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11/13/2020 12:45:00 PM \$40.00
Book - 11060 Pg - 313-321
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 9 P.

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

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
Parcel: 26-22-103-001
2050741AM

SECOND AMENDMENT TO DEED OF TRUST
AND NOTICE OF ASSUMPTION

This Second Amendment to Deed of Trust and Notice of Assumption (this "**Amendment**") is made as of November 12, 2020, by and between VP DAYBREAK INVESTCO 6 LLC, a Utah limited liability company ("**Investco 6**"), VP DAYBREAK DEVCO LLC, a Delaware limited liability company ("**Devco**"), 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, by and 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**"), Devco, 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**"), 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 Investco 12 LLC, a Utah limited liability company ("**Investco 12**", and together with Daybreak Operations, Daybreak Communities, Daybreak Investments, Devco, Investco 1, Investco 2, Investco 3, Investco 4, Investco 5, Investco 6, Investco 7, Investco 8, Investco 9, Investco 10 and Investco 11, individually and collectively, "**Borrower**") and Beneficiary, as modified by that certain Modification Agreement dated as of July 29, 2020 (collectively, as further amended, restated or otherwise modified from time to time, the "**Revolving Loan Agreement**"), 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).

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 Investco 6, as trustor, to Old Republic National Title Insurance Company, as trustee ("**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. 13153252, as amended by that certain First Amendment to Deed of Trust dated as of July 29, 2020 and recorded in the Official Records on July 30, 2020 as Document No. 13344714 (collectively, as further 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 (the "**Investco 6 Property**").

D. Pursuant to that certain Special Warranty Deed, dated November 12, 2020 and effective November 12, 2020, executed by Investco 6, as grantor, to Devco, as grantee, recorded in the Official Records on November 13, 2020 as Document No. 13460917, Investco 6 transferred to Devco the Investco 6 Property (the "**Transfer Deed**").

E. Pursuant to the terms of the Deed of Trust, the transfer of the Investco 6 Property to Devco pursuant to the Transfer Deed requires the consent of Beneficiary.

F. As a condition precedent to Beneficiary's consent to the transfer of the Investco 6 Property from Investco 6 to Devco pursuant to the Transfer Deed, Investco 6, Devco and Beneficiary desire to amend the Deed of Trust to provide, among other things, for the assumption by Devco of all of Investco 6's obligations and liabilities arising under the Deed of Trust.

G. Capitalized terms used herein without definition have the meanings ascribed to them in the Revolving 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. Assumption. Devco hereby assumes and agrees to perform each and all of the obligations, covenants and agreements of Investco 6 under the Deed of Trust, whether accruing prior to, on or after the date hereof, including, without limitation, the obligation to perform all of the

covenants and obligations of “Trustor” under the Deed of Trust. All references in the Deed of Trust to “Trustor” shall mean and be deemed to refer only to Devco.

3. Secured Obligations. 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.

4. Counterparts. 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.

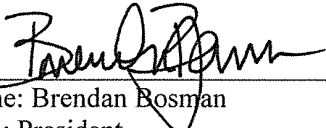
5. Governing Law. This Amendment shall be governed by the laws of the State of Utah, without regard to the choice of law rules of that State.

[Signatures begin on following page.]

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

INVESTCO 6:

VP DAYBREAK INVESTCO 6 LLC,
a Utah limited liability company

By: 
Name: Brendan Bosman
Title: President

DEVCO:

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

By: 
Name: Brendan Bosman
Title: President

BENEFICIARY:

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

By: _____
Name: _____
Title: _____

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

INVESTCO 6:

VP DAYBREAK INVESTCO 6 LLC,
a Utah limited liability company

By: _____
Name: _____
Title: _____

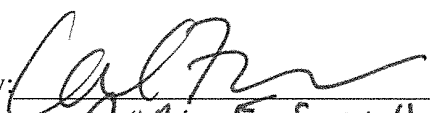
DEVCO:

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

BENEFICIARY:

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

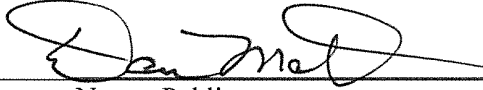
By: 
Name: CARL F. SWANNEll
Title: SVP

ACKNOWLEDGMENT

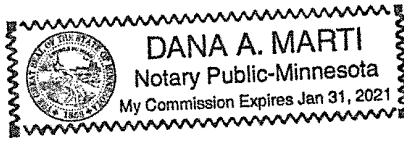
STATE OF MINNESOTA)
)SS.
County of Hennepin)

On this 5th day of November 2020, before me, the undersigned Notary Public, personally appeared Brendan Bosman, the President of VP DAYBREAK INVESTCO 6 LLC, a Utah limited liability company, 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.




