all rights and benefits accruing to Borrower under the Leases ("Payments"). The term Leases shall also include all guarantees of and security for the Tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder.

1.2. The proceeds of any rental insurance carried by Borrower with respect to the Real Property.

FOR THE PURPOSE OF MAKING:

2.1. Payment of the principal, interest, and all other indebtedness evidenced by that certain Promissory Note, dated of even date herewith executed by Borrower in favor of Lender (the "Note") with respect to a loan by Lender to Borrower in the maximum principal amount of up to \$9,000,000.00 which is made pursuant to that certain Loan Agreement, dated of even date herewith, between Borrower and Lender (as the same may be amended, modified, supplemented or replaced from time to time, the "Loan Agreement"). The obligations of Borrower under the Loan Agreement and the Note are secured by, among other things, a certain valid first priority lien on the Real Property as evidenced by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, by Borrower, as mortgagor, in favor of Lender, as mortgagee, to be recorded in the Official Records of Weber County in the State of Utah (as the same may be amended, modified, supplemented or replaced from time to time, the "Security Instrument"). Defined terms used but not expressly defined herein shall have the same meanings when used herein as set forth in the Loan Agreement;

2.2. Payments of all other sums with interest thereon at a rate per annum equal to the interest rate provided for in the Note, becoming due and payable to Lender under the provisions hereof or under the provisions of the Loan Agreement, the Note, the Security Instrument or any of the other Loan Documents; and

2.3. Performance of each and every obligation, covenant and agreement of Borrower in this Assignment, the Loan Agreement, the Note, the Security Instrument, and all other Loan Documents.

TO PROTECT THIS ASSIGNMENT:

3.1. Borrower hereby represents and warrants to Lender that there are no Leases other than Approved Leases with respect to the use, occupancy, management, or ownership of all or any portion of the Real Property.

3.2. Borrower hereby covenants and agrees: (i) to observe and perform all of the obligations imposed upon Borrower, as the landlord under the Leases; (ii) not to receive or collect any Payments more than thirty (30) days in advance of the time when the same become due under the terms of the Leases; (iii) not to discount any future accruing Payments, except in accordance with the terms and conditions of the Loan Agreement; (iv) not to execute any other assignment of lease or assignment of rents of the Real Property, except in accordance with the terms and conditions of the Loan Agreement; (v) not to alter, modify or change the terms of the Leases or surrender, cancel or terminate the Leases, except in accordance with the terms and conditions of the Loan Agreement; (vi) not to subordinate the Leases to any mortgage or other Lien or permit, consent or agree to such subordination except in accordance with the terms and conditions of the Loan Agreement; (vii) not to consent to any assignment of or subletting under the Leases, except in accordance with the terms and conditions of the Loan Agreement, and (viii) not to enter into any Lease subsequent to the date hereof, except in accordance with the terms and conditions of the Loan Agreement.

3.3. Notwithstanding the automatic applicability of this Assignment to all future Leases, Borrower covenants and agrees to assign and transfer to Lender any and all further Leases upon all or any part of the Real Property and to execute and deliver, at the written request of Lender, all such further assurances and assignments in the Real Property, as Lender may from time to time reasonably require.

IT IS MUTUALLY AGREED THAT:

4.1. Subject to the terms and conditions of that certain Cash Management Agreement, (if one has been entered into in accordance with the terms and conditions of the Loan Agreement), so long as there shall exist no Event of Default, Lender confers upon Borrower a license to collect as they become due, but not prior to accrual, all Payments and the proceeds of rent insurance and to retain, use and enjoy the same and to apply such rents, issues, income and profits, as more specifically provided for and required under the Note to the payment of, as more specifically provided for and required under the Loan Agreement. Upon the occurrence of an Event of Default, such license granted to Borrower shall be immediately revoked without further

demand or notice from Lender, and Lender is hereby empowered to enter upon and take possession of the Real Property as provided in Section 4.2 below.

4.2. Upon the occurrence and during the continuance of an Event of Default but after giving effect to any applicable cure periods, Lender, without in any way waiving such Event of Default, may at its option, without notice, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Real Property and have, hold, manage, lease and operate the same on such terms and for such periods of time as Lender may deem proper; and may demand, sue for or otherwise collect and receive from the Tenants now or hereafter in possession of the Real Property, or any part thereof, all Payments which have been uncollected by Borrower, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender in the exercise of prudent business judgment as a commercial landlord and to apply such Payments to the payment of the Obligations in such order or priority as to any of such items, as Lender in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. In addition, Lender may endorse the name of Borrower or any subsequent owner of the Real Property on any checks, notes or other instruments for the payment of money, to deposit the same in bank accounts, to give any and all acquittances or any other instrument in relation thereto in the name of Borrower, and to institute, prosecute, settle or compromise any summary or legal proceedings in the name of Borrower for the recovery of such Payments, or for the recovery of any damages done to the Real Property, or for the abatement of any nuisance thereon, and to defend any legal proceedings brought against Borrower arising out of the operation of the Real Property. Borrower shall reimburse Lender for any charges, expenses or fees, including reasonable attorneys' fees and costs, incurred by Lender in the enforcement of its rights and remedies under this Assignment.

