



MISC 2015064523



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COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
08/04/2015 09:18:47.00



2015064523

When Recorded. Please Return To:
Peter J. Hogan, Esq.
Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, NY 13202

(SPACE ABOVE RESERVED FOR RECORDER'S USE)

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING FIRST MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT INCREASES THE MAXIMUM PRINCIPAL AMOUNT OF THE DEBT ENCUMBERED BY THE LIEN OF THE DEED OF TRUST FROM \$6,147,074.00 to \$6,502,789.23

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING FIRST MODIFICATION AGREEMENT ("Modification") is made to be effective as of July 31, 2015, by and between RM6A HOLDINGS, LLC, a Delaware limited liability company, whose address is 3949 Forest Parkway, Suite 100, Wheatfield, New York 14120 ("**Borrower**"), and KEYBANK NATIONAL ASSOCIATION, whose address is 127 Public Square, Cleveland, Ohio 44114, its successors and assigns ("**Lender**").

WITNESSETH:

A. On or about April 30, 2014, Borrower executed and delivered to Lender a Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing ("**Deed of Trust**"), which was recorded in the Office of the Register of Deeds of Douglas County, Nebraska on April 30, 2014 as Instrument No. 2014031569 and encumbers, among other things, the real property described on Exhibit "A" attached thereto and hereto; and

B. The Deed of Trust secures the performance obligations of a Promissory Note dated as of March 31, 2014 ("**Note**") in the stated principal amount of Twenty Five Million Seven Hundred Thousand and 00/100 Dollars (\$25,700,000.00) (the "**Loan**") and the payment of Six Million One Hundred Forty Seven Thousand Seventy Four and 00/100 Dollars (\$6,147,074.00) of the Loan, plus interest and other charges thereon and the amount of any future advances under Section 9.19 of the Deed of Trust; and

D. Borrower has requested that Lender increase the stated principal amount of the Loan, whereby the stated principal amount that may be advanced under the Loan be increased to Twenty Seven Million and 00/100 Dollars (\$27,000,000.00) pursuant to the terms of a Promissory Note (with Consolidation Language executed and delivered by Borrower to Lender dated of even date herewith (the "**Restated Note**"), and Borrower is willing to have the lien of the Deed of Trust secure Six Million Five Hundred Two Thousand Seven Hundred Eighty Nine and 23/100 Dollars (\$6,502,789.23) of the increased principal amount of the Restated Note; and

E. As an inducement to Lender to enter into the transaction evidenced by the Restated Note, and in consideration of Lender doing so, Borrower is willing to execute and deliver this Modification in favor of Lender, and acknowledges good and sufficient consideration for entering into and delivering this Modification.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereto agree as follows:

1. Modification of Secured Amount of Deed of Trust. Notwithstanding terms to the contrary in the Deed of Trust, all references therein to "Loan" are hereby modified and changed from a loan in the stated principal amount of Twenty Five Million Seven Hundred Thousand and 00/100 Dollars (\$25,700,000.00) to a loan in the stated principal amount of Twenty Seven Million and 00/100 Dollars (\$27,000,000.00) (the "**Restated Loan**"), and all references to a "Promissory Note" or "Note" shall mean and refer to the Restated Note, executed on an even date herewith, in the stated principal amount of Twenty Seven Million and 00/100 Dollars (\$27,000,000.00). The lien and encumbrances of the Deed of Trust shall be limited to principal of Six Million Five Hundred Two Thousand Seven Hundred Eighty Nine and 23/100 Dollars (\$6,502,789.23), plus accrued interest and other charges thereon and the amount of any future advances under Section 9.19 of this Deed of Trust.

2. Recording Fees and Title Insurance Premiums. All recording fees associated with the recording of this Modification with the Douglas County Register of Deeds and all premiums incurred by Lender in connection with increase in the amount of Lender's loan policy insurance amount shall be reimbursed to Lender by Borrower on demand and, if not paid when due, shall bear interest at the default rate set forth in the Restated Note, from the due date until paid in full. In addition, failure to pay such fees shall constitute a default under this Modification and the Restated Loan.

3. Incorporation. All of the terms, conditions, obligations and representations of the Deed of Trust are hereby incorporated herein by reference.

4. No Further Commitment. Borrower hereby acknowledges and agrees that this Modification modifies the Deed of Trust only to the extent and on the terms set forth herein, and this Modification is not, nor shall it be, construed as a commitment by Lender to modify the same in any other respect.

5. Further Assurances. Borrower agrees to execute and deliver such documents and to perform such other acts, promptly upon request, as Lender requests and which are, in Lender's reasonable judgment, necessary or appropriate to effectuate the purposes of this Modification.

6. Governing Law. This Modification shall be construed in accordance with the laws of the State of Nebraska.


7. Execution in Counterparts. This Modification may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Modification to be effective as of the date and year above first written.

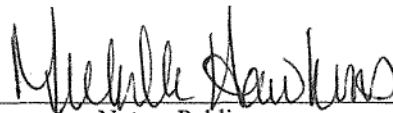
BORROWER:

RM6A HOLDINGS, LLC, a Delaware limited liability company

By  _____
Kenneth M. Franasiak, Authorized Signatory

STATE OF NEW YORK)
)SS:
COUNTY OF ERIE)

On the 22 day of July in the year 2015, before me, the undersigned, personally appeared KENNETH M. FRANASIAK, the Authorized Signatory of RM6A Holdings, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed this instrument.




Notary Public

MICHELLE HAWKINS
Notary Public, State Of New York
Reg. 01116697820
Qualified in Erie County
My Commission Expires February 24, 20 19

IN WITNESS WHEREOF, the parties hereto have executed this Modification to be effective as of the date and year above first written.

LENDER:

KEYBANK NATIONAL ASSOCIATION

By: 
David A. Pyc, Senior Vice President

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

On the 30th day of July in the year 2015 before me, the undersigned, personally appeared DAVID A. PYC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

KAREN L. SARGENT
Notary Public, State of New York
No. 01SA6252767
Qualified in Erie County
Commission Expires December 12, 2015

EXHIBIT "A"
Legal Description

Lot 164 in Woodbridge Subdivision, a Subdivision, as surveyed, plated and recorded, in Douglas County, Nebraska;

Together with non-exclusive easement rights appurtenant thereto for ingress and egress as established by the Plat and Dedication of Woodbridge Subdivision recorded October 4, 1994, in Book 1961 at Page 565 of the Deed Records of Douglas County, Nebraska;

And, together with non-exclusive easement rights appurtenant thereto for ingress and egress as established by Easement Agreement dated April 29, 2014 and recorded April 30, 2014, as Instrument No. 2014031466 of the Records of Douglas County, Nebraska.