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14293744 B: 11521 P: 3795 Total Pages: 10
09/27/2024 04:08 PM By: Jattermann Fees: \$40.00
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

APNS: 22-09-229-001, 22-09-229-002,
22-09-229-003, 22-09-229-004, and
22-09-229-039

137751-DMF



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

THIS FIRST AMENDMENT TO DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING ("**Amendment**") is made as of September 26, 2024, by and among HOLLADAY HILLS BLOCK D, L.L.C., a Delaware limited liability company ("**Trustor**"), whose address is 2733 East Parleys Way, Suite 300, Salt Lake City, Utah 84109, to COTTONWOOD TITLE INSURANCE AGENCY, INC., as trustee ("**Trustee**"), whose address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, for the benefit of WASHINGTON FEDERAL BANK, a Washington state chartered commercial bank, successor to WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION, whose address is 405 S. Main Street, Suite 100, Salt Lake City, Utah ("**Beneficiary**"). Capitalized terms used in this Deed of Trust without definition have the meanings given to them in the Loan Agreement referred to below.

NOTICE TO RECORDER: THE DEED OF TRUST MODIFIED BY THIS AMENDMENT IS A SECURITY AGREEMENT AND FIXTURE FILING UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, WITH TRUSTOR AS DEBTOR AND BENEFICIARY AS SECURED PARTY.

Notice to Trustor: The Note secured by the Deed of Trust amended by this Amendment contains provisions for a variable interest rate.

RECITALS

A. Trustor obtained a construction loan from Beneficiary (the "**Loan**") pursuant to the terms of a Construction Loan Agreement dated as of July 21, 2021, as amended by that certain First Modification Agreement dated July 15, 2024 (as the same may be amended, modified, extended, and renewed from time to time, the "**Loan Agreement**"). The Loan is also evidenced by a Promissory Note dated as of July 21, 2021, in the original principal amount of FORTY-EIGHT MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$48,750,000.00) (together with any amendments thereto, the "**Note**").

B. Trustor's obligations under the Loan Agreement and Note are secured by a Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing date July 21, 2021, and recorded on July 21, 2021, as Entry No. 13723587, in Book 11210, beginning on Page 120 in the official records of Salt Lake County, Utah (as amended,

A handwritten signature in black ink, appearing to be "JW".

the "**Deed of Trust**") against the real property legally described in EXHIBIT A attached thereto (the "**Property**"). Prior to the date hereof, all For Sale Residential Units have been released from the lien and charge of the Deed of Trust.

C. The Loan Agreement, Note, Deed of Trust, and all other documents evidencing, securing, or otherwise governing the Loan, as they may have been amended or modified, are referred to herein collectively as the "**Loan Documents**."

D. Trustor and Beneficiary desire to give notice that the Loan Agreement, the Note, and other Loan Documents have been further amended pursuant to the terms of that certain Second Modification Agreement between Trustor and Beneficiary dated as of even date herewith (the "**Second Modification Agreement**"), and to amend the Deed of Trust, as more particularly set forth herein.

E. Trustor is entering into this Amendment to modify the Deed of Trust to secure all of Trustor's obligations under the Loan Documents, as amended by the Second Modification Agreement.

AGREEMENTS

In consideration, the receipt and sufficiency of which are the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby acknowledge, and agree as follows:

1. **ACCURACY OF RECITALS.** Trustor hereby acknowledges the accuracy of the Recitals above.
2. **TERMINOLOGY.** All capitalized terms used herein shall have the meanings given to them in the Deed of Trust unless a different meaning is assigned herein or is required from the context in which such term is used.
3. **NOTICE OF MODIFICATION; MODIFICATIONS TO DEED OF TRUST.**

3.1 Notice of Modification; Modifications to Deed of Trust.

3.1.1 Notice of Modification; Conforming Modifications. Notice is hereby given that the Loan Agreement, Note, Deed of Trust and other Loan Documents have been amended and modified pursuant to the Second Modification Agreement. The Deed of Trust is hereby amended and modified as necessary to be consistent with the Second Modification Agreement. All references to the Loan Agreement, Note, and other Loan Documents in the Deed of Trust are hereby amended to refer to such documents as amended by the Second Modification Agreement.

