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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
07/05/2023 08:05:09 AM  
FEE: \$40.00 Pgs: 9  
DEP eCASH REC'D FOR: METRO NATIONAL TITLE

Recording Requested by and Return To:

Bank of the West  
Attn: Fargo Doc Center / BD-VET-01-B  
BMO Harris Bank NA  
3260 Veterans Blvd, Suite 100  
Fargo, ND 58104-3351

Tax ID: 10-029-0098

ASSUMPTION, RELEASE, CONSENT AND MODIFICATION AGREEMENT

## ASSUMPTION, RELEASE, CONSENT AND MODIFICATION AGREEMENT

THIS ASSUMPTION, RELEASE, CONSENT AND MODIFICATION AGREEMENT (this "Agreement") is made and entered into as of June 28, 2023, by and between HILLSIDE ASSETS LLC ("Current Borrower"), MATHEWS STEEL, LLC, a Utah limited liability company ("New Borrower"), and BMO HARRIS BANK N.A., successor in interest to Bank of the West ("Bank").

### RECITALS

A. Bank has made a loan (the "Loan") to Current Borrower in the original principal amount of ONE MILLION TWO HUNDRED FIFTY THOUSAND and no/100 Dollars (\$1,250,000.00) pursuant to the terms of that certain Business Loan Agreement dated October 27, 2021 (the "Loan Agreement"), and that certain Promissory Note of even date therewith (the "Note"), each executed by Current Borrower in favor of Bank. The Current Borrower's obligations under the Loan Agreement and the Note are secured by, among other things, a Deed of Trust of even date with the Note (the "Deed of Trust") encumbering certain real property described in the Deed of Trust (the "Real Property") and recorded on November 1, 2021, in the County of Davis, State of Utah, in Book 7877, Page 1876, and an Assignment of Rents of even date with the Note (the "Assignment of Rents") encumbering the Real Property and recorded on November 1, 2021, in the County of Davis, State of Utah, in Book 7877, Page 1888,

B. The Note, the Deed of Trust, the Assignment of Rents and all other documents and instruments evidencing, securing or pertaining to, or executed by Current Borrower in connection with, the Loan, including any agreement pertaining to an interest rate swap, if any, are collectively referred to as the "Loan Documents".

C. New Borrower recently acquired or is about to acquire title to the Real Property from Current Borrower (the "Transfer"), and in connection therewith New Borrower desires to assume the obligations of Current Borrower under the Loan Documents.

D. Current Borrower and New Borrower have requested that Bank consent to the Transfer. Bank is willing to consent to the Transfer but only on the terms and conditions set forth below.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assumption By New Borrower. New Borrower hereby (i) assumes and agrees to pay and to perform all of the obligations of Current Borrower under the Loan Documents, whether accruing prior to, on or after the date hereof, and further agrees that New Borrower shall be bound by all of the terms, provisions and conditions contained in the Loan Documents as though New Borrower had originally made, executed and delivered same to Bank, and (ii) reaffirms and restates all of the

representations, warranties, covenants and indemnities of Current Borrower contained in the Loan Documents with the same force and effect as if each were separately stated herein and made as of the date hereof.

2. Current Borrower's Representation and Warranties. Current Borrower represents and warrants to New Borrower and Bank that as of the date of this Agreement:

2.1 The Note has an unpaid principal balance of \$1,202,889.32, as of June 28, 2023.

2.2 The Note requires monthly payments of principal and interest as provided for in the Note, and one final payment on November 5, 2028, of all principal and all accrued interest not yet paid.

2.3 No default (or event which, with the giving of notice, the passage of time, or both, would become a default) by Current Borrower under the provisions of the Note, the Loan Agreement, the Deed of Trust or the other Loan Documents; and

2.4 All provisions of the Note, the Loan Agreement, the Deed of Trust and other Loan Documents have not been modified or amended, and are in full force and effect.

