

13
Prepared by, and after recording
return to:
Moss & Barnett (KA)
A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402

13068885
09/09/2019 11:26 AM \$40.00
Book - 10826 Pg - 6785-6797
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
COTTONWOOD TITLE
1996 E 6400 S #120
SLC UT 84121
BY: DSA, DEPUTY - WI 13 P.

**AMENDMENT TO MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT,
REAFFIRMATION OF LOAN DOCUMENTS
AND RATIFICATION OF GUARANTY**

**Freddie Mac Loan No.: 501809791
Property Name: District North**

**AMENDMENT TO MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT,
REAFFIRMATION OF LOAN DOCUMENTS
AND RATIFICATION OF GUARANTY**

THIS AMENDMENT TO MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT REAFFIRMATION OF LOAN DOCUMENTS AND RATIFICATION OF GUARANTY (this "**Agreement**") is made effective as of the ~~6TH~~ day of ~~August~~ **SEPTEMBER**, 2019, by West Station North Apartments, LP, a Utah limited partnership ("**Borrower**"), and Blake Henderson and Neil Henderson (jointly and severally if more than one, "**Guarantor**") for the benefit of Federal Home Loan Mortgage Corporation, as Trustee, for the benefit of holders of Federal Home Loan Mortgage Corporation, Multifamily Aggregation Risk Transfer Certificates, Series 2018-KT03 ("**Lender**").

RECITALS

- A. Borrower previously obtained a mortgage loan in the original principal amount of \$17,550,000.00 ("**Loan**") from Berkadia Commercial Mortgage LLC, a Delaware limited liability company ("**Original Lender**"), which loan is secured by, among other things, certain Land and Improvements ("**Property**") located Salt Lake County, State of Utah. The Land is more particularly described in Exhibit 1, attached to this Agreement.
- B. Borrower executed a promissory note evidencing the Loan dated November 16, 2018 ("**Note**"), in the original principal amount of \$17,550,000.00 payable to Original Lender and a Multifamily Loan and Security Agreement ("**Loan Agreement**") further setting forth the terms of the Loan. Guarantor guaranteed payment of amounts due under the Note by executing a Guaranty dated as of November 16, 2018 ("**Guaranty**"). To secure repayment of the Loan, Borrower executed and delivered to Original Lender a Multifamily Deed of Trust, Assignment of Rents and Security Agreement of even date with the Note, which was recorded in the Records of Salt Lake County, Utah ("**Land Records**") on November 16, 2018 as Document No. 12887349 ("**Security Instrument**"). The Note, the Guaranty, the Security Instrument and any other document executed by Borrower in connection with the Loan at any time, are referred to collectively in this Agreement as the "**Loan Documents.**"
- C. Original Lender endorsed the Note to Lender and by instrument dated as of November 16, 2018 and filed for record on November 16, 2018 in the Land Records as Document No. 12887350, sold, assigned and transferred all right, title and interest of the Original Lender in and to the Security Instrument and the Loan Documents to Federal Home Loan Mortgage Corporation ("**Freddie Mac**"). Freddie Mac endorsed the Note to the order of Lender, assigned the Security Instrument to Lender, and sold, assigned, and transferred the Loan Agreement and other Loan Documents to Lender. Lender is now the owner and holder of the Note.
- D. Any capitalized terms used in this Agreement and not defined will have the meanings ascribed to them in the Loan Agreement.

- E. Borrower has requested Lender's consent to the following transaction(s): a transfer of an approximately 11,376 square foot tract of land in the southern portion of the Property ("**Release Parcel**") legally described on the attached Exhibit 2 and the release ("**Partial Release**") of the Release Parcel from the lien of the Security Instrument (individually and collectively, if applicable, "**Transfer**").
- F. Borrower has agreed to reaffirm the validity and enforceability, at all times after the Transfer, of all aspects of the Loan Documents, and to confirm that all aspects of the Loan Documents continue at all times after the Transfer to be in full force and effect in accordance with their terms, except as modified by this Agreement.
- G. Guarantor has agreed to reaffirm the validity and enforceability, at all times after the Transfer, of all aspects of the Guaranty, and to confirm that the Guaranty continues in full force and effect in accordance with its terms.
- H. Subject to the full satisfaction of all conditions set forth below, Lender has agreed to consent to the Transfer.

