

12

AGREEMENT REGARDING DAYBREAK DEVELOPMENT

AMENDING THE MASTER DEVELOPMENT AGREEMENT
FOR THE KENNECOTT MASTER SUBDIVISION #1 PROJECT

THIS AGREEMENT REGARDING DAYBREAK DEVELOPMENT (this "Agreement") is made and entered into as of the 29 day of April 2019, by and between SOUTH JORDAN CITY, a Utah municipal corporation (the "City"); and VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company, VP DAYBREAK INVESTMENTS LLC, a Delaware limited liability company, and VP DAYBREAK HOLDINGS LLC, a Delaware limited liability company, as successors-in-interest to OM Enterprises Company, a Utah corporation (collectively, as successor "Master Developer").

RECITALS:

A. Master Developer and the City have entered into that certain "Master Development Agreement for the Kennecott Master Subdivision #1 Project" recorded on March 26, 2003, as amended by that certain Agreement Regarding Daybreak Development Amending the Master Development Agreement for the Kennecott Master Subdivision #1 Project and Amending the P-C Zone Plan Land Use Table (the "Parks and Open Space Agreement"), dated July 9, 2007 (collectively, as amended, the "Development Agreement") which affects approximately four thousand one hundred fifty-seven (4,157) acres of land within the City, which land is or was owned by Master Developer and/or its affiliates and is being developed as the master planned community project commonly known as "*Daybreak*" ("Daybreak"). The Development Agreement concerns and encumbers the real property described on Exhibit A.

B. In accordance with the City's Planned Community Zone (the "P-C Zone"), Master Developer has submitted for Daybreak, and the City has approved, a Planned Community Zone Plan ("P-C Zone Plan") attached to the Development Agreement as Exhibit C. Pursuant to the P-C Zone, the P-C Zone Plan vests the entitlement to build the number of dwelling units and the square footage of nonresidential uses reflected in the P-C Zone Plan. The P-C Zone Plan contains a "P-C Zone Plan Land Use Table" listing said vested units and square footage, which table is replicated on the Community Structure Plan attached to the Development Agreement as Exhibit D and the Master Subdivision Plat attached to the Development Agreement as Exhibit E (the P-C Zone Plan, Community Structure Plan, and Master Subdivision Plat, as such may be amended from time to time, are collectively referred to in the Development Agreement and herein as the "Entitlement Approvals").

C. In order to add predictability, mutual understanding, and mutual benefit to the development process, and to ensure a well-planned and integrated parks system within the South Jordan community, Master Developer and the City wish to further clarify and amend certain obligations under the Development Agreement. The South Jordan City Council has approved and authorized the undersigned City representatives to execute this Agreement.

NOW, THEREFORE, in consideration of the above Recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which

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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH

SOUTH JORDAN
1600 W TOWNE CENTER DR
SOUTH JORDAN UT 84095-8265
BY: EAP, DEPUTY - WI 12 P.

are hereby acknowledged, the City and Master Developer hereby agree as follows:

1. Definitions. All capitalized terms not defined in this Agreement but defined in the Development Agreement shall have the definitions given in the Development Agreement.

2. Amendments and Certain Acknowledgments. Notwithstanding anything contained in the Development Agreement to the contrary, the City and Master Developer hereby acknowledge and agree as follows:

- (a) The requirements contained in Section 2(a)(1) and 2(a)(3) of the Parks and Open Space Agreement to dedicate Oquirrh Lake to the City, and for the City to accept the same, are hereby waived and released. In lieu thereof, the City consents to Master Developer's transfer of Oquirrh Lake and its related improvements (along with the ongoing maintenance and operational responsibility therefor), to Daybreak Community Association, Inc., a Utah nonprofit corporation (the "Master Association").
- (b) Notwithstanding the foregoing waiver of the obligation to dedicate Oquirrh Lake to the City, Master Developer and the City agree that Oquirrh Lake shall remain open space and shall be managed, maintained, and operated by the Master Association as common area within Daybreak similar to Daybreak's other common area facilities and amenities.
- (c) Notwithstanding the foregoing waiver of the obligation to dedicate Oquirrh Lake to the City, or anything contained in the Parks and Open Space Agreement to the contrary, Master Developer's Park Requirement of 200 acres is hereby reduced by 85 acres, resulting in an amended Park Requirement of 115 acres, with no deficit. No additional Active Park dedications shall be required under Section 2(a)(3) of the Parks and Open Space Agreement in excess of the Park Requirement as amended hereby.
- (d) The City acknowledges Master Developer's completion of, and the City's acceptance of, Master Developer's Lake Plan (as of December 13, 2007) concerning Oquirrh Lake as contemplated by, and in satisfaction of, the applicable provisions of Section 2(a)(3) and 2(a)(3)(i) and 6(b) of the Parks and Open Space Agreement. In managing Oquirrh Lake, the Master Association is not bound by the Lake Plan.
- (e) The City and Master Developer acknowledge and agree that Master Developer's designation of Oquirrh Lake as community common area open space (to be owned and managed by the Master Association as such), satisfies the Entitlement Approvals with respect the regional park requirement set forth therein, as contemplated by Section 2(c) and 12(b) of the Parks and Open Space Agreement.

