

13810037
10/28/2021 8:53:00 AM \$194.00
Book - 11260 Pg - 6197-6211
RASHELLE HOBBS
Recorder, Salt Lake County, UT
FIDELITY NATIONAL TITLE AGENCY
BY: eCASH, DEPUTY - EF 15 P.

**RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:**

FARMERS AND MERCHANTS BANK
OF LONG BEACH
2411 East Coast Hwy, Suite 300
Corona del Mar, CA 92625
Attention: Corinne Velez
Loan No. 90-290-0376-6

Assessor's Parcel Nos.: 26-13-347-001, -002, -003, -004, -005, -006, -007, -008, -009

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT ("Agreement") is made as of September 16, 2021, by and among VILLAGE TOWNS 77, LLC, a Delaware limited liability company ("Borrower"), VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company ("Seller"), and FARMERS AND MERCHANTS BANK OF LONG BEACH, a California corporation ("Lender").

RECITALS

A. Borrower and Seller entered into that certain Purchase and Sale Agreement and Escrow Instructions dated on or around March 25, 2021 (together with any amendments thereto or modifications, extensions or renewals thereof, the "Purchase Agreement"), whereby Borrower agreed to purchase from Seller seventy-seven (77) lots (each a "Lot" and collectively, the "Lots" or the "Property") within the project commonly known as "Daybreak" in the City of South Jordan, Salt Lake County, Utah and as more particularly described in Exhibit "A" attached hereto (the "Property"), in order to construct single family townhomes for sale to third party homebuyers. Borrower intends to purchase such Lots in eight (8) separate phases. As of the date hereof, Borrower has acquired a portion of the Property from Seller more particularly described in Exhibit "A-1" attached hereto (the "Initial Property").

B. As a condition to Seller's sale of the Property to Borrower under the Purchase Agreement, Seller is requiring that Borrower grant to Seller (i) the option (the "Repurchase Option") to repurchase the Property (or any portion thereof) in the event that certain construction milestones are not met in accordance with Section 14.2 of the Purchase Agreement and (ii) the right of first refusal (the "Anti-Speculation Right") to repurchase the Property (or any portion thereof) in the event Borrower proposes to sell, exchange or otherwise transfer any Property, except as otherwise permitted under Section 14.3 of the Purchase Agreement. In connection therewith, Borrower is required to execute a Memorandum of Repurchase Option and Anti-Speculation Right to be recorded in the Official Records of Salt Lake County, Utah (each, the

“Memorandum”) upon the purchase of the Lots by Borrower in each of the eight (8) phases. The Memorandum with respect to the Initial Property is being recorded concurrently with the purchase of the Initial Property in the first phase. The Repurchase Option and the Anti-Speculation Right are referred to in this Agreement collectively as the “Subordinated Obligations”.

C. Borrower has applied to Lender for a revolving line of credit in the maximum principal sum of \$6,000,000.00 (together with any amendments thereto or modifications, extensions or renewals thereof, the “Loan”), which is evidenced or will be evidenced by, among other things, that certain Promissory Note dated September 16, 2021, in the maximum principal amount of \$6,000,000.00, executed by Borrower in favor of Lender (together with any amendments thereto or modifications or extensions thereof, the “Note”), and that certain Construction Loan Agreement (Revolving Loan) dated September 16, 2021, by and between Borrower and Lender (together with any amendments thereto or modifications or extensions thereof, the “Loan Agreement”), and secured, in part, by that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated September 16, 2021, by Borrower in favor of Lender (together with any amendments thereto or modifications or extensions thereof, including, without limitation, the Additional Property Modifications (as hereinafter defined), the “Deed of Trust”) and to be recorded concurrently herewith in the Official Records of the County of Salt Lake, Utah. The Note, the Loan Agreement, the Deed of Trust and all the other documents executed by Borrower in connection with the Loan and defined in the Loan Agreement as “Loan Documents,” as the same may hereafter be amended, modified or supplemented, are hereafter referred collectively as the “Loan Documents.” Borrower intends to acquire the Property in multiple phases pursuant to the Purchase Agreement for the construction of townhomes thereon to sell to third parties in accordance with the terms and conditions of the Loan Agreement and the Loan Documents. With respect to each phase of acquisition of a portion of the Property, Borrower intends to execute and deliver in favor of Lender a modification to the Deed of Trust and the other Loan Documents (individually and collectively, the “Additional Property Modification”), providing, without limitation, for the addition and inclusion of such portion of the Property as additional property encumbered under the Deed of Trust as security for the Loan.

D. As a condition precedent to the making of the Loan, Lender has required that the Deed of Trust and Loan Documents (as amended by the Additional Property Modification from time to time) shall be and remain at all times a lien or charge upon the Property (and any portion thereof) prior and superior to the lien or charge of the Subordinated Obligations.

