

Recording Requested by
U.S. Bank National Association,
d/b/a Housing Capital Company

13344715
7/30/2020 1:07:00 PM \$40.00
Book - 10989 Pg - 2406-2417
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 12 P.

And when recorded return to:
U.S. Bank National Association,
d/b/a Housing Capital Company
265 E. River Park Circle, Suite 460
Fresno, CA 93720
Attention: Loan Administration Manager
Loan No. 2459B

18281754M-2

FIRST AMENDMENT TO DEED OF TRUST

This First Amendment to Deed of Trust (this "**Amendment**") is made as of July 29, 2020, by and between VP DAYBREAK INVESTCO 7 LLC, a Utah limited liability company ("**Trustor**" or "**Investco 7**"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association d/b/a Housing Capital Company ("**Beneficiary**").

Factual Background

A. Under that certain Second Amended and Restated Revolving Loan Agreement dated as of December 19, 2019 (the "**Revolving Loan Agreement**"), among Daybreak Operations LLC, a Delaware limited liability company ("**Daybreak Operations**"), Daybreak Communities LLC, a Delaware limited liability company ("**Daybreak Communities**"), VP Daybreak Investments LLC, a Delaware limited liability company ("**Daybreak Investments**"), VP Daybreak Investco 1 LLC, a Utah limited liability company ("**Investco 1**"), VP Daybreak Investco 2 LLC, a Utah limited liability company ("**Investco 2**"), VP Daybreak Investco 3 LLC, a Utah limited liability company ("**Investco 3**"), VP Daybreak Investco 4 LLC, a Utah limited liability company ("**Investco 4**"), VP Daybreak Investco 5 LLC, a Utah limited liability company ("**Investco 5**"), VP Daybreak Investco 6 LLC, a Utah limited liability company ("**Investco 6**"), Investco 7, VP Daybreak Investco 8 LLC, a Utah limited liability company ("**Investco 8**"), VP Daybreak Investco 9 LLC, a Utah limited liability company ("**Investco 9**"), VP Daybreak Investco 10 LLC, a Utah limited liability company ("**Investco 10**"), VP Daybreak Investco 11 LLC, a Utah limited liability company ("**Investco 11**"), VP Daybreak Investco 12 LLC, a Utah limited liability company ("**Investco 12**"), VP Daybreak Devco LLC, a Delaware limited liability company ("**Devco**," together with Daybreak Operations, Daybreak Communities, Daybreak Investments, Investco 1, Investco 2, Investco 3, Investco 4, Investco 5, Investco 6, Investco 7, Investco 8, Investco 9, Investco 10, Investco 11 and Investco 12, individually and collectively, "**Borrower**") and Beneficiary, Beneficiary agreed to make a revolving loan to Borrower (the "**Loan**" or the "**Revolving Loan**") in the maximum principal amount of Sixty Million and No/100 Dollars (\$60,000,000.00).

B. The Revolving Loan is evidenced by that certain Second Amended and Restated Revolving Promissory Note Secured by Deed of Trust dated as of December 19, 2019, made by Borrower payable to the order of Beneficiary in the stated maximum principal amount of Sixty Million and No/100 Dollars (\$60,000,000.00) (the “*Existing Revolving Note*”).

C. Borrower’s obligations under the Revolving Loan are secured by, among other things, that certain Construction Deed of Trust, with Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Trustor, as trustor, to Old Republic National Title Insurance Company, as trustee, for the benefit of Beneficiary, as beneficiary, dated as of December 19, 2019 and recorded on December 20, 2019 in the Official Records of Salt Lake County, Utah (the “*Official Records*”) as Document No. 13153450 (as amended, modified, supplemented or restated from time to time, the “*Deed of Trust*”). The Deed of Trust encumbers, among other things, the real property more particularly described in Exhibit A attached hereto.

D. Borrower and Beneficiary have agreed (i) to modify the terms of the Revolving Loan pursuant to that certain Modification Agreement dated as of the date hereof, by and among Borrower and Beneficiary (the “*Modification Agreement*”) to, among other things, modify certain financial covenants, and (ii) to amend the Existing Revolving Note pursuant to the Modification Agreement to, among other things, increase the interest rate (as the same may from time to time be further amended, supplemented, restated or otherwise modified, the “*Note*” or the “*Revolving Note*”).

