

**MAIL TAX STATEMENTS TO:**

No Change

**AFTER RECORDING RETURN TO:**

Alan Sorem, Attorney  
Saalfeld Griggs PC  
PO Box 470  
Salem, OR 97308-0470

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**FIRST AMENDMENT TO DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE  
DECLARATION**

THIS AMENDMENT TO DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE DECLARATION (hereinafter the "**Amendment**") is made on the last date signed below, by MWIC Parkway UT, LLC, a Utah limited liability company ("**MWIC Parkway**"), as to a fifty-four and one-half percent (54.5%) interest held as tenants-in-common with MWIC Turner Road UT, LLC, a Utah limited liability company ("**MWIC Turner Road**"), as to the remaining forty-five and one-half percent (45.5%) (collectively "**Declarant**"), to be effective upon recording in the real property records of Utah County, Utah.

**RECITALS:**

- A. The real property owned by Declarant subject to this Declaration is commonly known as the Kelton Apartments in the City of American Fork, County of Utah, and State of Utah and is legally described as Lots 1 through 15, Kelton Apartments Phase 1 Plat (the "**Plat**"), recorded as ENT No. 69769: 2021, Map No. 17637, recorded by Andrea Allen, Utah County Recorder on April 13, 2021 (herein individually a "**Lot**" or collectively the "**Property**" or "**Lots**").
- B. Declarant previously entered into that certain Declaration of Access and Utility Easement and Maintenance Declaration dated June 9, 2023, which was recorded as ENT No. 38739: 2023, recorded by Andrea Allen, Utah County Recorder on June 15, 2023 for the Property (hereinafter the "**Declaration**") and wishes to supplement and modify the Declaration by executing this Amendment.

**AGREEMENT:**

NOW, THEREFORE, Declarant hereby declares that the Property shall be subject to the easements and maintenance obligations set forth in the Declaration and as modified by the Amendment.

### 1. Amendment to Section 11.2 of the Declaration

The following subsections shall be added to Section 11.2, Use of Lot 1, as additional uses prohibited on Lot 1:

- “11.2.5           Liquor stores;
- 11.2.6           Check-cashing and payday loan businesses; and
- 11.2.7           Meal centers, warming centers, pallet homes, and homeless shelters.”

### 2. Amendment to Design Review Standards

The Declarant or the Declarant’s successor-in-interest (collectively the “**Declarant**”) shall retain design review authority under this Section 2 so long as the Declarant owns a majority of the Lots.

No building, dwelling, fence, deck, screen, wall, patio or other structure or hardscape shall be erected, placed, or altered on any Lot until the construction or alteration plans and specifications have been submitted, reviewed, and approved by the Declarant. The Declarant’s review shall include, but not be limited to, compliance with the design requirements for improvements to a Lot described on **Exhibit “1,”** attached hereto and by this reference made a part hereof (collectively the “**Design Standards**”), together with quality of workmanship and materials, harmony of design with existing structures and landscape, view clearance, and as to the location of the building or improvement with respect to relationship with existing surroundings (both natural and manmade), topography, geologic stability, and finish grade elevation.

The Declarant’s approval or disapproval as required in these covenants shall be reduced to writing. In the event the Declarant, or its designated representative, fails to approve or disapprove the plans and specifications within thirty (30) days after such plans and specification have been submitted to it, the plans and specifications shall be deemed to have been approved as submitted. If the Declarant denies approval, it shall, to the extent practical, advise the person submitting said plans and specifications as to the reason or reasons for denial, and the modifications to the plans and specifications that must be made in order to obtain approval. Determinations made by the Declarant shall be final and may not be overturned by legal action except in the case of fraud, bad faith, or failure to exercise honest judgment by so many members of the Declarant as would result in a different determination if the actions of the member or members that engaged in fraud, bad faith or failure to exercise honest judgment was disregarded.

### 3. Continuing Validity

Except as expressly modified above, the terms of the Declaration shall remain unchanged and in full force and effect.

**4. Recording**

This Amendment and any amendments or modifications thereto shall be recorded in the real property records of Utah County, Utah.

**5. Affirmation of Declaration**

Except as amended above, the Declarant reaffirms and incorporates the easements and restrictions contained in the Declaration, and hereby declares that the Property, and each parcel of real property therein, shall be sold, conveyed, developed, owned, and occupied subject to the provisions of the Declaration, as amended herein.

**6. Miscellaneous**

- a.** All capitalized terms used herein shall have the meanings ascribed to them in the Declaration unless otherwise defined herein.
- b.** It is the intent of Declarant that this Amendment shall control as to any conflicting terms or conditions set forth in the Declaration.
- c.** This Amendment may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

[Signature Pages Follow]


IN WITNESS WHEREOF, Declarant has executed this Amendment as of the date last signed below.