By accepting this Assignment, Lender agrees that if, upon the occurrence of an Event of Default but after giving effect to any applicable cure periods, it shall exercise its option herein, only upon the waiver of such Event of Default by Lender, and all necessary charges and expenses incurred by reason thereof paid, then the parties hereto shall each be restored to and reinstated in their respective rights and estates as if an Event of Default had not occurred. Borrower shall thereupon hold said Real Property subject to this Assignment as if Lender had not exercised any option hereunder, but nothing hereinbefore contained shall impair any right of Lender hereunder upon any subsequent breach.

4.3. Lender shall not be obligated to perform or discharge, nor does it undertake to perform or discharge, any obligation, duty or liability under any of the Leases, or under or by reason of this Assignment. If requested by Lender, Borrower shall, and does hereby agree to enforce the Leases and all remedies available to Borrower against the Tenants, in case of default under any of the Leases by any of the Tenants. Borrower shall and does hereby agree to indemnify Lender for and to hold Lender harmless of and from any and all liability, loss or damage (collectively, "Losses"), which Lender may or might incur under any of the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, and further, Borrower hereby agrees to defend, at its own cost and expense, any action or

actions brought against itself or Lender relative to the Leases or this Assignment, except and to the extent such Losses arise solely from (a) the gross negligence or intentional misconduct of Lender or Lender's agents or (b) any events occurring after the Transition Date (as defined below). Borrower's failure to properly defend any such action or actions, or to properly pursue all rights and remedies relative to any such dispute, in the reasonable opinion of Lender, shall entitle Lender to defend such action or pursue such remedies in Borrower's place and stead. Should Lender incur any such liability, loss or damage under any of the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Borrower shall reimburse Lender therefor within ten (10) Business Days after demand, and, upon the failure of Borrower so to do, Lender may declare all sums secured by the Security Instrument immediately due and payable. The above obligation of Borrower to indemnify and hold harmless Lender (and their respective successors, assigns and participants) shall survive the release and cancellation of the Obligations and the release and reconveyance or partial release and reconveyance of this Assignment. For purposes of this Assignment, the term "Transition Date" means the earlier of the following dates: (1) the release of the Security Instrument and this Assignment as to the entirety of the Property and the satisfaction of all of Borrower's obligations under the Loan Documents; or (2) the date on which title to the entirety of the Property is conveyed pursuant to judicial or non-judicial foreclosure under the Security Instrument or transfer of the Property in lieu of such foreclosure; provided that, if such payment, performance, release, foreclosure or conveyance is challenged in bankruptcy proceedings or otherwise, the Transition Date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by law from further assertion (and then only if and to the extent that Borrower has not conveyed the Property in violation of the Loan Documents and Borrower retains ownership and control of the Property).

4.4. Borrower hereby irrevocably appoints Lender as its agent whereby Lender may, at its election, upon the occurrence of an Event of Default (i) perform any of Borrower's obligations to the Tenants under the Leases, (ii) exercise any of Borrower's rights, powers or privileges under the Leases, (iii) modify the Leases, and (iv) execute new Leases for any or all property covered by the Leases. All obligations created by the exercise of such agency shall be those of Borrower and not those of Lender except as otherwise provided herein. Borrower hereby irrevocably appoints Lender as the true and lawful attorney-in-fact (coupled with an interest) of Borrower in its name and stead and on its behalf, for the purpose of executing and delivering any such Leases on behalf of Borrower and delivering to the Tenant to whom such Lease pertains, written notice of this assignment. Notwithstanding the above granted power, Lender may perform any of Borrower's obligations as Borrower's agent, and Lender may, at its election, subsequent to any default (beyond any applicable cure periods provided for in the Leases) by Borrower under the Leases and by the giving of written notice to Borrower, assume any of the obligations of Borrower or its assigns to the Tenants under the Leases.