E. It is to the mutual benefit of the parties hereto that Lender make the Loan to Borrower, and Seller is willing that the Deed of Trust (as amended by the Additional Property Modification from time to time) shall be a lien or charge upon the Property (or any portion thereof) covered thereby unconditionally prior and superior to the lien or charge of the Subordinated Obligations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and

in order to induce Lender to make the Loan to Borrower, it is hereby declared, understood and agreed as follows:

1. The Deed of Trust, the Additional Property Modification and the other Loan Documents shall be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Subordinated Obligations, and Seller declares, agrees and acknowledges that Seller intentionally and unconditionally subordinates the lien or charge of the Subordinated Obligations in favor of the lien or charge upon the Property of the Deed of Trust, the Additional Property Modification and other Loan Documents. .

2. Lender would not make the Loan without this Agreement.

3. This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Subordinated Obligations to the lien or charge of the Deed of Trust and the other Loan Documents and shall supersede and cancel, but only insofar as would affect the priority between the Loan Documents and the Subordinated Obligations, any prior agreement as to such subordination including, but not limited to, those provisions, if any, contained in the Purchase Agreement or the Memorandum, which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

4. Seller further acknowledges and agrees that in the event Lender exercises any of its rights and remedies under the Loan Documents including foreclosing its lien under the Deed of Trust, the Additional Property Modification and the other Loan Documents, whether judicially, by power of sale or otherwise, or by deed in lieu of foreclosure, that the Subordinated Obligations shall not be applicable to any transfer at the foreclosure sale to a third party purchaser ("Purchaser") or to the first subsequent transfer of the Property by Lender to a Purchaser if Lender is the transferee at the foreclosure sale ("Transfer Date"); provided, however, following the date that such Purchaser shall become the owner of the Property through or in lieu of the exercise of the aforementioned remedies or otherwise, the Subordinated Obligations shall continue to remain in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Purchase Agreement. All claims, demands or causes of action for money damages accruing prior to the Transfer Date which Seller may have against Borrower under any provisions of, or with respect to, the Purchase Agreement or the Memorandum, or on account of any matter, condition or circumstance arising out of the relationship of Borrower and Seller under the Purchase Agreement, or Borrower's prior ownership of the Property, shall be enforceable solely against Borrower personally, and neither Lender, nor any such successor, nor their respective successors and assigns, nor the Property shall be subject to any such claim, demand or cause of action. Seller agrees that Lender (in the event Lender becomes the transferee at the foreclosure sale) and any Purchaser shall be entitled to all of the benefits of the Master Development Agreement (as defined in the Purchase Agreement) and the other rights assigned to Borrower under the Purchase Agreement in connection with the sale of the Property, subject to their compliance with the provisions thereof.

5. Borrower intends to acquire the Property in multiple phases pursuant to the Purchase Agreement for the construction of townhomes thereon to sell to third parties in accordance with the terms and conditions of the Loan Agreement and the Loan Documents. With respect to each phase of acquisition of a portion of the Property, Borrower intends to

execute and deliver in favor of Lender an Additional Property Modification, providing, without limitation, for the addition and inclusion of such portion of the Property as additional property encumbered under the Deed of Trust as security for the Loan. Seller acknowledges and agrees that Borrower and Lender may, from time to time, (i) enter into new documents to secure the existing Loan, including, without limitation, the Additional Property Modifications and/or (ii) modify the Loan Documents. With respect thereto, in the event that any additional documents evidencing Lender's security interest in the Property, including, without limitation, any amendment or modification to any of the Loan Documents, including, without limitation, the Additional Property Modifications (collectively, "Additional Security Documents"), are recorded against the Property after the recordation of this Agreement in the Official Records of Salt Lake County, Utah, the lien or charge of the Subordinated Obligations shall be and remain subordinate to the lien or charge upon the Property (or any portion thereof) of such Additional Security Documents. In furtherance of the foregoing, Seller agrees to execute, if requested by Borrower or Lender, an additional agreement, including, without limitation a new subordination agreement in form and content reasonably similar to this Agreement, or a reaffirmation of this Agreement, and otherwise in recordable form, to evidence the subordination of the lien or charge of the Subordinated Obligations to the lien or charge of any Additional Security Documents.

6. Seller acknowledges and agrees that Seller has no claim against Lender with respect to any payments required to be paid by Borrower and/or any collateral given by Borrower to Lender, and that Seller's sole recourse as to any payments payable to Seller under the Purchase Agreement is against Borrower only, and not against Lender.

7. Seller and Borrower hereby covenant and agree with and for the benefit of Lender that, so long as the Loan remains outstanding, without Lender's prior written consent, the Purchase Agreement will not be modified or amended in any respect whatsoever.

8. This Agreement may not be amended or modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

9. This Agreement contains the entire agreement between the parties upon the subject matter hereof and cannot be changed, modified, waived or canceled, except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

12. In the event of a conflict between any term, condition or provision in this Agreement and the Purchase Agreement, the term, condition and provision in this Agreement shall prevail and the Purchase Agreement are deemed to be amended thereby.

