

*This document prepared by and  
after recording return to:*

Brian D. Cunningham  
Snell & Wilmer L.L.P.  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

APN: 00-0021-5172

150196-6TF



**FIRST AMENDMENT TO DEED OF TRUST**  
**(Project Commonly Known as "Klein Huis at Turner's Mill")**

THIS FIRST AMENDMENT TO DEED OF TRUST (this "*Amendment*") is dated as of September 30, 2022, by and between **ALPHA-KH HEBER, LLC**, a Utah limited liability company ("*Grantor*"), whose address is 166 East 14000 South, Suite 210, Draper, Utah 84020; **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation, its successors and assigns ("*Trustee*"), whose address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121; for the benefit of **KEYBANK NATIONAL ASSOCIATION**, its successors, participants, and assigns ("*Beneficiary*"), whose address is 1675 Broadway, Suite 400, Mail Code: CO-02-WT-0401, Denver, Colorado 80202.

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

**Notice to Borrower:** The Note secured by the Security Instrument amended by this Amendment contains provisions for a variable interest rate.

**RECITALS**

**A.** Borrower obtained a construction loan from Beneficiary (the "*Loan*") pursuant to the terms of a Construction Loan Agreement dated as of November 18, 2021 (together with any amendments or modifications thereto, the "*Loan Agreement*"). The Loan is also evidenced by a Promissory Note dated as of November 18, 2021, in the maximum principal amount of TWENTY-FIVE MILLION THREE HUNDRED TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$25,325,000.00) (together with any amendments thereto, the "*Note*").

**B.** Borrower's obligations under the Loan Agreement and Note are secured by a Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement and Fixture Filing

dated November 18, 2021, executed by Borrower, as grantor, to the trustee named therein, for the benefit of Beneficiary, as beneficiary, and recorded on November 18, 2021, as Entry No. 510874 in Book 1385 at Page 1594 of the Official Records of Wasatch County, Utah (the "**Security Instrument**"), against the real property legally described in EXHIBIT A attached hereto (the "**Property**").

C. The Loan Agreement, Note, Security Instrument, 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. Borrower now desires to modify the terms of the Loan as set forth in the First Amendment to Loan Documents executed by Trustor and Beneficiary dated as of September 30, 2022 (the "**Modification Agreement**"). Borrower is entering into this Amendment to modify the Security Instrument to secure all of Borrower's obligations under the Loan Documents, as amended by the Modification Agreement.

## AGREEMENTS

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

1. **TERMINOLOGY.** All capitalized terms used herein shall have the meanings given to them in the Security Instrument, unless a different meaning is assigned herein or is required from the context in which such term is used.

2. **AMENDMENT TO SECURITY INSTRUMENT.**

2.1 The Security Instrument is hereby 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 Modification Agreement, including, without limitation, (i) an increase in the maximum amount available under the Loan (subject to the terms of the Loan Documents) from **TWENTY-FIVE MILLION THREE HUNDRED TWENTY-FIVE AND NO/100THS DOLLARS (\$25,325,000.00)** to **THIRTY-TWO MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$32,375,000.00)** and (ii) such other amendments as are set forth in the Modification Agreement. Notwithstanding the foregoing, the Secured Obligations specifically exclude (a) all obligations of Borrower 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 Borrower, Guarantor, or any other party as an indemnitor under any indemnity agreement with respect to the Property.

2.2 Section 1.2.1.1 of the Security Instrument is hereby amended and restated in its entirety as follows:

"1.2.1.1 Payment of all obligations at any time owing under a promissory note of even date herewith, payable by Grantor, as maker, in the stated principal amount of **THIRTY-TWO MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$32,375,000.00)** to the order of Beneficiary (as it may be amended, restated, modified, or extended, the "**Note**"), subject to Grantor's exercise of any extension options available under the terms and conditions of the Loan Agreement (hereinafter defined);"

2.3 The Security Instrument 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 Modification Agreement, and such other amendments as are set

forth in the Modification Agreement. Notwithstanding the foregoing, the Secured Obligations specifically exclude (a) all obligations of Borrower 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 Borrower, Guarantor, or any other party as an indemnitor under any indemnity agreement with respect to the Property.

**2.4** The definition of the term "*Loan Documents*" as used in the Security Instrument is hereby modified to include this Amendment. All other terms and conditions of the Security Instrument 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 Modification Agreement.

**3. LIEN PRIORITY.** All of the Property shall remain and continue in all respects to be subject to the Security Instrument, and nothing in this Amendment, or done pursuant to this Amendment, shall affect or be construed to affect the lien of the Security Instrument or the priority thereof as to all of the Property. Borrower shall provide, at Borrower'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 Security Instrument, as amended, against all of the Property with priority over all encumbrances that are not Permitted Exceptions. Borrower 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 Borrower 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.