E. As a condition precedent to modifying the Revolving Loan on the terms set forth in the Modification Agreement, Trustor and Beneficiary desire to amend the Deed of Trust to provide, among other things, that the obligations secured thereunder shall include, without limitation, the obligations of Borrower under the Note and the Loan Agreement, in each case, as amended.

F. Capitalized terms used herein without definition have the meanings ascribed to them in the Loan Agreement.

Agreement

Therefore, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are true and correct and incorporated herein by this reference.

2. Description of Real Property. Exhibit A attached to the Deed of Trust is hereby amended and restated in its entirety by Exhibit A attached hereto. For the avoidance of doubt, the “Real Property” defined and described in the Deed of Trust shall mean all that real property located in the County of Sale Lake, State of Utah, described on Exhibit A attached hereto.

3. Obligations Secured. Section 2.1 of the Deed of Trust is hereby amended and restated in its entirety as follows:

“2.1 Obligations Secured. Trustor makes this grant and assignment for the purpose of securing the following obligations (“*Secured Obligations*”):

- (a) Payment to Beneficiary of all sums at any time owing under that certain Second Amended and Restated Revolving Promissory Note Secured by Deed of Trust dated as of December 19, 2019, as amended by that certain Modification Agreement dated as of July 29, 2020 (as amended, and as the same may be further amended, restated or otherwise modified from time to time, the *“Note”* or the *“Revolving Note”*) in the maximum principal amount of SIXTY MILLION AND NO/100 DOLLARS (\$60,000,000.00) executed by Trustor and each of Daybreak Operations LLC, a Delaware limited liability company (*“Daybreak Operations”*), Daybreak Communities LLC, a Delaware limited liability company (*“Daybreak Communities”*), VP Daybreak Investments LLC, a Delaware limited liability company (*“Daybreak Investments”*), VP Daybreak Investco 1 LLC, a Utah limited liability company (*“Investco 1”*), VP Daybreak Investco 2 LLC, a Utah limited liability company (*“Investco 2”*), VP Daybreak Investco 3 LLC, a Utah limited liability company (*“Investco 3”*), VP Daybreak Investco 4 LLC, a Utah limited liability company (*“Investco 4”*), VP Daybreak Investco 5 LLC, a Utah limited liability company (*“Investco 5”*), VP Daybreak Investco 6 LLC, a Utah limited liability company (*“Investco 6”*), VP Daybreak Investco 8 LLC, a Utah limited liability company (*“Investco 8”*), VP Daybreak Investco 9 LLC, a Utah limited liability company (*“Investco 9”*), VP Daybreak Investco 10 LLC, a Utah limited liability company (*“Investco 10”*), VP Daybreak Investco 11 LLC, a Utah limited liability company (*“Investco 11”*), VP Daybreak Investco 12 LLC, a Utah limited liability company (*“Investco 12”*), VP Daybreak Devco LLC, a Delaware limited liability company (*“Devco”*) (Trustor, Daybreak Operations, Daybreak Communities, Daybreak Investments, Investco 1, Investco 2, Investco 3, Investco 4, Investco 5, Investco 6, Investco 8, Investco 9, Investco 10, Investco 11, Investco 12 and Devco are sometimes referred to herein, individually and collectively, as *“Borrower”*), jointly and severally as Borrower, and payable to the order of Beneficiary as Lender, under which Beneficiary has agreed to make advances to Borrower, which advances will be of a revolving nature and may be made, repaid and remade from time to time, subject to the limitation that the total outstanding principal balance at any one time under said Revolving Note (not including interest thereon at a rate which will be adjusted from time to time pursuant to the terms of said Revolving Note, and any late charges, collection costs and other charges under said Revolving Note or advances hereunder) will not exceed the maximum principal amount stated above; and
- (b) Payment and performance of all obligations of Borrower under that certain Second Amended and Restated Revolving Loan Agreement dated as of December 19, 2019, as amended by that certain Modification Agreement dated as of July 29, 2020, by and among Borrower and Beneficiary (as amended, and as the same may be further amended, restated or otherwise modified from time to time, the *“Loan Agreement”* or the *“Revolving Loan Agreement”*), and any and all other *“Loan Documents”* (as defined in the