My Commission Expires: 1 | 31 | 2021 Notary Public

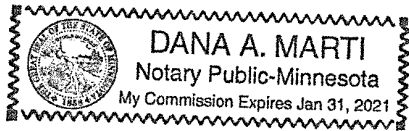


ACKNOWLEDGMENT

STATE OF MINNESOTA)
)SS.
County of Hennepin)

On this 5th day of November 2020, before me, the undersigned Notary Public, personally appeared Brendan Bosman, the President of VP ~~DAYBREAK INVESTCO~~ ^{DAYCO} LLC, a Utah limited liability company, 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. 
My Commission Expires: 1/31/2021 _____ Notary Public



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 November 12, 2020, before me, **Lori Beckman, a Notary Public**, personally appeared **Carl F. Swanson** 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]

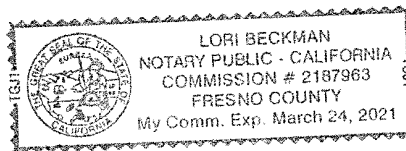


Exhibit A

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

Parcel 1:

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 4.457 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 3648.171 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 North 00°03'55" East 1155.893 feet; thence East 477.695 feet to a point on a 1935.000 foot radius non tangent curve to the right, (radius bears South, Chord: South 83°43'22" East 423.135 feet); thence along the arc of said curve 423.982 feet through a central angle of 12°33'15" to a point of compound curvature with a 705.000 foot radius tangent curve to the right, (radius bears South 12°33'15" West, Chord: South 71°24'42" East 148.219 feet); thence along the arc of said curve 148.493 feet through a central angle of 12°04'05"; thence South 65°22'40" East 514.324 feet to a point on a 705.000 foot radius tangent curve to the right, (radius bears South 24°37'20" West, Chord: South 59°20'37" East 148.219 feet); thence along the arc of said curve 148.493 feet through a central angle of 12°04'05" to a point of compound curvature with a 1935.000 foot radius tangent curve to the right, (radius bears South 36°41'26" West, Chord: South 51°39'17" East 111.754 feet); thence along the arc of said curve 111.769 feet through a central angle of 03°18'34"; thence South 50°00'00" East 943.608 feet; thence South 30°00'00" West 505.965 feet; thence North 60°00'00" West 651.135 feet to a point on a 230.000 foot radius tangent curve to the left, (radius bears South 30°00'00" West, Chord: North 76°02'00" West 127.049 feet); thence along the arc of said curve 128.723 feet through a central angle of 32°03'59"; thence South 87°56'01" West 195.178 feet to a point on a 170.000 foot radius tangent curve to the right, (radius bears North 02°03'59" West, Chord: South 89°10'41" West 7.384 feet); thence along the arc of said curve 7.384 feet through a central angle of 02°29'19"; thence North 89°34'40" West 270.515 feet to a point on a 170.000 foot radius tangent curve to the right, (radius bears North 00°25'20" East, Chord: North 87°44'32" West 10.889 feet); thence along the arc of said curve 10.891 feet through a central angle of 03°40'14"; thence North 85°54'25" West 414.411 feet to a point on a 230.000 foot radius tangent curve to the left, (radius bears South 04°05'35" West, Chord: South 77°41'44" West 129.856 feet); thence along the arc of said curve 131.646 feet through a central angle of 32°47'41" to a point of reverse curvature with a 170.000 foot radius tangent curve to the right, (radius bears North 28°42'06" West, Chord: South 75°38'57" West 84.272 feet); thence along the arc of said curve 85.160 feet through a central angle of 28°42'06"; thence West 212.444 feet; thence North 9.000 feet; thence West 187.338 feet to the point of beginning.

TPN - 26-22-103-001
NAI-1514860463v2