**4. 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.

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

**6. 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.

**[Remainder of Page Intentionally Left Blank; Signatures Appear on Following Page]**

**NOTICE REGARDING ORAL AGREEMENTS.** PURSUANT TO *UTAH CODE ANNOTATED* § 25-5-4, BORROWER IS NOTIFIED THAT THIS AGREEMENT AND THE OTHER 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: ALPHA-KH HEBER, LLC**  
a Utah limited liability company

By: BRC ADG JV Heber, LLC  
a Utah limited liability company  
its Manager

By: Alpha-Heber GP, LLC  
a Utah limited liability company  
its Manager

By: Wadsworth dbUrban Heber, LLC  
a Utah limited liability company  
its Manager

By: Wadsworth Heber, LLC  
a Utah limited liability company  
its Manager

By: Wadsworth & Sons II, LLC  
a Utah limited liability company  
its Manager


By: \_\_\_\_\_  
Name: Kip L. Wadsworth  
Title: Executive Manager

By: \_\_\_\_\_  
Name: Tod L. Wadsworth  
Title: Operations Manager

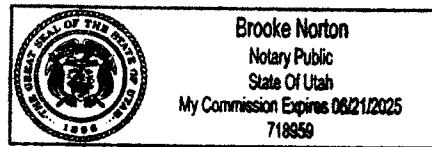
**[Signatures continue on following page]**

STATE OF UTAH )  
 : ss.  
County of Salt Lake )

On this 26 day of September, in the year 2022, before me Brooke Norton, a notary public, personally appeared **KIP L. WADSWORTH**, an individual, in his capacity as Executive Manager of WADSWORTH & SONS II, LLC, a Utah limited liability company, Manager of WADSWORTH HEBER, LLC, a Utah limited liability company, Manager of WADSWORTH DBURBAN HEBER, LLC, a Utah limited liability company, Manager of ALPHA-HEBER GP, LLC, a Utah limited liability company, the Manager of BRC ADG JV Heber, LLC, a Utah limited liability company, the Manager of **ALPHA-KH HEBER, LLC**, a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.


  
\_\_\_\_\_  
Notary Signature

(Notary Seal)



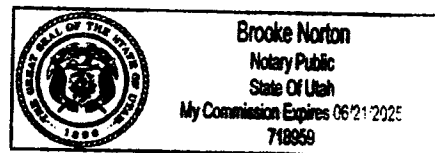
STATE OF UTAH )  
 : ss.  
County of Salt Lake )

On this 26 day of September, in the year 2022, before me Brooke Norton, a notary public, personally appeared **TOD L. WADSWORTH**, an individual, in his capacity as Operations Manager of WADSWORTH & SONS II, LLC, a Utah limited liability company, Manager of WADSWORTH HEBER, LLC, a Utah limited liability company, Manager of WADSWORTH DBURBAN HEBER, LLC, a Utah limited liability company, Manager of ALPHA-HEBER GP, LLC, a Utah limited liability company, the Manager of BRC ADG JV Heber, LLC, a Utah limited liability company, the Manager of **ALPHA-KH HEBER, LLC**, a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

  
\_\_\_\_\_  
Notary Signature

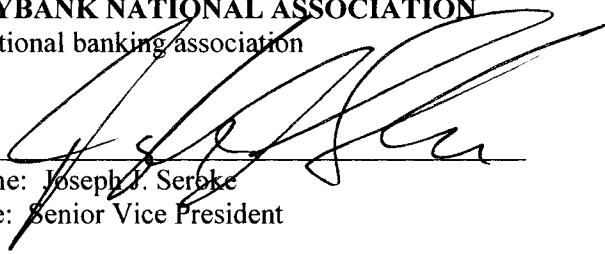
(Notary Seal)

[Signatures continue on following page]



**BENEFICIARY:**

**KEYBANK NATIONAL ASSOCIATION**  
a national banking association

By:   
Name: Joseph J. Seroke  
Title: Senior Vice President

STATE OF UTAH        )  
                                  : ss.  
County of Salt Lake    )

On this 23<sup>rd</sup> day of September, in the year 2022, before me, Karen E. Kelly, a notary public, personally appeared **JOSEPH J. SEROKE**, an individual, in his capacity as Senior Vice President of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, on behalf of said national banking association, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

  
Notary Signature

(Notary Seal)



**EXHIBIT A**

**DESCRIPTION OF PREMISES**

That certain real property located in Wasatch County, Utah, and more particularly described as follows:

**PARCEL 1:**

Lot 1, TURNER MILL MASTER SUBDIVISION PLAT, according to the official plat thereof, as filed in the office of the Wasatch County Recorder, State of Utah, recorded August 28, 2020, as Entry No. 483557 in Book 1309 at Page 807.

**PARCEL 2:**

A non-exclusive, permanent easement on, over and across the Easement Area, as established and defined in that certain Access Easement and Maintenance Agreement, recorded August 30, 2021, as Entry No. 506316 in Book 1372 at Page 1034.