4.5. This Assignment shall not operate (i) to place responsibility upon Lender for the control, care, management, or repair of the Real Property nor for the carrying out of any of the terms and conditions of the Leases, unless such responsibility is specifically assumed by Lender in writing and/or (ii) to make Lender responsible or liable for (a) any waste committed on the Real Property by any Tenant or any other party, (b) any dangerous or defective condition of the

Real Property, and/or (c) any negligence in the management, upkeep, repair or control of the Real Property, resulting in loss or injury or death to any Tenant, licensee, employee or stranger.

4.6. Lender assumes no liability for any security deposit delivered by any Tenant to Borrower, as the landlord under the terms of any Leases.

4.7. [Intentionally Omitted]

4.8. Borrower hereby irrevocably consents that the Tenants under the Leases, upon demand and notice from Lender of the occurrence of an Event of Default but after giving effect to any applicable cure periods, shall pay the Payments under the Leases directly to Lender without liability of the Tenants for the determination of the actual existence of any Event of Default claimed by Lender. Borrower hereby irrevocably authorizes and directs the Tenants, upon receipt of any notice from Lender stating that such an Event of Default exists, to pay to Lender the Payments due and to become due under the Leases, and Borrower hereby irrevocably constitutes and appoints Lender with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority (coupled with an interest) in the place and stead of Borrower and in the name of Borrower or in Lender's own name, for the purpose of executing and delivering such notices to the Tenants and such other documents which may be necessary to effect the foregoing. Upon the curing of all Events of Defaults, Lender may give written notice thereof to the Tenants, and thereafter, until further notice from Lender, the Tenants shall pay such Payments to Borrower.

4.9. Notwithstanding the license granted by Lender in Section 1 hereof, Lender, and not Borrower, shall be deemed to be the creditor of each Tenant in respect of any assignment for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such Tenant, with an option to Lender to have any money received by Lender as such creditor (i) applied to reduce the principal or interest due on the Note or applied to reduce any other indebtedness secured by or to be paid pursuant to the Loan Agreement, the Note, the Security Instrument, or the other Loan Documents or (ii) paid over to Borrower; provided, however, that Lender shall be obligated to file or make timely filings of claims in such proceedings and to otherwise pursue creditor's rights therein.

4.10. Upon payment in full of the Obligations and performance in full of the Obligations, Lender, at Borrower's expense, shall cancel and release the liens and security interests created by this Assignment.

4.11. A demand on a Tenant by Lender for the payment of any Payment, upon the occurrence of an Event of Default in accordance with the Cash Management Agreement (if one has been entered into in accordance with the terms and conditions of the Loan Agreement), shall be sufficient warrant to said Tenant to make further Payments to Lender without the necessity for further consent by Borrower and proof of the Event of Default.

4.12. Lender may take or release any security; may release any party primarily or secondarily liable for any indebtedness secured hereby; may grant extensions, renewals, modifications, or indulgences with respect to the Loan Agreement, the Note, the Security Instrument or any of the other Loan Documents without prejudice to any of its rights hereunder.

4.13. The term "Leases" as used herein shall mean the Leases hereby assigned or any extension or renewal thereof, and any Leases subsequently executed by Borrower covering the Real Property or any part thereof. In this Assignment, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural, and conversely. The term "Tenant" or "Tenants" as used herein shall mean all present and future lessees, users or occupants of the Real Property or any part thereof.

4.14. Nothing herein contained and no act done or omitted by Lender pursuant to the powers and rights granted it herein shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Agreement, the Note, the Security Instrument or any of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect said indebtedness and to enforce any security therefor held by it may be subsequent to any action taken by it hereunder.

4.15. This Assignment is binding upon and inures to the benefit of Lender and Borrower, including their respective successors and permitted assigns. The words "Borrower", "Lender" and "Tenants" wherever used herein shall include the person named herein and designated as such and their respective successors and permitted assigns.

4.16. Governing Law; Service of Process. This Assignment and any claim, controversy or dispute arising under or related to this Assignment, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties will be governed by, and construed and enforced in accordance with, the laws of Utah without regard to any conflicts of law principles, except to the extent preempted by federal laws. BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 4.17 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

4.17 Notices. All notices and other communications required or permitted under this Assignment must be in writing and must be personally delivered; mailed by U.S. registered or certified mail, return receipt requested, postage prepaid; sent by nationally recognized private courier service; or transmitted by email (provided that a copy of such notice or other communication is also delivered by another permitted means of delivery), delivered or addressed to the appropriate party at its respective address as set forth in the Loan Agreement.

Any party may change its address by giving written notice to the other party in accordance with this Section 4.17. If any notice or other communication is given by registered or certified mail it will be deemed effective seventy-two (72) hours after it is deposited in the U.S. mail, postage prepaid; or if given by any other permitted means, when received at the address listed above. Borrower shall forward to Lender, without delay, any notices, letters or other communications delivered to the Property or to Borrower naming Lender, "Lender" or any

similar designation as addressee, or which is reasonably likely to affect the ability of Borrower to perform its obligations to Lender under the Note or the Loan Agreement.

