

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

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Page 1 of 7

Wells Fargo Bank, National Association  
Real Estate Banking Group (AU #3037)  
P.O. Box 45490  
Salt Lake City, Utah 84111  
Attention: Lauri Parent  
Loan No.: 1006314

Rhonda Francis Summit County Recorder  
05/26/2023 12:20:59 PM Fee \$40.00

By COTTONWOOD TITLE INSURANCE AGENCY, INC.  
Electronically Recorded

APNs: NPRK-P-1

(Space Above For Recorder's Use)

**FIFTH MODIFICATION AGREEMENT AMENDING DEED OF TRUST**

THIS FIFTH MODIFICATION AGREEMENT AMENDING DEED OF TRUST ("**Agreement**") is dated as of May 26, 2023, by and between WELLS FARGO BANK, NATIONAL ASSOCIATION (collectively with its successors or assigns, "**Lender**"), and COTTONWOOD NEWPARK THREE, L.L.C., a Delaware limited liability company ("**Trustor**" or "**Borrower**"). Lender is the beneficiary hereunder for indexing purposes by the clerk of court. This is not a novation.

**RECITALS**

**A.** Pursuant to the terms of that certain Building Loan Agreement dated February 10, 2012, as further amended and modified as follows: by a letter agreement dated June 27, 2012; by that certain Second Modification Agreement dated effective as of February 20, 2014; by that certain Third Modification Agreement dated effective February 20, 2015; by that certain Fourth Modification Agreement dated as of March 11, 2016; by that certain letter agreement dated July 21, 2017; by that certain Sixth Modification and Additional Advance and Consolidation Agreement dated as of June 13, 2018; and by that certain Seventh Modification Agreement dated as of even date herewith ("**Seventh Modification Agreement**") (collectively, and as the same may be amended, modified, supplemented or replaced from time to time, "**Loan Agreement**"), Lender made a loan to Borrower in the original principal amount of Thirteen Million Two Hundred Fifteen Thousand and No/100 Dollars (\$13,215,000.00) ("**Loan**"). The Loan is evidenced by that certain Second Amended and Restated Secured Promissory Note, dated June 30, 2018, executed by Borrower payable to the order of Lender, in the principal amount of the Loan, (as the same may be amended, modified, supplemented or replaced from time to time, "**Existing Note**") and is further evidenced and secured by certain other documents described in the Loan Agreement as Loan Documents.

**B.** Concurrently with the execution of this Agreement, Borrower shall execute that certain Third Amended and Restated Secured Promissory Note, dated as of even date herewith, in the original principal amount of Thirteen Million Two Hundred Fifteen Thousand and No/100 Dollars (\$13,215,000.00) (as the same may be amended, modified, supplemented or replaced from time to time "**Amended Note**"). The Amended Note amends and restates the Existing Note in its entirety. Borrower hereby agrees that all terms, covenants and conditions of the Amended Note, including without limitation the manner in which interest shall be calculated thereunder, shall be effective as of the date hereof. All references to the "Note" herein shall refer to the Amended Note.

- C. The Note is secured by, among other things, a Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated February 10, 2012, executed by Borrower, as Trustor, in favor of the trustee named therein, for the benefit of Lender, as Beneficiary, and recorded February 23, 2012, as Entry No. 00939971 of the official records of Summit County, Utah, as further amended and modified as follows: by that certain Modification Agreement Amending Deed of Trust dated effective February 20, 2014, and recorded March 25, 2014, as Entry No. 00991995 of the official records of Summit County, Utah, by that certain Second Modification Agreement Amending Deed of Trust dated March 2, 2015, and recorded March 18, 2015, as Entry No. 01015008 of the official records of Summit County, Utah, by that certain Third Modification Agreement Amending Deed of Trust dated as of March 11, 2016, and recorded March 18, 2016, as Entry No. 01041098 of the official records of Summit County, by that certain Fourth Modification Agreement Amending Deed of Trust dated as of June 13, 2018, and recorded June 13, 2018, as Entry No. 01093342 of the official records of Summit County, and by that certain Fifth Modification Agreement Amending Deed of Trust dated as of even date herewith (as the same may be amended, modified, supplemented or replaced from time to time, "**Security Instrument**") encumbering real property described more particularly therein.
- D. Lender and Borrower have agreed to amend the Security Instrument and other Loan Documents and Other Related Documents pursuant to that certain Seventh Modification Agreement.
- E. All exhibits, schedules or other items attached hereto are incorporated herein by such attachment for all purposes.

