

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:



W3237342

MOUNTAIN AMERICA FEDERAL CREDIT UNION
ATTN: Steff McLane
9800 South Monroe Street
Sandy, UT 84096

E# 3237342 PG 1 OF 8
Leann H. Kilts, WEBER COUNTY RECORDER
23-May-22 0811 AM FEE \$40.00 DEP SLV
REC FOR: FIRST AMERICAN TITLE INSURANCE COI
ELECTRONICALLY RECORDED

Tax Parcel Number(s): 07-737-0001

FATNCS-537035

SECOND LOAN MODIFICATION AND REAFFIRMATION AGREEMENT

Second Loan Modification and Reaffirmation Agreement (the "Modification Agreement") dated as of May 17, 2022 between and among: (i) **MOUNTAIN AMERICA FEDERAL CREDIT UNION** ("MAFCU"), (ii) **BECK STREET PROPERTIES, LLC**, a Utah limited liability company ("Borrower"), and (iii) the following (collectively, the "Guarantors" or, individually, a "Guarantor"): JOHN ZARBOCK, BUDDY ZARBICK, JKZ, LTD., BEAR CANYON LIMITED PARTNERSHIP, THE JOHN S. ZARBOCK FAMILY LIVING TRUST, u/d/t June 28, 2011. Borrower, MAFCU, and the Guarantors are sometimes hereinafter referred to collectively as the "Parties" or, individually, as a "Party."

RECITALS

On or about April 30, 2012, Lender extended, to Borrower, a certain loan (the "Loan"). In connection with the Loan, Lender and Borrower executed and delivered a number of documents including, but not limited to, a Non-Revolver Promissory Note (the "Note") in the principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00), a Trust Deed with Assignment of Rents (the "Trust Deed"), Loan and Security Agreement (the "Loan Agreement"), and certain other documents (the Note, the Trust Deed, the Loan Agreement, and all other documents executed and delivered in connection with the establishment of the Loan are sometimes hereinafter collectively referred to as the "Initial Loan Documents," and the Initial Loan Documents, the Modification Agreement dated April 7, 2020 and this Second Modification Agreement are sometimes hereinafter referred to collectively as the "Loan Documents"). As an inducement for MAFCU to extend the Loan to Borrower, Guarantor executed and delivered to MAFCU a personal and unconditional Continuing Guaranty (the "Guaranty"). Subject to the terms, and subject to the conditions, set forth herein, MAFCU and Borrower have agreed to reduce the "Current Interest Rate" applicable to the Loan and to confirm all unmodified portions of the Loan Documents.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing Recitals are incorporated herein by this reference.
2. Modification to Loan. The Loan and the Initial Loan Documents are hereby modified and amended as follows (unless otherwise defined herein, all defined terms shall have the same meanings as set forth in the Initial Loan Documents):
 - A. The Parties acknowledge and agree that the current principal balance (the "Current Principal Balance") of the Loan and the Note is Four Hundred Fifty-Four Thousand Five Hundred Fifty-Seven and 98/100 Dollars (\$454,557.98).
 - B. The maturity date of the Loan is hereby extended to May 1, 2027.

C. The interest rate with respect to the Note and the Loan is hereby reduced from its current level of five and 50/100 percent (5.50%) per annum to a rate of three and 75/100 percent (3.75%) per annum (the "Replacement Rate"). The Principal Balance together with the interest from the date hereof shall be paid as follows:

Four Thousand Five Hundred Eighty-Five and 00/100 Dollars (\$4,585.00) on the first day of May 1, 2022, and the same amount on the first day of each succeeding month thereafter until May 1, 2027, when the entire then unpaid balance of principal, together with all amounts of then accrued and unpaid interest, shall be due and payable in full.

The Parties herewith acknowledge and agree that the Loan has been re-amortized to reflect the reduction in principal balance and the Replacement Rate.

Notwithstanding the foregoing, and consistent with the terms and conditions set forth in the Note, the Replacement Rate shall automatically increase to Eighteen percent (18.00%) per annum (the "Default Rate") in the event of the occurrence of a breach, default, or Event of Default in connection with the Loan or any of the Loan Documents. The Default Rate shall remain in full force and effect at all times thereafter, both before and after judgment, until all amounts owed by Borrower in connection with the Loan and the Loan Documents are paid in full.