- (f) The City and Master Developer acknowledge and agree that, except as expressly amended hereby, the terms, conditions, rights and obligations set forth in the Development Agreement (including, without limitation, in the Park and Open Space Agreement) are and shall remain in full force in effect.

3. Development Agreement and Entitlement Approvals. This Agreement amends and is incorporated into the Development Agreement, and any assignment of this Agreement, notice required hereunder, termination hereof, dispute hereunder, alleged waiver hereunder, or other matter relating to this Agreement shall be governed by the Development Agreement. In the event of a conflict between this Agreement and the Development Agreement, this Agreement shall govern. To the extent that this Agreement is inconsistent therewith, the Entitlement Approvals are hereby amended, and in the case of a conflict between this Agreement and the Entitlement Approvals, this Agreement shall govern.

4. Miscellaneous.

(a) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby, and each such other term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law so long as the remainder of the Agreement substantially provides the relative benefits and burdens bargained for by Master Developer and the City in this Agreement.

(b) Entire Agreement. This Agreement and the Development Agreement (and the amendments thereto) contain the entire agreement between the parties respecting the matters herein set forth and supersede all prior agreements, written or oral, between the parties respecting such matters. Any amendments or modifications hereto in order to be effective shall be in writing and executed by the parties hereto.

(c) Headings. Headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

(d) Counterparts. This Agreement may be executed in counterparts, each of which is fully effective as an original and all of which together constitute one and the same instrument.

(e) No Third-Party Rights. The obligations of Master Developer and the City set forth in this Agreement do not create any rights in or obligations to any other persons or parties except to the extent otherwise expressly provided herein.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first herein above written by and through their respective representatives who have been duly authorized and empowered to enter into this binding Agreement.

“City”

ATTEST:

Anna M. Wust
City Recorder



SOUTH JORDAN CITY

By: Dawn R Ramsay
Name: DAWN R RAMSAY
Mayor

By: Gary L Whitcomb
Name: GARY L WHITCOMB
City Manager City Manager

By: Ryan Loose
Name: RYAN LOOSE
City Attorney

[Signatures continue on following page]

ATTEST:

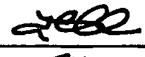


Corporate Secretary

"Master Developer"

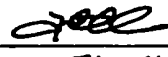
VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: Daybreak Communities LLC,
a Delaware limited liability company
Its: Project Manager


By: 
Name: TY MCCUTCHEON
Its: PRESIDENT & CEO

VP DAYBREAK INVESTMENT LLC,
a Delaware limited liability company

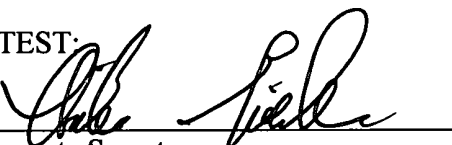
By: Daybreak Communities LLC,
a Delaware limited liability company
Its: Project Manager

By: 
Name: TY MCCUTCHEON
Its: PRESIDENT & CEO

VP DAYBREAK HOLDINGS LLC,
a Delaware limited liability company

By: 
Name: Brendan Bosman
Its: Authorized Signatory

ATTEST:



Corporate Secretary

“Master Developer”

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: Daybreak Communities LLC,
a Delaware limited liability company
Its: Project Manager

By: JCC
Name: TY MCCUTCHEON
Its: PRESIDENT & CEO

VP DAYBREAK INVESTMENT LLC,
a Delaware limited liability company

By: Daybreak Communities LLC,
a Delaware limited liability company
Its: Project Manager

