

**MAIL TAX STATEMENTS TO:**

No Change

**AFTER RECORDING RETURN TO:**

Alan M. Sorem  
Saalfeld Griggs PC  
PO Box 470  
Salem, OR 97308

CT-1105805-CAP

T.V.N 44-238-0001 through 44-238-0015

**DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE DECLARATION**

THIS DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE DECLARATION (the "**Declaration**") 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 intends to sell Lot 1, as depicted on the Plat, for commercial development. Declarant desires to create mutual, reciprocal access and utility easements for vehicular and pedestrian access and public and private utilities, as well as provide for the future use and maintenance of the easements and create restrictions limiting the permitted uses on Lot 1.

**DECLARATION:**

NOW, THEREFORE, Declarant declares that all Lots on the Property shall be sold, developed, conveyed, owned, and occupied subject to this Declaration. Each person or entity, upon acceptance of a deed or land sale contract to purchase, covenants and agrees to follow said provisions of this Declaration, and it binds and inures to the benefit of the parties' successors in interest.

## 1. Declaration of Easement

Declarant declares there shall be a mutual, reciprocal access and utility easement (the "**Easement**") over the Property except for those parts of the Property occupied by existing buildings, footings, foundations, aboveground improvements and/or subsurface structures on the effective date hereof or any future buildings, footings, foundations, above-ground improvements and/or subsurface improvements constructed with the consent of the other owners of the Property, which shall not be unreasonably withheld (the "**Easement Area**"). The scope of the Easement shall include all private and public utilities, including, but not limited to, stormwater detention facilities.

## 2. Appurtenant

This Declaration shall be appurtenant to the Lots, shall run with the land, and the terms hereof shall bind and inure to the benefit of Declarant's successors and assigns.

## 3. Scope of Easement

In addition, the Easement shall include the right, privilege and authority of the owners of the Lots (collectively the "**Owners**" or individually an "**Owner**"), and their agents, independent contractors and invitees, and any successors, to enter upon the Easement Area to install and maintain underground public and private utilities, grade, level, drain, build, maintain, repair or rebuild the driveways, parking areas, and sidewalks as may be necessary or desirable on, over and across the ground within the Easement Area. The Owners shall keep the Easement Area free of obstructions that might reasonably interfere with the purpose of the Easement described herein.

## 4. Not a Dedication

This Declaration shall not be construed as a dedication to the public.

## 5. Easement Terms and Obligations

### 5.1 Maintenance Obligations

Each Owner shall maintain, repair, and replace the part of any roadway or other improvement within the Easement Area on such Owner's Lot to the standards provided in this Declaration.

### 5.2 Improvement Standards

The operation, maintenance, repair, replacement, and relocation, to the extent allowed, of the Easement Area and related improvements (a) shall occur on the Owners' respective Lots on a prompt, diligent, and regular basis in a manner consistent with Class A commercial or multifamily space in American Fork, Utah and applicable maintenance, design, and engineering standards under the then existing laws in American Fork, Utah, (b) shall not unreasonably interfere with or diminish the service to the Lot served by the improvement, (c) shall not reduce or unreasonably impair the usefulness or function of the improvement, (d) shall provide for the disturbed real property and affected improvement to be restored to their original conditions, and (e) shall be constructed, installed, operated, maintained, or repaired consistent with the

specifications for such improvement. In addition to the foregoing general standards, the following minimum maintenance standards shall apply to the roadways, curbs, sidewalks, and similar improvements:

- 5.2.1 Prompt patching or filling of damage to the pavement;
- 5.2.2 Asphalt striping, sealing, and resurfacing at least every ten (10) years; and
- 5.2.3 Removal of snow, ice, and debris as soon as practicable after their occurrence.

