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ADAM GARDINER
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 7 P.

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

VP Daybreak Operations LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, Utah 84009
Attention: Scott R. Kaufmann

(Tax Parcel # 26-24-200-023-0000, 26-24-257-002-0000, 26-24-257-001-0000)

26-24-200-022-0000

(Space Above for Recorder's Use Only)

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

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT ("Agreement") is made as of October 13, 2017, by and between **VP DAYBREAK OPERATIONS LLC**, a Delaware limited liability company ("**Assignor**"), and **SOUTH STATION APARTMENTS LLC**, a Utah limited liability company ("**Assignee**"); individually, a "**Party**", and collectively, the "**Parties**".

R E C I T A L S

A. Assignor and Assignee's predecessor-in-interest, **DESTINATION HOMES, INC.**, a Utah Corporation, and **KC GARDNER COMPANY L.C.**, a Utah limited liability company (collectively, "**Original Buyer**"), have entered into that certain Purchase and Sale Agreement dated as of April 20, 2017, as amended by that certain First Amendment to Purchase and Sale Agreement dated as of September 13, 2017, and as assigned by Original Buyer to Assignee by that certain Assignment and Assumption of Purchase and Sale Agreement dated as of October 10, 2017 (collectively, 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 **OM Enterprises Company**, a Utah corporation ("**OME**"), 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, supplemented and assigned from time to time, collectively, the "**MDA**").

C. Assignor is the successor in interest to **OME's** rights and obligations as "**Master Developer**" under the **MDA**.

D. The Property is subject to a "**Final Plat Map**" in accordance with Section 17.72.120.70 of the City's ordinances.

E. 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 and absolute 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 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.

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. 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 (as determined by a court of competent jurisdiction) a reasonable sum for out of pocket 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]

[PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT
– Signature Page – Assignor]

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

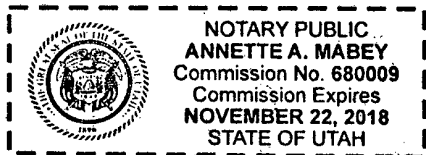
Its: Project Manager

By: 
Name: Ty McCutcheon
Title: President & CEO

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

On October 13, 2017, 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.



Annette A Mabey
Notary Public in and for said State

My commission expires: 11/22/2018

[SEAL]

[PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT
- Signature Page - Assignee]

ASSIGNEE:

SOUTH STATION APARTMENTS LLC,
a Utah limited liability company

By: *David S. Bailey*
Name: DAVID S BAILEY
Title: MANAGER

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

On October 13, 2017, personally appeared before me, a Notary Public, DAVID S. BAILEY, the MANAGER of SOUTH STATION APARTMENTS 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 SOUTH STATION APARTMENTS LLC, a Utah limited liability company.

WITNESS my hand and official Seal.



Sonia Cortez Perez
Notary Public in and for said State

My commission expires: 10.16.20

[SEAL]

[PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT
- Signature Page - Assignee]

ASSIGNEE:

SOUTH STATION APARTMENTS LLC,
a Utah limited liability company

By: *Christian Gardner*
Name: Christian Gardner
Title: manager

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

On October 13, 2017, personally appeared before me, a Notary Public, CHRISTIAN GARDNER
the MANAGER of SOUTH STATION APARTMENTS 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 SOUTH
STATION APARTMENTS LLC, a Utah limited liability company.

WITNESS my hand and official Seal.



Sonia Cortez Perez
Notary Public in and for said State UTAH

My commission expires: 10.16.20

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot C-115, DAYBREAK SOUTH STATION PLAT 1 SUBDIVISION, AMENDING LOT T4 OF THE KENNECOTT MASTER SUBDIVISION #1, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.