By: JCC
Name: TY MCCUTCHEON
Its: PRESIDENT & CEO

VP DAYBREAK HOLDINGS LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

EXHIBIT A

[Attach legal description from MDA]

EXHIBIT A
LEGAL DESCRIPTION

A tract of land situated in Sections 18 and 19, Township 3 South, Range 1 West and Sections 13, 14, 15, 22, 23 and 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said tract being more particularly described as follows:

BEGINNING at a Salt Lake County monument marking the Northwest corner of said Section 13; thence North 89°57'24" East along the north line of said section for 2699.959 feet to a Salt Lake County monument marking the North quarter corner of said Section 13; thence continuing along said north line North 89°57'36" East for 2666.551 feet to a point marking the northwest corner of a parcel described in that certain Quit Claim Deed recorded in Book 6833 at Page 52, from which a Salt Lake County monument marking the Northeast corner of said Section 13 bears North 89°57'36" East – 33.000 feet; thence along the west and south lines of said parcel the following two (2) calls: (1) South 00°15'56" West for 33.000 feet; (2) thence North 89°57'36" East intersecting the east line of said Section 13 at 33.000 feet and continuing on along the south line of said parcel for a total of 33.178 feet; thence North 89°57'12" East parallel to and 33.00 feet perpendicular south of the north line of Section 18, Township 3 South, Range 1 West and along the south right of way of 10200 South for 2574.761 feet to an angle point; thence continuing parallel with said north line and along the said south right of way North 89°58'34" East for 278.761 feet to a point of intersection with the south right if way of 10200 South and an extension of the west line of the property conveyed to Oquirrh Shadows, L.C. as recorded in Book 8221 at Page 869; thence South 23°56'44" East passing the northwest corner of said property at 0.591 feet and continuing along the west line of said property for a total of 634.361 feet to an angle point; thence continuing along said west line South 29°39'04" East for 1012.874 feet to the northeast corner of a parcel conveyed to South Jordan City, recorded in Book 8401 at Page 5930; thence along the perimeter of said South Jordan City property the following four (4) calls: (1) South 60°20'55" West for 360.045 feet; (2) thence South 29°39'05" East for 496.250 feet; (3) thence North 33°11'06" East for 98.140; (4) thence with a curve to the right, having a radius of 1653.000 feet, a central angle of 10°12'46" (chord bearing and distance of North 38°17'57" East – 294.249 feet) and for an arc distance of 294.639 feet, said point being the southwest corner of South Jordan City and lying on the north right of way of 10400 South Street, said point also lying on the west line of said Oquirrh Shadows property, thence South 29°39'04" East along said west line for 2916.402 feet to the south east corner of said Oquirrh Shadows property, said point also lying on the east line of said Section 18; thence South 00°07'15" East along said east line for 967.184 feet to a Salt Lake County monument marking the northeast corner of Section 19; thence South 00°07'47" East along the west line of said Section 19 for 1326.083 feet to the northeast corner of the William B. Wray Jr. parcel, also known as Parcel 3 in Commitment for Title Insurance, Amendment No. 3, Order No. 00113350; thence along the north and west lines of said parcel 3 the following two (2) calls: (1) South 89°58'28" West for 1316.070 feet; (2) thence South 00°04'54" East for 1324.371 feet to a point on the North line of Country

