

RECORDATION REQUESTED BY:

CIBC Bank USA
Attn: Katelyn Brungardt
120 South LaSalle Street
Chicago, Illinois 60603

13944233 B: 11334 P: 8575 Total Pages: 11
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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

**THIS INSTRUMENT WAS
PREPARED BY AND WHEN
RECORDED RETURN TO:**

Craig D. Jeffrey
Riley Safer Holmes & Cancila LLP
70 West Madison Street, Suite 2900
Chicago, Illinois 60602

152822 - ETB
Permanent Tax Index Number(s) : 14-24-424-001
and Address: See Exhibit A

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this “Agreement”) is made as of the 29th day of April, 2022, by LAKE PARK PHASE III LLC, a Delaware limited liability company (the “Trustor”) the several banks and financial institutions from time to time parties to the Loan Agreement (collectively, the “Lender”) and CIBC BANK USA, an Illinois state chartered bank, together with its successors and assigns (the “Administrative Agent”).

RECITALS:

Administrative Agent, as lender and administrative agent on behalf of those lenders set forth on Schedule 1 of the Loan Agreement, as hereinafter defined, made a loan to Trustor in the amount of Thirty Million Nine Hundred Eighty-Four Thousand Three Hundred Sixty-Five and No/100 Dollars (\$30,984,365.00) (the “Loan”), dated as of January 18, 2022.

The Loan encumbers that certain property fully described in Exhibit A attached hereto (the “Property”).

The Loan is evidenced and secured by the following instruments, each dated as of January 18, 2022, unless otherwise noted (collectively, the “Loan Documents”):

(a) Promissory Note made by Trustor in favor of Lender in the original principal amount of Thirty Million Nine Hundred Eighty-Four Thousand Three Hundred Sixty-Five and No/100 Dollars (\$30,984,365.00) (the “Note”);

(b) Construction Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents made by Trustor in favor of **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation (the "Trustee") for the benefit of Lender and Administrative Agent dated January 18, 2022 and recorded January 19, 2022 in the records of the Salt Lake County, Utah Recorder as Instrument No. 13873535 in Book 11296, Page 4695 of the Salt Lake County, Utah records (as amended, restated or replaced from time to time, the "Construction Deed of Trust")

(c) Construction Loan and Security Agreement by and between Trustor and Administrative Agent (the "Loan Agreement");

(d) Assignment of Leases and Rents made by Trustor in favor of Lender and Administrative Agent recorded January 19, 2022 in the records of the Salt Lake County, Utah Recorder as Instrument No. 13873536 in Book 11296, Page 4738 of the Salt Lake County, Utah records (as amended, restated or replaced from time to time, the "ALR");

(e) Guaranty of Payment and Completion made by **RONALD LUNT**, an individual, **MARK HAMILTON**, an individual, and **BRUCE BINGHAM**, an individual (together, the "Guarantors" and each a "Guarantor") for the benefit of Lender and Administrative Agent (as amended, restated or replaced from time to time, the "Guaranty");

(f) Environmental Indemnity Agreement by Trustor and Guarantors to and for the benefit of Lender and Administrative Agent (as amended, restated or replaced from time to time, the "Indemnity"); and

(g) Any and all other documents and instruments given at any time to evidence and secure the Loan.

The parties desire to amend the Loan Documents as based upon the terms set forth herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions. All terms not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement.

2. Modifications to the Loan Agreement. The Loan Agreement is hereby modified as set forth below:

(a) The definition for "Construction Escrow" is hereby deleted in its entirety from Section 2.1 "Definitions".

(b) Section 4.22 "Construction Escrow Agreement" is hereby deleted in its entirety and replaced with the following:

"Intentionally Omitted"

(c) Section 5.1(h)(vii) is hereby deleted in its entirety and replaced with the following:

"(vii) Such other documents, assignments, certificates and opinions as may be reasonably required by Agent."

