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Book - 10382 Pg - 6563-6566
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 4 P.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Kennecott Land Company
Attn: Financial Analyst
4700 West Daybreak Parkway
South Jordan, Utah 84009

APN(s) 26-24-300-022-0000

**NOTICE OF PARTIAL APPLICABILITY
DAYBREAK VILLAGE DECLARATION**
(SMITH'S - LOTS C-101 AND C-102 VILLAGE 7A PLAT 1)

NOTICE IS HEREBY GIVEN of the following agreement and covenants pertaining to that certain real property located in South Jordan, Utah, more particularly described on Exhibit A attached hereto and incorporated herein (the "**Property**"). The Property is located within a community commonly known as *Daybreak*, and is governed by, among other things, (a) that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Daybreak Village, recorded on December 30, 2005, as Entry No. 9598233, in Book 9237, beginning at Page 5395 of the official records of the Salt Lake County Recorder (the "**Declaration**"), and (b) that certain Covenant for Community For Daybreak dated February 25, 2004 and recorded on February 27, 2004 as Entry No. 8989517, in Book 8950, beginning at Page 7722, as amended and/or supplemented from time to time (collectively, the "**Covenant**"). Kennecott Land Company, a Delaware corporation ("**Declarant**") is the "Founder" under the Covenant and the "Declarant" under the Declaration.

Any capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Declaration.

Pursuant to the provisions of the Covenant and the powers reserved unto Declarant pursuant to the Declaration, Declarant may release the owner of a parcel from any issue, matter, term, provision, or subject under the Declaration or the Governing Documents (as defined in the Declaration). With respect to the ownership and operation of the Property by Smith's Food & Drug Centers, Inc., an Ohio corporation ("**Smith's**") as a supermarket and fuel center, Declarant hereby releases Smith's from compliance with Section 9 and Section 12 of the Declaration, on the terms and for the period set forth herein. The contents of this Notice shall be binding upon Declarant's successors and assigns, and shall run with the land.

For so long as Smith's, or any entity controlling, controlled by or under common control with Smith's (an "**Affiliate**"), owns the Property and operates a supermarket and fuel center on the Property (including the period of time between which Smith's takes title to the Property and a supermarket and fuel center is constructed, any period of time during which the supermarket and fuel center is actively being renovated, rebuilt, or repaired due to casualty or obsolescence, and for 18 months following Declarant's receipt of notice from Smith's (which notice is to be provided within 90 days after such cessation of use), or the actual cessation date if no notice is given, of a casualty or cessation of use, for whatever reason, during which a supermarket and fuel center is not operated, each such time period being referred to herein as an "**Exempt Period**"), Declarant hereby releases and excuses Smith's and any Affiliate from compliance with the terms, provisions, obligations, and subject matter of Section 9 and Section 12 of the

Declaration, to the extent applicable to the Property; *provided, however*, the Property shall remain subject to and benefited by the balance of the provisions of the Declaration relating to use of the Property, all as more particularly set forth therein. If Smith's or any Affiliate ceases to operate a supermarket and fuel center on the Property during other than an Exempt Period, or if Smith's or any Affiliate transfers title to the Property, the Property and the owner of the Property shall be deemed, immediately upon the cessation of such use or such transfer of title, to have become automatically subject to all terms, provisions, obligations, subject matters and conditions of Section 9 and Section 12 of the Declaration (in addition to all other provisions of the Declaration), without the need for any action by Declarant, its successors or assigns.

Without limiting the generality of the foregoing, Declarant hereby confirms that, for so long as, and only so long as Smith's or any Affiliate is released and excused from compliance with the provisions of Section 9 and 12 of the Declaration, Smith's and any Affiliate shall be exempt from the payment of the Base Assessment, Service Area Assessment, Special Assessment, and Specific Assessment, if any, as set forth in Chapter 12 of the Declaration, with respect to the Property.

The undersigned represents that it has the authority to enter into this Notice and agree to the terms and covenants set forth herein. Declarant further acknowledges that this instrument is executed during the "Development and Sale Period," as defined in the Declaration.

[Signatures on following page]

[Notice of Partial Applicability - Signature & Acknowledgement page]

IN WITNESS WHEREOF, Declarant has caused its duly authorized representative to execute this instrument as of the date hereinafter written.

DATED: November 25, 2015

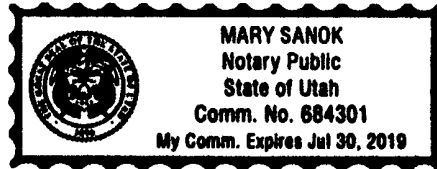
DECLARANT:

KENNECOTT LAND COMPANY,
a Delaware corporation

By [Signature]
Name TY MCCUTCHEN
Title VICE PRESIDENT DAYBREAK

ACKNOWLEDGMENT

STATE OF UTAH)
) :ss.
COUNTY OF SALT LAKE)



On 11-25-15, personally appeared before me, a Notary Public, TY MCCUTCHEN, the VICE PRESIDENT, DAYBREAK of KENNECOTT LAND COMPANY, a Delaware corporation personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of KENNECOTT LAND COMPANY, a Delaware corporation.

WITNESS my hand and official Seal.

[Signature]
Notary Public in and for said State

My commission expires: July 30 2019

[SEAL]

**EXHIBIT A
TO NOTICE OF APPLICABILITY**

LEGAL DESCRIPTION

Lots C-101 and C-102 of Kennecott Daybreak Village 7A Plat 1, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder's Office.