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14262256 B: 11503 P: 4279 Total Pages: 11
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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

APNS: 22-09-228-038, 22-09-228-042, 22-10-151-025, 22-10-151-024, 22-10-151-028, 22-09-228-045, 22-10-151-023, 22-10-151-027, 22-09-228-044, 22-09-228-039, 22-09-228-043, 22-10-151-032, 22-10-151-033, 22-10-151-034, 22-10-151-035, 22-10-151-036, 22-10-151-037, 22-10-151-038, 22-10-151-039, 22-10-151-040, 22-10-151-041, 22-10-151-042, 22-10-151-043 and 22-09-228-040

137413-DMF



SECOND AMENDMENT TO FEE AND LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING

THIS SECOND AMENDMENT TO FEE AND LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING ("*Deed of Trust*") is made as of July 8, 2024, by and among **KMW DEVELOPMENT L.L.C.**, a Utah limited liability company ("*Trustor*"), whose address is 2733 East Parleys Way, Suite 300, Salt Lake City, Utah 84109, to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, as trustee ("*Trustee*"), whose address is 1996 East 400 South, Suite 120, Salt Lake City, Utah 84121, for the benefit of **WASHINGTON FEDERAL BANK**, a Washington state chartered commercial bank, successor to **WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION**, whose address is 405 S. Main Street, Suite 100, Salt Lake City, Utah ("*Beneficiary*"). Capitalized terms used in this Deed of Trust without definition have the meanings given to them in the Loan Agreement referred to below.

NOTICE TO RECORDER: THE DEED OF TRUST MODIFIED BY THIS AMENDMENT IS A SECURITY AGREEMENT AND FIXTURE FILING UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, WITH TRUSTOR AS DEBTOR AND BENEFICIARY AS SECURED PARTY.

Notice to Trustor: The Note secured by the Deed of Trust amended by this Amendment contains provisions for a variable interest rate.

RECITALS

A. Trustor, **PETERBUILT HH, L.L.C.**, a Utah limited liability company ("*Peterbuilt*"), **RL CHENEY HOLLADAY HOLDINGS, LLC**, a Utah limited liability company ("*RL Cheney*"), and **JM CHENEY HOLLADAY HOLDINGS, LLC**, a Utah limited liability company ("*JM Cheney*"), and referred to collectively with Peterbuilt and RL Cheney herein as "*Original Trustor*") obtained a term loan from Beneficiary (the "*Loan*") pursuant to the terms of a Term Loan Agreement dated as of December 30, 2020 (as the same may be amended, modified, extended, and renewed from time to time, the "*Loan Agreement*"). The Loan is also



evidenced by a Promissory Note dated as of December 30, 2020, in the principal amount of **THIRTY-THREE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$33,100,000.00)** (together with any amendments thereto, the "**Note**").

B. Trustor's obligations under the Loan Agreement and Note are secured by a Fee and Leasehold Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing dated as of December 30, 2020 executed by Original Trustor, as trustor to the trustee named therein for the benefit of Beneficiary, as beneficiary and recorded on December 30, 2020 as Entry No. 13517120 of the official records of Salt Lake County, Utah, as amended by that certain First Amendment to Fee and Leasehold Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing dated as of May 12, 2023 and recorded on May 25, 2023 as Entry No. 14109761 of the official records of Salt Lake County, Utah (as amended, the "**Deed of Trust**") against the real property legally described in EXHIBIT A attached hereto (the "**Property**").

C. The Loan Agreement, Note, Deed of Trust, and all other documents evidencing, securing, or otherwise governing the Loan, as they may have been amended or modified, are referred to herein collectively as the "**Loan Documents**."

D. Original Trustor previously completed a property contribution whereby Peterbuilt, RL Cheney, and JM Cheney deeded their interest in the Project to Trustor. As provided in that certain First Modification and Joinder Agreement between Original Trustor and Beneficiary dated as of May 12, 2023 (the "**First Modification Agreement**"), Original Trustor and Beneficiary agreed to release Peterbuilt, RL Cheney, and JM Cheney as Borrowers under the Loan Documents and to make certain other changes to the Loan Documents on the terms and conditions set forth in the First Modification Agreement.

E. Trustor and Beneficiary desire to give notice that the Loan Agreement, the Note and other Loan Documents have been further amended pursuant to the terms of that certain Fourth Modification Agreement between Trustor and Beneficiary dated as of even date herewith (the "**Fourth Modification Agreement**"), and to amend the Deed of Trust, as more particularly set forth herein.