D. *All of the terms and conditions set forth in the Initial Loan Documents that are not modified by this Second Modification Agreement are hereby expressly reaffirmed.* Such terms and conditions include, but are not limited to: (i) all requirements relating to Borrower's obligation to repay the Loan, (ii) the continuing effectiveness of the Trust Deed, and all other requirements relating to collateral with respect to the Loan, (iii) all of the covenants of Borrower that are set forth in the Initial Loan Documents, and (iv) all of the rights and remedies of MAFCU in the event of a breach, default, or Event of Default upon the part of Borrower.

E. The failure by Borrower to timely and fully comply with any of Borrower's obligations hereunder or under any of the other Loan Documents shall constitute a breach, default, and Event of Default under this Second Modification Agreement and under all of the other Loan Documents. In such event, Borrower expressly acknowledges and agrees that MAFCU shall be entitled to exercise all rights and remedies granted to MAFCU under this Second Modification Agreement, under any of the other Loan Documents, under any written agreement between the Parties, at law, or in equity.

3. *Continued Validity and Priority of Initial Loan Documents.* Borrower hereby expressly agrees and reaffirms that this Second Modification Agreement is being executed merely to effect a modification of the Initial Loan Documents on the terms specified herein, and that this Second Modification Agreement does not constitute or in any way operate as a release or discharge of the indebtedness or other obligations, or any part thereof, of Borrower to MAFCU in connection with the Loan or the Loan Documents. Except as specifically set forth herein, this Modification Agreement shall not affect, or be construed to affect, any of the terms and conditions of any of the Initial Loan Documents, nor impair the validity or priority of any of the Initial Loan Documents or any rights or powers which MAFCU now or hereafter may have there under for the recovery of the debt evidenced thereby in case of a breach, default, or Event of Default under the terms of this Modification Agreement or any of the other Loan Documents. Borrower expressly acknowledges and agrees that Borrower will be required to comply with all of Borrower's obligations and responsibilities under the Initial Loan Documents, as modified herein, and that all of the

obligations, rights, and responsibilities of MAFCU under the Initial Loan Documents, as modified herein, remain in full force and effect as set forth therein.

4. Consent of Guarantor and Reaffirmation of Guaranties. Each Guarantor, by such Guarantor's signature at the foot hereof, hereby expressly agrees and consents to the changes and modifications to the Loan affected by this Second Modification Agreement. Each Guarantor further acknowledges and agrees: (i) that such Guarantor has read this Second Modification Agreement, and (ii) that such Guarantor expressly agrees and consents that such Guarantor's Guaranty fully and completely applies to the Loan, as modified herein. Each Guarantor further expressly acknowledges and agrees that such Guarantor is agreeing to extend the scope and extent of such Guarantor's Guaranty in order to induce MAFCU to make the modifications to the Loan described herein.

5. "Date-Down" and Other Endorsements, and Documents. Borrower is herewith providing to MAFCU, at Borrower's sole cost and expense, a so-called 'date-down' endorsement, in form and substance acceptable to MAFCU, evidencing to MAFCU that the Trust Deed continues to constitute a first position deed of trust interest with respect to the "Real Property" more particularly described in the Initial Loan Documents. Borrower further agrees to provide to MAFCU, promptly upon MAFCU's request and at Borrower's sole cost and expense, any documents or instruments requested by MAFCU to evidence the continued effectiveness of MAFCU's security interests in and to the "Collateral" (as such term is defined in the Loan Agreement including, but not limited to, providing additional 'date-down' or other appropriate title insurance endorsements).

6. Second Loan Modification and Document Preparation Fees. Borrower shall pay to MAFCU, in cash and upon demand, all of the costs relating to the negotiation and preparation of this Second Modification Agreement including, but not limited to, reasonable attorney's fees and all other out-of-pocket costs and expenses incurred at any time prior to the repayment, in full, of the Loan. A loan modification fee (the "Loan Modification Fee") of Two Thousand Two Hundred Seventy-Three and no/100 Dollars (\$2,273.00) which amount is approximately one half percent (.50%) of the current principal Loan balance of Four Hundred Fifty-Four Thousand Five Hundred Fifty-Seven and 98/100 Dollars (\$454,557.98) shall be paid by Borrower simultaneously herewith. The document preparation fee associated with this modification is Four Hundred Fifty and 00/100 Dollars (\$450.00). The title fees associated with this modification are \$901.50.

