

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

ENT 79054:2023 PG 1 of 7
ANDREA ALLEN
UTAH COUNTY RECORDER
2023 Dec 07 12:12 PM FEE 40.00 BY AC
RECORDED FOR First American Title Insura
ELECTRONICALLY RECORDED

MOUNTAIN AMERICA FEDERAL CREDIT UNION
ATTN: STEFF MCLANE
9800 South Monroe Street
Sandy, UT 84070

Tax Parcel Number(s): *65:143:0003*
NCS-637905M-54

SECOND LOAN MODIFICATION AND REAFFIRMATION AGREEMENT

Second Loan Modification and Reaffirmation Agreement (the "Second Modification Agreement") dated as of *Nov. 29th*, 2023 between and among: (i) MOUNTAIN AMERICA FEDERAL CREDIT UNION, ("Lender"), (ii) D & KM PROPERTIES L.C. ("Borrower"), and (iii) the following (collectively, the "Guarantors" or, individually, a "Guarantor"): D. KENT MONSEN, DEANNE MONSEN, and THE D. K. MONSEN 1990 TRUST. Borrower, Lender, and the Guarantors are sometimes hereinafter referred to collectively as the "Parties" or, individually, as a "Party."

RECITALS

On or about November 22, 2013 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-Revolving Promissory Note (the "Note") in the principal amount of Three Hundred Seventy Thousand and No/100 Dollars (\$370,000.00), a Trust Deed with Assignment of Rents (the "Trust Deed"), recorded November 25, 2013, as entry number 108559:2013, 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 unrecorded First Modification Agreement dated May 19, 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 interest rate with respect to the Note and the Loan is hereby increased from its current level of four and 95/100 percent (4.95%) per annum to a rate of Seven and 30/100 percent (7.30%) per annum (the "Replacement Rate").

B. The maturity date with respect to the Loan and the Note is extended to November 1, 2028. The Parties acknowledge and agree that the current principal balance (the "Current Principal Balance") of the Loan and the Note is Two Hundred Seventy-Four Thousand Six Hundred Sixty-Five and 56/100 dollars (\$274,665.56). The Parties further acknowledge and agree that the Deferred Interest of Three Thousand Eight Hundred Ninety-Eight and 65/100 dollars (\$3,898.65), as stated in the First Modification Agreement, will be added to the Current Principal Balance and total Two Hundred Seventy-Eight Thousand Five Hundred Sixty-Four and 21/100 dollars (\$278,564.21), (the "New Principal Balance"). The New Principal Balance together with the interest from the date hereof shall be paid as follows:

Two Thousand Five Hundred Fifty-One and 00/100 Dollars (\$2,551.00) on the first day of December, 2023 and the same amount on the first day of each succeeding month thereafter until November 1, 2028, 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 Lender 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 Lender shall be entitled to exercise all rights and remedies granted to Lender 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 Lender 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 Lender 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 Lender 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 Guarantees.* 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 Lender to make the modifications to the Loan described herein.

5. *Loan Modification Fees.* A loan modification fee (the "Loan Modification Fee") of One Thousand Three Hundred Ninety-Three and 00/100 dollars (\$1,393.00), which amount is approximately one half of one percent (0.50%) of the new principal Loan balance of Two Hundred Seventy-Eight Thousand Five Hundred Sixty-Four and 21/100 dollars (\$278,564.21), shall be paid by Borrower to MAFCU simultaneously herewith. Borrower shall also

pay a processing fee (the "Processing Fee") of Four Hundred Fifty and 00/100 dollars (\$450.00). It is a condition precedent to the effectiveness of this Modification Agreement, the modifications to the Loan described herein, and the obligations of MAFCU hereunder that the Loan Modification Fee and Processing Fee be paid by Borrower as described above.

6. *No Setoffs, Claims, or Defenses.* Borrower hereby acknowledges and agrees that Borrower has no claims, setoffs, or demands against Lender, 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 Lender's rights and remedies for enforcement of the Loan Documents.

7. *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.

8. *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 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.

9. The Parties hereto agree that delivery of a signature page to, or an executed counterpart of, this document by facsimile, email transmission of a scanned image or other electronic means, shall be effective as delivery of an originally executed counterpart, and shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

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

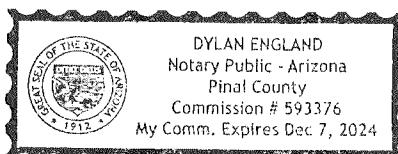
D & KM PROPERTIES L.C., a Utah limited liability company

By: D. Kent Monsen
D. KENT MONSEN, Manager

STATE OF UTAH) Arizona :SS.
COUNTY OF Mesa

On this 29th day of Nov., 2023 the foregoing instrument was acknowledged before me by D. KENT MONSEN, the Manager of D & KM PROPERTIES L.C., a Utah limited liability company.