F. Trustor has requested, and Beneficiary has agreed—subject to the satisfaction of the Release Conditions (as defined in the Loan Agreement)—to release and reconvey the lien and charge of the Deed of Trust against the real property described herein as Exhibit B (the "**Release Parcels**")

G. Trustor is entering into this Amendment to modify the Deed of Trust to secure all of Trustor's obligations under the Loan Documents, as amended by the Fourth Modification Agreement.

AGREEMENTS

In consideration, the receipt and sufficiency of which are the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby acknowledge, and agree as follows:

1. **ACCURACY OF RECITALS.** Trustor hereby acknowledges the accuracy of the Recitals above.
2. **TERMINOLOGY.** All capitalized terms used herein shall have the meanings given to them in the Deed of Trust, unless a different meaning is assigned herein or is required from the context in which such term is used.
3. **NOTICE OF MODIFICATION; MODIFICATIONS TO DEED OF TRUST.**

3.1 Notice of Modification; Modifications to Deed of Trust.

3.1.1 Notice of Modification; Conforming Modifications. Notice is hereby given that the Loan Agreement, Note, Deed of Trust and other Loan Documents have been amended and modified pursuant to the Fourth Modification Agreement. The Deed of Trust is hereby amended and modified as necessary to be consistent with the Fourth Modification Agreement. All references to the Loan Agreement, Note, and other Loan Documents in the Deed of Trust are hereby amended to refer to such documents as amended by the Fourth Modification Agreement.

3.1.2 The Deed of Trust is hereby further amended and modified to secure, without limitation, the making of all payments and the performance of all obligations under the terms of the Loan Documents as modified by the Fourth Modification Agreement, and such other amendments as are set forth in the Fourth Modification Agreement. Notwithstanding the foregoing, the Secured Obligations specifically exclude (a) all obligations of Trustor as a guarantor under any guaranty, (b) the obligations of any other party as a guarantor under any guaranty of the Loan, and (c) the obligations of Trustor, Guarantors, or any other party as an indemnitor under any indemnity agreement with respect to the Property.

3.1.3 The definition of the term "Loan Documents" as used in the Deed of Trust is hereby modified to include this Amendment. All other terms and conditions of the Deed of Trust that are inconsistent with the terms and conditions of this Amendment are modified to the extent necessary to be consistent with this Amendment and the Fourth Modification Agreement.

3.1.4 Property Description. All references in the Deed of Trust to the Property, including, without limitation, those in Exhibit A to the Deed of Trust are hereby amended to reflect the exclusion of the Release Parcels.

4. NOT A NOVATION. The parties each agree and acknowledge that the modifications set forth in this Amendment are not intended to be a novation or to constitute or evidence a new loan but rather a continuation of the existing Loan and the lien and charge of the Deed of Trust against the Property and all assets and properties described in the Deed of Trust shall continue unabrogated and in full force and effect.

5. REAFFIRMATION.

5.1 Trustor hereby (a) ratifies and confirms all of its obligations under the Deed of Trust, the Loan Agreement and each of its obligations under the other Loan Documents, and acknowledges and agrees that such obligations remain in full force and effect, and (b) ratifies, reaffirms and reapproves in favor of Beneficiary the terms and provisions of the Deed of Trust, Loan Agreement and each of the other Loan Documents, including (without limitation), its pledges and other grants of liens and security interests pursuant to the Deed of Trust, Loan Agreement and other Loan Documents to secure such obligations (as amended hereby). Remaining Trustor acknowledges and agrees that the Property secures all Secured Obligations which include all past and future advances made under the Loan Documents.

5.2 The Deed of Trust, as modified by this Amendment, remains in full force and effect and contains the entire understanding and agreement of the parties in respect of the Deed of Trust and supersedes all prior representations, warranties, agreements and understandings. This Agreement and the Deed of Trust shall be read together, as one document. The real property and the whole thereof described in the Deed of Trust, as modified by this Amendment, shall be and remain subject to the lien, charge or encumbrance of the Deed of Trust and nothing herein contained or done pursuant hereto shall affect or be construed to affect the liens, charges or encumbrances of the Deed of Trust, or the priority thereof over other liens, charges or encumbrances, or to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Loan Documents and/or the Deed of Trust.