### **5.3 Failure to Perform Maintenance and Notice**

In addition to any other remedy permitted by this Declaration, if an Owner fails to perform any maintenance or repair as required, any Owner, upon fifteen (15) days' prior written notice ("**Notice**") to the nonperforming Owner, may cause such work to be done with a right of reimbursement for all sums necessarily and properly spent to remedy such failure. However, if such performance is necessary to prevent the harm to an Owner's Lot or substantial interference with an Owner's use of such Lot, then no Notice is necessary. The Notice, if necessary, shall include a summary of the actions to be completed, an estimate of the total cost, and an estimate of when such actions will be completed.

### **5.4 Parking Use**

- 5.4.1 The Easement granted does not include the right of any Owner, tenant, guest, customer, or invitee to park vehicles on any other Owner's Lot, unless temporarily and approved in advance by the Owner of the Lot where vehicles will be parked.
- 5.4.2 Unless approved in advance, no Owner may include parking spaces on any Lot, other than such Owner's Lot, to meet any minimum parking requirement imposed by applicable laws.

### **5.5 No Conflicting Easements**

No Owner shall, without the consent of the other Owners, grant or permit granting any easement or right of use affecting any part of the Property to any third party or entity other than grants that are consistent with this Declaration.

## **6. Insurance Requirements**

Each Owner shall keep in full force and effect a policy of insurance covering loss or damage to any building on its Lot, together with such other structures and improvements constructed thereon, in an amount equal to the full replacement value thereof, exclusive of excavation, footings and foundations, with no deductible or only a commercially reasonable deductible.

### **6.1 Liability Insurance**

Each Owner shall keep in full force and effect a policy of commercial general liability insurance protecting itself and naming the other Owners as additional insureds, against loss, cost,

or expense from injury to or death of persons or damage to or destruction of property occurring on such Owner's Lot. Such insurance shall have limits of at least Two Million Dollars (\$2,000,000) for each occurrence, bodily injury and property damage combined, with no deductible or only a commercially reasonable deductible.

### **6.2 Acceptable Policies**

All insurance required to be carried under this Section 6 shall be under primary policies and shall be carried with reputable companies licensed to do business in Utah.

### **6.3 Blanket Insurance**

The insurance required to be carried under this Section 6 may be carried under policies of blanket insurance that may cover other liabilities and locations; provided, however, that such blanket policies have a per location endorsement and in all other respects follow this Section 6.

### **6.4 Waiver of Subrogation**

If insurance proceeds are actually received to satisfy a loss which any Owner must cover under this Declaration, each Owner waives any rights of recovery against the other Owners for any loss or damage to any building, structures or improvements on its respective Lot, or the contents therein, for loss of income because of fire or other casualty, or for losses from damage to person or property, and each Owner's policies of insurance shall contain provisions recognizing this mutual release and waiving all rights of subrogation by the respective insurance carriers.

## **7. Construction Requirements**

### **7.1 No Interference**

All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or improvement on the Property shall be effected as quickly as is reasonably possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from the Property, or any part of it, to or from any public right-of-way, (b) customer vehicular parking in that part of the roadway in front of any building constructed in the Property, or (c) receiving merchandise by any business in the Property. All staging for the construction, maintenance, repair, replacement, alteration, or expansion of any building or other improvements in the Property, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be approved in advance by the affected Owner.

### **7.2 Encroachments**

Incidental encroachments upon the Easement Area may occur because of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, improvements, and other improvements on the Property, which are permitted hereunder if all activities requiring the use of such facilities are quickly pursued to completion and are performed to reasonably reduce any

interference with the Easement or improvements or with the normal operation of any business in the Property.

## **8. Indemnification**

Each Owner shall indemnify, defend and hold harmless the other Owners, collectively and individually, from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees, paralegal fees, expert witness fees, and costs, whether at the "trial" level or the "appeal" level), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property occurring on the indemnifying Owner's Lot, except to the extent caused by the negligent or willful act or omission of the indemnified Owners and their respective tenants, subtenants, agents, contractors or employees.

## **9. Enforcement and Default**

### **9.1 Compliance with Declaration**

Each Owner shall follow the Declaration and all rules and regulations adopted pursuant thereto.