AGREEMENT

In consideration of the mutual covenants contained in this Agreement and the Loan Documents and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Modification of Security Instrument.

- (a) The Release Parcel is released from the lien, operation and effect of the Security Instrument
- (b) Exhibit A of the Security Instrument is deleted and replaced with the Exhibit A attached as Exhibit 3 to this Agreement.

2. Reaffirmation by Borrower.

- (a) Borrower agrees that the Loan Documents continue to be the valid and binding obligations of Borrower, and will be and remain in full force and effect, unmodified, except as modified by this Agreement, and enforceable against Borrower in accordance with their terms.
- (b) The remainder of the Property ("**Remaining Parcel**") is and will remain subject to the lien, charge and encumbrance of the Security Instrument. Nothing contained in this Agreement or done pursuant to this Agreement will affect or be construed to affect the lien, charge, and encumbrance of the Security Instrument or the

priority of the Security Instrument over other liens, charges and encumbrances of the Remaining Parcel.

- (c) Nothing contained in this Agreement or done pursuant to this Agreement will release or be construed to release or affect the liability of any party or parties who may now or after the date of this Agreement be liable under or on account of the Note, the Security Instrument, or any other Loan Document, except as may be expressly provided in this Agreement.
 - (d) Borrower is and will continue to be liable for the payment of all sums and the performance of every obligation required under the Loan Documents to the extent set forth in the Loan Documents as modified by this Agreement.
3. **Consent to Transfer; Additional Transfers.** Lender hereby consents to the Transfer. Notwithstanding Lender's consent to the Transfer, Borrower understands and agrees that such consent will in no way limit or operate as a waiver of Lender's continuing rights under Section 7.05 or any other provision of the Loan Agreement.
4. **Reaffirmation of Original Guaranty.** Each Guarantor:
- (a) Reaffirms its obligations under the Guaranty.
 - (b) Acknowledges that the Guaranty remains in full force and effect without any exoneration.
 - (c) Agrees that the Loan Documents as executed and as modified by this Agreement will continue to be guaranteed by the Guarantor to the full extent provided in the Guaranty.
5. **Representations.** By execution of this Agreement, Borrower represents and warrants to Lender:
- (a) All of the representations and warranties in the Loan Documents are true as of the date on which Borrower executes this Agreement.
 - (b) No Event of Default (or event which, with the giving of notice or the passage of time or both, would be an Event of Default) has occurred or is continuing under the Security Instrument or any other Loan Document.
 - (c) Borrower has no claims, offsets, defenses, or counterclaims of any kind to its performance under, or Lender's enforcement of, the Note and the other Loan Documents; and to the extent any such counterclaims, setoffs, defenses or other causes of action may exist, whether known or unknown, Borrower waives all such items. Borrower acknowledges that all of Lender's actions in connection with the

Loan have been in compliance with the terms of the Loan Documents, and acknowledges and agrees that Lender has not breached or failed to perform any duty or obligation that Lender may owe Borrower.

- (d) There are no suits or actions threatened or pending against Borrower which could affect the enforcement or validity of the Note, the Security Instrument and/or the Loan Documents.

6. **Continuing Obligations.** Borrower will execute, acknowledge and deliver such documents as Lender may require to document the Transfer described in this Agreement and to more fully implement the provisions of this Agreement. Borrower's failure to comply with the additional obligations contained in this Section will constitute an Event of Default under the Loan Documents, and Lender will be entitled to exercise all remedies available to it under the terms of the Loan Documents.

7. **Expenses.** Borrower's execution of this Agreement will constitute Borrower's agreement to pay all expenses incurred by Lender in connection with the Transfer, including the payment of any title endorsement costs, legal costs (including in-house legal costs), attorney's fees, and assumption fees required by Lender.