Crossing Subdivision No. 5, recorded as Entry No. 7422489 in Plat Book 99-7P at Page 204; thence along the north and west lines of said subdivision, phase No.'s 5, 4 and 3 the following two (2) calls: (1) North 89°56'46" West for 1320.153 feet; (2) thence South 00°01'42" West for 2609.121 feet to the southwest corner of said Country Crossing Subdivision No. 3, said point also lying on the north right of way of 11800 South Street; thence along said north right of way line the following three (3) calls: (1) North 89°52'04" West for 2642.116 feet; (2) thence North 89°58'42" West for 2677.945 feet; (3) thence North 89°58'44" West for 2677.394 feet to a point of intersection of the north right of way line of said 11800 South Street and the east line of Sunstone Village No. 1 Subdivision, recorded as Entry No. 7973084 in Plat Book 2001P at Page 224, said point also lying North 00°00'42" East – 40.000 feet from a Salt Lake County monument marking the southwest corner of Section 24, Township 3 South, Range 2 West; thence along the east, north and west lines of phases No. 1 and 2 the following three (3) calls: (1) North 00°00'42" East for 2360.900 feet to the northeast corner of said Sunstone Village No. 1; (2) thence South 89°56'12" West for 1815.000 feet to the northwest corner of said Sunstone Village No. 2; (3) thence South 00°00'42" West for 783.900 feet to a point of intersection of the west line of said Sunstone Village No. 2 and the northeast corner of a 20 acre land swap; thence along the north and west lines of said 20 acre land swap the following two (2) calls: (1) South 89°56'12" West for 550.000 feet; (2) thence South 00°00'42" West for 1577.000 feet to a point on the north right of way line of said 11800 South Street; thence along said north right of way line the following four (4) calls: (1) South 89°56'12" West for 282.340 feet; (2) thence South 89°56'14" West for 2647.809 feet; (3) thence North 89°49'08" West for 2644.258 feet; (4) thence North 89°49'44" West for 1322.052 feet; thence North 00°02'03" East along the west line of the east half of the southwest quarter of section 22 for 2605.415 feet to the northwest corner of the east half of the southwest quarter of said Section 22; thence North 89°47'52" West along the north line of said southwest quarter for 1320.211 feet to a Salt Lake County monument marking the west quarter corner of said Section 22; thence North 00°03'55" East along the west line of said Section 22 for 2645.133 feet to a Salt Lake County monument marking the southwest corner of Section 15; thence North 00°14'20" West along the west line of said Section 15 for 12.748 feet to a point on the east right of way of Highway 111; thence along said east right of way line the following two (2) calls: (1) North 20°34'34" East for 618.785'; (2) thence with a curve to the left, having a radius of 2934.930 feet, a central angle of 18°11'53" (chord bearing and distance of North 03°16'41" East – 928.261 feet) and for an arc distance of 932.174 feet to a point of intersection with said east right of way and the south line of the Trans Jordan Landfill property, recorded as Entry No. 5683985 in Book 6826 at Page 293, from which the southwest corner of said property bears South 89°55'33" West – 2.095 feet; thence North 89°55'33" East along the south line of said landfill property for 4347.905 feet to the southeast corner; thence along the east and northerly boundary of said landfill property the following fourteen (14) calls: (1) North 00°04'27" West for 1075.580 feet; (2) thence North 70°32'11" West for 679.750 feet; (3) thence North 32°28'51" West for 429.340 feet; (4) thence North 25°09'37" West for 219.480 feet; (5) thence North 54°23'20" West for 67.210 feet; (6) thence North 71°54'33" West for 83.160 feet; (7) thence South 87°43'11" West for 366.060 feet; (8) thence South 71°57'46" West for 162.800 feet; (9) thence South 84°04'01" West for 113.990 feet; (10) thence North 87°25'43" West for

89.260 feet; (11) thence North 79°38'44" West for 107.140 feet; (12) thence North 72°57'41" West for 348.270 feet; (13) thence North 78°14'53" West for 465.783 feet; (14) thence South 89°55'33" West for 1887.661 feet to a point on said east right of way of Highway 111; thence along said east right of way the following four (4) calls: (1) North 06°31'26" West for 48.941 feet; (2) thence North 00°48'48" West for 251.250 feet; (3) thence North 06°31'26" West for 687.100 feet to a found Utah Department of Transportation right of way marker; (4) thence with a curve to the right, having a radius of 5654.580 feet, a central angle of 05°38'46" (chord bearing and distance of North 03°42'03" West – 556.992 feet) and for an arc distance of 557.218 feet to a point of intersection of the said east right of way and the south right of way of the Denver and Rio Grande Railroad, recorded in Book 5381 at Page 373 ; thence leaving Highway 111 and along said Denver and Rio Grande south right of way the following four (4) calls: (1) North 87°56'32" East for 525.105 feet; (2) thence with a curve to the right, having a radius of 5679.650 feet, a central angle of 02°07'45" (chord bearing and distance of North 89°00'25" East - 211.050 feet) and for an arc distance of 211.062 feet; (3) thence South 89°55'43" East for 6588.936 feet; (4) thence North 56°54'49" East for 242.927 feet to a point of intersection with said south right of way and the north line of Section 14, Township 3 South, Range 2 West; thence South 89°55'21" East along the north line of said section for 512.274 feet to a Salt Lake County monument marking the north quarter corner of said Section 14; thence South 89°55'04" East continuing along said north line for 761.295 feet to the northwest corner of the Utah Power and Light parcel recorded in Book 4362 at Page 429; thence along the west and south lines of said U.P & L. parcel the following two (2) calls: (1) South 00°02'50" West for 940.000 feet; (2) thence South 89°55'04" East for 1890.000 feet to the southeast corner of the Utah Power and Light parcel recorded in Book 4358 at Page 302, said point also lying on the east line of said Section 14; thence North 00°02'50" East along said east line for 940.000 feet to the POINT OF BEGINNING