**DECLARANT:**

**MWIC PARKWAY UT, LLC, a Utah limited liability company**

By: Mountain West Investment Corporation, an Oregon corporation

Its: Manager

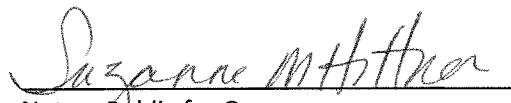
By:   
Jason Tokarski, Vice President

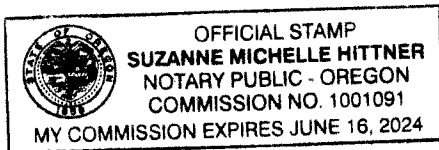
Date: 12.18.2023

State of Oregon )  
 ) ss.  
County of Marion )

This instrument was acknowledged before me on Dec 18, 2023, by Jason Tokarski, Vice President of Mountain West Investment Corporation, an Oregon corporation, Manager of MWIC Parkway UT, LLC, a Utah limited liability company.

Before me:

  
Notary Public for Oregon  
My Commission Expires: 6.16.2024



**DECLARANT:**

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

By: Mountain West Investment Corporation, an Oregon corporation

Its: Manager

By: Jason Tokarski  
Jason Tokarski, Vice President

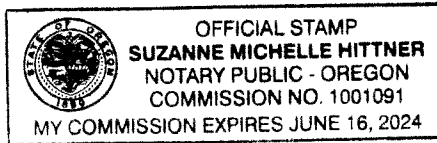
Date: 12-18-2023

State of Oregon )  
 ) ss.  
County of Marion )

This instrument was acknowledged before me on Dec 18<sup>th</sup>, 2023, by Jason Tokarski, Vice President of Mountain West Investment Corporation, an Oregon corporation, Manager of MWIC Turner Road UT, LLC, a Utah limited liability company.

Before me:

Suzanne McHittner  
Notary Public for Oregon  
My Commission Expires: 6-16-2024



### Exhibit 1

The purpose of the Design Standards is to facilitate quality development through an orderly process of evaluation and approval of plans submitted to the Declarant. The Design Standards set forth in this document establish the minimum standards to be used in the evaluation of each submittal. The Declarant may impose additional or more restrictive requirements in its sole discretion.

## 1. Exterior Design and Height Restrictions

The exterior design of each Unit shall incorporate design elements which are compatible with the exterior design of the Kelton Apartment development. The height of any building or other improvement shall not exceed twenty (20) feet.

## 2. Exterior Materials

**2.1 Siding.** Will be mixed elements which can include horizontal lap siding, stucco, and cultured or natural stone veneers. Vinyl siding will not be permitted.

**2.2 Roofing.** Material shall be composition shingle with a minimum 30-year warranty, with a Class A fire rating and non-reflective or a non-reflective metal roof. The color will be dark browns, grey, or black.

**2.3 Windows.** Will be wood, vinyl, or prefinished metal frames and sashes. Aluminum windows or door frames must be vinyl clad or non-reflective anodized color complementing the earth tones.

**2.4 Front Doors.** Will be similar in style to those used in Kelton Apartment development or standard with Class A office or retail construction in American Fork, Utah.

### 3. Exterior Colors

Siding, stucco, stone, and trim will be comprised of tones ranging from warm browns to tans and grays and white. Accent colors will be gray, white, black, brown and like hues. Proposed color palettes must be submitted as part of the Design Review process.

#### 4. Landscaping

Proposed landscaping plans must be submitted as part of the Design Review process. Prior to commencing any business activity, Lot 1 shall complete all landscaping required by the City of American Fork, including, a minimum of the following: a minimum of two trees (2" caliper as measured 6" from the ground for deciduous species and/or 8' height for evergreen species) and one shrub (minimum five gallon shrubs) shall be installed one per (4') lineal feet of the building's foundation.

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## 5. Lighting Restrictions

Proposed lighting plans must be submitted as part of the Design Review process. No fixture shall exceed 20,000 lumens ( $\pm 3\%$ ). Additionally, all lighting fixtures shall conform to the limitations below.

Types of Lighting	Maximum Lumens Allowed
Path lighting	1,500 lumens
Building Entrance	3,500 lumens
Commercial Pole at 20'	15,000 Lumens

## 6. Sign Restrictions

The Owner of Lot 1 shall be restricted to one (1) monument sign not more than ten (10) feet in height. Any illuminated area of the sign shall not exceed 20,000 lumens between sunrise and sunset and that is no greater than 7,500 lumens between sunset and sunrise nor shall it exceed a total sign space in excess of eight (8) square feet.

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