(d) Section 5.5(a) is hereby deleted in its entirety and replaced with the following:

"(a) Loan Advances shall be made by Agent, and Borrower will cause the Contractor to comply with the requirements of the Title Company in order to enable said escrowee to issue to Agent a "date down" endorsement to the Title Policy, make disbursements and obtain necessary sworn statements and waivers of lien, provided, however, that Agent, in its sole discretion, may make payments of Project Costs directly to Borrower or to the person or entity Agent determines is entitled to payment or jointly to Borrower and such person or entity. Once the Loan Advance is funded to the to the person or entity Agent determines is entitled to payment, such Loan Advance shall be deemed to have been funded to Borrower."

(e) Section 5.5(c) "Contract Administrator" is hereby added as a new section as follows:

"(c) **Contract Administrator.** At Borrower's expense, Agent may engage a third-party contract administrator (the "**Contract Administrator**") to assist Agent, as its agent in the administration and management of the Loan. Agent may delegate to the Contract Administrator such tasks and responsibilities as it deems appropriate, including, for example, (i) the processing of Borrower's requests for the Loan Advances; (ii) the inspection of the Project to determine the quality and quantity of construction completed and whether requests for the disbursement of any Loan Advance should be honored; (iii) the review and verification of receipts, lien waivers, and title insurance endorsements; (iv) the payment to the appropriate parties of the Loan Advance disbursed by Agent; and (v) the handling of lien claims."

(f) Section 5.6(a)(i) is hereby deleted in its entirety and replaced with the following:

"(i) Borrower has delivered final and unconditional waivers of lien from the Subcontractor whose individual Subcontract has been fully performed to the Contract Administrator with copies to Agent;"

(g) Section 5.6(b)(v) is hereby deleted in its entirety and replaced with the following:

“(v) Borrower has delivered to Agent final and unconditional waivers of lien from the Contractor and all Subcontractors and materialmen who have supplied labor or material in connection with the Work and who not previously submitted such final waivers;”

(h) Section 5.8 “Suspension/ Cessation of Disbursement of Loan Advances” is hereby added as a new section as follows:

“5.8 Suspension/Cessation of Disbursement of Loan Advances. Regardless of any duty Agent has to notify Borrower of a default and any right Borrower has to cure a default, Agent shall have no obligation to make a disbursement of Loan Advances at any time Borrower or any other party thereto other than Agent is in default under the terms of this Agreement or any of the Loan Documents. Agent’s obligation to make a disbursement of any Loan Advance shall be suspended following the occurrence of an Event of Default until such default is cured. Agent shall have no obligation to make any further disbursement of a Loan Advance (i) after the Construction Completion Date, (ii) after the maturity of the Note, or (iii) if an Event of Default occurs.”

3. Modifications to the Construction Deed of Trust. The Construction Deed of Trust is hereby modified as set forth below:

(a) The first paragraph under the heading “WITNESSETH” is hereby deleted in its entirety and replaced with the following:

“Lenders have agreed to make loans (the “Loan”) to (i) Trustor and in the aggregate maximum principal amount of Thirty Million Nine Hundred Eighty-Four Thousand Three Hundred Sixty-Five and No/100 Dollars (\$30,984,365.00) pursuant to that certain Construction Loan and Security Agreement dated as of even date herewith by and between Phase III Borrower, Beneficiary and Lender, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Construction Loan and Security Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the “Loan Agreement”) and (ii) to Lake Park Phase I LLC, a Delaware limited liability company, and Lake Park Phase II, a Delaware limited liability company (collectively “Phase I and II Borrower”, together with Phase III Borrower, referred to herein as “Borrower”) in the aggregate maximum principal amount of Thirty Three Million Fifteen Thousand Six Hundred Thirty Five and No/100 Dollars (\$33,015,635.00) pursuant to that certain Amended and Restated Construction Loan and Security Agreement dated as of even date herewith by and between Phase I and II Borrower, Beneficiary and Lender. The maximum amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Deed of Trust shall not exceed One Hundred Twenty-Eight Million and No/100 Dollars (\$128,000,000.00). The Loan is due and payable in full on or before the Maturity Date (as defined in the Loan Agreement), except as such date may be extended pursuant to the terms of the Loan Agreement or accelerated pursuant to the terms hereof or of any other Loan Document (as hereinafter

