

105376-MKF

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

MOUNTAIN WEST DEBT FUND, LP
Attn: Kelley Dixon
357 West 200 South, Suite 200
Salt Lake City, Utah 84101

ENT 87131:2018 PG 1 of 7
Jeffery Smith
Utah County Recorder
2018 Sep 11 04:18 PM FEE 23.00 BY MG
RECORDED FOR Cottonwood Title Insurance Agency, Inc.
ELECTRONICALLY RECORDED

Parcel Identification Numbers: 19-036-0104

**ASSIGNMENT OF RIGHTS
UNDER COVENANTS, CONDITIONS AND RESTRICTIONS,
SALES AGREEMENTS, PERMITS, AND DEVELOPMENT DOCUMENTS**

THIS ASSIGNMENT OF RIGHTS UNDER COVENANTS CONDITIONS AND RESTRICTIONS, SALES AGREEMENTS, PERMITS, AND DEVELOPMENT DOCUMENTS ("**Assignment**") is made as of September 6, 2018 by **BOARDWALK INDUSTRIES, LLC**, a Utah limited liability company ("**Assignor**") in favor of MOUNTAIN WEST DEBT FUND, LP, a Delaware limited partnership ("**Assignee**").

WHEREAS, Assignee has agreed to make a loan to Assignor in the original principal amount of Three Million Five Hundred Sixty Five Thousand Dollars (\$3,565,000) ("**Loan**") pursuant to the terms of that certain Construction Loan Agreement between Assignor, as Borrower, and Assignee, as Lender, of even date herewith ("**Loan Agreement**"), which Loan is evidenced by that certain Secured Promissory Note made by Assignor in favor of Assignee, dated of even date herewith in the original principal amount of Three Million Five Hundred Sixty Five Thousand Dollars (\$3,565,000) ("**Note**") and secured by, among other things, a Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") made by Assignor in favor of Assignee encumbering certain real property more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("**Property**"). Unless otherwise defined herein, capitalized terms used in this Assignment shall have the same meanings as set forth in the Loan Agreement.

WHEREAS, as a condition to making the Loan, Assignee requires Assignor to execute and deliver this Assignment to Assignee as further security for the Loan.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor hereby agrees as follows:

1. **Assignment.** For value received, Assignor hereby absolutely and irrevocably conveys, transfers and assigns to Assignee:

1.1 All of Assignor's right, title and interest in any profits and/or sales proceeds (including earnest money deposits) now due or which may hereafter become due by virtue of any existing or future contracts which provide for the sale of Assignor's interest in all or any part of the Property (herein singularly or collectively referred to as the "**Sales Agreements**").

1.2 All of Assignor's right, title and interest in and to any and all zoning, use, building and other similar permits, licenses, approvals, certificates and/or other similar authorizations, to

the full extent permitted by law (hereinafter collectively the "**Permits**") obtained by or on behalf of Assignor, or previously transferred to Assignor, in connection with the Property.

1.3 All of Assignor's right, title and interest in, to and under any and all existing or future development agreements, utility agreements, planning ordinances, master-planned approvals or similar entitlements (herein singularly or collectively referred to as the "**Development Documents**") relating to, benefitting and/or facilitating the development of the Property.

1.4 All of Assignor's right, title and interest as "Declarant" under all covenants, conditions and restrictions now or at any time hereafter encumbering the Property or any portion thereof, together with any and all amendments thereto (hereinafter collectively the "**CC&Rs**"); including, without limitation, any and all existing CC&Rs that currently encumber the Property as well as any and all future amendments, restatements, and new CC&Rs recorded against the Property.

The foregoing assignment, transfer and conveyance is intended to be and constitutes a present assignment, transfer and conveyance by Assignor to Assignee.

2. **Obligations Secured.** This Assignment is given for the purpose of securing:

2.1 Repayment of the Loan, including, but not limited to, all principal, interest and other charges and sums due and owing under the Note.

2.2 Payment of all other sums and charges becoming due and payable to Assignee under the provisions of the Loan Agreement, this Assignment, the Note, Deed of Trust, or any of the other Loan Documents.

2.3 The observance and performance of each and every obligation, covenant, agreement, representation and warranty of Assignor contained herein, or under the Loan Agreement, the Note, the Deed of Trust or any other Loan Document.

