

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

13344732  
7/30/2020 1:20:00 PM \$40.00  
Book - 10989 Pg - 2553-2565  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
OLD REPUBLIC TITLE DRAPER/OREM  
BY: eCASH, DEPUTY - EF 13 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

1828175 HM-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 12 LLC, a Utah limited liability company ("**Trustor**" or "**Investco 12**"), 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**"), VP Daybreak Investco 7 LLC, a Utah limited liability company ("**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**"), 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. 13153455 (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. 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 7 LLC, a Utah limited liability company (“*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 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 7, Investco 8, Investco 9, Investco 10, Investco 11 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.

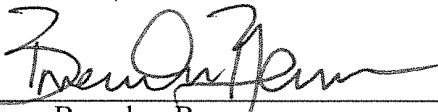
7. This Amendment shall be governed by the laws of the State of Utah, without regard to the choice of law rules of that State.

*[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 12 LLC,  
a Utah limited liability company

By:   
Name: Brendan Rosman  
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 12 LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BENEFICIARY:

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

By: RH AD  
Name: Rhonda Haral  
Title: Vice President





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

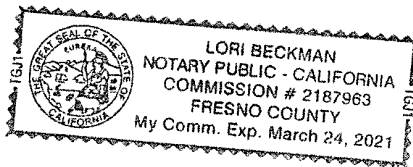
On July 29, 2020, before me, **Lori Beckman, a Notary Public**, personally appeared **Rhonda Harold** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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 

[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 31 - Parcel M - 26-14-302-001)**

Beginning at a point on the Southerly Line of Lot OS1 of the Kennecott Master Subdivision Amended #1, said point lies South 89°56'03" East 6365.175 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 7535.713 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Southerly Line South 63°32'01" West 181.098 feet to a point on a 737.500 foot radius non tangent curve to the right, (radius bears South 33°27'00" East, Chord: North 62°54'28" East 163.341 feet); thence along the arc of said curve 163.677 feet through a central angle of 12°42'57"; thence North 69°15'57" East 17.855 feet to the point of beginning.

### **Parcel 2: (TPN 31 - Parcel N - 26-14-301-001)**

Beginning at a Southwesterly Corner of Lot OS1 of the Kennecott Master Subdivision Amended #1, said point lies South 89°56'03" East 4624.729 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 6821.002 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 OS1 and an Easterly Line of the Kennecott Daybreak Bingham Creek subdivision North 00°04'27" West 1530.859 feet to the Northeast corner of Lot P-131 of said Kennecott Daybreak Bingham Creek; thence along the extension of the Northerly Line of said Lot P-131 South 71°47'05" East 520.385 feet; thence North 89°57'35" East 168.018 feet to the East Line of the Northeast Quarter of Section 15, T3S, R2W; thence along said East Line North 00°02'25" West 324.973 feet; thence South 75°51'05" East 459.247 feet; thence South 78°57'17" East 85.000 feet to a point on a 782.500 foot radius non tangent curve to the right, (radius bears South 78°57'17" East, Chord: North 26°43'44" East 423.059 feet); thence along the arc of said curve 428.389 feet through a central angle of 31°22'02" to a point of reverse curvature with a 867.500 foot radius tangent curve to the left, (radius bears North 47°35'15" West, Chord: North 30°36'33" East 354.898 feet); thence along the arc of said curve 357.421 feet through a central angle of 23°36'24" to the Northerly Line of said Lot OS1; thence along said Northerly Line North 89°07'05" East 99.010 feet to a Westerly Line of said Kennecott Daybreak Bingham Creek; thence along said Kennecott Daybreak Bingham Creek the following (4) courses: 1) South 29°24'49" West 956.988 feet; 2) South 710.904 feet; 3) East 252.711 feet to a point on a 5658.038 foot radius non tangent curve to the right, (radius bears South 38°21'56" East, Chord: North 55°07'24" East 688.634 feet); 4) along the arc of said curve 689.060 feet through a central angle of 06°58'40" to a point on the Quarter Section Line of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian; thence along said Quarter Section Line South 89°41'15" East 156.928 feet; thence South 37°21'12" West 108.797 feet to a point on a 718.000 foot radius tangent curve to the right, (radius

bears North 52°38'48" West, Chord: South 53°18'35" West 394.761 feet); thence along the arc of said curve 399.911 feet through a central angle of 31°54'45"; thence South 69°15'57" West 77.927 feet to a point on a 782.000 foot radius tangent curve to the left, (radius bears South 20°44'03" East, Chord: South 61°56'57" West 199.178 feet); thence along the arc of said curve 199.720 feet through a central angle of 14°37'59"; thence South 54°37'58" West 262.108 feet to the Southerly Line of said Lot OS1; thence along said Lot OS1 the following (3) courses: 1) South 63°32'01" West 892.423 feet to a point on a 1000.000 foot radius tangent curve to the right, (radius bears North 26°27'59" West, Chord: South 76°43'46" West 456.569 feet); 2) along the arc of said curve 460.630 feet through a central angle of 26°23'32"; 3) South 89°55'32" West 75.203 feet to the point of beginning.

**Parcel 3: (TPN NN - 26-14-176-009)**

Lot P-102, DAYBREAK COMMERCE PARK PLAT 5 SUBDIVISON, Amending Lots B2, OS1, and The DRGRR Parcel Kennecott Master Subdivision #1 Amended, according to the official plat thereof recorded on November 16, 2018 as Entry No. 12887764 in Book 2018P of Plats at Page 395 in the office of the Recorder, Salt Lake County, Utah.