7. No Setoffs, Claims, or Defenses. Borrower hereby acknowledges and agrees that Borrower has no claims, setoffs, or demands against MAFCU, that the amounts provided to be paid pursuant to the Note, this Second Modification Agreement, and the other Loan Documents are validly due and owing, and that Borrower has no defenses to MAFCU's rights and remedies for enforcement of the Loan Documents.

8. Effectiveness Contingent Upon Certain Signatures. Notwithstanding anything herein contained to the contrary, this Second Modification Agreement shall not become effective and binding upon the Parties until such time as it has been executed by all of the Parties. In the event that less than all of the required signatures are obtained, this Second Modification Agreement shall be ineffective and the terms and conditions of the unmodified Initial Loan Documents shall remain in full force and effect.

9. General.

A. This Agreement constitutes the entire agreement of the Parties hereto with respect to the matters discussed herein and cannot be altered by prior oral representations or prior negotiations, all of which are deemed to have been merged into this Agreement. This Agreement may not be changed or modified except by a writing signed by all of the Parties hereto.

B. The terms and conditions of this Agreement shall be binding upon the respective heirs, legal representatives, successors, and assigns of the Parties hereto.

C. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Utah. The Parties expressly agree and consent that the courts of Salt Lake County, Utah shall have exclusive jurisdiction over all actions arising from, out of, or with respect to this Agreement.

D. If any provision of this Agreement is held to be invalid or unenforceable, this Agreement shall be considered divisible as to such provision and such provision shall thereupon be inoperative and shall not be part of the consideration moving between the Parties. The remaining provisions of this Agreement shall, however, continue to be valid and binding and have like effect as though such provision was not included herein.

E. In the event of a breach by one of the Parties hereunder (the "breaching Party") of such Party's warranties, representations, obligations, or responsibilities herein, such breaching Party shall pay to the other Party (the "non-breaching Party") enforcement and collection costs, including reasonable attorneys' fees and legal expenses, regardless of whether the breach is ultimately cured, and regardless of whether formal legal proceedings are commenced. The non-breaching Party may pay a third party to assist in enforcing its rights hereunder, and the breaching Party shall pay the costs and expenses of such enforcement. Costs and expenses shall include, but not be limited to: (i) the non-breaching Party's reasonable attorneys' fees and legal expenses, whether or not such expenses are incurred by a salaried employee of the non-breaching Party, (ii) reasonable attorneys' fees and legal expenses for bankruptcy proceedings including, but not limited to, efforts to modify or vacate any automatic stay or injunction, (iii) appeals to higher courts arising out of legal proceedings to enforce the breaching Party's obligations hereunder, and (iv) any anticipated post-judgment collection services.

F. All notices by any signatory to this Agreement shall, except as otherwise provided herein, be in writing and be sent by overnight mail or by certified or registered mail, return receipt requested. Notices shall be deemed received three (3) days after being deposited in a United States post office box, postage prepaid, properly addressed to the Parties at the addresses set forth in this Second Modification Agreement, or to such other addresses as such Parties may from time to time specify in writing. Any notice so addressed and otherwise delivered shall be deemed to be given when actually received by the addressee.

G. This Agreement shall supersede any and all outstanding agreements between and among the Parties.

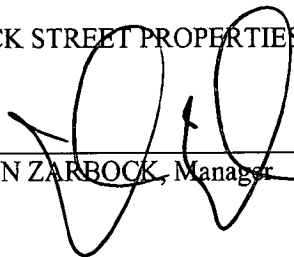
H. The Parties agree to perform all further actions and to execute all further agreements, certificates, and other documents necessary or desirable to carry out the purposes of this Agreement and the transactions contemplated hereunder.