3. **Covenants of Assignor.** To protect the security of this Assignment, Assignor covenants and agrees:

3.1 To perform each of its obligations under the Permits, Development Documents, CC&Rs and Sales Agreements; at its sole cost and expense, to enforce or secure the performance of each obligation under the Sales Agreements to be performed by purchasers under the Sales Agreements (collectively, "**Purchaser**"); and not to materially modify the Permits, Development Documents, CC&Rs or Sales Agreements, without the prior written consent of Assignee. Assignor assigns to Assignee all Assignor's right and power to materially modify in any respect the terms of the Permits, Development Documents, CC&Rs and Sales Agreements and any attempt on the part of Assignor to exercise any such right without the written consent of Assignee shall be a breach of the terms hereof. After Assignee has given its written consent to any modified or new Permits, Development Documents, CC&Rs or Sales Agreement, Assignor shall deliver to Assignee copies of such modified or new Permits, Development Documents, CC&Rs or Sales Agreement as soon as such documents have been executed.

3.2 To defend at Assignor's sole cost any action in any manner connected with the Permits, Development Documents, CC&Rs and Sales Agreements, or the obligation hereunder, and to pay all costs of Assignee, including reasonable attorneys' fees, in any such action in which Assignee may appear.

3.3 If Assignor fails to do any act as herein provided and such failure continues for ten (10) days after written notice thereof is given by Assignee to Assignor, then Assignee, but without obligation to do so and without notice to Assignor, and without releasing Assignor from any obligation hereof, may take action in such manner and to such extent as Assignee may deem necessary to protect the security described herein. These actions include specifically, without limiting Assignee's general powers, the defense of any action purporting to affect the security described herein or the rights or powers of Assignee, and also the performance of each obligation of Assignor set forth in the Permits, Development Documents, CC&Rs and Sales Agreements. In exercising such powers, Assignee may employ attorneys and other agents, and pay necessary costs and reasonable attorneys' fees. Assignor agrees to give prompt notice to Assignee of any default of any Purchaser and of any notice of default on the part of the Assignor with respect to the Sales Agreements, together with an accurate and complete copy thereof.

3.4 To pay immediately to Assignee upon demand all sums expended by Assignee under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the default rate provided in the Note and such sums shall be added to Assignor's indebtedness and shall be secured hereby and by the Deed of Trust.

4. **Assignor's Warranties.** Assignor represents and warrants to Assignee that: (a) Assignor has not executed any prior assignment of the Permits, Development Documents, CC&Rs or Sales Agreements or the proceeds due thereunder or performed any act or executed any instrument which might prevent Assignee from operating under any of the terms and conditions thereof, or which would limit Assignee in such operation; (b) to the knowledge of Assignor, no default now exists under the Permits, Development Documents, CC&Rs or Sales Agreements; (c) Assignor has good right, title and interest in and to the Permits, Development Documents, Sales Agreements and CC&Rs hereby assigned and the right to assign the same, and that no other person or entity has any right, title or interest therein; and (d) Assignor has duly and timely performed all of the terms, covenants, conditions and warranties set forth in the Permits, Development Documents, CC&Rs and Sales Agreements which are to be kept, observed and performed by Assignor.

5. **Limited License Back.**

5.1 So long as there exists no (i) "Event of Default" (as defined in the Loan Agreement); or (ii) uncured default in the performance of any material obligation, covenant or agreement contained herein, in the Sales Agreements, Development Documents, CC&Rs or Permits, Assignor shall (x) have a license to exercise all rights and powers of the "Declarant" under the CC&Rs, (y) have the right to enjoy all of the rights arising out of the Development Documents and Permits, and (z) have a license to collect upon, but not prior to, accrual, all sales proceeds, issues and profits coming due pursuant to the Sales Agreements and to hold the same as a trust fund to be applied, as required by Assignee, as follows:

(a) First, to the payment of taxes and assessments upon the Property before any penalty or interest is due thereon;

(b) Second, to the costs of insurance, maintenance, repairs and any other payments as required by the terms of the Deed of Trust;

(c) Third, to satisfaction of all obligations under the Permits, CC&Rs, Sales Agreements and Development Documents;

(d) Fourth, to the payment of interest, principal, and any other sums becoming due under the Note, the Loan Agreement and Deed of Trust; and

(e) Fifth, for Assignor's remaining purposes.