4.18. This Assignment may be executed by one or more parties to this Assignment in any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

4.19. Borrower agrees that, in the event that Borrower or any of the Persons or parties directly constituting Borrower shall be the subject of any Bankruptcy Action, Lender shall thereafter be entitled and Borrower irrevocably consents to immediate and unconditional relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided for herein, in the Loan Agreement, the Note or in the other Loan Documents and as otherwise provided by law, and Borrower irrevocably waives any right to object to such relief and will not contest any motion by Lender seeking relief from the automatic stay and Borrower will cooperate with Lender, in any manner reasonably requested by Lender, in its efforts to obtain relief from any such stay or other prohibition.

4.20. **WAIVER OF JURY TRIAL.** BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY EACH WAIVE ANY RIGHT TO TRIAL BY JURY THEY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS ASSIGNMENT OR THE TRANSACTIONS RELATED THERETO. BORROWER REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS RIGHT TO JURY TRIAL WAIVER. BORROWER ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO ACCEPT THIS ASSIGNMENT BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Assignment has been executed as of the date first set forth above.

BORROWER:

NWI DAWN, LLC, a Delaware limited liability company

By: NWRP DAWN, LLC, a Delaware limited liability company, its Managing Member

By: Jordan J. Fisher
Name: Jordan J. Fisher
Title: Manager

STATE OF _____)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Jordan J. Fisher as Manager of NWRP DAWN, LLC, a Delaware limited liability company, acting in its capacity as the Managing Member of NWI DAWN, LLC, a Delaware limited liability company, on behalf of the limited liability company.

My commission expires: _____

NOTARY PUBLIC

[SEAL] _____ Print Name: _____

See attached Atay

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

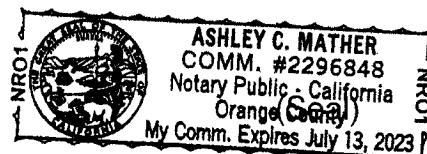
County of Orange

On October 22nd, 2021 before me, Ashley C Mather, Notary Public
(name and title of officer), personally appeared Jordan Fisher,
who proved to me on the basis of satisfactory evidence to be the person[✓] whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity^(s), and that by
his/her/their signature^s on the instrument the person^(s) or the entity upon behalf of
which the person^(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Ashley C. Mather



LaDawn Apartments
Roy, Weber County, Utah
1 of 1

Exhibit A

Part of the Northwest quarter of the Northwest quarter of Section 13, Township 5 North, Range 2 West, Salt Lake Base and Meridian: Beginning at a point 849.55 feet East and 33 feet South of the Northwest corner of said Section 13 and running thence South 169 feet; thence West 159.46 feet; thence South 359 feet; thence East 219.46 feet; thence North 528 feet to the South line of 4800 South Street; thence West 60 feet to the beginning.

ALSO: Part of the Northwest quarter of the Northwest quarter of Section 13, Township 5 North, Range 2 West, Salt Lake Base and Meridian: Beginning at a point 909.55 feet East and 220.2 feet South of the Northwest corner of said Section 13 and running thence East 112 feet; thence South 7.8 feet, more or less, to an existing chain fence; thence East 107.46 feet along said fence; thence South 333 feet; thence West 219.46 feet; thence North 340.8 feet to the beginning.

Further described by the following as surveyed description:

Part of the Northwest quarter of the Northwest quarter of Section 13, Township 5 North, Range 2 West, Salt Lake Base and Meridian: Beginning at a point 849.55 feet North $89^{\circ}52'11''$ East along the section line and 33.00 feet South $00^{\circ}07'49''$ East of the Northwest corner of said Section 13 and running thence North $89^{\circ}52'11''$ East 60.00 feet; thence South $00^{\circ}07'49''$ East 187.20 feet; thence North $89^{\circ}52'11''$ East 112.00 feet; thence South $00^{\circ}07'49''$ East to an existing chain link fence 8.58 feet; thence South $89^{\circ}42'37''$ East along said fence line 107.46 feet; thence South $00^{\circ}07'49''$ East 331.43 feet; thence South $89^{\circ}52'11''$ West 438.92 feet; thence North $00^{\circ}07'49''$ West 359.00 feet; thence North $89^{\circ}52'11''$ East 159.46 feet; thence North $00^{\circ}07'49''$ West 169.00 feet to the point of beginning.