**Parcel 4: (TPN OO - 26-15-276-006)**

A portion of Lot OS1, 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, being more particularly described as follows:

A parcel of land located in the Northeast quarter of Section 15, Township 3 South, Range 2 West, Salt Lake Base and Meridian and being more particularly described as follows:

Commencing at the Northeast corner of said Section 15 (basis of bearing South 00°02'25" East - 2650.848 feet between the Northeast corner and the East quarter corner of said Section 15) and running South 00°02'25" East along the East line of said Section 15 for a distance of 1490.882 feet to a point on the southerly right-of-way of the former Denver & Rio Grande Railroad (DRGRR) said point also being the point of beginning; thence continuing South 00°02'25" East along the east line of said Section 15 for a distance of 897.801 feet; thence South 89°57'35" West for 168.008 feet; thence North 71°47'05" West for 1305.398 feet; thence North 43°52'57" West for 323.001 feet to a point on said southerly right-of-way of the Former Denver & Rio Grande Railroad (DRGRR); thence along said southerly right-of-way of the former Denver & Rio Grande Railroad (DRGRR) the following two (2) calls: 1.) North 89°07'05" East for a distance of 225.840 feet; 2.) Thence with a curve to the left having a radius of 4397.183 feet, with a central angle of 18°41'30" (chord bearing and distance of North 79°46'20" East - 1428.144 feet) for an arc length of 1434.497 feet to the point of beginning.

LESS AND EXCEPTING therefrom all of DAYBREAK COMMERCE PARK PLAT 5 SUBDIVISON, Amending Lots B2, OS1, and The DRGRR Parcel Kennecott Master Subdivision #1 Amended, according to the official plat thereof recorded on November 16, 2018 as Entry No.

12887764 in Book 2018P of Plats at Page 395 in the office of the Recorder, Salt Lake County, Utah.

**Parcel 5: (TPN PP - 26-15-276-005)**

A parcel of land located in the North half of Section 15 and the Northwest quarter of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian and being more particularly described as follows:

Commencing at the Northeast corner of said Section 15 (basis of bearing South 00°02'25" East - 2650.848 feet between the Northeast corner and the East quarter corner of said Section 15) and running South 00°02'25" East along the East line of said Section 15 for a distance of 220.433 feet; thence North 89°57'35" East perpendicular to said section line for a distance of 1809.333 feet to a point on the Northerly right-of-way line of the former Denver & Rio Grande Railroad (DRGRR) parcel shown on the Kennecott Master Subdivision #1 recorded in Book 2002P at Page 273 in the office of the Salt Lake County recorder said point also being the point of beginning; thence South 00°04'17" West for 238.901 feet to a point on the Southerly right-of-way line of said former Denver & Rio Grande Railroad (DRGRR) parcel; thence along the boundary of said former Denver & Rio Grande Railroad (DRGRR) parcel the following ten (10) calls: 1.) South 56°54'49" West for 1051.300 feet; 2.) Thence with a curve to the right having a radius of 4397.183 feet with a central angle of 32°12'16" (chord bearing and distance of South 73°00'57" West - 2439.140 feet) for an arc length of 2471.547 feet; 3.) Thence South 89°07'05" West for 1572.971 feet; 4.) Thence North 78°14'53" West for 407.402 feet; 5.) Thence South 89°55'33" West for 1661.830 feet; 6.) Thence North 89°07'34" East for 1067.497 feet; 7.) Thence North 00°12'08" West for 87.624 feet; 8.) Thence North 89°07'05" East for 2563.638 feet; 9.) Thence with a curve to the left having a radius of 4197.183 feet with a central angle of 32°12'16" (chord bearing and distance of North 73°00'57" East - 2328.199 feet) for an arc length of 2359.132 feet; 10.) Thence North 56°54'49" East for 1181.966 feet to the point of beginning.

LESS AND EXCEPTING any portion of KENNECOTT DAYBREAK BINGHAM CREEK amending portions of Lots B1, B2, Os1, OS2, WTC1 and V3 of the Kennecott Master Subdivision #1 Amended, according to the official plat recorded December 30, 2009 as Entry No. 10869681 in Book 2009P at Page 193 thereof on file and of record in the Salt Lake County Recorder's Office.

ALSO LESS AND EXCEPTING any portion of KENNECOTT DAYBREAK CRIMSON VIEW DRIVE AND PROSPERITY ROAD DEDICATION PLAT, according to the official plat recorded September 17, 2010 as Entry No. 11033843 in Book 2010P at Page 151 thereof on file and of record in the Salt Lake County Recorder's Office.

ALSO LESS AND EXCEPTING any portion of KENNECOTT DAYBREAK COMMERCE PARK PLAT 3 amending Lots B1 and B2 of the Kennecott Master Subdivision #1 Amended, according to the official plat recorded January 09, 2015 as Entry No. 11973866 in Book 2015P at Page 5 thereof on file and of record in the Salt Lake County Recorder's Office.

ALSO LESS AND EXCEPTING any portion of KENNECOTT DAYBREAK COMMERCE PARK PLAT 4 amending Parcel A of the Lots B1 and B2 of the Kennecott Daybreak Commerce Park Plat 2 and Lot B1 and DRGRR Parcel of the Kennecott Master Subdivision #1 Amended, according to the official plat recorded December 23, 2016 as Entry No. 12440459 in Book 2016P at Page 340 thereof on file and of record in the Salt Lake County Recorder's Office.

ALSO LESS AND EXCEPTING therefrom all of DAYBREAK COMMERCE PARK PLAT 5 SUBDIVISION, Amending Lots B2, OS1, and The DRGRR Parcel Kennecott Master Subdivision #1 Amended, according to the official plat thereof recorded on November 16, 2018 as Entry No. 12887764 in Book 2018P of Plats at Page 395 in the office of the Recorder, Salt Lake County, Utah.