

When recorded, mail to:

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2/8/2021 1:10:00 PM \$40.00
Book - 11114 Pg - 2978-2983
RASHELLE HOBBS
Recorder, Salt Lake County, UT
SNELL & WILMER
BY: eCASH, DEPUTY - EF 6 P.

APN(s): 26-24-301-007

**FIRST AMENDMENT TO CONSTRUCTION DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

THIS FIRST AMENDMENT TO CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "*Amendment*") is made effective as of February 4, 2021, by and among **DAYBREAK HOLIDAY, L.L.C.**, a Utah limited liability company ("*Trustor*"), and **BOKF, NA**, dba BOKF Financial ("*Beneficiary*").

RECITALS:

A. Beneficiary has extended a construction loan to Trustor (the "*Loan*") in the original maximum principal amount of up to **SIX MILLION TWO HUNDRED NINE THOUSAND AND NO/100 DOLLARS (\$6,209,000.00)** pursuant to that certain Construction Loan Agreement dated January 25, 2021, by and between Trustor and Beneficiary (as amended, the "*Loan Agreement*"), and evidenced by a Promissory Note dated January 25, 2021, in the original principal amount of the Loan executed by Trustor in favor of Beneficiary (as amended, the "*Note*").

B. The Loan is secured by, among other things, a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (together with any modifications and amendments, the "*Deed of Trust*") executed by Trustor, as trustor, to the trustee named therein, for the benefit of Beneficiary, recorded on January 25, 2021, as Instrument No. 13543367, in the official records of Salt Lake County, Utah, which encumbers certain real property located in Salt Lake County, Utah, as more particularly described on **Exhibit A** attached hereto (the "*Property*").

C. Trustor and Beneficiary desire to amend the Deed of Trust, as more particularly set forth herein. Capitalized terms used herein without definition, shall have the meanings given to such terms in the Deed of Trust.

NOW THEREFORE, in consideration of the covenants and conditions contained herein and in the Loan Documents, the parties agree as follows:

1. Accuracy of Recitals. Trustor hereby acknowledges the accuracy of the foregoing Recitals which are incorporated herein by this reference.

2. Amendment of Deed of Trust. Section 1.12(a) of the Deed of Trust is hereby amended and restated in its entirety as follows:

“(a) any sale, transfer, conveyance, hypothecation, encumbrance, lease (except for the Holiday Oil Lease (as defined in the Loan Agreement)) or vesting of the Trust Estate or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions (as such term is defined in Exhibit C to this Deed of Trust);”

3. Not a Novation. The parties each agree and acknowledge that the modifications set forth herein are not intended to be a novation or to constitute or evidence a new loan but rather a continuation of the existing Loan and the lien and charge of the Deed of Trust against the Property and all assets and properties described in the Deed of Trust shall continue unabrogated and in full force and effect.

4. Ratification of Deed of Trust and Assignment of Rents. As amended by this Amendment, the Deed of Trust is ratified and confirmed and continues in full force and effect and contains the entire understanding and agreement of the parties in respect of the Deed of Trust and supersedes all prior representations, warranties, agreements and understandings. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of Trustor and Beneficiary, and their respective successors and assigns. No provision of this Amendment may be changed, discharged, supplemented, terminated or waived except in a writing signed by Beneficiary.

5. Release and Discharge. Trustor fully, finally, and forever releases and discharges Beneficiary and its respective successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity, that Trustor has or in the future may have, whether known or unknown, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Beneficiary in respect of the Loan, or the Loan Documents, and (ii) arising from events occurring prior to the date of this Amendment.

6. Governing Law. This Amendment shall be governed by the law of the State of Utah without regard to its conflicts of laws principles.

7. Counterparts. This Amendment 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 document. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one document.

8. Miscellaneous. Except for the amendment above stated, all of the conditions and covenants of the Deed of Trust shall remain in full force effect, unchanged, and the Deed of Trust is in all respects ratified, confirmed and approved. All of the terms and conditions of the Deed of Trust are incorporated herein by reference.

9. Binding Effect. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of Trustor and Beneficiary and their respective successors and assigns.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

DAYBREAK HOLIDAY, L.L.C.
a Utah limited liability company

By: COLMENA CAPITAL, INC.
a Utah corporation
its Manager

By: *Brian Shelley*
Name: Brian Shelley
Title: Vice President

By: KIMBALL DAYBREAK LLC
a Utah limited liability company
its Manager

By: *Victor M. Kimball*
Name: Victor M. Kimball
Title: Manager

"Trustor"

State of Utah)
) ss.
County of Salt Lake)

On this 2nd day of February, in the year 2021, before me Yvonne M. Schenk, a notary public, personally appeared BRIAN SHELLEY, an individual, the Vice President of COLMENA CAPITAL, INC., a Utah corporation, a Manager of DAYBREAK HOLIDAY, L.L.C., a Utah 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 Seal)

Yvonne M Schenk
Notary Signature

State of Utah)
County of Salt Lake) ss.


On this 3rd day of February, in the year 2021, before me Yvonne M. Schenk, a notary public, personally appeared VICTOR M. KIMBALL, an individual, a Manager of KIMBALL DAYBREAK LLC, a Utah limited liability company, a Manager of **DAYBREAK HOLIDAY, L.L.C.**, a Utah 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 Seal)

Yvonne M. Schenk
Notary Signature

BOKF, NA dba BOK Financial

By: 
Name: Aaron Munro
Title: Vice President

"Beneficiary"

STATE OF Utah)
 : ss.
COUNTY OF Salt Lake)

On this 4 day of February 2021, before me Aaron Munro, a notary public, personally appeared **AARON MUNRO**, an individual, a Vice President of **BOKF, NA dba BOK Financial**, 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 Seal)

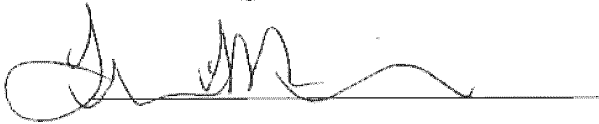


EXHIBIT A

PROPERTY DESCRIPTION

That certain real property owned by Trustor and situated in the County of Salt Lake, State of Utah and described as follows:

PARCEL 1:

Lot C-101, DAYBREAK VILLAGE 7A PLAT 3 SUBDIVISION Amending Lot WTC2 of The Kennecott Daybreak Master Subdivision #1 Amended and Lot Z108 of The VP Daybreak Operations-Investments Plat I and Lot P-126 of The Daybreak Lake Avenue from Mountain View Corridor to 6000 West Subdivision, recorded May 18, 2020 as Entry No. 13272988 in Book 2020P of Plats at Page 118, on file and of record in the office of the Salt Lake County Recorder, State of Utah.

Parcel 2:

An exclusive perpetual easement for the construction, operation and maintenance of parking areas, landscaping and related improvements and a perpetual vehicular and pedestrian cross access easement, as defined and described in that certain Easement Agreement recorded June 15, 2020 as Entry No. 13298626 in Book 10961 at Page 4952, on and over the real property more particularly described as follows:

Beginning at a point on the South Line of Parcel Number 26-24-301-004, said point lies South 89°55'30" East 306.933 feet along the Daybreak Baseline Southeast (Being South 89°55'30" East 10641.888 feet between the Southwest Corner of Section 24, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 2401.647 feet from the Southwest Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 53°39'50" East 155.369 feet to the Easterly Line of Parcel Number 26-24-301-004; thence along said Parcel Number 26-24-301-004 the following (2) courses: 1) South 33°43'21" East 110.441 feet; 2) South 89°56'17" West 186.472 feet to the point of beginning.