

MODIFICATION TO NOTE AND LOAN AGREEMENT

This Modification to Note and Loan Agreement (this "Modification") is made and entered into as of July 9, 2020 (the "Effective Date"), by and between MidFirst Bank, a federally chartered savings association (the "Lender") and Beaver Creek Lodge Condominium Association, Inc., a Colorado nonprofit corporation ("Borrower").

Recitals

A. The Lender made a loan (the "Loan") to Borrower pursuant to a Construction Loan Agreement dated June 21, 2019, (as amended, restated, modified, or supplemented at any time, the "Loan Agreement") and a Promissory Note dated June 21, 2019, in the original principal amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) (as may be amended, restated, modified, or supplemented at any time, the "Note").

B. The Loan Agreement and Note are secured by, among other documents, a Collateral Assignment and Security Agreement Covering Member Assessments and Deposit Accounts (as may be amended, restated, modified, or supplemented at any time, the "Security Instrument").

C. The Loan Agreement, the Note, the Security Instrument, and all other promissory notes, agreements, instruments, mortgages, deeds, guaranties, collateral documents, and certificates executed in connection with or relating to the Loan or the Note, as each have been or may be amended, restated, modified, or supplemented at any time, are collectively referred to in this Modification as the "Loan Documents."

D. As of the Effective Date, Borrower contends that no default or event of default has occurred and is continuing under the Loan Documents. Borrower, however, is experiencing economic hardship due to the COVID-19 outbreak and related governmental orders, and Borrower has requested to extend (i) the Maturity Date, (ii) the period during which Lender may be obligated to disburse Loan proceeds for construction, and the period of interest-only payments under the Loan Documents. The Lender is willing to do so subject to the terms and conditions set forth in this Modification.

Agreement

NOW, THEREFORE, in consideration of the foregoing and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** Capitalized terms used in this Modification and not otherwise defined shall have the meaning ascribed to such terms in the Loan Documents.

2. **Representations and Warranties.** In order to induce Lender to enter into this Modification, and in consideration thereof, Borrower hereby represents and warrants as follows:

(a) This Modification has been approved by a vote of the membership of the Borrower and Borrower has the full right, power and authority to execute and deliver this Modification and to perform its obligations hereunder.

(b) The information and documents to be furnished by or on behalf of the Borrower to Lender pursuant to this Modification are and will be true, accurate and complete in all respects.

(c) The covenants and obligations set forth in this Modification benefit and are in the best interest of Borrower.

(d) The indebtedness evidenced by the Loan Documents is valid and subsisting and is not subject to any defenses, offsets, claims or counterclaims.

3. **Modification of the Loan Documents.** The Loan Documents are hereby modified, as follows:

(a) A "**Loan Year**" shall mean a consecutive 365-day period; there shall be nine (9) Loan Years. The last Loan Year shall end on June 21, 2028, which shall be the "**Maturity Date**." All references in the Loan documents to Maturity Date shall refer to June 21, 2028.

(b) During the first twenty-four (24) months of the Loan, the Borrower will make interest payments alone. Borrower's first payment will be due on July 21, 2019 and all subsequent payments will be due on the same day of each month thereafter. Borrower's final payment of interest alone will be due on June 21, 2021. Unless otherwise agreed or required by applicable law, Borrower's payments will be applied first to any accrued unpaid interest; then to any escrow or reserve account payments as required by any security agreement securing the Note; then to any late charges; and then to any unpaid collection costs. Borrower will pay Lender at Lender's address set forth in the Note or at such other place as Lender may designate in writing. This initial twenty-four (24) month period shall be called the "**Interest Only Period**."

(c) On or before July 21, 2021, the interest rate on the Note will be fixed. The fixed interest rate will equal the Swap Yield plus 230 basis points (2.30%) (the "**Fixed Rate**").

(c) Notwithstanding the foregoing or any other provision in the Loan Documents, under no circumstances will the interest rate on the Note, whether during the Interest Only Period or the Fixed Rate Period, be less than 3.90% per annum.

