

mtc 332851

When recorded Mail To:
KRK CONSTRUCTION, LLC
Attn: Robert Olsen
9045 South 1300 East Suite 101
Sandy, UT 84094

TRUST DEED, SECURITY AGREEMENT, AND FIXTURE FILING
With Assignments of Rents

THIS TRUST DEED, SECURITY AGREEMENT, AND FIXTURE FILING ("Security Instrument"), is made on July 20, 2023 by **TY GWYN FAMILY, LP**, a Utah limited partnership, as Grantor ("Borrower" or "Trustor"), whose address is 960 South 1300 East Bountiful, UT 84010, in favor of Joseph Covey attorney as Trustee ("Trustee"), for the benefit of **KRK CONSTRUCTION, LLC** and **ROTH HOLDINGS, LLC**, whose address is 9045 South 1300 East Sandy, UT 84094 ("Lender" or "Beneficiary"). Borrower owes Lender the principal sum of **EIGHT MILLION EIGHT HUNDRED THOUSAND and 00/100 Dollars** (U.S. 8,800,000.00) plus accrued and unpaid interest thereon. This debt is evidenced by Borrower's promissory note dated the same date of this Security Instrument ("Note"), which provides for monthly payments, with the full principal and accrued and unpaid interest thereon, if not paid earlier, due and payable on July 1, 2024. This Security Instrument secures to Lender the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations, liabilities and indebtedness (including, without limitation, principal, premium, interest, reimbursement obligations, fees and indemnities thereon (including, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of the Trustor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such proceeding)) of the Borrower to the Lender, whether now existing or hereafter incurred under, arising out of, or in connection with the Note and the due performance and compliance by the Lender with all of the terms, conditions and agreements contained in the Note and in such other credit documents. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, for the benefit and security of Beneficiary, all of Trustor's right, title, and interest in and to the following described real property located in **Tooele County, State of Utah** and more particularly described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A

TOGETHER WITH all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof, **SUBJECT, HOWEVER**, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits (collectively, the "Property");



BORROWER COVENANTS that Borrower has fee simple title to the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

TO PROTECT THE SECURITY OF THIS Security Instrument, TRUSTOR AGREES:

1. To keep said Property in good condition and repair, not remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting said Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of law; to do all other acts which from the character or use of said Property may be reasonably necessary; the specific enumerations herein not excluding the general. Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this paragraph, is authorized to accept as true and conclusive all facts and statements in such affidavit, and to act upon such affidavit hereunder.

2. To provide and maintain in full force and effect policies of property, hazard and liability insurance, of such type or types and amounts as Beneficiary may require with respect to the Property, together with statutory workers' compensation insurance with respect to any work to be performed on or about the Property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary. Trustor hereby irrevocably authorizes and directs each insurance company providing any policy of insurance to the Lender with respect to the Property to make payment for such loss directly to Beneficiary instead of to Trustor. Beneficiary may, at its option, apply the insurance proceeds, or any part thereof, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance, together with any endorsements requested by Beneficiary, and any extensions or renewals thereof or supplements thereto.

4. To pay for any and all reasonable fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of the Beneficiary's liens on, and security interest in, the Property, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices (including stamp and mortgage recording taxes or other taxes imposed on the Beneficiary by virtue of its ownership of this Security Instrument), which are imposed upon the recording of this Security Instrument or thereafter, all reasonable attorneys' fees, payment or discharge of any taxes or liens upon or in respect of the Property, premiums for insurance with respect to the Property and all other reasonable fees, costs and expenses in connection with protecting, maintaining or preserving the Property and the Beneficiary's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or

proceedings arising out of or relating to the Property, with interest from date of expenditure at the rate of TWELVE percent (12%) per annum until paid, and the repayment thereof shall be secured hereby.

5. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said Property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

6. To pay at least 10 days before delinquency all taxes and assessments affecting said Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said Property; to pay, when due, all encumbrances, charges and liens with interest, on said Property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.

7. No part of the Property or any legal or beneficial interest in the Property shall be sold, assigned, conveyed, leased, transferred or otherwise disposed of (whether voluntarily or involuntarily, directly or indirectly, or any interest in the Trustor, or by operation of law or otherwise).

8. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of procuring evidence of title, employing counsel, and paying its reasonable fees.

IT IS MUTUALLY AGREED THAT:

9. Should said Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Trustor shall give prompt written notice thereof to the Beneficiary and Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same to the repayment of any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation,



awards, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

10. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Security Instrument and the note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of said Property; (b) join in granting an easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Security Instrument or the lien or charge thereof; (d) reconvey, without warranty, all or any part of said Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

11. This Security Instrument shall constitute a security agreement upon the terms and conditions stated herein. As additional security for the performance of Trustor's covenants and obligations under the Note and this Security Instrument, Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect such moneys shall not in any manner affect the subsequent enforcement by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

12. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, upon and take possession of said Property or any part thereof, in its own name sue for or costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

13. The entering upon and taking possession of said Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

15. Time is of the essence hereof. Upon default by Trustor in the payment of any

indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the Note and all documents evidencing indebtedness secured hereby.

16. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its deed conveying said Property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale of payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the applicable rate from the date of expenditures; (4) all late charges and penalties; (5) all other sums then secured hereby; and (6) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretions, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

17. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Security Instrument in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

18. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which said Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

19. (a) Trustor agrees to indemnify, reimburse and hold the Beneficiary and its successors, assigns, employees, affiliates and agents (hereinafter in this paragraph 19 referred to individually as "Indemnitee," and collectively as "Indemnitees") harmless from any and all liabilities, obligations, damages, injuries, penalties, claims, demands, actions, suits, judgments and any and all reasonable costs, expenses or disbursements (including reasonable attorneys' fees and expenses) (for the purposes of this paragraph 19 the foregoing are collectively called "expenses") of whatsoever kind and nature imposed on, asserted against or incurred by any of the Indemnitees in any way relating to or arising out of this Security Instrument or in any way connected with the administration of the transactions contemplated hereby or the enforcement of any of the terms of, or the preservation of any rights under this Security Instrument, or in any way relating to or arising out of the possession, operation, condition, sale, return or other disposition, or use of the Property (including, without limitation, latent or other defects, whether or not discoverable), the violation of the laws of any country, state or other governmental body or unit, any tort (including, without limitation, claims arising or imposed under the doctrine of strict liability, or for or on account of injury to or the death of any person (including any Indemnitee), or property damage), or contract claim; provided that no Indemnitee shall be indemnified pursuant to this paragraph 19 for losses, damages or liabilities to the extent caused by the gross negligence or willful misconduct of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable decision). The Trustor agrees that upon written notice by any Indemnitee of the assertion of such a liability, obligation, damage, injury, penalty, claim, demand, action, suit or judgment, the Trustor shall assume full responsibility for the defense thereof. Each Indemnitee agrees to use its reasonable best efforts to promptly notify the Trustor of any such assertion of which such Indemnitee has knowledge.

(b) Without limiting the application of paragraph 19 hereof, the Trustor agrees to pay, indemnify and hold each Indemnitee harmless from and against any loss, costs, damages and expenses which such Indemnitee may suffer, expend or incur in consequence of or growing out of any misrepresentation by the Trustor in this Security Instrument or in any writing contemplated by or made or delivered pursuant to or in connection with this Security Instrument.

(c) If and to the extent that the obligations of the Trustor under this paragraph 19 are unenforceable for any reason, the Trustor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

20. Borrower shall pay or reimburse Lender for all out-of-pocket costs and expenses (including but not limited to attorneys' fees and disbursements) Lender may pay or incur in connection with the preparation, review and negotiation of this Security Instrument. All obligations provided for in this paragraph 20 shall survive any termination of this Security Instrument.

21. This Security Instrument shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note. In this Security Instrument, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

22. Trustee accepts this Trust when this Security Instrument, duly executed and



acknowledged, is made public record as provided by law. Trustee is not obligated to notify any party hereto pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

23. This Security Instrument shall be construed according to the laws of the State of Utah.

24. This Trust Deed, or a copy thereof, may be filed as a financing statement in appropriate state, county or municipal offices and/or in the real estate records of the TOOELE County Recorder in order to perfect and protect the security interest granted herein. The mailing address for the Beneficiary, as secured party, and Trustor, as debtor, are as stated above.

25. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the following address:

TY GWYN FAMILY, LP
960 S. 1300 E.
BOUNTIFUL, UT 84010

REQUEST FOR NOTICE OF DEFAULT
-----AND FORECLOSURE UNDER SUPERIOR-----
MORTGAGES OF DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Security Instrument to give Notice to Lender, at lender's address set forth on page one of this Security Instrument, of any default under the superior encumbrance and of any sale or other foreclosure action.

Remainder of the page intentionally left blank.

BY SIGNING BELOW, Trustor accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signature of Trustors

TY GWYN FAMILY, LP

By: [Signature]
Name: Matthew Carter
Its: GP

STATE OF UTAH)
)ss:
COUNTY OF Salt Lake)

On the 21st day of July 2022 personally appeared before me MATTHEW S. CARTER, who is PRESIDENT/DIRECTOR of MSC MANAGEMENT, INC., a Utah Corporation, who MSC MANAGEMENT, INC is the GENERAL PARTNER of TY GWYN FAMILY, LP a Utah limited partnership, and that he, MATTHEW S. CARTER as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

[Signature]
Notary Public



TY GWYN FAMILY, LP

By: [Signature]
Name: Melissa Carter
Its: GP

STATE OF UTAH)
)ss:
COUNTY OF)

On the 21st day of July 2022 personally appeared before me MELISSA S. CARTER, who is is the GENERAL PARTNER of TY GWYN FAMILY, LP a Utah limited partnership, and that he, MELISSA S. CARTER as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

[Signature]
Notary Public



[Handwritten initials]

EXHIBIT "A"
Legal Description

LOT(S) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144 MOUNTAIN VALLEY TOWNHOMES, A SUBDIVISION OF TOOELE CITY, OUT OF 2-4-85 FOR 2022 YEAR. ACCORDING TO THE PLAT THEREOF RECORDED IN THE TOOELE COUNTY RECORDER.

Parcel(s): 21-095-0-0102, 21-095-0-0103, 21-095-0-0104, 21-095-0-0105, 21-095-0-0106, 21-095-0-0107, 21-095-0-0108, 21-095-0-0109, 21-095-0-0110, 21-095-0-0111, 21-095-0-0112, 21-095-0-0113, 21-095-0-0114, 21-095-0-0115, 21-095-0-0116, 21-095-0-0117, 21-095-0-0118, 21-095-0-0119, 21-095-0-0120, 21-095-0-0121, 21-095-0-0122, 21-095-0-0123, 21-095-0-0124, 21-095-0-0125, 21-095-0-0126, 21-095-0-0127, 21-095-0-0128, 21-095-0-0129, 21-095-0-0130, 21-095-0-0131, 21-095-0-0132, 21-095-0-0133, 21-095-0-0134, 21-095-0-0135, 21-095-0-0136, 21-095-0-0137, 21-095-0-0138, 21-095-0-0139, 21-095-0-0140, 21-095-0-0141, 21-095-0-0142, 21-095-0-0143, 21-095-0-0144