### **9.2 Authority to Enforce and Collect**

Any Owner may take prompt action against any violator to enforce the Declaration and rules and regulations adopted pursuant thereto, including levying reasonable fines for violations of the Declaration, rules and regulations, and taking prompt action to collect any unpaid monetary obligations. In doing so, an Owner may exercise one or more remedies, separately or concurrently, specified in the Declaration, as well as any other remedies that may be available at law.

### **9.3 Abatement and Enjoining of Violations**

In the event of a violation of provisions of the Declaration or any rules or regulations adopted pursuant thereto, the enforcing Owner shall have the right to:

9.3.1 Enter the Lot in which the violation exists and to summarily abate and remove, at the expense of the Owner, any object, improvement, or condition that may exist contrary to the intent and meaning of these provisions, and the enforcing Owner shall not thereby be deemed in any manner of trespass; or

9.3.2 Enjoin, abate, or remedy such thing or condition, including removal or alteration of construction by appropriate legal proceedings, including claims for specific performance and injunctive or declaratory relief.

### **9.4 Interest**

If any amount owing under this Declaration is delinquent, in addition to all other rights and remedies available under this Declaration, such delinquent amount shall accrue interest at the default rate of twelve percent (12%).

**9.5 Collection Costs; Attorney's Fees**

Owners who fail to pay monetary obligations when due shall be obligated to pay reasonable fees and costs including, but not limited to, attorney's fees incurred in connection with the other Owner's efforts to collect the delinquent unpaid monetary obligations, whether or not suit or action is commenced. If an Owner commences suit or action for the collection of any amounts due or to seek damages or enforcement of any provision of the Declaration, or rules and regulations adopted pursuant thereto, the prevailing party shall be awarded the costs of such suit or action, including reasonable attorney's fees to be fixed by the court or courts, both at trial and on appeal, in addition to all other sums or obligations.

**9.6 No Right of Termination**

No breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration occurring prior to such termination. No breach of any of the covenants, conditions and restrictions of this Declaration, nor the enforcement of any lien provisions in this Declaration, shall render invalid the lien of any first mortgage or first deed of trust recorded against the fee interest on a Lot, but the covenants, conditions, restrictions, limitations and agreements in this Declaration shall be binding upon and effective against any Owner(s) of a Lot whose title is derived through foreclosure or trustee's sale, or otherwise.

**10. Right to Modify, Terminate, Amend or Extend**

**10.1 Required Approval**

This Declaration and any provision, covenant, condition, or restriction within it may be extended, modified, or amended as to the whole of the Property or any portion, with the consent of all Owners.

**10.2 Termination**

No termination will be effective until a written instrument setting forth its terms has been executed by all Owners, and the Owners have recorded said written instrument in the office of the recorder of Utah County, Utah.

**10.3 Amendment**

No such amendment, modification, or termination will affect the rights of (1) any mortgagee under a mortgage, or (2) the trustee or beneficiary under any deed of trust constituting a lien on the Property or any part of it at the time unless the mortgagee or beneficiary consent to it, nor will any amendment, change, or termination be effective against such mortgagee, trustee or beneficiary after securing title to the encumbered Lot, unless the mortgagee, or trustee and beneficiary have consented in writing.

**10.4 Notices**

All notices to be delivered in connection with this Declaration shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, and shall be deemed given upon receipt if personally delivered, or if mailed, seventy-two (72) hours after being deposited in the United States mail, postage prepaid to the registered business address for the Owner. Instead of mailing, any party may cause delivery of such notices, demands and requests to be made by personal service, email, or reputable overnight courier (e.g., Federal Express or UPS) if written proof of delivery is given to the sender.

The aforesaid persons may, by written notice served upon the other Owners as aforesaid, designate a different address, or a different or additional person(s), to which all such notices or demands are thereafter to be addressed.