Dylan England
NOTARY PUBLIC



AGREED AND CONSENTED TO:

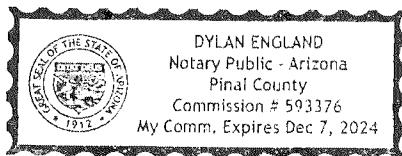
D. Kent Monsen
D. KENT MONSEN

Deanne Monsen
DEANNE MONSEN

STATE OF ~~UTAH~~ Arizona :ss.

COUNTY OF ~~Maricopa~~

On this 29th day of Nov., 2023 the foregoing instrument was acknowledged before me by D. KENT MONSEN.

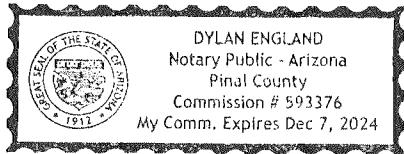


Dylan England
NOTARY PUBLIC

STATE OF ~~UTAH~~ Arizona :ss.

COUNTY OF ~~Maricopa~~

On this 29th day of Nov., 2023 the foregoing instrument was acknowledged before me by DEANNE MONSEN.



Dylan England
NOTARY PUBLIC

THE D. K. MONSEN 1990 TRUST

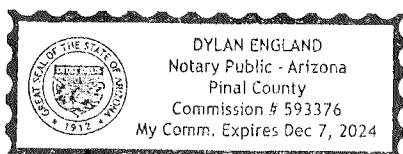
By: D. Kent Monsen
D. KENT MONSEN, Co-Trustee

By: Deanne Monsen
DEANNE MONSEN, Co Trustee

STATE OF ~~UTAH~~ Arizona :ss.

COUNTY OF ~~Maricopa~~

On this 29th day of Nov., 2023 the foregoing instrument was acknowledged before me by D. KENT MONSEN, a Co-Trustee of THE D. K. MONSEN 1990 TRUST.

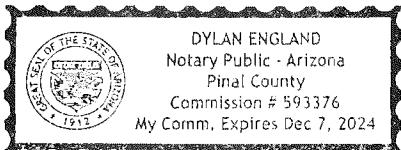


Dylan England
NOTARY PUBLIC

STATE OF ~~UTAH~~ Arizona

COUNTY OF Marcosia :ss.

On this 29th day of Nov., 2023 the foregoing instrument was acknowledged before me by DEANNE MONSEN, a Co-Trustee of THE D. K. MONSEN 1990 TRUST.



NOTARY PUBLIC

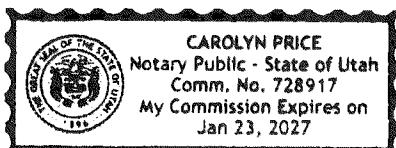
Mountain America Federal Credit Union

By: Dave Hillyard
DAVE HILLYARD, VP Commercial Lending

STATE OF UTAH)

COUNTY OF Salt Lake :ss.

On this 6 day of December, 2021 he foregoing instrument was acknowledged before me by DAVE HILLYARD, VP Commercial Lending, MOUNTAIN AMERICA FEDERAL CREDIT UNION.



NOTARY PUBLIC

EXHIBIT "A"

LEGAL DESCRIPTION

Unit 3, contained within CASCADE PROFESSIONAL & COMMERCIAL CENTER CONDOMINIUMS (including a vacation of Cascade Medical-Dental Center Plat 1), a Condominium project located in Orem, Utah, as the same is identified in the Record of Survey Map recorded in the office of the Utah County Recorder as Entry No. 61431:2005, and Map Filing No. 11127, as said Record of Survey map may have heretofore been amended or supplemented, and in the Declaration of Condominium of Cascade Professional & Commercial Center Condominiums Recorded in the office of the Utah County Recorder as Entry No. 61432:2005 of Official Records (as said Declaration may have heretofore been amended or supplemented).

TOGETHER WITH the undivided ownership interest in and to the Common Areas and Facilities which is appurtenant to said Unit as more particularly described in said Declaration (as said Declaration may have heretofore been amended or supplemented).

TOGETHER WITH a Right of Way and Easement over, across and upon the following described land: Beginning at a point in the Westerly boundary of U.S. Highway No. 91, State Street, Orem, Utah, said point being South 1051.54 feet and East 1321.29 feet from the Northwest corner of Section 23, Township 6 South, Range 2 East, Salt Lake Base and Meridian, thence South 18 deg. 46' East along said Highway boundary 31.36 feet, thence South 89 deg. 44' West along a fence line 460 feet, more or less, thence North 00 deg. 46' 42" West 30 feet; thence North 89 deg. 44' East 451 feet, more or less, to the Westerly boundary of U.S. Highway 91 and the point of beginning.

A.P.N. 65-143-0003