5.3 Nothing in this Agreement shall be deemed to or shall in any manner prejudice or impair the lien and encumbrance of the Deed of Trust or the terms and conditions of or any rights, powers, or remedies of Beneficiary under the Deed of Trust.

5.4 Trustor acknowledges and represents that the lien as extended and modified herein is a valid and existing lien and there exists no counterclaim or defense of any kind to the Loan Agreement, Note, Deed of Trust or any other document or instrument creating or evidencing the lien securing the Note. The execution, delivery, recordation, terms and conditions of this Amendment shall not novate or subordinate or otherwise adversely affect the lien, encumbrance and priority of the Deed of Trust.

6. RATIFICATION OF DEED OF TRUST. As amended by this Amendment, the Deed of Trust is ratified and confirmed and continues in full force and effect and contains the entire understanding and agreement of the parties in respect of the Deed of Trust and supersedes all prior representations, warranties, agreements and understandings. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of Trustor and Beneficiary, and their respective successors and assigns. No provision of this Amendment may be changed, discharged, supplemented, terminated or waived except in a writing signed by Beneficiary.

7. LIEN PRIORITY. All of the Property shall remain and continue in all respects to be subject to the Deed of Trust, and nothing in this Amendment, or done pursuant to this Amendment, shall affect or be construed to affect the lien of the Deed of Trust or the priority thereof as to all of the Property. Remaining Trustor shall provide, at Remaining Trustor's sole cost and expense,



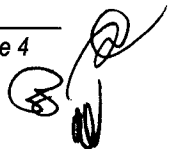
such endorsements to Beneficiary's existing title policy as Beneficiary may request insuring the continued first lien position of the Deed of Trust, as amended, against all of the Property with priority over all encumbrances that are not Permitted Exceptions. Trustor shall obtain such priority agreements, lien waivers, and other instruments from any and all parties who have performed work on or supplied materials to the Property, and Remaining Trustor shall execute such indemnity agreements and other documents as may be required by the title company in connection with the issuance of such new title policy or endorsements requested by Beneficiary.

8. BINDING EFFECT. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

9. APPLICABLE LAW. The creation, perfection, and enforcement of the lien of the Deed of Trust shall be governed by the Laws of the state in which the Property is located. In all other respects, the Deed of Trust and this Amendment shall be governed by the substantive Laws of the jurisdiction governing the Loan Agreement.

10. COUNTERPARTS. The parties may execute this Amendment in any number of counterparts, each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument.

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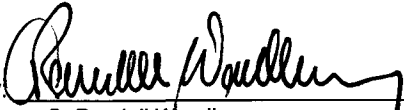
NOTICE RE ORAL AGREEMENTS. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, REMAINING TRUSTOR IS NOTIFIED THAT THIS AGREEMENT AND THE OTHER THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of the date of this Amendment.

TRUSTOR:


KMW DEVELOPMENT, L.L.C.
a Utah limited liability company

By: WOODBURY CORPORATION
a Utah corporation
its manager

By: 
Name: O. Randall Woodbury
Title: Vice Chairman

By: 
Name: Scott S. Bishop
Title: President and Chief Financial Officer

By: MILLROCK CAPITAL, II, LLC
a Utah limited liability company
its manager

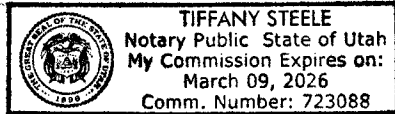
By: 
Name: Steven Peterson
Title: Manager

[Acknowledgments on Following Page]

State of Utah)
)
 County of Salt Lake)
) SS.

On this 28th day of June, in the year 2024, before me Tiffany Steele, a notary public, personally appeared O. RANDALL WOODBURY, an individual, in his capacity as Vice Chairman of WOODBURY CORPORATION, a Utah corporation, a manager of **KMW DEVELOPMENT L.L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

Witness my hand and official seal.



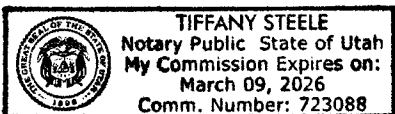
Tiffany Steele
 NOTARY PUBLIC

(Notary Seal)

State of Utah)
)
 County of Salt Lake)
) SS.

On this 28th day of June, in the year 2024, before me Tiffany Steele, a notary public, personally appeared SCOTT S. BISHOP, an individual, in his capacity as President and Chief Financial Officer of WOODBURY CORPORATION, a Utah corporation, a manager of **KMW DEVELOPMENT L.L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

Witness my hand and official seal.