defined). This Deed of Trust encumbers certain real estate located in Salt Lake County, Utah, legally described on Exhibit A attached hereto, and payment of the Obligations (as defined in the Loan Agreement) and all other obligations of Borrower are secured by this Deed of Trust, financing statements and other security documents (this Deed of Trust, the Loan Agreement, the Rate Management Agreement (as defined below), and all other documents evidencing or securing the Loan (as amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the “Loan Documents”). As used herein, the term “Rate Management Agreement” shall mean any agreement between the Trustor and the Beneficiary and/or its Affiliates (as defined in the Loan Agreement), or any other provider, providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation, any ISDA Master Agreement between Trustor and Beneficiary or its Affiliates, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising, and in each case as amended, modified or supplemented from time to time.”

(b) The third paragraph under the heading “WITNESSETH” is hereby deleted in its entirety and replaced with the following

“To secure (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, and all other indebtedness evidenced by or owing under the Note and any of the other Loan Documents (including any Rate Management Agreement), together with any extensions, modifications, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Deed of Trust by its terms secures, and (iii) the performance and observance of the covenants and agreements contained in this Deed of Trust, the Loan Agreement, the Note and each of the other Loan Documents, and any Rate Management Agreement, whether now existing or hereafter arising, of Trustor and/or its Affiliates (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the “Debt”), Trustor does hereby irrevocably and unconditionally GRANT, WARRANT, SELL, CONVEY, TRANSFER, MORTGAGE AND ASSIGN to Trustee, in trust, for the benefit and security of Beneficiary or its Affiliates, as agent for the Lender, its successors and assigns, all estate, right, title and interest that Trustor now has or may later acquire in and to the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, VIII and IX below, all of same being collectively referred to herein as the “Property”.”

(c) Section 19 "Application of Proceeds" is hereby deleted in its entirety and replaced with the following:

Application of Proceeds. The proceeds of any foreclosure sale of the Property or of any sale of property pursuant to Section 14(c) or Section 14(d) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Section 14(c) or Section 14(d) and Section 17 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note, including any obligations under the Rate Management Agreement owing to Beneficiary or its Affiliates; fifth, to whomsoever shall be lawfully entitled to the same."

4. **Representations and Warranties of Trustor.** Trustor hereby represents, covenants and warrants to Administrative Agent as follows:

(a) The representations and warranties in the Note and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default or Default under the Note or the other Loan Documents and Trustor does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Trustor enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Trustor or any other party whose financial statement has been delivered to Administrative Agent in connection with the Loan from the date of the most recent financial statement received by Administrative Agent.

(e) As of the date hereof, Trustor has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Trustor is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Trustor. This Agreement has been duly executed and delivered on behalf of Trustor.

5. **Full Force and Effect.** Except as otherwise modification by this Agreement, Trustor hereby acknowledges and agrees that all of the terms, provisions, covenants, representations,

warranties, conditions and stipulations contained in the Loan Documents shall continue to apply with full force and effect to Trustor from and after the date hereof.

6. Same Indebtedness. This Agreement and the execution of other documents contemplated hereby do not constitute the creation of a new debt or the extinguishment of the debt evidence by the Loan Documents, nor will they in any way affect or impair the liens and security interests created by the Loan Documents, which Trustor acknowledges to be valid and existing liens on and security interest in the Property. Trustor agrees that the lien and security interests created by the Construction Deed of Trust continue to be in full force and effect, unaffected and unimpaired by this Agreement and that said liens and security interests shall so continue in their perfection until the debt secured by the Loan Documents is fully discharged.

7. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Administrative Agent than against Trustor merely by virtue of the fact that the same has been prepared by counsel for Administrative Agent, it being recognized that Trustor and Administrative Agent have contributed substantially and materially to the preparation of this Agreement, and Trustor and Administrative Agent each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Administrative Agent, the same shall not be deemed to constitute Administrative Agent a venturer or partner of or in any way associated with Trustor nor shall privity of contract be presumed to have been established with any third party.