NOW, THEREFORE, Trustor and Lender agree as follows:

- 1. **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants, as of the effective date above, that:
  - 1.1 **FORMATION AND ORGANIZATIONAL DOCUMENTS.** Borrower has delivered to Lender all of the relevant formation and organizational documents of Borrower, the partners, members, managers or joint venturers of Borrower (if any), and all guarantors of the Loan (if any) and all such formation documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Borrower hereby certifies that: (i) the above documents are all of the relevant formation and organizational documents of Borrower; (ii) they remain in full force and effect; and (iii) they have not been amended or modified since they were delivered to Lender.
  - 1.2 **FULL FORCE AND EFFECT.** The Note and other Loan Documents, as amended hereby, are in full force and effect without any defense, counterclaim, right or claim of set-off; all necessary action to authorize the execution and delivery of this Agreement has been taken; and this Agreement is a modification of an existing obligation and is not a novation.
  - 1.3 **NO DEFAULT.** No Default, breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under the Security Instrument any of the Loan Documents (as modified by this Agreement) or any of the Other Related Documents and that all representations and warranties herein and in the other Loan Documents are true and correct, and shall survive execution and recordation of this Agreement.
  - 1.4 **TITLE TO THE PROPERTY.** Since the recordation date of the Security Instrument (stated above), Borrower has not further encumbered the Property, including, without

limitation, by entering into any deed of trust, deed to secure debt or mortgage, ground lease, and/or any option to purchase or right of first refusal with respect to the Property.

1.5 **INTERVENING LIENS.** The lien of the Security Instrument is a first lien on the property described therein and covered thereby and that this Agreement will not cause intervening liens to become prior to the lien of the Security Instrument. If any intervening lien exists or hereafter arises, Borrower shall cause the same to be released or subordinated to the lien of the Security Instrument, without limiting any other right or remedy available to Lender. Borrower has no legal or equitable claim against any mortgagor, trustor or grantor named in the Security Instrument which would be prior to the lien of the Security Instrument, or which would entitle Borrower to a judgment entitling Borrower to an equitable lien on all or any portion of that property prior in lien to the Security Instrument.

2. **CONSOLIDATION.** The indebtedness evidenced by the Note constitutes a single indebtedness of Borrower to Lender in the aggregate principal amount of the Loan. The Loan shall be secured by the Security Instrument and the other Loan Documents which recite they are security instruments.

3. **MODIFICATION OF LOAN DOCUMENTS.** The Security Agreement hereby is (and the other Loan Documents and Other Related Documents have been) supplemented and modified to incorporate the following and all other modifications set forth in the Seventh Modification Agreement, which shall supersede and prevail over any conflicting provisions of the Security Agreement:

a. The Security Instrument shall secure, in addition to any other obligations secured thereby, the payment and performance by Borrower of all obligations under: (a) the Note together with interest and other charges thereon and any and all amendments, modifications, extensions and renewals thereof, whether or not any such amendment, modification, extension or renewal is evidenced by a new or additional promissory note or notes; and (c) the Seventh Modification Agreement, as amended, modified, extended or renewed in writing by Borrower and Lender.

b. The Maturity Date of the Loan as set forth in the Note and the Security Instrument and any other Loan Document or Other Related Document is hereby extended to **May 21, 2024**, as the same may be extended to the Second Extended Maturity Date, pursuant to Borrower's exercise of the Second Option to Extend in accordance with Section 2.9 of the Loan Agreement (such initial maturity date as the same may be extended pursuant to the aforementioned extension options, the "**New Maturity Date**"). Accordingly, for the avoidance of doubt, all references in the Loan Agreement and any other Loan Document and every Other Related Document to the "Maturity Date" shall be amended to mean the **New Maturity Date**, and all sums owing on the Loan, including all outstanding principal, accrued and unpaid interest, outstanding late charges, unpaid fees, and all other amounts outstanding under the Note and the other Loan Documents, shall be due and payable no later than the **New Maturity Date**.

4. **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 Security Instrument against the Property and all assets and properties described in the Security Instrument shall continue unabrogated and in full force and effect.

