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Palm Beach County, Florida  
Sharon R. Bock, CLERK & COMPTROLLER  
Pgs 1428 - 1434; (7pgs)

This instrument was prepared by and when recorded should be returned to:

William G. Capko, Esq.  
Lewis, Longman & Walker, P.A.  
515 North Flagler Drive  
Suite 1500  
West Palm Beach, FL 33401

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## MORTGAGEE SPECIAL ASSESSMENT ACKNOWLEDGMENT

**THIS MORTGAGEE SPECIAL ASSESSMENT ACKNOWLEDGMENT** (the “**Acknowledgment**”) is made as of December 17, 2020, by **U.S. REAL ESTATE CREDIT HOLDINGS III-A, LP**, an Irish limited partnership (the “**Mortgagee**”).

A. The Mortgagee is the owner and holder of mortgages and related security interests (collectively, the “**Mortgage**”) with respect to the real property located in Palm Beach County, Florida (the “**Mortgaged Properties**”), which Mortgage is described on Exhibit A attached hereto, as the same as may be amended from time to time.

B. The Mortgagee is the owner and holder of certain Secured Promissory Notes executed by the Mortgagor and secured by the Mortgage (collectively the “**Note**”). The Note, the Mortgage and the related loan documents are collectively referred to herein as the “**Loan Documents**.”

C. The Mortgaged Properties are included within a local unit of special-purpose government of the State of Florida, created pursuant to Chapter 190, Florida Statutes, and known as the Banyan Cay Community Development District (the “**District**”). The District intends to impose special assessments in an amount sufficient to repay the principal of the Series 2020 Bonds (herein defined) (the “**Special Assessments**”) on the portions of the Mortgaged Properties described in Exhibit B attached hereto and incorporated by reference (the “**District Lands**”) in accordance with Florida law.

D. The Special Assessments will be imposed and levied on the Mortgaged Properties of Banyan Cay Resort & Golf, LLC, Banyan Cay Dev. LLC and Banyan Cay Villas, LLC, all of which are Delaware limited liability companies (collectively, the “**Mortgagor**”) for the purpose of generating funds which will be used to make payments due upon the District’s Special Assessment Bonds, Series 2020 (Phase One Assessment Area) (the “**Series 2020 Bonds**”) which Series 2020 Bonds are expected to be issued in the principal amount of \$6,895,000 on or about December 17, 2020.

E. In order to induce the District to impose and levy the Special Assessments and issue the Series 2020 Bonds, for the benefit of portions of the Mortgaged Properties, the District has

required and the Mortgagor has requested that the Mortgagee acknowledge (i) the statutory priority of the lien of the Special Assessments, (ii) that if the Mortgagee becomes the fee simple owner of any portion of the Mortgaged Properties in the District Lands, whether by judicial foreclosure, private foreclosure, deed-in-lieu of foreclosure or otherwise, its title is subject to all Special Assessments levied on such properties not previously paid, and (iii) that to the extent that the imposition of the Special Assessments would otherwise constitute a default under any of the Loan Documents, the Mortgagee shall waive such default.

F. The Mortgagee has agreed to provide such acknowledgments as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagee agrees as follows:

1. Recitals. The above Recitals are true and correct and are incorporated herein by reference as if set forth in full herein.

2. Representations and Covenants by the Mortgagee. The Mortgagee makes the following acknowledgments and agreements to and for the benefit of the District and its successors:

(a) The Mortgagee acknowledges that the Special Assessments will impose a statutory lien on the portions of the Mortgaged Properties within the District Lands, superior to the lien of the Mortgage.

(b) The Mortgagee agrees that it will not assert against the District, the Trustee or the holders of the Series 2020 Bonds that the lien of the Special Assessments, or the payment of the Special Assessments, will violate any provision of any of the Loan Documents, or any other agreement made by the Mortgagor with or for the benefit of Mortgagee, in connection with any of the Loan Documents.

(c) The Mortgagee further agrees that it will not in any way contest the legality or the validity of the Special Assessments or contest or challenge the future levy or imposition of the Special Assessments or any of the proceedings to be conducted in connection therewith.

(d) If the Mortgagee becomes the fee simple owner of any portion of the Mortgaged Properties within the District, whether by judicial foreclosure, private foreclosure, deed-in-lieu of foreclosure or otherwise, the Mortgagee recognizes that its title to such properties is subject to all unpaid Special Assessments.

3. Mortgages Not Affected. This Mortgagee Special Assessment Acknowledgment is made by Mortgagee solely for the benefit of the District and the current and future holders of the Series 2020 Bonds. Nothing herein shall in any way affect the Mortgage, the Note or any of the other Loan Documents or limit Mortgagee's rights or Mortgagor's obligations under the Mortgage, the Note or any of the Loan Documents. Without limiting the generality of the

foregoing, nothing herein shall limit Mortgagee's ability to declare a default under any of the Loan Documents in the event of a violation of the terms of any of the Loan Documents.

4. Mortgagee Waivers. By execution of this Mortgagee Special Assessment Acknowledgment, the Mortgagee hereby waives any default under any of the Loan Documents arising solely from the issuance of the Series 2020 Bonds and the imposition of the Special Assessments. No other waiver is given or implied.

5. Third Party Beneficiaries. The Mortgagee, Mortgagor and District agree that the Trustee may enforce the provisions of this Mortgagee Special Assessment Acknowledgment and that the Trustee and holders of the Series 2020 Bonds are intended to be third party beneficiaries hereunder.

6. Notices of Events of Default under the Series 2020 Bonds. Notwithstanding anything to the contrary contained in any documents or instruments executed or delivered in connection with the Series 2020 Bonds (collectively, the "**District Documents**"), the District will provide Mortgagee with notice promptly upon becoming aware of a default by the Mortgagor with respect to the payment of any Special Assessment, or the payment or performance of any other obligation of the Mortgagor under the Series 2020 Bonds or any other District Documents.