**11. Alienation and Restrictions on Use****11.1 Consent to Sale of Lot 1**

Note 7 of the Plat restricts individual sale of the Lots without prior written consent of all Owners of the Lots. Declarant owns all Lots. Declarant consents to the sale of Lot 1; provided, however, the new Owner shall be responsible for installation and maintenance of separate utility meter(s) for Lot 1.

**11.2 Use of Lot 1**

Declarant intends to retain a part of the Property for existing residential development. Declarant is seeking to restrict the development and use of Lot 1 to ensure consistency of future development with the existing uses. The following uses are prohibited uses on Lot 1:

- 11.2.1 Any business related to the growing, distribution or sale of marijuana (i.e., cannabis) and marijuana-related businesses, including, but not limited to, marijuana dispensaries or retail stores focused on the sale of marijuana paraphernalia and smoke and vape shops;
- 11.2.2 Any business related to pornography or nudity of any kind, including, but not limited to, strip clubs or gentlemen's clubs, and retail stores focused on the sale of pornography, lingerie, or adult stores;
- 11.2.3 Any casinos or businesses where the primary purpose is gambling. The foregoing does not include convenience stores, grocery stores, sit-down restaurants, or other retail facilities where gambling is properly classified as an incidental use (such as the sale of lottery tickets and video lottery machines in a restaurant or pub); and
- 11.2.4 Tattoo parlors, bars where not incidental to restaurant use, and night clubs.

**12. Real Property Taxes**

Each Owner shall pay any real property taxes assessed to that Owner's Lot without apportionment

thereof relating to the Easement Area.

**13. Time of Essence**

Time is of the essence of the performance of each obligation under this Declaration.

**14. Arbitration**

Any dispute or claim that arises out of or that relates to this Declaration, or to the interpretation or breach thereof, or to the existence, validity, or scope of this Declaration, shall be resolved by arbitration under the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc. or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim under the filing rules of the organization selected, and judgment upon the award rendered under such arbitration may be entered in any court having jurisdiction thereof. The parties acknowledge that mediation usually helps parties to settle their dispute. Therefore, any party may propose mediation whenever appropriate through either organization named above or any other mediation process or mediator as the parties may agree upon.

**15. Venue**

The parties agree that any disputes arising out of or related to this Declaration shall be arbitrated exclusively in Marion County, Oregon. Each party to this Declaration further agrees that under such arbitration, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for arbitration in Marion County, Oregon.

**16. Rule of Construction**

Any rule of construction interpreting a document against its drafter shall be inapplicable.

[Signature Pages Follow]



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

**DECLARANT:**

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

By: Mountain West Investment Corporation, an Oregon corporation

Its: Manager

By: *Jason C Tokarski*  
Jason Tokarski, Vice President

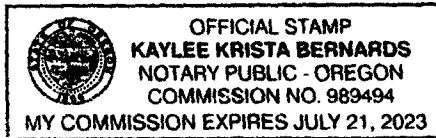
Date: June 9, 2023

State of Oregon )  
 ) ss.  
County of MARION )

This instrument was acknowledged before me on June 9, 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:

*Kaylee Krista Bernards*  
Notary Public for Oregon  
My Commission Expires: July 21 2023





ON BEHALF OF THE CITY OF AMERICAN FORK, the undersigned acknowledges and consents to the transfer of title of Lot 1 to a third-party without further approval by the City of American Fork as required under that Certain Owner Acknowledgment an Utility Liability Indemnification, recorded on September 2, 2021 at Recorder No. 153225:2021 and the Kelton Apartments Phase 1 Plat recorded on April 13, 2021 at Recorder No. 69769:2021, Pap 17637.

CITY OF AMERICAN FORK, a Utah municipal corporation

By: [Signature]

Date: 6/14/2023

Its: CITY ADMINISTRATOR

State of Utah )  
County of UTAH ) ss.

This instrument was acknowledged before me on JUNE 14, 2023, by DAVID BUNKER, CITY OF AMERICAN FORK an municipal corporation.

Before me:

[Signature]  
Notary Public for Utah  
My Commission Expires: 11.04.2026