5.2 Upon the occurrence and continuance of (a) an Event of Default or (b) an uncured default in the performance of any material obligation, covenant or agreement contained herein, in the Sales Agreements, Development Documents, CC&Rs or Permits, Assignee may: (i) exercise any and all rights and remedies available to it under the Loan Documents, (ii) immediately exercise any and all rights of the "Declarant" under the CC&Rs; (iii) make, cancel, enforce or modify the Sales Agreements; (iv) exercise all rights under the Permits and Development Documents; (v) do any acts which Assignee deems proper to protect the security hereof, and (vi) either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive all payments due under the Sales Agreements, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Assignee may determine. The entering and taking possession of the Property, the collection of such payments and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or affect notice of default under the Deed of Trust or invalidate any act done pursuant to such notice.

5.3 Any default by Assignor in the performance of any material obligation herein contained that is not cured within any applicable notice and cure period shall constitute an Event of Default under the terms of the Deed of Trust entitling Assignee to all of its rights and remedies thereunder, including specifically the right to declare a default thereunder and to elect to sell the Property secured by the Deed of Trust, or foreclose the Deed of Trust as provided by law.

5.4 Assignee shall not be obligated to perform nor does it hereby undertake to perform any obligation under the Permits, Development Documents, CC&Rs, Sales Agreements or this Assignment and all claims which may be asserted against it by persons other than Assignor by reason of any alleged obligation to perform any of the terms in the Permits, Development Documents, CC&Rs or Sales Agreements; should Assignee incur any such liability, loss or damage under the Permits, Development Documents, Sales Agreements, CC&Rs or this Assignment, or in the defense of any such claims, the amount thereof, including costs and reasonable attorneys' fees, shall be secured hereby and by the Deed of Trust, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon failure of Assignor to do so Assignee may declare all sums secured hereby immediately due and payable.

6. Miscellaneous.

6.1 Until all indebtedness secured hereby has been paid in full, any subsequent Permits, Development Documents, CC&Rs and Sales Agreements shall be deemed to be assigned to Assignee hereby, upon the terms and conditions herein contained, and Assignor agrees to execute all instruments necessary therefor.

6.2 Upon the payment in full of all indebtedness secured hereby, this Assignment shall automatically terminate and shall be of no effect. In such an event, Assignee agrees to execute any document reasonably necessary to release its interest hereunder. The affidavit of any officer of Assignee showing any part of said indebtedness to remain unpaid shall be conclusive evidence of the validity, effectiveness and continuing force of this assignment, and any person may and is hereby authorized to rely thereon.

6.3 This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee, to any lender participating in the Note, and to any subsequent

holder of said Note, and shall be binding upon Assignor, its successors and assigns. Pursuant to Section 18.3 of the Loan Agreement, Assignor shall immediately execute, upon the request of Assignee, such estoppels and confirmation as Assignee may reasonably require in order to facilitate any financings or participations arranged by Assignee, including, but not limited to, a certification by Assignor that, to the extent true, this Assignment is unmodified and in full force and effect and, to the knowledge of Assignor, there are no defaults by Assignee under this Assignment.

6.4 All notices hereunder shall be in writing and sent by certified mail to the addresses specified in the Loan Agreement.

6.5 Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder. It is further agreed that nothing herein contained and no act done or omitted by Assignee pursuant to the powers and rights granted to Assignee herein shall be deemed to be a waiver by Assignee of the rights and remedies possessed by Assignee under the terms hereof. The right of Assignee to collect said indebtedness and to enforce any other security therefor owned by Assignee may be exercised either prior to, simultaneously with, or subsequent to any action taken by Assignee hereunder.

6.6 This Assignment constitutes an irrevocable direction and authorization to all purchasers under Sales Agreements to pay all sales proceeds to Assignee upon demand from Assignee during the existence of an Event of Default without the necessity of any further consent or other action by Assignor.

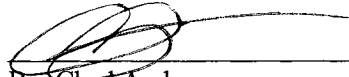
6.7 Assignor hereby agrees to indemnify, protect and hold Assignee harmless from any and all liability, loss, damage or expense which Assignee may incur under or by reason of (i) this Assignment; (ii) any action taken by Assignee hereunder; or (iii) defense of any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Permits, Development Documents, Sales Agreements or CC&Rs, excluding any such liability, loss, damage or expense to the extent attributable to the gross negligence or willful misconduct of Assignee. Should Assignee incur any such liability, loss, damage or expense, the amount thereof, including reasonable attorneys' fees, with interest thereon at the Default Rate provided in the Note shall be payable by Assignor immediately upon demand, and shall be secured hereby and by the Deed of Trust.

