

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

13344731
7/30/2020 1:20:00 PM \$40.00
Book - 10989 Pg - 2543-2552
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 10 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

1828175HM-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 11 LLC, a Utah limited liability company ("**Trustor**" or "**Investco 11**"), 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**"), 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. 13153454 (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 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 7, Investco 8, Investco 9, Investco 10, 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 11 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 11 LLC,
a Utah limited liability company

By: _____
Name: _____
Title: _____

BENEFICIARY:

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

By: Rhonda Harold
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]

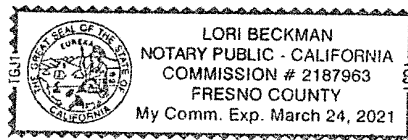


EXHIBIT A

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

Parcel 1: (TPN 35a - Parcel D - 26-23-203-001)

Beginning at a point on the Westerly Line of Lot Z107 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point also being a point on a 1033.000 foot radius non tangent curve to the left, (radius bears South 58°42'52" West, Chord: North 32°25'18" West 40.969 feet), said point lies South 89°56'03" East 7984.871 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 3065.751 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 Z107 the following (2) courses: 1) along the arc of said curve 40.972 feet through a central angle of 02°16'21"; 2) North 33°33'29" West 1029.577 feet; thence North 54°38'21" East 1278.979 feet to a point on a 4932.000 foot radius tangent curve to the right, (radius bears South 35°21'39" East, Chord: North 56°05'44" East 250.683 feet); thence along the arc of said curve 250.710 feet through a central angle of 02°54'45"; thence North 57°33'06" East 174.529 feet to the Easterly Line of said Lot Z107; thence along said Lot Z107 the following (7) courses: 1) South 28°15'49" East 3.877 feet to a point on a 2829.000 foot radius non tangent curve to the left, (radius bears North 28°15'47" West, Chord: North 59°38'39" East 206.614 feet); 2) along the arc of said curve 206.660 feet through a central angle of 04°11'08"; 3) North 57°50'02" East 10.440 feet; 4) South 36°33'03" East 0.580 feet; 5) South 36°32'59" East 121.694 feet to a point on a 6295.000 foot radius non tangent curve to the left, (radius bears North 60°44'59" East, Chord: South 33°01'39" East 829.387 feet); 6) along the arc of said curve 829.988 feet through a central angle of 07°33'16"; 7) South 36°48'17" East 167.098 feet; thence South 58°42'58" West 630.900 feet; thence South 56°26'31" West 1298.467 feet to the said Westerly Line of Lot Z107 and the point of beginning.

Parcel 2: (TPN 35b - Parcel C - 26-23-226-001)

Beginning at a point on the Easterly Line of Lot Z107 of the VP Daybreak Operations-Investments Plat 1 subdivision, said point lies South 89°56'03" East 9606.090 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 4112.995 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 Z107 the following (2) courses: 1) North 36°48'17" West 167.098 feet to a point on a 6295.000 foot radius tangent curve to the right, (radius bears North 53°11'43" East, Chord: North 33°01'39" West 829.387 feet); 2) along the arc of said curve 829.988 feet through a central angle of 07°33'16"; thence South 36°32'59" East 838.941 feet; thence South 45°16'29" East 164.815 feet; thence South 58°42'58" West 75.530 feet to the point of beginning.