Containing 189,265,768.079 Square feet or 4344.9442 Acres

Less and Except

A tract of land located in the west half of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said tract being more particularly described as follows:

Commencing at the south quarter corner of said Section 24; thence North 00°08'33" East along the east line of said west half for 362.40 feet to the POINT OF BEGINNING, said point marking the south east corner of a tract of land recorded in Book 5015 at Page 420; thence North 37°29'42" West for 4399.260 feet to a point on the west line of said Section 24; thence North 00°00'12" East along said west line for 410.687 feet to a point, from which the northwest corner of said Section 24 bears North 00°00'12" East – 1020.943 feet; thence South 37°29'42" East for 4400.894 feet to a point on the east line of said west half; thence South 00°08'33" West for 409.393 to the POINT OF BEGINNING.

Containing 25.2530 Acres.

Less and Except

A tract of land located in the northeast quarter of Section 23, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said tract being more particularly described as follows:

Commencing at the northeast corner of said Section 23; thence South 89°58'54" West along the north line of said section for 791.000 feet to the POINT OF BEGINNING; thence South 37°29'42" East for 1299.415 feet to a point on the east line of said Section 23, from which the northeast corner of said section bears North 00°00'12" East – 1031.220 feet; thence South 00°00'12" West along said east section line for 180.702 feet; thence North 37°29'42" West for 1527.114 feet to a point on the north line of said Section 23; thence North 89°58'54" East along the north line of said section for 138.608 feet to the POINT OF BEGINNING.

Containing 3.5689 Acres.

Less and Except

A tract of land traditionally described as the South 80 rods of Section 14, Township 3 South Range 2 West, Salt Lake base and Meridian, said tract being more particularly described as follows:

BEGINNING at a Salt Lake County monument marking the southeast corner of said Section 14; thence South 89°58'54" West along the south line of the section for 2647.919 feet to a Salt Lake County monument marking the south quarter corner of said Section 14; thence South 89°58'44" West continuing along the south line of said section for 2648.752 feet to a Salt Lake County monument marking the southwest corner of said Section 14; thence North 00°02'40" West along the west line of said section for 1325.317 feet; thence South 89°51'12" East for 5298.808 feet to a point on the east line of said section; thence South 00°02'52" West along the east line of said section for 1309.930 feet to the POINT OF BEGINNING.

Containing 160.2445 Acres.

Less and Excepting

A parcel of land located in the north half of Sections 14 and 15, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said parcel owned by the Denver and Rio Grande Railroad, said parcel being more particularly described as follows:

Commencing at the north quarter corner of said Section 14; thence North 89°55'21" West along the north line of said Section 14 for 146.669 feet to the POINT OF BEGINNING; thence the following three calls along the south right of way of said railroad: (1) South

56°54'49" West for 1884.169 feet; (2) thence with a curve to the right having a radius of 4397.183 feet, a central angle of 32°12'16" (chord bearing and distance of South 73°00'57" West – 2439.140 feet) and for an arc distance of 2471.547 feet; (3) thence South 89°07'05" West for 1572.971 feet to a point of intersection with the north line of the landfill property; thence along the north line of said landfill property the following two (2) calls: (1) thence North 78°14'54" West for 407.402 feet; (2) thence South 89°55'33" West for 1661.830 feet to a point of intersection with the north right of way of the railroad; thence with said north right of way line the following five (5) calls: (1) North 89°07'34" East for 1067.497 feet; (2) North 00°12'08" West for 87.624 feet; (3) thence North 89°07'05" East for 2563.638 feet; (4) thence with a curve to the left having a radius of 4197.183 feet, a central angle of 32°12'16" (chord bearing and distance of North 73°00'57" East – 2328.199 feet) and for an arc distance of 2359.132 feet; (5) thence North 56°54'49" East for 1578.118 feet to a point on the north line of said Section 14; thence South 89°55'21" East along the north line of said Section 14 for 365.605 feet to the POINT OF BEGINNING.

Containing 29.3158 acres.