

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

13344713  
7/30/2020 1:07:00 PM \$40.00  
Book - 10989 Pg - 2383-2395  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
OLD REPUBLIC TITLE DRAPER/OREM  
BY: eCASH, DEPUTY - EF 13 P.

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 5 LLC, a Utah limited liability company ("*Trustor*" or "*Investco 5*"), 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*"), 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 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. 15153251 (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 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 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 6, Investco 7, 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.

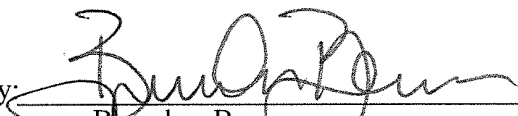
7. This Amendment shall be governed by the laws of the State of Utah, without regard to the choice of law rules of that State.

*[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 5 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 5 LLC,  
a Utah limited liability company

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

BENEFICIARY:

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

By: RLH  
Name: Rhonda Harold  
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.

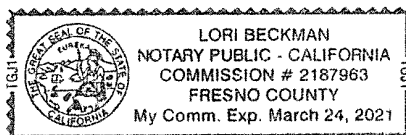
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

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 4 - Parcel Q - 26-22-478-001)**

Beginning at a point being 13.000 feet perpendicularly distant Northerly of the South Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 3971.887 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 45.467 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 598.333 feet to a point on a 535.000 foot radius non tangent curve to the left, (radius bears North 01°08'37" West, Chord: North 88°13'52" East 11.673 feet); thence along the arc of said curve 11.673 feet through a central angle of 01°15'00"; thence North 87°36'22" East 91.862 feet; thence North 80°28'52" East 40.311 feet; thence North 87°36'22" East 483.943 feet; thence South 41°12'21" East 168.864 feet; thence North 55°12'26" East 209.911 feet; thence East 272.967 feet to a point being 29.500 feet perpendicularly distant Westerly of the East Line of said Lot Z101; thence along said perpendicularly distant line South 625.882 feet to a point on said 13.000 feet perpendicularly distant line; thence along said perpendicularly distant line North 89°49'08" West 1183.325 feet to the point of beginning.

Less and excepting therefrom the following described property:

A Parcel of land known as Tank Site 5B as described in a Deed recorded July 31, 2006 as Entry No. 9797198 in Book 9329 at Page 2530, in the office of the Salt Lake County Recorder and reads as follows:

All of a certain Parcel of land, designated as Tank Site 5B, said Parcel located in the Southeast Quarter of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian, Lot V6 of the Kennecott Master #1 Amended; said Parcel being more particularly described as follows:

Commencing at the Southeast Corner of said Section 22; thence North 89°29'24" West along the South line of said Section for 979.452 feet; thence North 00°30'36" East perpendicular to said South line for 70.000 feet to the point of beginning; thence North 89°29'24" West parallel to the South line of said Section for 336.000 feet; thence North 00°30'36" East for 304.000 feet; thence South 89°29'24" East for 336.000 feet; thence South 00°30'36" West for 304.000 feet to the point of beginning.

### **Parcel 2: (TPN 5 - Parcel R - 26-22-477-001)**

Beginning at a point that lies South 89°56'03" East 4701.264 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 615.407 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian

and running thence North 41°12'21" West 90.141 feet to a point on a 25.000 foot radius tangent curve to the right, (radius bears North 48°47'39" East, Chord: North 06°56'45" East 37.246 feet); thence along the arc of said curve 42.020 feet through a central angle of 96°18'10"; thence North 55°05'50" East 145.410 feet to a point on a 25.000 foot radius tangent curve to the right, (radius bears South 34°54'10" East, Chord: South 79°08'28" East 35.822 feet); thence along the arc of said curve 39.935 feet through a central angle of 91°31'24"; thence South 33°22'46" East 89.884 feet to a point on a 25.000 foot radius tangent curve to the right, (radius bears South 56°37'14" West, Chord: South 10°54'50" West 34.917 feet); thence along the arc of said curve 38.653 feet through a central angle of 88°35'12"; thence South 55°12'26" West 133.124 feet to a point on a 25.000 foot radius tangent curve to the right, (radius bears North 34°47'34" West, Chord: North 82°59'57" West 33.322 feet); thence along the arc of said curve 36.472 feet through a central angle of 83°35'13" to the point of beginning.