All notices to Mortgagee required herein shall be in writing and sent to the address set forth below and may be sent by e-mail (provided that a copy is simultaneously sent by one of the other permitted means of giving notice hereinafter set forth), by personal delivery or by mail either (i) by United States registered or certified mail, return receipt requested, postage prepaid, or (ii) by Federal express or similar generally recognized overnight carrier regularly providing proof of delivery:

Mortgagee: U.S. REAL ESTATE CREDIT HOLDINGS III-A, LP  
c/o Calmwater Capital  
11755 Wilshire Blvd., Suite 1425  
Los Angeles, California 90025  
Attention: Larry Grantham, Managing Director  
Telephone: (310) 806-9724  
Email: [larry@calmwatercapital.com](mailto:larry@calmwatercapital.com)

With a copy to: HOGAN LOVELLS US LLP  
1601 Wewatta Street, Suite 900  
Denver, Colorado 80202  
Telephone: (303) 454-2425  
Attention: Ana L. Tenzer, Esq.  
Email: [Ana.Tenzer@Hogallovells.com](mailto:Ana.Tenzer@Hogallovells.com)



[SIGNATURE PAGE TO FOLLOW]


IN WITNESS WHEREOF, the Mortgagee has caused this instrument to be executed the day and year first above written.

**WITNESSES:**

**U.S. REAL ESTATE CREDIT HOLDINGS III-A, LP**, an Irish limited partnership, acting by its General Partner, U.S. Real Estate Credit Holdings III-A GP Limited

By: Calmwater Asset Management, LLC, a Delaware limited liability company, it's Investment Manager

  
Print Name: Karen Fine  
  
Print Name: Nancy Ho

By:   
Name: DEAN CUSACK  
Title: Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )SS  
COUNTY OF LOS ANGELES )

On December 7, 2020, before me, David Charles Magruder, Notary Public, personally appeared **Dean Chang**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

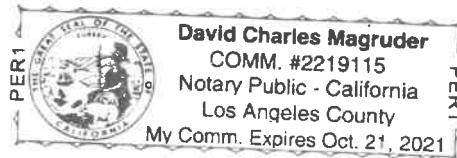
WITNESS my hand and official seal.

Signature



My Commission Expires: October 21, 2021

Notary Name: David Charles Magruder  
Notary Registration Number: 2219115



*This area for official notarial seal*

Notary Phone: 310-405-7484  
County of Principal Place of Business: Los Angeles

## **EXHIBIT A**

### **MORTGAGE**

#### **61MM Loan**

Amended and Restated Mortgage, Security Agreement and Financing Statement granted by Borrower in favor of Lender, which granted Lender a first priority lien on the property encumbered thereby and described therein and located in West Palm Beach, Florida (the “**Property**”), as recorded on June 18, 2018, in Official Records of Palm Beach County, Florida as Document number 20180236395 in Official Record Book 29932, Page 121, and amended by First Amendment to Mortgage and Other Loan Documents as Document number 20200386908 in Official Record Book 31827, Page 77 (collectively, the “**Mortgage**”), and that certain Assignment of Leases and Rents granted by Borrower in favor of Lender, as recorded on June 18, 2018, in the Official Records of Palm Beach County, Florida as Document number 20180236396, in Official Record Book 29932, Page 168 (the “**Assignment**”),

Second Priority Mortgage, Security Agreement and Financing Statement recorded October 16, 2020 in Document number 20200386917 in Official Record Book 31827, Page 209.

Second Priority Assignment of Leases and Rents recorded October 16, 2020 in Document number 20200386918 in Official Record Book 31827, Page 251.

UCC Financing Statement recorded June 18, 2018 in Document number 20180236397 in Official Record Book 29932, Page 181 as amended in UCC Amendment recorded October 16, 2020 in Document number 20200386907 in Official Record Book 31827, Page 76.

UCC Financing Statement recorded October 16, 2020 in Document number 20200386919 in Official Record Book 31827, Page 271.

#### **19 MM Loan – Villas**

Mortgage, Security Agreement and Financing Statement granted by Borrower in favor of Lender, which granted Lender a first priority lien on the property encumbered thereby and described therein and located in West Palm Beach, Florida (the “**Property**”), as recorded on October 16, 2020, in Official Records of Palm Beach County, Florida as Document number 20200386910 in Official Record Book 31827, Page 95 (the “**Mortgage**”).

Assignment of Leases and Rents granted by Borrower in favor of Lender, as recorded on October 16, 2020, in the Official Records of Palm Beach County, Florida as Document number 20200386911, in Official Record Book 31827, Page 131 (the “**Assignment**”).

Second Priority Mortgage, Security Agreement and Financing Statement recorded in Document number 20200386941 in Official Record Book 31827, Page 154.

Second Priority Assignment of Leases and Rents recorded in Document number 20200386915 in Official Record Book 31827, Page 189.

UCC Financing Statement recorded October 16, 2020 in Document number 20200386912 in Official Record Book 31827, Page 143.

UCC Financing Statement recorded October 16, 2020 in Document number 20200386916 in Official Record Book 31827, Page 202.

**EXHIBIT B**

**LEGAL DESCRIPTION OF DISTRICT LANDS**

ALL OF THE PLAT, LESS AND EXCEPT TRACT MF, OF BANYAN CAY RESORT, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 125, PAGES 114-117, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA.



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office with redactions, if any as required by law.

THIS 21 DAY OF December, 2020

SHARON R. BOCK  
CLERK & COMPTROLLER

By *[Signature]*  
DEPUTY CLERK