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RASHELLE HOBBS
Recorder, Salt Lake County, UT
STEWART TITLE INS AGCY OF UT
BY: eCASH, DEPUTY - EF 10 P.

WHEN RECORDED, RETURN TO:

Holland & Hart LLP
Attention: Carl W. Barton
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101

CONSTRUCTION IMPACTS AND NEGATIVE EASEMENT

This CONSTRUCTION IMPACTS AND NEGATIVE EASEMENT AGREEMENT (“*Agreement*”), dated February 11 , 2020 (“*Effective Date*”), is made and entered between **DESTINATION HOMES, INC.**, a Utah corporation (the “*Grantor*”), and **ROSENDA ROCHA**, an individual (the “*Grantee*”). Grantor and Grantee are referred to herein individually as a “*Party*” and, collectively, as the “*Parties*.”

RECITALS:

A. Grantor is the owner of certain real property known as 11404 S. Regalstone Drive, South Jordan City, Utah, Parcel No.: 26-23-407-026, which consists of a single-family residential dwelling, more particularly described and depicted in the attached Exhibit “A” (the “*Burdened Parcel*”).

B. Grantee is the owner of certain real property known as 5903 W. Lake Avenue, South Jordan City, Utah, Parcel No.: 26-23-254-004, sharing a property line with the Burdened Parcel, which consists of a single-family residential dwelling, more particularly described and depicted in attached Exhibit “B” (the “*Benefitted Parcel*”).

C. Grantee has constructed a 30” by 60” (9 sq. ft.) window (the “*Window*”) on Grantor and Grantee’s shared property line.

D. The construction of a window on a property line is prohibited by applicable building codes enforceable by the City of South Jordan, Utah.

E. The City of South Jordan has agreed to permit the construction and existence of the Window on the Property Line if Grantor grants to Grantee a non-exclusive, appurtenant, negative easement across a portion of the Grantor Property for the benefit of the Grantee Property, which shall restrict and prohibit Grantor from constructing any improvements or erecting any vertical structures above ground on, in, or above the easement area more particularly described and depicted in attached Exhibit “C” (“*Easement Area*”), subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the covenants contained in this Agreement and the mutual benefits to be derived herefrom, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **RECITALS AND DEFINITIONS.** The Recitals and the definitions set forth in them are hereby incorporated into this Agreement for all purposes.

2. **GRANT OF NEGATIVE EASEMENT/COVENANTS.** Subject to the terms and conditions of this Agreement and for the benefit of the Benefitted Parcel, Grantor hereby grants to Grantee a non-exclusive, appurtenant, negative easement across a portion of the Grantor Property, which is located adjacent to the Window, as indicated by crosshatch and described as the Easement Area, and hereby restricts

and prohibits Grantor from constructing any improvements or erecting any vertical structures above ground on, in, or above the Easement Area allowing emergency egress through the Window (the "**Easement**"). The Easement shall also be a grant of negative covenants. The Easement is granted subject to any and all easements, conditions, covenants, restrictions, and matters of record title or unknown title matters. The Grantee accepts said conveyance in its "as is" and "where is" condition, without any representation or warranty.

3. **NEGATIVE COVENANTS RUN WITH THE LAND.** The provisions hereof shall be negative covenants that burden the Burdened Parcel and run with the land. To the extent the Easement cannot be enforced as a negative covenant running with the Burdened Parcel or for any other reason, the Parties agree that the restrictions herein shall be enforceable as equitable servitudes.

4. **ENFORCEMENT ACTION.** Prior to filing any legal action or proceeding to enforce the Easement as against the other Party, the aggrieved Party shall provide written notice to the other Party that a breach of this Easement has occurred, in which event the breaching Party shall have a period of seventy-five (75) days, from the receipt of such written notice to cure any asserted violation. If the breaching Party fails to cure the stated violation, the aggrieved Party may proceed to enforce the Easement against the other Party through a legal action. A legal action shall be defined as any filing of a complaint with a court/tribunal with jurisdiction over the Easement Area.

5. **SUCCESSORS AND ASSIGNS.** The provisions hereof shall be binding upon any Party having any interest in all or any portion of the Burdened Parcel, its heirs, personal representatives, successors, assigns, lessees, sublessees, as well as occupants, employees, contractors, agents, invitees and licensees.

6. **MODIFICATION AND TERMINATION.**

a. This Easement may be amended by, and only by, a written agreement signed by all of the then current owners of the Properties and shall be effective only when recorded in the county in which the Easement Area is located.

b. Upon any change to the City of South Jordan building/fire code that renders the purpose of the Easement unnecessary, this Agreement shall automatically terminate, and such termination shall be self-effectuating, as of the date which the City of South Jordan building code change becomes effective. In that event, Grantor shall have the right, without Grantee's consent or signature, to record a termination or release of this Agreement and the Easement.

7. **WAIVER.** The failure to insist upon strict performance of any of the other terms and conditions contained herein shall not be deemed a waiver of any rights or remedies, and shall not be deemed a waiver of any subsequent breach or default in the performance, or other terms and conditions contained herein.