- Revolving Loan Agreement); provided, for clarity, that this Deed of Trust does not secure the obligations of Borrower under that certain Hazardous Materials Indemnity Agreement dated as of December 19, 2016, as amended; and
- (c) Payment and performance of all obligations of Borrower under any application or reimbursement agreement executed by Borrower in connection with any letter of credit issued by Beneficiary pursuant to the Revolving Loan Agreement for the account of Borrower or its nominee, together with any and all extensions, renewals or modifications thereof, substitutions therefor or replacements thereof; and
 - (d) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

As used herein, "*Loan Document*" means each document defined as a "Loan Document" in the Revolving Loan Agreement.

Notwithstanding the amount outstanding under said Revolving Note at any particular time, this Deed of Trust secures the total amount of said Revolving Note and any future advances thereon. The unpaid balance of the revolving line of credit under the Revolving Note may at certain times be zero dollars. A zero balance does not affect Beneficiary's agreement to make advances to Borrower under said Revolving Note. Beneficiary's interest under said Revolving Note and any other Loan Document will remain in full force and effect notwithstanding a zero balance under said Revolving Note."

4. The Revolving Loan is amended on the terms and subject to the conditions of the Modification Agreement, which terms include, among other things, a modification of the financial covenants and an increase in the interest rate. For the avoidance of doubt, all references in the Deed of Trust to (a) the "Loan" shall refer to the Revolving Loan, as amended by the Modification Agreement, (b) the "Loan Agreement" shall refer to the Revolving Loan Agreement, as amended by the Modification Agreement, and (c) the "Note" shall refer to the Revolving Note, as amended by the Modification Agreement.

5. The Deed of Trust is modified to secure payment and performance of the Revolving Loan, as amended and modified to date, in addition to all other "*Secured Obligations*" as therein described herein or therein. The foregoing notwithstanding, certain obligations continue to be excluded from the Secured Obligations, as provided herein and in the Deed of Trust. Except as specifically amended by this Amendment, the Deed of Trust remains unmodified and in full force and effect.

6. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

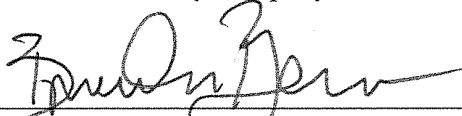
7. This Amendment shall be governed by the laws of the State of Utah, without regard to the choice of law rules of that State.

[Signatures begin on following page.]

IN WITNESS WHEREOF, this First Amendment to Deed of Trust is executed by the parties hereto as of the date first written above.

TRUSTOR:

VP DAYBREAK INVESTCO 7 LLC,
a Utah limited liability company

By: 
Name: Brendan Bosman
Title: Authorized Signatory

BENEFICIARY:

U.S. BANK NATIONAL ASSOCIATION,
d/b/a Housing Capital Company

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this First Amendment to Deed of Trust is executed by the parties hereto as of the date first written above.

TRUSTOR:

VP DAYBREAK INVESTCO 7 LLC,
a Utah limited liability company

By: _____
Name: _____
Title: _____

BENEFICIARY:

U.S. BANK NATIONAL ASSOCIATION,
d/b/a Housing Capital Company

By: RH
Name: Rhonda Harrod
Title: Vice President

ACKNOWLEDGMENT

STATE OF MINNESOTA)
)SS
County of HENNEPIN)

On July 29, 2020, before me, the undersigned Notary Public, personally appeared Brendan Bosman, the Authorized Signatory of VP Daybreak Investco 7 LLC, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

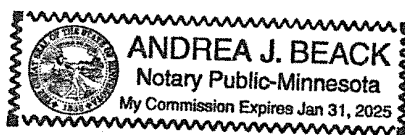
WITNESS my hand and official seal.