3. New Borrower's Representations and Warranties. Each New Borrower, respectively and collectively, represents and warrants to Bank that as of the date of the Agreement:

3.1 New Borrower is a limited liability company duly organized and validly existing under the laws of the State of Utah, and has full power and authority to enter into and carry out the terms of this Agreement and to assume and carry out the terms of the Loan Agreement, the Note and the other Loan Documents. The New Borrower is in good standing under the laws of the State of Utah.

3.2 New Borrower has full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Following the Transfer, New Borrower shall maintain its principal office at the Real Property.

3.3 New Borrower's execution, delivery and performance of this Agreement and its assumption of the obligations of Current Borrower under the Loan Documents have been duly authorized by all necessary action by New Borrower and do not conflict with, result in a violation of, or constitute a default under any provision of any agreement or other instrument binding upon New Borrower or any law, governmental regulation, court decree, or order applicable to New Borrower or New Borrower's properties.

3.4 This Agreement, the Loan Agreement, the Note and the other Loan Documents constitute the legal, valid and binding obligations of New Borrower, enforceable in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally or general principals of equity.

3.5 No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes against New Borrower) is pending or threatened, and no other event has occurred which may materially adversely affect New Borrower's financial condition or properties, other than litigation, claims or other events, if any, that have been disclosed to and acknowledged by Bank in writing.

4. Consent By Bank. Bank hereby expressly consents to the Transfer and, as to the Transfer only, waives any rights it may have under the terms of any of the Loan Documents to declare that the Transfer constitutes an unpermitted transfer of the Real Property. Bank's consent to the Transfer shall not be deemed to be a waiver of Bank's right to require such consent to future or successive transactions involving the transfer of some or all of the Real Property.

5. Release of Current Borrower. Upon full Satisfaction of all Conditions Precedent set forth in Section 8 of this Agreement Bank hereby releases Current Borrower from any and all liabilities and obligations under the Loan Documents, and agrees that it will not institute any action, suit, claim or demand in law or equity against Current Borrower for or on account of Current Borrower's personal liability and obligation to repay the indebtedness evidenced by the Note; provided, however, that nothing herein shall be construed to release or otherwise affect in any manner any existing or future guaranty or other undertaking of the obligations of New Borrower by Current Borrower, whether related to the Note and the Loan Documents assumed by New Borrower hereby or otherwise.

6. Release of Guarantor. Upon full Satisfaction of all Conditions Precedent set forth in Section 8 of this Agreement Bank hereby releases JEFF R. MATHEWS, TRUSTEE OF JEFF MATHEWS LIVING TRUST, and JEFF R. MATHEWS (collectively, "Current Guarantor") from any and all liabilities and obligations under that certain Loan Guaranty of even date with the Note, and agrees that it will not institute any action, suit, claim or demand in law or equity against Current Guarantor for or on account of Current Guarantor's personal liability and obligation to guarantee repayment of the indebtedness evidenced by the Note; provided, however, that nothing herein shall be construed to release or otherwise affect in any manner any existing or future guaranty or other undertaking of the obligations of New Borrower by Current Guarantor, whether related to the Note and the Loan Documents assumed by New Borrower hereby or otherwise.

7. Relinquishment of Current Borrower's Rights. Current Borrower hereby expressly agrees that it shall have no further rights under the Loan Documents, including but not limited to, any right to any Loan funds, if any, still to be disbursed thereunder, and all such rights are hereby expressly terminated. Current Borrower further agrees that, from and after the effectiveness of the consent and waiver provided for herein, (i) New Borrower shall have the full, sole and absolute right, power and authority to extend, renew, amend or otherwise modify the Loan Documents, and (ii) Bank may, without affecting Current Borrower's liability under the Loan Documents, renew, extend, amend, compromise or otherwise modify the Loan Documents or accelerate the indebtedness evidenced thereby.

8. Conditions Precedent. The effectiveness of this Agreement is expressly conditioned upon the satisfaction of all of the following conditions:

8.1 Assumption, Release and Consent Agreement. Current Borrower and New Borrower shall have executed and delivered to Bank this Agreement.