**Parcel 3: (TPN 24a - Parcel YY - 26-22-202-001)**

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 3938.988 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 4635.435 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 Z101 the following (2) courses: 1) South 53°07'08" West 307.137 feet; 2) South 36°52'52" East 139.657 feet; thence South 28°40'03" West 86.479 feet to a point on said Northerly Line; thence along said Northerly Line South 53°07'08" West 1025.420 feet; thence North 62°35'47" West 344.201 feet to a point on a 685.000 foot radius tangent curve to the right, (radius bears North 27°24'13" East, Chord: North 60°30'55" West 49.749 feet); thence along the arc of said curve 49.760 feet through a central angle of 04°09'43"; thence North 30°00'00" East 626.831 feet to a point on a 1240.000 foot radius tangent curve to the right, (radius bears South 60°00'00" East, Chord: North 36°01'03" East 259.983 feet); thence along the arc of said curve 260.461 feet through a central angle of 12°02'06"; thence North 42°02'06" East 135.830 feet to a point on a 1256.000 foot radius tangent curve to the left, (radius bears North 47°57'54" West, Chord: North 34°59'00" East 308.377 feet); thence along the arc of said curve 309.157 feet through a central angle of 14°06'11"; thence North 27°55'55" East 93.666 feet; thence South 49°43'27" East 32.256 feet to a point on a 533.000 foot radius tangent curve to the left, (radius bears North 40°16'33" East, Chord: South 55°53'46" East 114.609 feet); thence along the arc of said curve 114.831 feet through a central angle of 12°20'38"; thence South 62°04'05" East 462.167 feet; thence South 65°07'58" East 98.742 feet; thence South 28°40'03" West 47.739 feet to the point of beginning.

**Parcel 4: (TPN 24b - Parcel XX - 26-22-251-001)**

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 2915.427 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 3646.931 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 Z101 North 53°07'08" East 1025.420 feet; thence South 28°40'03" West 433.685 feet to a point on a 530.000 foot radius tangent curve to the left, (radius bears South 61°19'57" East, Chord: South 23°52'44" West 88.487 feet); thence along the arc of said curve 88.590 feet through a central angle of 09°34'37"; thence South 19°05'25" West 223.051 feet to a point on a 470.000 foot radius tangent curve to the right, (radius bears North 70°54'35" West, Chord: South 21°50'17" West 45.064 feet); thence along the arc of said curve 45.081 feet through a central angle of 05°29'44"; thence South 24°35'09" West 135.257 feet to a point on a 685.000 foot radius non tangent curve to the right, (radius bears North 23°51'21" East, Chord: North 64°22'13" West 42.411 feet); thence along the arc of said curve 42.417 feet through a central angle of 03°32'53"; thence North 62°35'47" West 441.685 feet to the point of beginning.

**Parcel 5: (TPN 24c - Parcel ZZ - 26-22-202-002)**

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 3938.988 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 4635.435 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 Z101 South 28°40'03" West 337.397 feet; thence North 36°52'52" West 139.657 feet; thence North 53°07'08" East 307.137 feet to the point of beginning.

**Parcel 6: (TPN 28a - Parcel DD - 26-22-226-003)**

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 4054.935 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 4722.563 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along Northerly Line North 53°07'08" East 661.718 feet; thence South 32.247 feet to a point on a 173.000 foot radius non tangent curve to the right, (radius bears West, Chord: South 05°14'05" West 31.568 feet); thence along the arc of said curve 31.612 feet through a central angle of 10°28'11"; thence South 10°28'11" West 411.839 feet to a point on a 273.000 foot radius tangent curve to the right, (radius bears North 79°31'49" West, Chord: South 17°40'07" West 68.421 feet); thence along the arc of said curve 68.601 feet through a central angle of 14°23'52"; thence South 24°52'02" West 74.168 feet; thence North 65°07'58" West 449.499 feet; thence North 28°40'03" East 17.090 feet to the point of beginning.

**Parcel 7: (TPN 28b - Parcel CC - 26-22-226-002)**

Beginning at a point on the Northerly Line of Lot Z101 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 4584.233 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 5120.305 feet from the Southwest Corner of Section 22, Township 3 South, Range 2 West, Salt

Lake Base and Meridian and running thence along said Northerly Line South 53°07'08" West 661.718 feet; thence North 28°40'03" East 599.095 feet to a point on a 230.000 foot radius non tangent curve to the left, (radius bears North 27°50'40" East, Chord: South 76°04'40" East 110.678 feet); thence along the arc of said curve 111.775 feet through a central angle of 27°50'40"; thence East 134.471 feet; thence South 101.895 feet to the point of beginning.