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11/22/2017 12:22:00 PM \$20.00  
Book - 10622 Pg - 5064-5069  
ADAM GARDINER  
Recorder, Salt Lake County, UT  
FIRST AMERICAN TITLE  
BY: eCASH, DEPUTY - EF 6 P.

WHEN RECORDED, MAIL TO:

CLAYTON PROPERTIES GROUP II, INC.  
dba Oakwood Homes  
206 E. Winchester Street  
Murray, Utah 84107

Tax Identification No. 26-23-326-010-0000

**ACCOMMODATION RECORDING ONLY**

This document is being recorded solely as a courtesy and an accommodation to the parties named herein. First American Title Insurance Company makes no representation as to the condition of title and hereby expressly disclaims any responsibility or liability for the content, validity, accuracy, sufficiency, or effects of the document.

**CONSTRUCTION EASEMENT AGREEMENT**

This *Construction Easement Agreement* (“**Agreement**”) is entered into by and between VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company (“**Grantor**”) and CLAYTON PROPERTIES GROUP II, Inc., a Colorado corporation dba Oakwood Homes (“**Grantee**”) effective as of the date set forth on the signature page. Grantee has or will purchase from Grantor certain real property located in South Jordan City, Salt Lake County. In order to facilitate Grantee’s development of such property, Grantee desires to obtain, and Grantor desires to provide, an easement for access and construction purposes, on the terms set forth herein, over the adjoining real property commonly known as Daybreak Village 7 Subdivision Amended Lot 100-A, and more particularly identified on Exhibit A hereto (“**Property**”).

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is acknowledged, Grantor and Grantee do hereby covenant and agree as follows:

1. **Grant of Easement.** Grantor does hereby grant and convey to Grantee and its agents, employees, contractors, and subcontractors a non-exclusive easement over the Property (“**Easement**”) for the purposes facilitating construction of new homes on the adjacent parcel or parcels owned by Grantee or its successors or assigns (“**Grantee’s Parcels**”). Without limitation, the Easement grants to Grantee the right, after notice to Grantor (which notice shall specify in reasonable detail the nature of Grantee’s proposed activities), to use mutually approved portions of the Property still owned by Grantor for Grantee to construct or install improvements on Grantee’s Parcels, for construction access, to grade portions of Grantee’s Parcels consistent with applicable entitlements (including, as reasonable under the circumstances, and subject to Grantee’s obligations under any applicable agreements with Grantor, to borrow soil from portions of the Property, or other undeveloped property owned by Grantor in close proximity to Grantee’s Parcels at locations mutually agreed to by the parties, and to deposit, without the need for engineering

specifications, fill material from portions of Grantee's Parcels onto portions of the Property or onto other undeveloped property owned by Grantor in close proximity to Grantee's Parcels), to reasonably store necessary construction materials or equipment related to Grantee's activities on Grantee's Parcels consistent with any applicable entitlements. Grantee's use of the Easement, and any portion of the Property, shall not interfere with Grantor's (or any other builder's) ongoing development work. Notwithstanding anything contained herein to the contrary, Grantor and Grantee hereby agree that the Easement, and this instrument, shall automatically terminate and become of no further force or effect (and shall terminate as an encumbrance on title to the Property without the further action of Grantor or Grantee), on that date which is the earlier to occur of: (a) Grantee acquiring fee simple title to the Property; or (b) eighteen (18) months from November 13, 2017. The parties agree to promptly execute, acknowledge, and deliver to each other such further reasonable recordable instrument(s) as may be reasonably requested by either party to confirm the termination of the Easement as herein described.

2. **Insurance.** In connection with Grantee's exercise of rights pursuant to the Easement, Grantee shall maintain in full force and effect at all times insurance in the amounts, types, and in compliance with the requirements set forth pursuant to Article 3.9 of that certain Development Services, Profit Participation, Marketing, and Sales Procedure Agreement by and between Grantor and Grantee dated as of May 1, 2017 together with all other insurance typically carried with respect to the nature of Grantee's activities on the Property pursuant to the Easement.

3. **Indemnification.** In connection with exercise of Grantee's rights under the Easement, Grantee (the "**Indemnitor**") shall keep the Property free from all liens arising out of its (and its respective officers, employees, agents, representatives or consultants) entry onto Property, or any portion thereof, and shall indemnify, defend, and hold Grantor (the "**Indemnitee**"), and Indemnitee's affiliates and officers, directors, shareholders, beneficiaries, members, partners, agents, employees and attorneys, and their respective successors and assigns (the "**Indemnitee Parties**"), harmless from and against any and all damage to the Property, or any portion thereof, injury to persons, suits, actions, legal or administrative proceedings, claims, losses, demands, damages, liabilities, costs and expenses (including attorneys' fees and costs) incurred by, or claimed against, any Indemnitee Party in connection with the exercise of Indemnitor's rights (or any of its officers, employees, agents, representatives or consultants or anyone acting under such Indemnitor's direction) under the Easement.