5. **RATIFICATION OF DEED OF TRUST.** As amended by this Agreement, the Security Instrument 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 Security Instrument and supersedes all prior representations, warranties, agreements and understandings. The Security Instrument as modified herein shall be binding upon and inure to the benefit of Trustor and Lender, and their respective successors and assigns. No provision of this Agreement may be changed, discharged, supplemented, terminated or waived except in a writing signed by Lender.
6. **RELEASE AND DISCHARGE.** Trustor fully, finally, and forever releases and discharges Lender, 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 Lender in respect of the Loan or the Loan Documents, and (ii) arising from events occurring prior to the date of this Agreement.
7. **MISCELLANEOUS.** Except for the amendments above stated, all of the conditions and covenants of the Security Instrument shall remain in full force effect, unchanged, and the Security Instrument is in all respects ratified, confirmed and approved. All of the terms and conditions of the Security Instrument are incorporated herein by reference.
8. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Signature pages may be removed from separate counterparts to form a single document.
9. **DEFINED TERMS.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings attributed to such terms in the Seventh Modification Agreement.
10. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to conflicts of law principles.
11. **BINDING EFFECT.** The Security Instrument as modified herein shall be binding upon and inure to the benefit of, Trustor and Lender and their respective successors and assigns.

Except as modified herein, all of the terms and provisions of the Security Instrument shall remain in full force and effect and are hereby ratified and confirmed.

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IN WITNESS WHEREOF, Trustor and Lender have caused this document to be duly executed as of the date first above written.

"LENDER"

**WELLS FARGO BANK, NATIONAL ASSOCIATION**  
a national banking association

By: *Carole Kackley*  
Name: Caroline Kackley  
Title: Managing Director

STATE OF COLORADO

) ss.

CITY AND COUNTY OF DENVER )

On this 24<sup>th</sup> day of May, 2023, before me Tammy Johnson, personally appeared **CAROLINE KACKLEY**, an individual, in her capacity as a Managing Director of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document and acknowledged she executed the same on behalf of such national banking association.

Witness my hand and official seal.

[SEAL]

TAMMY JOHNSON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20194000237  
MY COMMISSION EXPIRES JANUARY 03, 2027

*Tammy Johnson*  
NOTARY PUBLIC  
January 3, 2027  
Commission Expires

[Signature(s) Continue on the Following Page(s)]

"TRUSTOR"

**COTTONWOOD NEWPARK THREE, L.L.C.**  
a Delaware limited liability company

By: **DAKOTA PACIFIC REAL ESTATE PARTNERS, LP**  
a Delaware limited partnership  
its Managing Member

By: **DAKOTA PACIFIC RE GP, LLC**  
a Utah limited liability company  
its General Partner

By: **DPRE MANAGEMENT, LLC**  
a Utah limited liability company  
its Manager

By: [Signature]  
Name: Marc Stanworth  
Title: Manager

State of UTAH

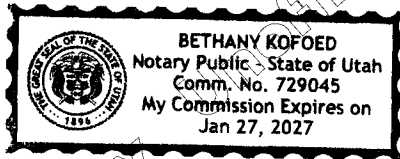
ss.

County of SALT LAKE

On this 24 day of May, in the year 2023, before me Bethany Kofoed, a notary public, personally appeared MARC STANWORTH, an individual, in his capacity as Manager of DPRE MANAGEMENT, LLC, a Utah limited liability company, the Manager of DAKOTA PACIFIC RE GP, LLC, the General Partner of DAKOTA PACIFIC REAL ESTATE PARTNERS, LP, THE Managing member of COTTONWOOD NEWPARK THREE, L.L.C., a Delaware 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 on behalf of said limited liability company.

Bethany Kofoed  
Notary Signature

(Notary Seal)



**EXHIBIT A - DESCRIPTION OF PROPERTY**

Exhibit A to Fifth Modification Agreement Amending Deed of Trust between COTTONWOOD NEWPARK THREE, L.L.C., a Delaware limited liability company, as Trustor, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (collectively with its successors or assigns, "Lender") dated as of May 26, 2023.

All that certain real property located in Summit County, Utah, described as follows:

**PARCEL 1:**

All of Lot P-1, NEWPARK PARCEL P SUBDIVISION, according to the official plat thereof, recorded February 21, 2012 as Entry No. 939829 of the official records in the office of the Summit County Recorder.

**PARCEL 2:**

Those certain easement rights in and to Common Parcel 1, Parcel Q, Lot T-1, and Lot V-2, as created by that certain Amended and Restated Easement and Maintenance Agreement recorded February 23, 2012 as Entry No. 939970 in Book 2116 at Page 1444 of the official records in the office of the Summit County Recorder, reference to which is hereby made for the particulars.