

13298626
6/15/2020 4:00:00 PM \$40.00
Book - 10961 Pg - 4952-4963
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 12 P.

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:

VP Daybreak Investco 8 LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, UT 84009
Attention: Scott R. Kaufmann
TIN: 26-24-301-004
19388495A

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of June 15, 2020, by VP DAYBREAK INVESTCO 8 LLC, a Utah limited liability company (“**Daybreak**”), and DMKIMBALL, LLC, a Utah limited liability company, and NSL FIFTY, LLC, a Utah limited liability company (collectively “**Daybreak Business Park**” or “**DBP**”) (Daybreak and DBP are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Daybreak is owner of that certain real property located in the City of South Jordan, State of Utah, which real property is more particularly described on Exhibit “A” and depicted on Exhibit “A-1” attached hereto and incorporated herein by reference (the “**Daybreak Property**”).

WHEREAS, DBP is, or at the time this Agreement is recorded will be, the owner of that certain real property located immediately adjacent to the Daybreak Property, which real property is more particularly described on Exhibit “B” attached hereto and incorporated herein by reference (the “**DBP Property**”).

WHEREAS, the Daybreak Property and the DBP Property are shown on the site plan attached hereto as Exhibit “C” and incorporated herein by reference (the “**Site Plan**”).

WHEREAS, DBP intends to develop the DBP Property with commercial buildings and related improvements substantially as shown on the Site Plan.

WHEREAS, in connection with the development of the DBP Property, DBP desires to construct certain improvements on a portion of the Daybreak Property including certain parking areas, landscaping and related improvements which will benefit the DBP Property.

WHEREAS, it is the intent and desire of the Parties and the purpose of this Agreement to provide for an easement for the construction of certain parking areas, landscaping and related improvements on the Daybreak Property, and to provide for the ongoing operation, maintenance, repair, and insurance of the parking areas, landscaping and related improvements, all on terms and conditions more particularly hereinafter set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **INCORPORATION OF RECITALS.**

1.1 Incorporation of Recitals. The above Recitals are hereby incorporated in and made an integral part of this Agreement.

2. **EASEMENTS.**

2.1 Grant of Easement. Daybreak, as grantor, hereby grants to DBP, as grantee, for the benefit of the DBP Property, and as a burden upon the Daybreak Property, an exclusive perpetual easement for the construction, operation and maintenance of parking areas, landscaping and related improvements on the Daybreak Property and a perpetual vehicular and pedestrian cross access easement over the parking areas on the Daybreak Property (collectively, the “**Easement**”).

2.2 Maintenance of Daybreak Property. DBP shall maintain, or cause to be maintained, at its sole cost and expense, the parking areas, landscaping related improvements located on the Daybreak Property at all times in good and clean condition and repair.

2.3 Ownership and Operation Costs. DBP shall be solely responsible for the timely payment of (i) all utility costs or expenses (e.g., electricity, water, etc.) incidental or related to the parking areas, landscaping and related improvements on the Daybreak Property and use of the Easement, and (ii) taxes and assessments attributable to the Daybreak Property.

3. **INDEMNIFICATION AND INSURANCE.**

3.1 Indemnification. DBP hereby indemnifies, holds harmless and agrees to defend Daybreak from and against all claims, damages, expenses (including, without limitation, attorneys’ fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring on the Daybreak Property, caused by the willful acts or active or passive negligence of DBP, or its tenants, or its or their respective agents, servants or employees; provided, DBP does not indemnify Daybreak against any injury, loss of life, or damage which is caused by the willful acts or the active or passive negligence of Daybreak, or its tenants, or its or their agents, servants or employees.

3.2 Liability Insurance Coverage and Limits. DBP shall maintain and/or cause to be maintained, at its sole cost and expense, liability insurance insuring its interests against claims for bodily injury, death and property damage occurring on, in or about the Daybreak Property and the ways immediately adjoining such areas, with a “Combined Single Limit” (covering bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000) for total claims for any one (1) occurrence. Any required insurance may be in the form of blanket coverage, so long as such blanket policy does not reduce the limits nor diminish the coverage required herein.

3.3 Performance of Indemnity Agreements. The policy(ies) of insurance required under this Section shall insure the performance of DBP of the indemnity agreement contained herein. Upon request, DBP shall deliver, or cause to be delivered, to Daybreak a certificate of insurance, reasonably satisfactory in form and substance, evidencing all insurance required to be maintained hereunder. DBP shall promptly

notify Daybreak of any asserted claim with respect to which Daybreak is or may be indemnified against hereunder, and shall deliver to Daybreak copies of process and pleadings.