3.1.2 Further Amendment. The Deed of Trust is hereby further amended and modified to secure, without limitation, the making of all payments and the performance of all obligations under the terms of the Loan Documents as modified by the Second Modification Agreement, and such other amendments as are set forth in the Second Modification Agreement. Notwithstanding the foregoing, the Secured Obligations specifically exclude (a) all obligations of Trustor as a guarantor under any guaranty, (b) the obligations of any other party as a guarantor under any guaranty of the Loan, and (c) the obligations of Trustor, Guarantors, or any other party as an indemnitor under any indemnity agreement with respect to the Property.

3.1.3 Definitions. The definition of the term "**Loan Documents**" as used in the Deed of Trust is hereby modified to include this Amendment. All other terms and conditions of the Deed of Trust that are inconsistent with the terms and conditions of this Amendment are modified to the extent necessary to be consistent with this Amendment and the Second Modification Agreement.

3.1.4 Property Description. All references in the Deed of Trust to the Property, including, without limitation, those in Exhibit A to the Deed of Trust are hereby amended to reflect the exclusion of the For Sale Residential Units. Accordingly, the legal description attached as Exhibit A to the Deed of Trust is hereby amended to be consistent with the legal description attached to the Amendment as Exhibit A.

4. **NOT A NOVATION.** The parties each agree and acknowledge that the modifications set forth in this Amendment 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.

5. REAFFIRMATION.

5.1 Trustor hereby (a) ratifies and confirms all of its obligations under the Deed of Trust, the Loan Agreement and each of its obligations under the other Loan Documents, and acknowledges and agrees that such obligations remain in full force and effect, and (b) ratifies, reaffirms and reapproves in favor of Beneficiary the terms and provisions of the Deed of Trust, Loan Agreement and each of the other Loan Documents, including (without limitation), its pledges and other grants of liens and security interests pursuant to the Deed of Trust, Loan Agreement and other Loan Documents to secure such obligations (as amended hereby). Remaining Trustor acknowledges and agrees that the Property secures all Secured Obligations which include all past and future advances made under the Loan Documents.

5.2 The Deed of Trust, as modified by this Amendment, remains 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. This Agreement and the Deed of Trust shall be read together, as one document. The real property and the whole thereof described in the Deed of Trust, as modified by this Amendment, shall be and remain subject to the lien, charge or encumbrance of the Deed of Trust and nothing herein contained or done pursuant hereto shall affect or be construed to affect the liens, charges or encumbrances of the Deed of Trust, or the priority thereof over other liens, charges or encumbrances, or to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Loan Documents and/or the Deed of Trust.

5.3 Nothing in this Agreement shall be deemed to or shall in any manner prejudice or impair the lien and encumbrance of the Deed of Trust or the terms and conditions of or any rights, powers, or remedies of Beneficiary under the Deed of Trust.

5.4 Trustor acknowledges and represents that the lien as extended and modified herein is a valid and existing lien and there exists no counterclaim or defense of any kind to the Loan Agreement, Note, Deed of Trust or any other document or instrument creating or evidencing the lien securing the Note. The execution, delivery, recordation, terms, and conditions of this Amendment shall not novate or subordinate or otherwise adversely affect the lien, encumbrance, and priority of the Deed of Trust.

6. **RATIFICATION OF DEED OF TRUST.** 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.

7. **LIEN PRIORITY.** All of the Property shall remain and continue in all respects to be subject to the Deed of Trust, and nothing in this Amendment, or done pursuant to this Amendment, shall affect or be construed to affect the lien of the Deed of Trust or the priority thereof as to all of the Property. Remaining Trustor shall provide, at Remaining Trustor's sole cost and expense, such endorsements to Beneficiary's existing title policy as Beneficiary may request insuring the continued first lien position of the Deed of Trust, as amended, against all of the Property with priority over all encumbrances that are not Permitted Exceptions. Trustor shall obtain such priority agreements, lien waivers, and other instruments from any and all parties who have performed work on or supplied materials to the Property, and Remaining Trustor shall execute such indemnity agreements and other documents as may be required by the title company in connection with the issuance of such new title policy or endorsements requested by Beneficiary.

8. **BINDING EFFECT.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

9. **APPLICABLE LAW.** The creation, perfection, and enforcement of the lien of the Deed of Trust shall be governed by the Laws of the state in which the Property is located. In all other respects, the Deed of Trust and this Amendment shall be governed by the substantive Laws of the jurisdiction governing the Loan Agreement.

10. **COUNTERPARTS.** The parties may execute this Amendment in any number of counterparts, each of which shall be deemed an original instrument but all of which together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank.]



