

13298625
6/15/2020 4:00:00 PM \$40.00
Book - 10961 Pg - 4945-4951
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 7 P.

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:

VP Daybreak Operations LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, Utah 84009
Attention: Scott R. Kaufmann
TIMs: 26-24-201-003
1938849 FA 26-24-201-005

Above Space for Recorder's Use

**PARTIAL ASSIGNMENT AND ASSUMPTION
OF MASTER DEVELOPMENT AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT ("Agreement") is made as of June 15, 2020, by and between **VP DAYBREAK OPERATIONS LLC**, a Delaware limited liability company ("**Assignor**"), and **DMKIMBALL, LLC**, a Utah limited liability company, and **NSL FIFTY, LLC**, a Utah limited liability company (collectively "**Assignee**"); individually, a "**Party**", and collectively, the "**Parties**".

RECITALS

A. VP Daybreak Operations LLC, a Delaware limited liability company ("**Seller**") and Colmena Group LLC, a Utah limited liability company ("**Buyer**"), entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of August 29, 2019, as amended by that certain First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated October 23, 2019, that certain Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated December 12, 2019, that certain Third Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated January 22, 2020, that certain Fourth Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated February 7, 2020, that certain Fifth Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated February 14, 2020, that certain Sixth Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated February 28, 2020, that certain Seventh Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated March 13, 2020, that certain Eighth Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated March 20, 2020, that certain Ninth Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated June 2, 2020, and as assigned from Buyer to Daybreak Business Park, LLC, a Utah limited liability company ("**DBP**") pursuant to that certain Assignment and Assumption of Purchase and Sale Agreement dated June 1, 2020, and further assigned from DBP to Assignee pursuant to that certain Assignment and Assumption of Purchase and Sale Agreement dated June 10, 2020 (collectively, as amended and assigned, the "**Purchase Agreement**") regarding the purchase and sale of certain real property located in the City of South Jordan, County of Salt Lake, State of Utah, as more particularly described in Exhibit A attached hereto and incorporated herein ("**Property**"). The Property is within a planned development known as the "Kennecott Master Subdivision #1 Project" ("**Project**").

B. The Property and the Project are subject to that certain Master Development Agreement for the Kennecott Master Subdivision #1 Project dated March 18, 2003, by and between Assignor (as successor in interest to OM Enterprises Company), and South Jordan City, a Utah municipal corporation ("**City**"), which was recorded on March 26, 2003 in the Salt Lake County Recorder's Office as Instrument No. 8581557, as amended by that certain Agreement Regarding Daybreak Development dated as of July 9, 2007, which was recorded on November 19, 2007, in the Salt Lake County Recorder's Office as Instrument No. 10279353, as amended and assigned by that certain Assignment of Master Development

Agreement and Entitlements dated as of July 15, 2016, which was recorded on July 18, 2016, in the Salt Lake County Recorder's Office as Instrument No. 12322170, as amended by that certain Agreement Relating to Master Development Agreement dated as of July 15, 2016, which was recorded on July 18, 2016, in the Salt Lake County Recorder's Office as Instrument No. 12322171 (as assigned and amended, the "MDA").

C. In connection with the conveyance of the Property by Seller to Assignee, Assignor desires to assign certain rights and to delegate certain of its obligations under the MDA, to the extent they relate to the Property, to Assignee, and Assignee desires to accept such assignment and delegation.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below.

1. **ASSIGNMENT OF MDA.** Pursuant to **Section 11** of the MDA, Assignor (as "Master Developer" thereunder) hereby assigns to Assignee (as "Developer" thereunder) all of its rights under the MDA with respect to the Property including, without limitation, (a) all rights to develop the Property in the manner set forth in the MDA; and (b) all impact fee credits and/or reimbursements relative to the Property and accruing to the owner thereof under the MDA after the date hereof, if any ("Assignment"), subject, however, to the following:

1.1 As set forth in **Section 11(b)(2)** of the MDA, Assignee shall not in each case without the prior written consent of Assignor, which may be granted or withheld in Assignor's sole but reasonable discretion:

- (i) submit any design guidelines to the City with respect to the Property, and/or propose any amendments, modifications or other alterations to any design guidelines previously submitted by Assignor to the City with respect to the Property;
- (ii) process any preliminary or final subdivision plats or site plans for the Property, and/or propose any amendments, modifications or other alterations of any approved final subdivision plats and/or site plans procured by Assignor for the Property; or
- (iii) propose any amendments, modifications or other alterations to the MDA.

1.2 Assignee acknowledges that the City has agreed (pursuant to **Section 11(b)(2)** of the MDA) not to accept or process any of the foregoing matters from Assignee unless the matter has been previously approved by Assignor.

2. **DELEGATION AND ASSUMPTION.** Assignor hereby delegates to Assignee all of its obligations under the MDA to the extent such obligations relate to the Property and arise after the date of this Agreement, and Assignee hereby accepts such delegation. Assignee hereby assumes, agrees to be bound by, and agrees to perform all such obligations under the MDA as the same specifically relate to the Property, including, without limitation, the indemnification obligation of Assignor with respect to the Property set forth in **Section 8(c)** of the MDA arising after that date of this Agreement.