6.8 Assignee's failure to avail itself of any of the rights and remedies set forth in this Assignment for any period of time or at any time shall not be construed or deemed to be a waiver of any such right or remedy, and nothing herein contained nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies under the Note and Deed of Trust or of the benefit of the laws of the state in which the Property is situated. The rights of Assignee to collect the said indebtedness, to enforce any other security therefor, or to enforce any other right or remedy hereunder may be exercised by Assignee, either prior to, simultaneously with, or subsequent to, any such other action hereinbefore described, and shall not be deemed an election of remedies.

6.9 This Assignment shall be governed by and construed in accordance with Utah law.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

ASSIGNOR:
BOARDWALK INDUSTRIES, LLC
A Utah limited liability company


By: Chad Anderson
Its: Member/Manager


By: Jeff Mansell
Its: Member/Manager

State of Utah)
County of Salt Lake :ss

On September 6, 2018 before me personally appeared Jeff Mansell, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he executed the same in his individual and herein stated capacity.

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



WITNESS my hand and official seal.

Signature  (Seal)

State of Utah)
County of Salt Lake :ss

On September 7, 2018 before me personally appeared Chad Anderson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he executed the same in his individual and herein stated capacity.

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



WITNESS my hand and official seal.

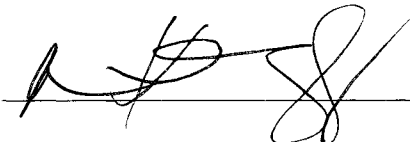
Signature  (Seal)

EXHIBIT A**LEGAL DESCRIPTION**

Proposed LAKEVIEW FIELDS PLAT E, being more particularly described as follows:

Beginning at a point located North 89°31'44" West along section line 1173.08 feet and North 320.33 feet from the Southeast corner of Section 28, Township 6 South, Range 2 East, Salt Lake Base and Meridian and running thence North 45°11'38" West, a distance of 14.14 feet; thence North 00°11'38" West, a distance of 319.51 feet; thence along the arc of a 171.00 foot curve to the left through a central angle of 16°36'36" for 49.57 feet (chord bears North 08°29'56" West 49.40 feet); thence North 76°06'34" East, a distance of 96.77 feet; thence South 27°35'14" East, a distance of 393.08 feet; thence South 22°33'10" West, a distance of 14.33 feet; thence South 62°24'46" West, a distance of 50.67 feet; thence along the arc of a 185.33 foot curve to the right through a central angle of 23°34'47" for 76.27 feet (chord bears South 77°46'53" West 75.73 feet); thence South 89°48'22" West, a distance of 133.13 feet to the point of beginning.

ALSO: Proposed LAKEVIEW FIELDS PLAT F, being more particularly described as follows:

Beginning at a point located North 89°31'44" West along section line 970.99 feet and North 00.13 feet from the Southeast corner of Section 28, Township 6 South, Range 2 East, Salt Lake Base and Meridian and running thence North 89°58'43" West, a distance of 233.51 feet; thence North 00°01'17" East, a distance of 99.72 feet; thence North 25°59'02" West, a distance of 45.13 feet; thence North 36°37'39" West, a distance of 63.35 feet; thence North 64°43'27" East, a distance of 41.28 feet; thence North 00°11'38" West, a distance of 122.85 feet; thence North 89°48'22" East, a distance of 42.00 feet; thence South 45°11'38" East, a distance of 14.14 feet; thence North 89°48'22" East, a distance of 133.13 feet; thence along the arc of a 185.33 foot curve to the left through a central angle of a 23°34'47" for 76.27 feet (chord bears North 77°46'53" East 75.73 feet); thence North 62°24'46" East, a distance of 50.67 feet; thence North 22°33'10" East, a distance of 14.33 feet; thence South 27°35'14" East, a distance of 72.24 feet; thence North 78°07'03" West, a distance of 14.25 feet; thence South 62°24'46" West, a distance of 51.83 feet; thence South 81°10'04" West, a distance of 45.24 feet; thence along the arc of a 221.00 foot curve to the right through a central angle of 08°38'18" for 33.32 feet (chord bears South 85°29'13" West 33.29 feet); thence South 37°43'33" East, a distance of 78.61 feet; thence South 00°11'38" East, a distance of 218.21 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM that portion deeded to Provo City in that certain Warranty Deed recorded April 30, 2018 as Entry No. 39816:2018.

Parcel Identification Number: 19-036-0104