Tiffany Steele
 NOTARY PUBLIC

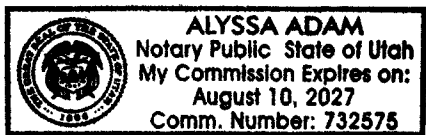
(Notary Seal)

TS
AW
AW

State of Utah)
County of Salt Lake)
SS.

On this 28th day of June, in the year 2024, before me Alyssa Adam, a notary public, personally appeared STEVEN PETERSON, an individual, in his capacity as manager MILLROCK CAPITAL, II, LLC, a Utah limited liability company, a manager of **KMW DEVELOPMENT L.L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

Witness my hand and official seal.



Alyssa Adam
NOTARY PUBLIC

(Notary Seal)

[Signatures continue on following page]

BENEFICIARY:


WASHINGTON FEDERAL BANK, a Washington state chartered commercial bank, successor to WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION, a national banking association

By: 
Name: Brian K. Jeppesen
Title: Vice President

STATE OF UTAH)
) §
COUNTY OF SALT LAKE)

On this 28th day of June, 2024, before me Teresa Stischak a notary public, personally appeared BRIAN K. JEPPESEN, an individual, in his capacity as Vice President of **WASHINGTON FEDERAL BANK**, a Washington state chartered commercial bank, successor to WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged he executed the same on behalf of such state chartered commercial bank.

Witness my hand and official seal.



NOTARY PUBLIC

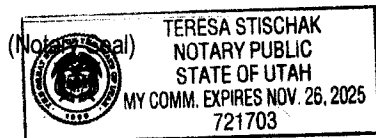


EXHIBIT A

DESCRIPTION OF PREMISES

That certain real property located in Salt Lake County, State of Utah, more particularly described as follows:

PARCEL 1:

Block A, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 2:

Block E, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 3:

Block G, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 4:

Block H Lot 1 and Block H Lot 2, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 5:

Block I, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 6:

Block K Lot 1 and Block K Lot 2, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 7:

Block J, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 8:

Lots 1, 2, 3 and 4, ROYAL HOLLADAY HILLS SUBDIVISION BLOCK B, according to the official plat thereof recorded April 16, 2024 as Entry No. 14228492 in Book 2024P at Page 101 in the office of the Salt Lake County Recorder.

PARCEL 9:

Block F, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 10:

All of Lots 1, 1-A, 2, 2-A, 3, 3-A, 4, 4-A, 5, 5-A, 6 and 6-A, ROYAL HOLLADAY HILLS BLOCK L PHASE 1, according to the official plat thereof, recorded November 2, 2021 as Entry No. 13814082 in Book 2021P at Page 279 in the office of the Salt Lake County Recorder.

PARCEL 12:

Block C, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

DW

PARCEL 18:

A non-exclusive easement for vehicular, non-vehicular, and pedestrian ingress and egress, as set forth and disclosed by that certain Declaration of Easements, Covenants, and Restrictions Regarding Common Areas for Royal Holladay Hills Subdivision, recorded December 3, 2021 as Entry No. 13839649 in Book 11278 at Page 4 in the office of the Salt Lake County Recorder.



EXHIBIT B

RELEASE PARCELS

That certain real property located in Salt Lake County, State of Utah, more particularly described as follows:

PARCEL 1:

Block A, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 3:

Block G, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 6:

Block K Lot 1 and Block K Lot 2, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

PARCEL 8:

That portion of Parcel 8 now more particularly described as Lot 2, ROYAL HOLLADAY HILLS SUBDIVISION BLOCK B, according to the official plat thereof recorded April 16, 2024 as Entry No. 14228492 in Book 2024P at Page 101 in the office of the Salt Lake County Recorder.

PARCEL 10:

All of Lots 1, 1-A, 2, 2-A, 3, 3-A, 4, 4-A, 5, 5-A, 6 and 6-A, ROYAL HOLLADAY HILLS BLOCK L PHASE 1, according to the official plat thereof, recorded November 2, 2021 as Entry No. 13814082 in Book 2021P at Page 279 in the office of the Salt Lake County Recorder.

PARCEL 12:

Block C, ROYAL HOLLADAY HILLS SUBDIVISION #2, according to the official plat thereof recorded June 25, 2021 as Entry No. 13700581 in Book 2021P at Page 171 in the office of the Salt Lake County Recorder.

DW