4. **General Provisions.**

4.1 **Attorneys' Fees.** If Grantor or Grantee institutes or threatens legal proceedings to determine or enforce legal rights arising hereunder or under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees (including fees and charges of legal assistants and other non-attorney personnel performing services under the supervision of an attorney), expert fees and costs, court costs, cost of investigation and other related expenses in connection therewith.

4.2 **No Rights in Public.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement to or for the general public or for any public purpose whatsoever. This Agreement shall be strictly limited to and for the purposes herein expressed. The provisions of this Agreement are for the exclusive benefit of Grantor and Grantee, their successors and assigns, and not for the benefit of any other third persons, and this Agreement shall not be deemed to have conferred any rights upon any other third person.

4.3 **Notices.** All notices, requests and other communications hereunder must be made in writing and delivered by (i) personal service or overnight delivery service (such as Federal Express), with a written receipt, or (ii) sent by registered or certified mail, in a sealed envelope, postage prepaid, return receipt requested or (iii) by telecopy, if confirmed in writing sent in the

manner described in the preceding clauses (i) or (ii) and addressed as to the parties at the address set forth on the signature page. Any such notice personally served or delivered overnight will be deemed given when received and any such notice by mail will be deemed to have been received by the addressee seventy-two (72) hours after posting in the United States mail and any notice sent by telecopy will be deemed given on the date of receipt, provided it is confirmed by a copy sent by another method permitted hereunder within twenty-four (24) hours after being telecopied. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**4.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict of laws principles.

**4.5 Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of such provision and this Agreement shall not be affected thereby, and each other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**4.6 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of Grantor and Grantee, their respective heirs, executors, administrators, successors and assigns.

**4.7 Further Assurances.** Grantee will, whenever and as often as it shall be requested so to do by Grantor, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Agreement.

**4.8 Entire Agreement.** This Agreement comprises the entire agreement with respect to the Easement and other matters described herein.

**4.9 Recordation.** This Agreement may be recorded against the Property.

*[Signature Page Follows]*

[Oakwood Homes – Construction Easement – Grantor’s Signature Page]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement effective the 13<sup>th</sup> day of November, 2017.

**GRANTOR:**

VP DAYBREAK OPERATIONS LLC,  
a Delaware limited liability company

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

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

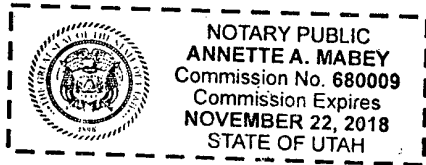
Address for Notice:

VP Daybreak Operations  
11248 Kestrel Rise Road, Suite 201  
South Jordan, Utah 84009  
Attn: Ty McCutcheon  
[tmccutcheon@daybreakcommunities.com](mailto:tmccutcheon@daybreakcommunities.com)

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

On November 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. Mabe*  
Notary Public in and for said State

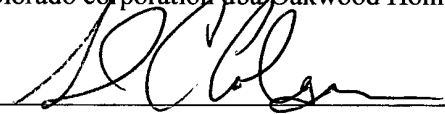
My commission expires: 11/22/2018

[SEAL]

[Oakwood Homes – Construction Easement – Grantor’s Signature Page]

**GRANTEE:**

**Clayton Properties Group II, Inc.,**  
a Colorado corporation dba Oakwood Homes

By:   
Samuel Colgan, Assistant Secretary

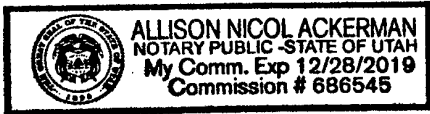
Address for Notice:

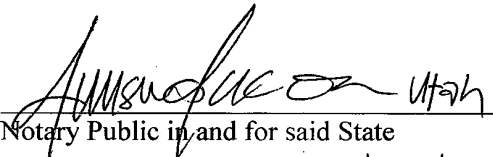
Clayton Properties Group II, dba Oakwood Homes  
206 E. Winchester Street  
Murray, Utah 84107  
Attn: Samuel Colgan  
scolgan@oakwoodhomesco.com

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

On November 13<sup>th</sup>, 2017, personally appeared before me, a Notary Public,  
Samuel Colgan, the Assistant Secretary of CLAYTON  
PROPERTIES GROUP II, INC., a Colorado corporation dba Oakwood Homes, personally known or  
proved to me to be the person whose name is subscribed to the above instrument who acknowledged  
to me that he/she executed the above instrument on behalf of CLAYTON PROPERTIES GROUP II,  
INC., a Colorado corporation dba Oakwood Homes.

WITNESS my hand and official Seal.



  
Notary Public in and for said State

My commission expires: 12/28/2019

[SEAL]

**EXHIBIT A**

**Legal Description**

LOT 100-A OF THE DAYBREAK VILLAGE 7 SUBDIVISION AMENDED, AMENDING LOT 100 OF THE KENNECOTT DAYBREAK VILLAGE 7 SUBDIVISION AMENDING LOTS V7 AND T6 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED, recorded on November 8, 2017, as Entry No. 12654584, in Book 2017P, at Page 307 of the Official Records of Salt Lake County, Utah.

Tax Id No: 26-23-326-010-0000