8. **ATTORNEY'S FEES; GOVERNING LAW.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the substantially prevailing Party shall be entitled to recover its reasonable attorneys' fees, and any other fees and costs incurred in the

action or proceeding, including appeals, in addition to any other relief to which such Party may be entitled. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

9. **TEMPORARY OBSTRUCTIONS.** Grantor may, from time to time on a temporary basis, erect a ladder or construction equipment or other temporary obstruction that limits or impairs the free and unimpeded use of the Easement Area, but in no event shall it obstruct full and unimpeded access to the Window.

10. **NOTICE.** Each Notice to be provided or given hereunder must be in writing (in some instances in this Agreement the words “written Notice” or “notice in writing” may be used and in others simply the word “Notice” may be used; no inference is to be drawn therefrom as all Notices must be in writing) and must be delivered or provided in one of the following methods:

a. (i) certified mail, return receipt requested, postage pre-paid and addressed to the Party to whom such Notice is intended to be delivered; (ii) delivery by nationally recognized overnight delivery service (such as Federal Express); or (iii) personal delivery to the addressee by courier or other means of hand delivery; or (iv) electronic mail communication directed to the email address for such individual set forth below or as otherwise described below and any such notice shall be deemed delivered and received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested function, as available, return email, or other written acknowledgement). Notice delivered by certified mail pursuant hereto shall be effectively given and received on the third (3rd) business day following deposit of the same in the United States Mail, postage pre-paid, addressed properly to the individual to whom such notice is intended. Notice by overnight delivery service shall be effectively given and received upon delivery (or attempted delivery, if delivery is refused or cannot be made because the address of the recipient changed and the Party sending the notice is not aware of the address change) of the same with such delivery service, with all postage pre-paid, addressed properly to the Party to whom such notice is intended. Notice by personal delivery shall be effectively given and received upon acceptance thereof by (or, if delivery is refused, upon attempted delivery to) the addressee as confirmed in writing by a receipt executed by and retained by the Party delivering such Notice. Any Party, and any individual described in the preceding sentences, may from time to time by Notice as herein provided, designate a different address to which Notices to it shall be sent.

b. To Grantor:

Destination Homes, Inc

Attn: John B. Warnick-VP of land

67 S. Main Street

Layton, Utah, 84041

c. To Grantee:

Rosenda Rocha

5903 W. Lake Avenue,

South Jordan City, Utah 84009

11. **SEVERABILITY.** If any term or provision of this Easement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Easement 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 Easement shall be valid and shall be enforced to the extent permitted by law.

12. **CAPTIONS AND HEADINGS.** The captions and headings in this Easement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, Easements, conditions or agreements contained herein.

13. **CONSTRUCTION.** In construing the provisions of this Easement 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.

14. **RECORDATION.** This Easement shall be recorded against the Burdened Parcel for the benefit of the Benefitted Parcel in the office of the Salt Lake County Recorder.

15. **COUNTERPARTS.** This Easement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

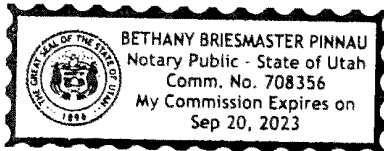
GRANTOR:

DESTINATION HOMES, INC,
a Utah corporation

Carter Owens
By: Carter Owens
Its: CEO

STATE OF UTAH)
 : ss
COUNTY OF DAVIS)

The foregoing instrument was signed and acknowledged before me on 2/11/2020, by Carter Owens, CEO, of Destination Homes, Inc., a Utah corporation.



Bethany B. Pinnau

NOTARY PUBLIC
Residing at: Layton, UT
My Commission Expires: Sept 20, 2023

GRANTEE:

ROSENDA ROCHA,
an individual

Signed: Rosenda Rocha

Name: Rosenda Rocha

Rosendo Rocha

RR

STATE OF UTAH)
 : SS
COUNTY OF Salt Lake)

The foregoing instrument was signed and acknowledged before me on Feb. 17, 2020, by
ROSENDA ROCHA, an individual.

Rosendo Rocha

RR

Beth B. Pinnau

NOTARY PUBLIC

Residing at: 67 S. Main St.

My Commission Expires: Sept. 20, 2023

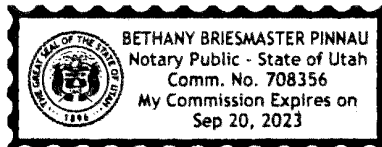


EXHIBIT "A"
Legal Description of the Burdened Parcel

Lots 105 DAYBREAK SOUTH MIXED USE MULTIFAMILY #1, Amending Lot M-101 and P-128 of The Daybreak Lake Avenue from Mountain View Corridor to 6000 West Subdivision, according to the official plat thereof; on file and of record in the office of the Salt Lake County Recorder, State of Utah.