(d) Trustor and Administrative Agent each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Trustor and Administrative Agent; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Trustor's obligations under this Agreement.

(i) Each of the Loan Documents is hereby modified to the extent necessary so that the term "Loan Documents," as such term may be used therein, shall be deemed to include this Agreement.

(j) Except as specifically set forth herein, Administrative Agent's rights under this Agreement shall be in addition to all of the rights of Administrative Agent under the Construction Deed of Trust and other Loan Documents.

(k) This Agreement is subject to enforcement by Administrative Agent at law or in equity, including, without limitation, actions for damages or specific performance.

(l) In the event that Administrative Agent shall retain the services of an attorney or any other consultants in order to enforce this Agreement or any of the other Loan Documents, or any portion hereof, Trustor agrees to pay to Administrative Agent any and all costs and expenses, including, without limitation, reasonable attorneys' fees, costs and disbursements, incurred by Administrative Agent as a result thereof.

(m) Trustor agrees to execute and deliver all such documents and instruments, and do all such other acts and things, as may be reasonably required by the Administrative Agent in the future to perfect, assure, confirm or effectuate this Agreement.

(n) This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of Illinois (without regard to any conflict of laws principles). Trustor irrevocably submits to the jurisdiction of any court of competent jurisdiction chosen by Administrative Agent located in the State of Illinois in connection with any proceeding out of or relating to this Agreement.

[Remainder of page intentionally left blank; signature page follows]

TRUSTOR:

LAKE PARK PHASE III LLC, a Delaware limited liability company

By: BRHP OZ JV I LLC, a Delaware limited
liability company, its Sole Member

By: HP LAKE PARK I LLC, a Utah limited liability company, its Managing Member

By:

Name: Taylor Scarpers

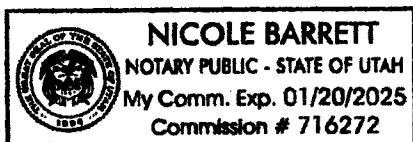
Title: Authorized Signatory

STATE OF Utah)
) SS

COUNTY OF Salt Lake

On this 24th day of March, 2022, personally appeared before me Timothy Stephens, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is a Managing Member of HP Lake Park I LLC, a Utah limited liability company, which is the Managing Member of BRHP OZ JV I LLC, a Delaware limited liability company, which is the Sole Member of Lake Park Phase III LLC, a Delaware limited liability company, and that said document was signed by him on behalf of said company.

WITNESS MY HAND AND OFFICIAL SEAL



Printed Name: Nicole Barrett
Notary Public
My commission expires: 01/20/2025

ADMINISTRATIVE AGENT:

CIBC BANK USA, an Illinois state chartered bank

By:

Printed Name: Katelyn Brungardt

Title: Managing Director



STATE OF IL)
COUNTY OF Cook) SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Katelyn Brungardt, in her capacity as a Managing Director of the above entity, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal as of the 28 day of March, 2022



NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT 2, LAKE PARK COMMERCE CENTER, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE, RECORDED DECEMBER 3, 2018 AS ENTRY NO. 12896346 IN BOOK 2018P AT PAGE 405.

PARCEL 1A:

A NONEXCLUSIVE EASEMENT APPURTENANT TO PARCEL 1 ABOVE, FOR PURPOSES OF INGRESS AND EGRESS, AS DISCLOSED AND DEFINED IN THAT CERTAIN DECLARATION OF CROSS ACCESS AND UTILITIES EASEMENT AGREEMENT RECORDED DECEMBER 4, 2018 AS ENTRY NO. 12897259 IN BOOK 10735 AT PAGE 7580, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO DECLARATION OF CROSS ACCESS AND UTILITIES EASEMENT AGREEMENT RECORDED JUNE 24, 2020 AS ENTRY NO. 13308163 IN BOOK 10967 AT PAGE 2448 IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

TAX PARCEL NO.: 14-24-426-001