Andrea J. Beack

My Commission Expires:

Notary Public

Jan 31, 2025



ACKNOWLEDGMENT

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

COUNTY OF FRESNO

On July 29, 2020, before me, **Lori Beckman, a Notary Public**, personally appeared **Rhonda Harold** 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 *Lori Beckman*

[SEAL]

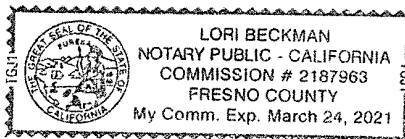


EXHIBIT A

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

Parcel 1: (TPN 27 - Parcel AAA - 26-22-201-001)

Beginning at a point that lies South 89°56'03" East 3989.583 feet along the Daybreak Baseline South (Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 4728.030 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 62°04'05" West 561.509 feet to a point on a 470.000 foot radius tangent curve to the right, (radius bears North 27°55'55" East, Chord: North 55°53'46" West 101.062 feet); thence along the arc of said curve 101.258 feet through a central angle of 12°20'38"; thence North 49°43'27" West 46.043 feet; thence North 27°55'55" East 284.323 feet to a point on a 970.000 foot radius tangent curve to the right, (radius bears South 62°04'05" East, Chord: North 34°41'01" East 228.082 feet); thence along the arc of said curve 228.610 feet through a central angle of 13°30'13"; thence North 41°26'08" East 155.863 feet to a point on a 1030.000 foot radius tangent curve to the left, (radius bears North 48°33'52" West, Chord: North 35°03'05" East 229.055 feet); thence along the arc of said curve 229.530 feet through a central angle of 12°46'05"; thence North 28°40'03" East 23.307 feet to a point on a 270.000 foot radius non tangent curve to the right, (radius bears South 33°19'12" West, Chord: South 41°17'04" East 143.362 feet); thence along the arc of said curve 145.102 feet through a central angle of 30°47'29"; thence South 25°53'19" East 359.332 feet to a point on a 230.000 foot radius tangent curve to the left, (radius bears North 64°06'41" East, Chord: South 43°36'38" East 140.024 feet); thence along the arc of said curve 142.281 feet through a central angle of 35°26'38"; thence South 61°19'57" East 66.205 feet; thence South 28°40'03" West 625.560 feet to the point of beginning.

Parcel 2: (TPN 30 - 26-15-376-004)

A parcel of land located in Section 15, Township 3 south, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah, being more particularly described as follows:

Lot T7, of AMENDED LOTS B2, B3, OS2, T4, V4, V7 & WTC2 KENNECOTT MASTER SUBDIVISION #1, according to the official plat recorded in Book 2003P at Page 303, in the Office of the Salt Lake County Recorder.

LESS AND EXCEPTING therefrom all of DAYBREAK VILLAGE 14 PLAT 1 Amending Lots T7 & V5 of The Kennecott Master Subdivisions #1 Subdivision, recorded November 22, 2019 as Entry No. 13130712 in Book 2019P of Plats at Page 321, on file in the office of the Salt Lake County Recorder, State of Utah.

Parcel 3: (TPN 26a - Parcel BBB - 26-15-451-002)

Beginning at a point on the West Line of Lot V5 of the of the Kennecott Master Subdivision Amended #1, said point lies South 89°56'03" East 5.920 feet along the Daybreak Baseline South