NOTICE RE ORAL AGREEMENTS. PURSUANT TO *UTAH CODE ANNOTATED* SECTION 25-5-4, REMAINING TRUSTOR IS NOTIFIED THAT THIS AGREEMENT AND THE OTHER THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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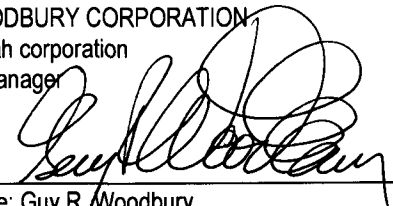
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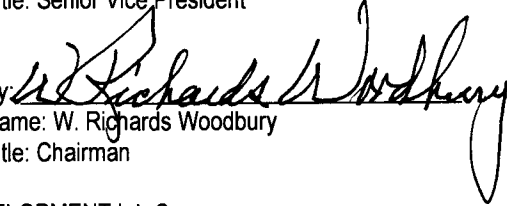
TRUSTOR:

HOLLADAY HILLS BLOCK D L.L.C.
a Delaware limited liability company

By: WCL GP L.L.C.
a Delaware limited liability company
its manager

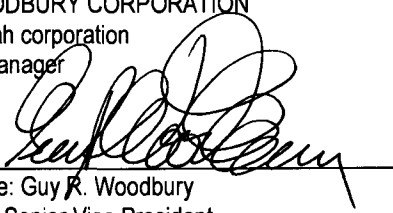
By: WOODBURY CORPORATION
a Utah corporation
its manager

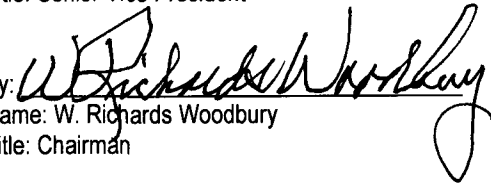
By: 
Name: Guy R. Woodbury
Title: Senior Vice President

By: 
Name: W. Richards Woodbury
Title: Chairman

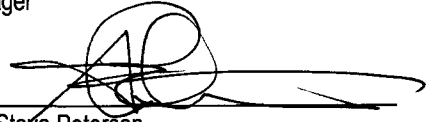
By: KMW DEVELOPMENT L.L.C.
a Utah limited liability company
its manager

By: WOODBURY CORPORATION
a Utah corporation
its manager

By: 
Name: Guy R. Woodbury
Title: Senior Vice President

By: 
Name: W. Richards Woodbury
Title: Chairman

By: MILLROCK CAPITAL II, LLC
a Utah limited liability company
its manager

By: 
Name: Steve Peterson
Title: Manager

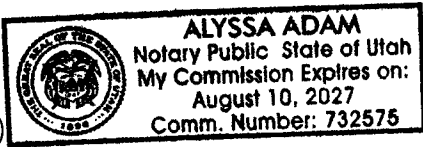
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ACKNOWLEDGEMENTS

State of UTAH)
)
 ss.
County of SALT LAKE)

On this 25th day of September, in the year 2024, before me Alyssa Adam, a notary public, personally appeared GUY R. WOODBURY, the Senior Vice President of Woodbury Corporation, a Utah corporation, the manager of WCL GP L.L.C., a Delaware limited liability company, the manager of **HOLLADAY HILLS BLOCK D L.L.C.**, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

Witness my hand and official seal.

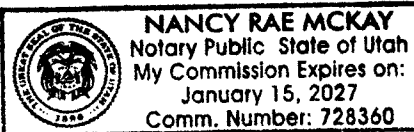
(Notary Seal) 

Alyssa Adam
Notary Signature

State of UTAH)
)
 ss.
County of SALT LAKE)

On this 25th day of September, in the year 2024, before me Nancy Rae McKay, a notary public, personally appeared W. RICHARDS WOODBURY, the Chairman of Woodbury Corporation, a Utah corporation, the manager of WCL GP L.L.C., a Delaware limited liability company, the manager of **HOLLADAY HILLS BLOCK D L.L.C.**, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

Witness my hand and official seal.

(Notary Seal) 

Nancy Rae McKay
Notary Signature

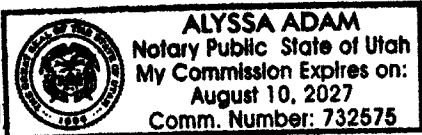
[Acknowledgements continue on the following page]



State of UTAH)
)
 ss.
County of SALT LAKE)

On this 25th day of September, in the year 2024, before me Alyssa Adam, a notary public, personally appeared GUY R. WOODBURY, the Senior Vice President of Woodbury Corporation, a Utah corporation, the manager of KMW Development L.L.C., a Utah limited liability company, the manager of **HOLLADAY HILLS BLOCK D L.L.C.**, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

Witness my hand and official seal.