4. CONDEMNATION.

4.1 Right to Award. In the event of any exercise of eminent domain, or transfer in lieu thereof, of all or any part of the Daybreak Property or improvements thereon, the award attributable to such taking shall be payable to DBP, and no claim thereto shall be made by Daybreak.

5. GENERAL PROVISIONS.

5.1 Successors and Assigns. This Agreement and the easement herein granted shall run with the land and shall inure to the benefit of and be binding upon the Parties, their heirs, successors, assigns and personal representatives, and upon any person acquiring any interest in either the Daybreak Property or the DBP Property.

5.2 Duration. This Agreement and the easement herein granted shall remain in full force and effect until terminated in accordance with the provisions of the Section 5.3 below.

5.3 Modification and Termination. This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Parties, and then only by written instrument duly executed and acknowledged by the Parties and recorded in the office of the recorder of Salt Lake County; provided, however, that this Agreement shall automatically terminate in the event the fee interest in the Daybreak Property is transferred to DBP.

5.4 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

5.5 Attorneys' Fees. In the event a Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other party, to be fixed by the court in the same action.

5.6 Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

5.7 Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between any Party.

5.8 No Third-Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.

5.9 Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

5.10 Entire Agreement. This Agreement contains the entire agreement of the Parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

5.11 Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

5.12 Recordation. This Agreement shall be recorded in the Office of the Recorder of Salt Lake County, Utah.

5.13 Authority of Signatories. Each person executing this Agreement individually and personally represents and warrants that he is duly authorized to execute and deliver the same on behalf of the entity for which he is signing (whether it be a corporation, limited liability company, general or limited partnership, or otherwise), and that this Agreement is binding upon said entity in accordance with its terms.

- SIGNATURE PAGE TO FOLLOW -

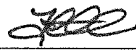
[Daybreak Business Park – South Site – Easement Agreement]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

Daybreak: VP DAYBREAK INVESTCO 8 LLC,
a Utah limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

By:  _____

Name: Ty McCutcheon

Title: President & CEO

DBP: DAYBREAK BUSINESS PARK, LLC,
a Utah limited liability company

By: COLMENA CAPITAL, INC.,
a Utah corporation,

Its: Manager

By: _____

Name: _____

Its: _____

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

Daybreak: VP DAYBREAK INVESTCO 8 LLC,
a Utah limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

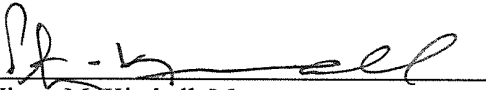
Its: Project Manager

By: _____
Name: Ty McCutcheon
Title: President & CEO

DBP: 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, Ty McCutcheon, the President & CEO of DAYBREAK COMMUNITIES LLC, a Delaware limited liability company, the Project Manager of VP DAYBREAK INVESTCO 8 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 VP DAYBREAK INVESTCO 8 LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

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



ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

On June ____, 2020, personally appeared before me, a Notary Public, _____, the _____ of COLMENA CAPITAL, INC., a Utah corporation, the Manager of DAYBREAK BUSINESS PARK, 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 DAYBREAK BUSINESS PARK, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

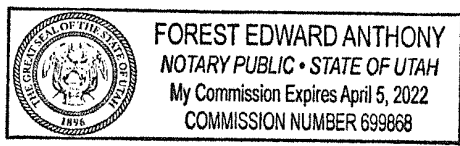
Notary Public in and for said State
My commission expires: _____

ACKNOWLEDGMENT

STATE OF Utah)
) SS.
COUNTY OF Salt Lake

On June 5, 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 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 5, 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 Anthony
Notary Public in and for said State
My commission expires: 4/5/2022

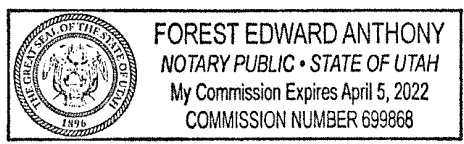


EXHIBIT "A"