I. No delay or omission in the exercise or pursuance by any Party of any right, power, or remedy shall impair any such right, power, or remedy or shall be construed to be a waiver thereof.


J. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of date first above written.

BECK STREET PROPERTIES, LLC, a Utah limited liability company



JOHN ZARBOCK, Manager



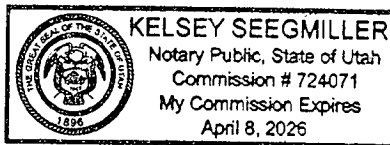
BUDDY ZARBOCK, Manager

STATE OF UTAH)

:SS.

COUNTY OF Salt Lake)

On this 17th day of May, 2022 the foregoing instrument was acknowledged before me by JOHN ZARBOCK, a Manager of BECK STREET PROPERTIES, LLC.





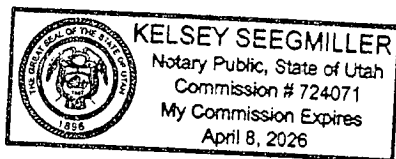
NOTARY PUBLIC


STATE OF UTAH)

:SS.

COUNTY OF Salt Lake)

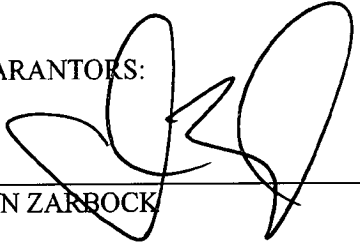
On this 17th day of May, 2022 the foregoing instrument was acknowledged before me by BUDDY ZARBOCK, a Manager of BECK STREET PROPERTIES, LLC.





NOTARY PUBLIC

GUARANTORS:

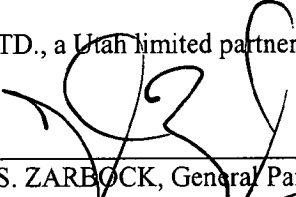


JOHN ZARBOCK



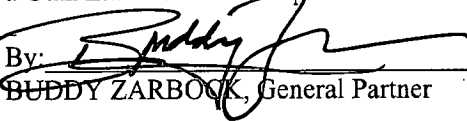
BUDDY ZARBOCK

JKZ, LTD., a Utah limited partnership

By: 

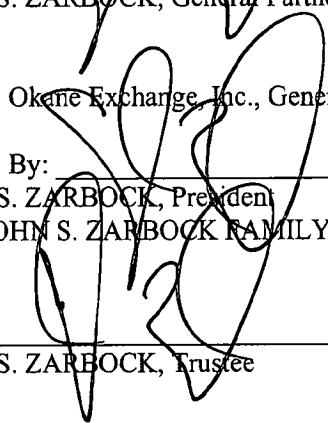
JOHN S. ZARBOCK, General Partner

BEAR CANYON LIMITED PARTNERSHIP,
a Utah Limited Partnership

By: 

BUDDY ZARBOCK, General Partner

By: Okane Exchange, Inc., General Partner

By: 

JOHN S. ZARBOCK, President
THE JOHN S. ZARBOCK FAMILY LIVING TRUST, u/d/t June 28, 2011

By: 

JOHN S. ZARBOCK, Trustee

Mountain America Federal Credit Union



MICHAEL GRIFFITHS, VP Business Lending

STATE OF UTAH)

COUNTY OF Salt Lake) :SS.

On this 17 day of May, 2022 he foregoing instrument was
acknowledged before me by MCHAEAL GRIFFITHS, the VP of MOUNTAIN AMERICA
FEDERAL CREDIT UNION.



NOTARY PUBLIC

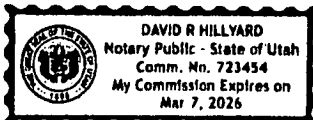


EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT 'A'

File No.: **NCS-537035-SLC1 (jt)**

04/26/2012

Property: **1025 East Chambers Street, South Ogden, UT 84403**

**LOT 1A, PLEASANT VALLEY COURT BUSINESS PARK LOT 1, AMENDED, ACCORDING TO THE
OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE WEBER COUNTY RECORDER'S OFFICE.
A.P.N. ~~07-047-0078~~**

07-737-0001 DS