(Being South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 4934.066 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot V5 the following (9) courses: 1) North 00°03'55" East 357.198 feet; 2) North 00°14'20" West 12.748 feet; 3) North 20°34'34" East 544.251 feet; 4) North 89°58'11" East 2490.672 feet; 5) North 00°01'49" West 998.333 feet; 6) North 89°55'33" East 2012.234 feet to a point on a 1000.000 foot radius tangent curve to the left, (radius bears North 00°04'28" West, Chord: North 77°50'00" East 418.977 feet); 7) along the arc of said curve 422.104 feet through a central angle of 24°11'05"; 8) South 00°01'49" East 1394.392 feet; 9) South 53°07'08" West 409.856 feet to a point on a 218.500 foot radius non tangent curve to the left, (radius bears South 07°10'49" West, Chord: North 86°24'36" West 27.364 feet); thence along the arc of said curve 27.382 feet through a central angle of 07°10'49"; thence West 305.322 feet to a point on a 181.500 foot radius non tangent curve to the right, (radius bears North, Chord: North 75°39'59" West 89.868 feet); thence along the arc of said curve 90.812 feet through a central angle of 28°40'03"; thence North 61°19'57" West 122.901 feet to a point on a 181.500 foot radius tangent curve to the right, (radius bears North 28°40'03" East, Chord: North 43°36'38" West 110.497 feet); thence along the arc of said curve 112.279 feet through a central angle of 35°26'38"; thence North 25°53'19" West 439.769 feet to a point on a 328.500 foot radius non tangent curve to the left, (radius bears South 49°56'16" West, Chord: North 53°53'45" West 157.092 feet); thence along the arc of said curve 158.628 feet through a central angle of 27°40'03"; thence South 28°40'03" West 80.651 feet to a point on a 971.500 foot radius tangent curve to the right, (radius bears North 61°19'57" West, Chord: South 31°02'04" West 80.251 feet); thence along the arc of said curve 80.273 feet through a central angle of 04°44'03"; thence South 28°31'16" West 79.709 feet to a point on a 981.500 foot radius non tangent curve to the right, (radius bears North 51°57'26" West, Chord: South 39°44'21" West 58.107 feet); thence along the arc of said curve 58.116 feet through a central angle of 03°23'33"; thence South 41°26'08" West 155.863 feet to a point on a 1018.500 foot radius tangent curve to the left, (radius bears South 48°33'52" East, Chord: South 34°41'01" West 239.486 feet); thence along the arc of said curve 240.041 feet through a central angle of 13°30'13"; thence South 27°55'55" West 92.518 feet; thence South 35°00'47" West 81.120 feet; thence South 27°55'55" West 264.575 feet; thence South 21°57'14" West 76.081 feet to a point on a 1207.500 foot radius non tangent curve to the right, (radius bears North 58°42'27" West, Chord: South 36°39'49" West 226.064 feet); thence along the arc of said curve 226.396 feet through a central angle of 10°44'33"; thence South 42°02'06" West 135.830 feet to a point on a 1288.500 foot radius tangent curve to the left, (radius bears South 47°57'54" East, Chord: South 36°01'03" West 270.151 feet); thence along the arc of said curve 270.649 feet through a central angle of 12°02'06"; thence South 30°00'00" West 383.374 feet; thence South 40°06'10" West 79.812 feet; thence South 30°00'00" West 160.306 feet to a point on a 685.000 foot radius non tangent curve to the right, (radius bears North 36°48'34" East, Chord: North 51°35'43" West 38.141 feet); thence along the arc of said curve 38.146 feet through a central angle of 03°11'26"; thence North 50°00'00" West 801.952 feet to a point being on the extension of the Southeasterly Line of Lot C-103 of the Daybreak Village 8, Village 9 & Village 13 School Sites Subdivision; thence along said Southeasterly line and line extended North 30°00'00" East 538.715 feet to the Easternmost Corner of said Lot C-103; thence along said Lot C-103 the following (3) courses: 1) North 56°26'06" West 764.424 feet; 2) South 87°50'35" West 351.139 feet; 3) South 14°52'31" West 433.902 feet along the Westernmost Line of said Lot C-103 and Westernmost Line extended to a point on a 2065.000 foot radius non tangent curve to the left, (radius bears South 15°39'08" West, Chord: North 82°10'26" West 562.370 feet); thence along the arc of said curve

564.122 feet through a central angle of 15°39'08"; thence West 477.547 feet to the point of beginning.

LESS AND EXCEPTING therefrom all of DAYBREAK VILLAGE 14 PLAT 1 Amending Lots T7 & V5 of The Kennecott Master Subdivisions #1 Subdivision, recorded November 22, 2019 as Entry No. 13130712 in Book 2019P of Plats at Page 321, on file in the office of the Salt Lake County Recorder, State of Utah.