Legal Description of the Daybreak Property

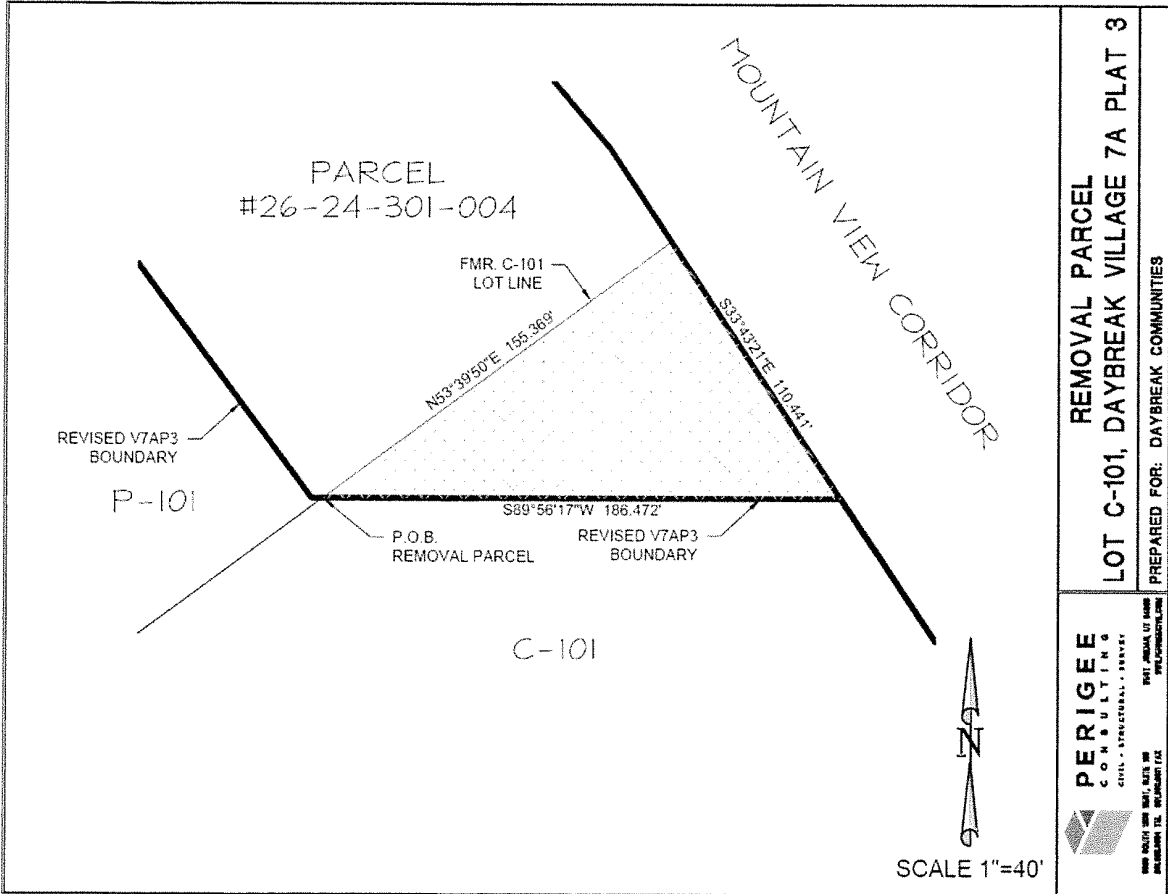
The following real property located in Salt Lake County, Utah and described as:

Beginning at a point on the South Line of Parcel Number 26-24-301-004, said point lies South 89°55'30" East 306.933 feet along the Daybreak Baseline Southeast (Being South 89°55'30" East 10641.888 feet between the Southwest Corner of Section 24, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 2401.647 feet from the Southwest Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 53°39'50" East 155.369 feet to the Easterly Line of Parcel Number 26-24-301-004; thence along said Parcel Number 26-24-301-004 the following (2) courses: 1) South 33°43'21" East 110.441 feet; 2) South 89°56'17" West 186.472 feet to the point of beginning.

Property contains 0.197 acres, 8571 square feet.

EXHIBIT "A-1"

Depiction of the Daybreak Property



REMOVAL PARCEL
 LOT C-101, DAYBREAK VILLAGE 7A PLAT 3
 PREPARED FOR: DAYBREAK COMMUNITIES

PERIGEE
 CONSULTING
 CIVIL • STRUCTURAL • SURVEY

1000 NORTH 10TH AVENUE, SUITE 100
 DENVER, CO 80202
 PHONE: 303.733.8888
 FAX: 303.733.8889
 WWW.PERIGEECONSULTING.COM

Exhibit "B"

Legal Description of the DBP Property

The following real property located in Salt Lake County, Utah and described as:

LOT C-101 OF 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 1 AND LOT P-126 OF THE DAYBREAK LAKE AVENUE FROM MOUNTAIN VIEW CORRIDOR TO 6000 WEST SUBDIVISION.

Exhibit "C"

Site Plan