(d) The following Section 7.1 (k) shall be added to the Loan Agreement:

(k) **Advance Period and Requests.** Borrower may draw Loan proceeds pursuant to, and in compliance with, this Section 7.1 on or before June 21, 2021, and not thereafter. Lender will not under any circumstances be obligated to make any disbursement of Loan proceeds based on any Advance Request received by Lender less than ten (10) Business Days prior to June 21, 2021, or thereafter.

(e) Contemporaneously with the execution of this Modification, Borrower shall (i) pay Lender a loan modification fee in the amount of Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00), such origination fee being fully earned by Lender.

4. **Reaffirmation of Loan Documents.**

Except as expressly modified by paragraphs 1 through 3 above, the Loan Documents, and all provisions therein, continue in full force and effect and are hereby ratified and confirmed by Borrower. **Further, this Modification constitutes an amendment of and not a replacement or payment of the Loan.** To the extent that there is a conflict between any provision in the Loan Documents and this Modification, the terms of this Modification shall govern.

5. **Ratification of Borrower's Obligations Under Loan Documents.** Borrower hereby reasserts, ratifies and reaffirms all of its obligations under the Loan Documents applicable to it and its performance of any and all of terms and conditions of the Loan, all of which shall continue in full force and effect. Borrower specifically acknowledges, agrees and represents that:

(a) There are no claims or offsets against, or defenses or counterclaims to, the terms or provisions of the Loan Documents, and the other obligations created or evidenced by the Loan Documents.

(b) Borrower has no claims, offsets, defenses or counterclaims arising from any of Lender's acts or omissions with respect to the Loan or Loan Documents or Lender's performance under the Loans or Loan Documents.

(c) No indulgence or part indulgence by Lender and nothing contained herein or in any other agreement between Borrower and Lender, nor any other action or inaction by Lender has waived or shall constitute a waiver of any default or Event of Default which may exist under the Loans or Loan Documents or an

election of remedies by Lender or a waiver of any of the rights, remedies or recourse of Lender provided in any of the Loan or Loan Documents or otherwise afforded by law or in equity.

6. **Default Hereunder.** The failure of Borrower to comply with any provision of this Modification or the breach of any representation, warranty or covenant contained in this Modification shall constitute an Event of Default under the Loan and Loan Documents, and any such Event of Default shall entitle Lender to exercise any and all remedies to which it may be entitled with respect to an Event of Default under such documents.

7. **No Waiver.** Except as expressly provided in this Modification, all terms, provisions, and conditions of the Loan Documents, and all documents executed in connection therewith, shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms, subject to the federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts and general principles of equity. Neither this Modification, nor any action taken in accordance with this Modification, the other Loan Documents, nor any correspondence, any oral or written communications, any making of any advance, the issuance of any letter of credit or any other extension of credit, any repayment of any advance or other amount, any discussion of any deferral, forbearance, amendment, waiver or consent or any other action or omission on the part of the Lender, shall be, or shall construed to be, a waiver, modification or release of any Default or any other existing or future Default or Event of Default under any Loan Document, as to which all rights and remedies of the Lender is and shall continue at all times to be expressly reserved by the Lender.

8. **Condition to Effectiveness.** This Modification shall be effective only if, on or before the Effective Date, the Lender has received a copy of this Modification, duly executed by each of the Obligor.

9. **Miscellaneous.** This Modification is a Loan Document. This Modification binds and inures to the benefit of the Lender and its successors and assigns. This Modification may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts of this Modification, taken together, shall constitute but one and the same instrument. The undersigned officers have full and express authority to execute this Modification on behalf of the Borrower and to bind Borrower to the terms set forth herein. Delivery of an executed counterpart of a signature page to this Modification by facsimile or by e-mail transmission of a PDF or similar copy shall be equally as effective as delivery of an original executed counterpart of this Modification. Any party delivering an executed counterpart signature page to this Modification by facsimile or by e-mail transmission shall also deliver an original executed counterpart of this Modification, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability or binding effect of this Modification.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

BORROWER:

**Beaver Creek Lodge Condominium Association, a
Colorado nonprofit corporation**

By:  _____

Name: Mark Kessler

Title: President

By: _____

Name: Steve Broadbent

Title: Vice President

LENDER:

MIDFIRST BANK

By:  _____

Name: Stephen Turner

Title: Senior Vice President

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