

**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

12637548
10/16/2017 3:37:00 PM \$20.00
Book - 10609 Pg - 3395-3400
ADAM GARDINER
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 6 P.

(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)

NOTICE OF RIGHT OF FIRST REFUSAL

NOTICE IS HEREBY GIVEN THAT VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company ("**Seller**"), and 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 April 20, 2017, as amended by that certain First Amendment to Purchase and Sale Agreement dated September 13, 2017, and as assigned by Original Buyer to SOUTH STATION APARTMENTS LLC, a Utah limited liability company ("**Buyer**") in that certain Assignment and Assumption of Purchase and Sale Agreement dated October 10, 2017 (collectively, the "**Agreement**"), regarding that certain real property more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**").

In the event Buyer determines to sell all or any portion of the Property prior to completion of the Mixed-Use Buildings (as defined in the Agreement) on the Property, or receives an acceptable bona fide offer to purchase (excluding any lease, easement, license or other similar agreement) from a party which is not an affiliate of Buyer, all or any portion of the Property prior to completion of the Mixed-Use Buildings on the Property which Buyer desires to accept (in both cases, an "**Offer**"), Buyer, before making any agreement to sell, shall give written notice to Seller stating Buyer's desire to sell and a copy of the Offer. Seller shall have the exclusive right for ten (10) calendar days after receiving such notice to elect to purchase the Property which is the subject of the Offer at the amount and upon the terms of the Offer by delivering written notice to Buyer within such ten (10) calendar day period (the "**Acceptance Notice**"). In the event Seller timely delivers an Acceptance Notice, Buyer and Seller shall, within forty-five (45) days of Seller's delivery of an Acceptance Notice, enter into a purchase agreement for the Property setting forth the terms of the Offer, with such additional terms and conditions as may be agreed to by Buyer and Seller (the "**Purchase Agreement**"). If Seller does not deliver an Acceptance Notice within such ten (10) calendar day period, Seller shall be deemed to have elected to not purchase the Property. In the event Seller does not desire to purchase the Property on the terms set forth in the Offer, Seller agrees to deliver to Buyer a written notice indicating that Seller is not exercising its rights as provided herein, provided, Seller's failure to deliver such notice shall not in any way extend such ten (10) calendar day period. If Seller fails to deliver an Acceptance Notice and Buyer thereafter conveys the Property to a third party, or if Seller delivers an Acceptance Notice but thereafter fails to enter into the Purchase Agreement within such forty-five (45) day period through no fault of Buyer or thereafter terminates the Purchase Agreement for any reason (other than a default by Buyer), Seller's rights hereunder shall be forever terminated. If any proposed sale as to which Seller did not exercise its right of first refusal as above provided is not consummated by Buyer within one hundred eighty (180) days after the Offer was delivered to Seller, or if prior to the closing of such transaction the purchase price is reduced by more than three percent (3%) of the purchase price set forth in the Offer or other terms become materially more favorable to the purchaser than as set forth in the Offer, then the

Property must be reoffered to Seller in the same manner provided above. In the event the amount of the Offer is not in the form of cash only, but includes any other valuable consideration, Seller may exercise its right to purchase by tendering the reasonable cash value of the other valuable consideration of the Offer. The foregoing right of first refusal does not apply to (a) any transfer by the Buyer to any entity which is controlled by, under common control with or controlling Buyer, (b) a lender providing a loan which is secured by a first deed of trust, mortgage or other security interest (a "**Mortgage**") against the Property (a "**Mortgage Lender**"), (c) the foreclosure, delivery of deed in lieu of foreclosure or other enforcement action taken by a Mortgage Lender (an "**Enforcement Action**"), or (d) the first sale of the Property following an Enforcement Action. Pursuant to the terms of the Purchase Agreement, Buyer's obligations run with the land, survive any sale of the Property and are binding upon Buyer and its successors and assigns.

[Signatures on Following Pages]

[NOTICE OF RIGHT OF FIRST REFUSAL – Signature Page – Seller]

SELLER:

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

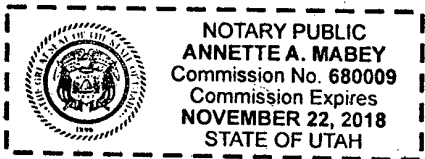
By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company
Its: Project Manager

By: 
Name: Ty McCutcheon
Title: President & CEO

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

On October 12, 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. Mabe
Notary Public in and for said State

My commission expires: 11/22/2018

[SEAL]

[NOTICE OF RIGHT OF FIRST REFUSAL – Signature Page – Buyer]

BUYER:

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]

[NOTICE OF RIGHT OF FIRST REFUSAL – Signature Page – Buyer]

BUYER:

SOUTH STATION APARTMENTS LLC,
a Utah limited liability company

By: *[Signature]*
Name: Chastin 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.

[Signature]
Notary Public in and for said State UTAH
My commission expires: 10.16.20

[SEAL]

**EXHIBIT A
TO NOTICE OF RIGHT OF FIRST REFUSAL**

LEGAL DESCRIPTION

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.