8. **Miscellaneous.**

- (a) This Agreement will be binding upon and will inure to the benefit of the parties to the Agreement and their respective heirs, successors and permitted assigns.
- (b) No provision of this Agreement that is held to be inoperative, unenforceable or invalid will affect the remaining provisions, and to this end all provisions of this Agreement are declared to be severable.
- (c) Time is of the essence of this Agreement.
- (d) This Agreement may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- (e) This Agreement will be construed in accordance with the laws of the jurisdiction in which the Land is located.
- (f) This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute a single document.
- (g) All notices given pursuant to the Agreement must be in writing and will be effectively given if personally delivered or, if mailed, postage prepaid, certified or registered mail, return receipt requested, to the addresses of the parties set forth

below or to such other address as any party subsequently may designate in writing.

9. **ATTACHED EXHIBITS.** The following Exhibits are attached to this Agreement:

<input checked="" type="checkbox"/>	Exhibit 1	Legal Description of the Release Parcel
<input checked="" type="checkbox"/>	Exhibit 2	Legal Description of Land

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

BORROWER:

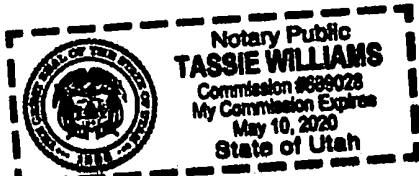
West Station North Apartments, LP,
a Utah limited partnership

By: Henderson Development, LLC,
a Utah limited liability company
Its: General Partner

By: [Signature]
Name: Blake Henderson
Its: Manager

STATE OF UTAH)
COUNTY OF Summit) ss.

The foregoing instrument was acknowledged before me this September 3, 2019, by Blake Henderson, Manager of Henderson Development, LLC, a Utah limited liability company, General Partner of West Station North Apartments, LP, a Utah limited partnership.



(Seal)

My commission expires:

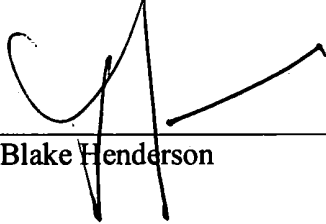
5-10-2020

[Signature]
Signature of Person Taking Acknowledgement

Notary Public
Title

Residing at: Summit Co.

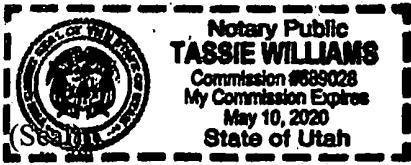
GUARANTOR:




Blake Henderson

STATE OF UTAH)
COUNTY OF Summit) ss.

The foregoing instrument was acknowledged before me this September 3, 2019,
by Blake Henderson.





Signature of Person Taking Acknowledgement

Notary Public

Title

Residing at: Summit Co.

My commission expires:
5-10-2020

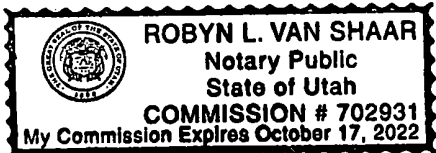
[SIGNATURE PAGES FOLLOW]

Neil Henderson

Neil Henderson

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 4th day of September 2019, by Neil Henderson.



(Seal)

Robyn L. Van Shaar

Signature of Person Taking Acknowledgement

Notary Public

Title

My commission expires:

Residing at: Salt Lake County, UT

10/17/2022

[SIGNATURE PAGE FOLLOWS]

EXHIBIT 1

(Legal Description of Land)

Property located in the State of Utah, County of Salt Lake and is described as follows:

Parcel 1:

Beginning at the Northeast corner of Lot 2, Chars S. Deskys Fourth Addition to Salt Lake City, Amended & Extended, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder (Entry No. 12130004 , Book 2015, Page 211, Filed September 10, 2015), said point being located North 00°00'00" East 1,947.43 feet and North 90°00'00" West 113.19 feet from the South quarter corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian (a found brass cap survey marker, Salt Lake County Monument No. 1N1W3402, located at 000 North 1700 West), said point also being on the Westerly right of way line of Redwood Road and on a 22,865.31 foot radius foot curve to the right, the center of which bears South 88°48'57" West; thence along said Westerly right of way line and along the arc of said curve a distance of 231.72 feet through a central angle of 00°34'50"; thence leaving said Westerly right of way line South 89°58'38" West a distance 213.67 feet; thence South 00°01'22" East a distance of 151.68 feet; thence South 89°58'38" West a distance of 75.00 feet; thence North 00°01'22" West a distance of 151.68 feet; thence South 89°58'38" West a distance of 45.50 feet; thence North 00°01'22" West a distance of 15.00 feet; thence South 89°58'38" West a distance of 235.64 feet to the Easterly line of Morton Meadows Subdivision Plat B; thence along said Easterly line of Morton Meadows Subdivision Plat B; thence along said Easterly line of Morton Meadows Plat B, North 00°04'28" East a distance of 218.26 feet; thence leaving said Easterly boundary line of Morton Meadows Subdivision Plat B, South 89°51'50" East a distance of 565.92 feet to the point of beginning.

Parcel 1A:

Together with a perpetual, appurtenant, non-exclusive easement of access, passage and use as disclosed by that certain Cross Access Easement Agreement recorded September 29, 2016 as Entry No. 12377051 in Book 10482 at Page 588 of official records.

Parcel 1B:

Together with a perpetual, appurtenant, non-exclusive easement of access, passage and use as disclosed by that certain Cross Access Easement Agreement recorded April 5, 2018 as Entry No. 12748051 in Book 10662 at Page 3930 of official records.

Tax Parcel ID: 08-34-331-044

**Amendment to Multifamily Deed of Trust, Assignment of Rents and Security Agreement,
Reaffirmation of Loan Documents and Ratification of Guaranty**

EX. 1 - 1

EXHIBIT 2

(Legal Description of Release Parcel)

BEGINNING AT THE NORTHWEST CORNER OF LOT 4, CHARS S. DESKYS FOURTH ADDITION TO SALT LAKE CITY, AMENDED & EXTENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER (ENTRY NO. 12130004, BOOK 2015, PAGE 211, FILED SEPTEMBER 10, 2015), SAID POINT BEING LOCATED NORTH 00°00'00" EAST 1,563.94 FEET AND NORTH 90°00'00" WEST 398.18 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN (A FOUND BRASS CAP SURVEY MARKER, SALT LAKE COUNTY MONUMENT NO. 1N1W3402, LOCATED AT 000 N. 1700 W.), SAID POINT ALSO BEING LOCATED ON THE EAST LINE OF LOT 1 OF SAID CHARS S. DESKYS FOURTH ADDITION TO SALT LAKE CITY, AMENDED & EXTENDED; THENCE ALONG THE EAST LINE OF SAID LOT 1 NORTH 00°01'22" WEST A DISTANCE OF 151.68 FEET; THENCE NORTH 89°58'38" EAST A DISTANCE OF 75.00 FEET; THENCE SOUTH 00°01'22" EAST A DISTANCE OF 151.68 FEET TO THE NORTH BOUNDARY LINE OF SAID LOT 4; THENCE ALONG THE NORTH LINE OF SAID LOT 4 SOUTH 89°58'38" WEST A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING.

PART OF 08-34-331-044

EXHIBIT 3

EXHIBIT A

Legal Description

Parcel 1:

Lot 2 of Chars S Desky's Fourth Addition to Salt Lake City, Second Amended & Extended

Parcel 1A:

Together with a perpetual, appurtenant, non-exclusive easement of access, passage and use as disclosed by that certain Amended and Restated Access Easement Agreement dated SEPT. 6, 2019 and recorded SEPT. 9, 2019 as Entry No. 13068785 in Book 10826 at Page 6414 of official records.

Tax Parcel ID: 08-34-331-044