13. This Agreement may be executed in any number of counterparts, and any party hereto may execute any counterpart, each of which, when executed and delivered, will be

deemed to be an original, and all of which counterparts of this Agreement taken together will be deemed to be but one and the same instrument. The execution of this Agreement by any party or parties hereto or thereto will not become effective until counterparts hereof or thereof, as the case may be, have been executed by all the parties hereto or thereto.

[Signature page to follow.]


NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination Agreement as of the date first set forth above.

BORROWER:

VILLAGE TOWNS 77, LLC,
a Delaware limited liability company

By: Presidio Merced Land V Active I, LLC,
a Delaware limited liability company
Its: Co-Manager

By: 
Name: Michael M. Sullivan
Its: Authorized Representative

By: Van Daele Homes of Utah, Inc.,
a Utah corporation
Its: Co-Manager

By: _____
Name: Jeffrey M. Hack
Its: President

[Seller's signature to follow on next page.]

[Signature Page to Subordination Agreement]

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination Agreement as of the date first set forth above.

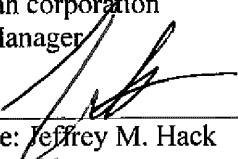
BORROWER:

VILLAGE TOWNS 77, LLC,
a Delaware limited liability company

By: Presidio Merced Land V Active I, LLC,
a Delaware limited liability company
Its: Co-Manager

By: _____
Name: Michael M. Sullivan
Its: Authorized Representative

By: Van Daele Homes of Utah, Inc.,
a Utah corporation
Its: Co-Manager

By:  _____
Name: Jeffrey M. Hack
Its: President

[Seller's signature to follow on next page.]

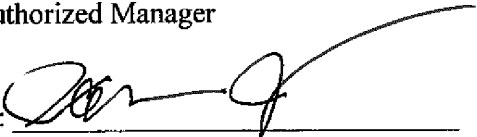
[Signature Page to Subordination Agreement]

SELLER:

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: Miller Family Real Estate, L.L.C.,
a Utah limited liability company

Its: Authorized Manager

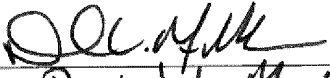
By: 
Cameron Jackson, VP Residential Operations

[Lender's signature to follow on next page.]

[Signature Page to Subordination Agreement]

LENDER:

FARMERS AND MERCHANTS BANK OF LONG BEACH,
a California corporation

By: 
Name: Daniel L MacMillan
Its: First Vice President

[ALL SIGNATURES MUST BE ACKNOWLEDGED]

[Signature Page to Subordination Agreement]

EXHIBIT "A"

Legal Description of the Property

Lots 101 through 177 (inclusive), Daybreak North Station Multi Family #1 Amending Lots M-101, M-102, M-103 & M-104 of the Kennecott Daybreak Village 10 North Plat 2 Subdivision and a Portion of Lot T3 of the Kennecott Daybreak Master Subdivision #1 Amended, according to the official plat thereof, filed in Book "2021P" of Plats, at Page 197 of the Official Records of the Salt Lake County Recorder.

EXHIBIT "A-1"

Legal Description of the Initial Property

Lots 157, 158, 159, 160, 161, 162, 163, 164 and 165, Daybreak North Station Multi Family #1 Amending Lots M-101, M-102, M-103 & M-104 of the Kennecott Daybreak Village 10 North Plat 2 Subdivision and a Portion of Lot T3 of the Kennecott Daybreak Master Subdivision #1 Amended, according to the official plat thereof, filed in Book "2021P" of Plats, at Page 197 of the Official Records of the Salt Lake County Recorder.

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~~)
) ss
COUNTY OF _____)

On Sept. 17, 2021, before me, Amy Sundell, a Notary Public, personally appeared Michael M. Sullivan, 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.

Amy Sundell
Notary Public



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)
) ss
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

Notary Public

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)
) ss
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

Notary Public

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)
) ss
COUNTY OF Riverside)

On September 20, 2011 before me, Cindy Kha Nguyen, a Notary Public, personally appeared Jeffrey M. Haux, 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.

Notary Public



[Acknowledgment Page to Subordination Agreement

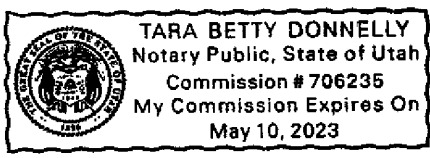
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

On September 22, 2021 before me, Tara Betty Donnelly, a Notary Public, personally appeared Cameron Jackson, 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 Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Tara Betty Donnelly
Notary Public



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)
) ss
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

Notary Public

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.

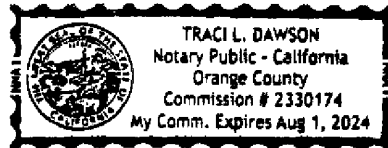
STATE OF CALIFORNIA)
) ss
COUNTY OF Orange)

On Sept. 21 2021, before me, Traci L. Dawson, a Notary Public, personally appeared Daniel L. MacMillan, 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.

Traci L. Dawson
Notary Public



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)
) ss
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

Notary Public