8.2 Deed of Conveyance. Current Borrower and New Borrower shall have caused the deed effectuating the Transfer of the Real Property from Current Borrower to New Borrower to have been duly executed, notarized and recorded in the Official Records of the County Recorder's Office where the Real Property is located.

8.3 Title Endorsement. If requested by Bank, Current Borrower and New Borrower shall have caused the title company that issued the policy of title insurance insuring the priority, validity and enforceability of the lien of the Deed of Trust to issue in Bank's favor a modified CLTA 111.4 endorsement (or an equivalent endorsement) insuring that the Transfer does not and will not affect the priority, validity or enforceability of the lien of the Deed of Trust.

8.4 Loan Guaranty. JEFF R. MATHEWS, TRUSTEE OF JEFF MATHEWS LIVING TRUST, and JEFF R. MATHEWS (collectively, "New Guarantors") shall have executed and delivered to Bank Bank's standard form Commercial Guaranty pursuant to which New Guarantors shall guarantee New Borrower's monetary obligations under the Loan Agreement, the Note, the Deed of Trust and the other Loan Documents.

8.5 Environmental Phase I Report. If required by Bank, Bank shall have obtained and approved a Phase I Environmental Report in its sole discretion, at the sole cost of New Borrower and/or Current Borrower.

8.6 UCC-1 Financing Statement. New Borrower shall have authorized Bank (and by execution of this Agreement does so authorize Bank) to file an amendment to the UCC-1 Financing Statement, if any, covering certain personal property located at the Real Property as more particularly described in the Deed of Trust naming New Borrower as the Debtor thereunder.

8.7 Agreement to Furnish Insurance. New Borrower shall have executed and delivered to Bank Bank's standard form Agreement to Furnish Insurance.

8.8 Authorization to Obtain Credit. New Borrower shall have executed and delivered to Bank Bank's standard form Authorization to Obtain Credit.

8.9 Organizational Documents. New Borrower and New Guarantor shall have delivered to Bank true and correct copies of organizational documents of New Borrower and New Guarantors, as applicable, including without limitation, and as applicable, filed articles of incorporation, bylaws, partnership agreements, recorded statements of partnership, fictitious business name statements, filed and recorded certificates of limited partnership, operating agreements, filed and recorded articles of organization and trust agreements, and any amendments to any of the foregoing.

8.10 Other Documents. New Borrower shall have delivered to Bank such other documents, instruments and agreements as Bank may reasonably require in order to effect fully the purposes of this Agreement.

8.11 Costs and Expenses. Bank shall have received payment of all costs and expenses (including, without limitation, appraisal, environmental, legal and title) incurred by Bank in connection with the negotiation, documentation and closing of the transaction contemplated hereby. Fees incurred in the processing of this Assumption: Title Insurance/Opinion Fee of \$1,697.00 was waived in full.

9. New Borrower's Obligations Joint and Several. If New Borrower is now or hereafter becomes comprised of more than one individual or entity, then the obligations of each such individual or entity under this Agreement and under the Loan Documents shall be joint and several.

10. Modification of Loan Documents. Upon full satisfaction to the Conditions Precedent set forth in Section 8, the Loan Documents are amended as follows:

Upon satisfaction of all conditions precedent to the effectiveness of this Agreement, the terms "Borrower", "Trustor", "Grantor", "Assignor", "Indemnitor" and any other defined term used to reference Current Borrower, as used in the Note, the Loan Agreement, the Deed of Trust and all other Loan Documents respectively, are revised to mean New Borrower, and the term "Guarantor", to the extent defined in any of the Loan Documents is revised to mean New Guarantor.

11. Continuing Force and Effect. This Agreement and the Loan Documents embody and constitute the entire understanding among the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, with respect thereto are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument. Except as expressly modified hereby, the Note, the Loan Agreement, the Deed of Trust and the other Loan Documents shall remain in full force and effect without modification, and this Agreement shall have no effect on the priority of validity of the liens and encumbrances set forth in the Deed of Trust and any other agreement securing the obligations of the New Borrower.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective heirs, executors, administrators, successors and assigns.