3. **RETAINED RIGHTS.** Assignor retains all rights under the MDA to modify, amend or terminate the MDA with respect to all other areas within the Project excluding the Property; provided, however, that Assignor shall not modify or alter the MDA in a manner which would materially interfere with Assignee's rights under the MDA with respect to the Property without Assignee's prior written consent, which shall not be unreasonably withheld or delayed. Assignee acknowledges and agrees that all matters regarding the Project (excluding the Property) and the development thereof shall be determined

by Assignor in its sole and absolute discretion and Assignee shall have no interest or right to participate therein.

4. COOPERATION. The Parties hereto agree to cooperate with each other in carrying out the purpose and intent of this Agreement, including cooperating to obtain the consent of the City Council to the delegation of duties under the MDA described above.

6. GOVERNING LAW. This Agreement shall be governed by and construed under the laws of the State of Utah without regard to choice of law rules.

7. SUCCESSORS AND ASSIGNS. Each and all of the covenants and conditions of this Agreement will inure to the benefit of and be binding upon the successors in interest of Assignor and the successors, heirs, representatives and assigns of Assignee. As used in this Section, "successors" means successors to the Parties' interest in the Property, successors to all or substantially all of the Parties' assets, and successors by merger or consolidation.

8. ATTORNEYS' FEES. If any action, arbitration, judicial reference or other proceeding is instituted between Assignor and Assignee in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs actually incurred (based on such attorneys normal and customary hourly rates for services actually rendered) in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment.

9. SEVERABILITY. If any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement will not be affected thereby and will remain in force and effect to the fullest extent permissible by law.

10. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless it is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

11. COUNTERPARTS. This Agreement may be executed in counterparts, each of which, when taken together, will constitute a fully executed original.

[Signatures on Following Pages]

A handwritten signature in black ink, appearing to be the initials 'BK' with a stylized flourish.

[Daybreak Business Park – Partial Assignment of MDA – Assignor Signature Page]


IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Assignor:

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

By: 
Ty McCutcheon, President & CEO

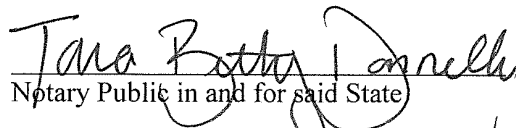
ACKNOWLEDGMENT

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

On June 15, 2020, personally appeared before me, a Notary Public, Ty McCutcheon, the President & CEO of DAYBREAK COMMUNITIES LLC, a Delaware limited liability company the Project Manager of VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company, 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 VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.



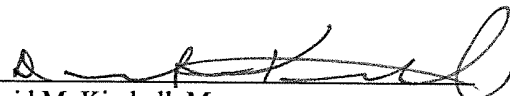

Notary Public in and for said State
My commission expires: 5-10-23

[SEAL]

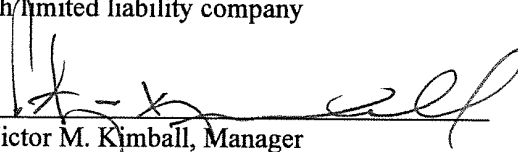
[Daybreak Business Park – Partial Assignment of MDA – Assignee Signature Page]

Assignee:

DMKIMBALL, LLC,
a Utah limited liability company

By: 
David M. Kimball, Manager

NSL FIFTY, LLC
a Utah limited liability company

By: 
Victor M. Kimball, Manager

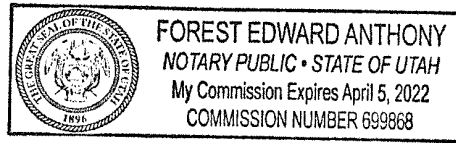
ACKNOWLEDGMENT

STATE OF Utah)
) SS.
COUNTY OF Salt Lake)

On June 15, 2020, personally appeared before me, a Notary Public, David M. Kimball, Manager of DMKIMBALL, LLC, a Utah limited liability company, 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 DMKIMBALL, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Forest Edward Anthony
Notary Public in and for said State
My commission expires: 4/5/2022



ACKNOWLEDGMENT

STATE OF Utah)
) SS.
COUNTY OF Salt Lake)

On June 15, 2020, personally appeared before me, a Notary Public, Victor M. Kimball, Manager of NSL FIFTY, LLC, a Utah limited liability company, 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 NSL FIFTY, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Forest Edward Anthony
Notary Public in and for said State
My commission expires: 4/5/2022

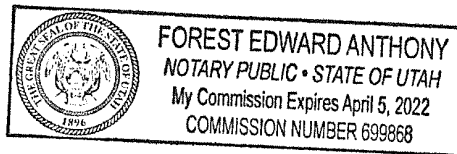


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots C-101, C-102, C-103, C-104, and C-105, DAYBREAK VILLAGE 7A PLAT 3 SUBDIVISION Amending Lot WTC2 of The Kennecott Daybreak Master Subdivision #1 Amended and Lot Z108 of The VP Daybreak Operations-Investments Plat I and Lot P-126 of The Daybreak Lake Avenue from Mountain View Corridor to 6000 West Subdivision, recorded May 18, 2020 as Entry No. 13272988 in Book 2020P of Plats at Page 118, on file and of record in the office of the Salt Lake County Recorder, State of Utah.

Tax Parcel No.: 26-24-301-003 & 26-24-301-005