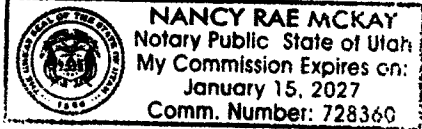
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Alyssa Adam
Notary Signature

State of UTAH)
)
 ss.
County of SALT LAKE)

On this 25th day of September, in the year 2024, before me Nancy Rae McKay, a notary public, personally appeared W. RICHARDS WOODBURY, the Chairman of Woodbury Corporation, a Utah corporation, the manager of KMW Development L.L.C., a Utah limited liability company, the manager of **HOLLADAY HILLS BLOCK D L.L.C.**, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

Witness my hand and official seal.

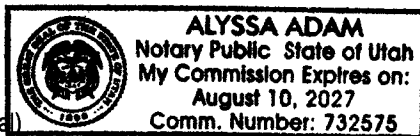
(Notary Seal) 

Nancy Rae McKay
Notary Signature

State of UTAH)
)
 ss.
County of SALT LAKE)

On this 25th day of September, in the year 2024, before me Alyssa Adam, a notary public, personally appeared STEVE PETERSON, the Manager of MILLROCK CAPITAL II, LLC, a Utah limited liability company, a manager of KMW DEVELOPMENT L.L.C., a Utah limited liability company, a manager of **HOLLADAY HILLS BLOCK D L.L.C.**, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

Witness my hand and official seal.

(Notary Seal) 

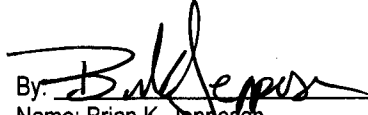
Alyssa Adam
Notary Signature

[Signatures continue on following page]



BENEFICIARY:

WASHINGTON FEDERAL BANK, a Washington state chartered commercial bank, successor to WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION, a national banking association

By: 
Name: Brian K. Jeppesen
Title: Vice President

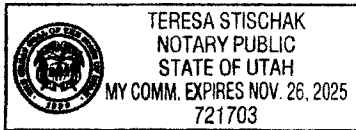
STATE OF UTAH)

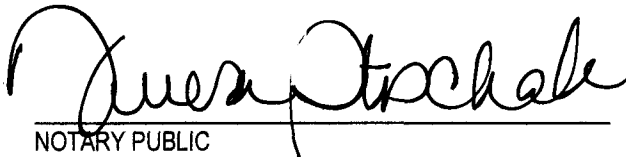
§

COUNTY OF SALT LAKE)

On this 20th day of September, 2024, before me Teresa Stischak, a notary public, personally appeared BRIAN K. JEPPESEN, an individual, in his capacity as Vice President of **WASHINGTON FEDERAL BANK**, a Washington state chartered commercial bank, successor to WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this instrument, and acknowledged he executed the same on behalf of such state chartered commercial bank.

Witness my hand and official seal.




NOTARY PUBLIC

(Notary Seal)

EXHIBIT A

DESCRIPTION OF PREMISES

That certain real property located in Salt Lake County, State of Utah, more particularly described as follows:

Commercial Unit Nos. C100, C110, C120, and C130, and All Residential Rental Units of the ROYAL HOLLADAY HILLS BLOCK D CONDOMINIUM, according to the official plat recorded in the Office of the Salt Lake County Recorder on November 23, 2022, as Entry No. 14045663 in Book 2022P at Page 229 ("Condominium Plat"), and as further defined in and made subject to that certain Declaration of Easements, Covenants, Conditions, and Restrictions for Commercial and Rental Project recorded in the Office of the Salt Lake County Recorder on November 23, 2022, as Entry No. 14045665, in Book 11387 at Page 2728 ("Master Declaration"), together with the appurtenant interest in the Commercial Shared Facilities, the Residential-Rental Units Shared Facilities, the Commercial-Rental Units Shared Facilities, and the General Shared Facilities, as defined and provided for in the Condominium Plat and the Master Declaration.

[For reference purposes only: Tax Parcel Nos. 22-09-229-001, 22-09-229-002, 22-09-229-003, 22-09-229-004, and 22-09-229-039]