13. Governing Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

14. Entire Agreement. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof, superseding all prior written or oral understandings or communications. This Agreement may not be amended or modified except by a written agreement signed by both Bank and New Borrower.

15. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same document.

16. Attorneys' Fees. If any lawsuit, arbitration or other proceeding is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover the reasonable fees and costs of its attorneys in such proceeding.

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

"CURRENT BORROWER"

HILLSIDE ASSETS LLC

By: 

Jeff R. Mathews, Manager

"NEW BORROWER"

MATHEWS STEEL, LLC, a Utah limited liability company

By: 

Jeff R. Mathews, Manager

"BANK"

BMO HARRIS BANK N.A., successor in interest to Bank of the West

By: 

Name: Garon Gardner

Its: Business Banker

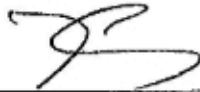


State of Utah )

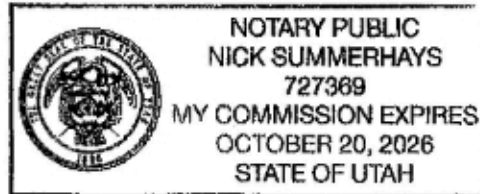
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County of Wasatch)

On this date, June 30, 2023, personally appeared before me Jeff R. Mathews, who being by me duly sworn did say that he is the Manager of Hillside Assets, LLC, the limited liability company that executed the above and foregoing instrument and that said instrument was signed on behalf of said company by authority of its Articles of Organization and/or Operating Agreement and said Jeff R. Mathews acknowledged to me that said limited liability company executed same.



Notary Public




State of Utah )

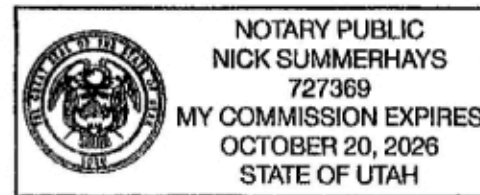
ss:

County of Wasatch)

On this date, June 30, 2023, personally appeared before me Jeff R. Mathews, who being by me duly sworn did say that he is the Manager of Mathews Steel, LLC, a Utah limited liability company, the limited liability company that executed the above and foregoing instrument and that said instrument was signed on behalf of said company by authority of its Articles of Organization and/or Operating Agreement and said Jeff R. Mathews acknowledged to me that said limited liability company executed same.



Notary Public



State of Utah )

ss:

County of Salt Lake)

On this date, June 30, 2023, personally appeared before me Aaron Gardner, who being by me duly sworn did say, that he is the Business Banker of BMO Harris Bank N.A., successor in interest to Bank of the West, the corporation that executed the above and foregoing instrument and that said instrument was signed on behalf of said corporation by authority of its by-laws (or by authority of a resolution of its board of directors) and said Aaron Gardner acknowledged to me that said corporation executed the same.



Notary Public

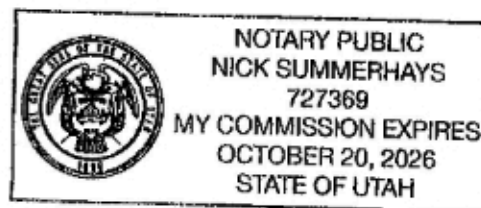




Exhibit "A"

Beginning at a point North 908.62 feet and East 922.57 feet from the Southwest Corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base & Meridian, said point being the intersection of the South line of Highway 91 and the West line of 1120 North Street, and running thence South  $38^{\circ}27'50''$  West 145.00 feet along the West line of 1120 North Street; thence North  $51^{\circ}32'10''$  West 230.00 feet; thence North  $38^{\circ}27'50''$  East 145.56 feet to a point on the South line of Highway 91; thence South  $51^{\circ}23'50''$  East 230.00 feet along said South line of Highway 91 to the point of beginning.