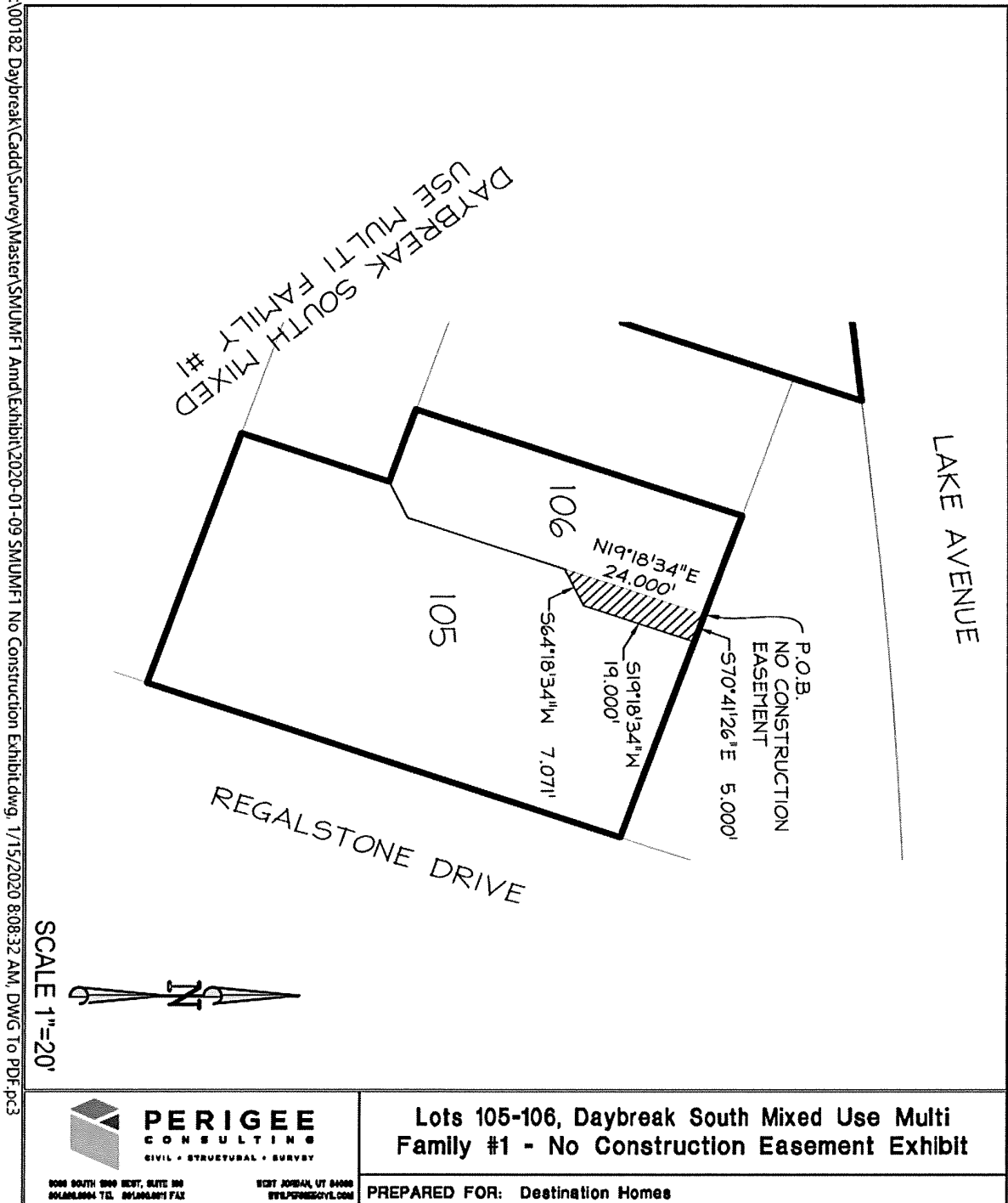
(Parcel No.: 26-23-407-026)

EXHIBIT "B"
Legal Description of the Benefitted Parcel

Lots 106 DAYBREAK SOUTH MIXED USE MULTIFAMILY #1, Amending Lot M-101 and P-128 of The Daybreak Lake Avenue from Mountain View Corridor to 6000 West Subdivision, according to the official plat thereof; on file and of record in the office of the Salt Lake County Recorder, State of Utah.

(Parcel No.: 26-23-254-004)

EXHIBIT "C"
Description and Depiction of Easement Area



Lots 105-106, Daybreak South Mixed Use Multi Family #1 - No Construction Easement Exhibit

PREPARED FOR: Destination Homes

EXHIBIT "C"
Description and Depiction of Easement Area (cont.)

Beginning at the North Corner of Lot 105 of the Daybreak South Mixed Use Multi Family #1 subdivision, said point lies North 89°56'12" East 685.924 feet along the Section Line and North 2671.605 feet from the South Quarter Corner of Section 23, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot 105 South 70°41'26" East 5.000 feet; thence South 19°18'34" West 19.000 feet; thence South 64°18'34" West 7.071 feet to the Northwesterly Line of said Lot 105; thence along said Northwesterly Line North 19°18'34" East 24.000 feet to the point of beginning.

Property contains 0.002 acres, 107 square feet.

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