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Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 7 P.

WHEN RECORDED RETURN TO:

James R. Haisley
Associate General Counsel
Office of General Counsel
University of Utah
201. S. Presidents Circle
Salt Lake City, Utah 84112

DECLARATION OF CERTAIN EXCLUSIVE RIGHTS

This Declaration of Certain Exclusive Rights ("**Declaration**") is made and entered into this 23 day of April, 2010, by KENNECOTT LAND RESIDENTIAL DEVELOPMENT COMPANY, a Delaware corporation, and OM ENTERPRISES COMPANY, a Utah corporation (collectively, "**Declarant**").

RECITALS:

- A. Declarant is the owner of certain real property within the community development commonly known as "Daybreak" and which is more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Daybreak Community**"). The real property owned or controlled by Declarant within the Daybreak Community on the date this Declaration is recorded in the Official Records of Salt Lake County, Utah is referred to herein as (the "**Restricted Property**").
- B. Pursuant to that certain Lease Agreement, dated April 23, 2010 ("**Lease**"), by and between Declarant's affiliate, DB MEDICAL I, LLC, a Utah limited liability company ("**Landlord**"), and the University of Utah, a body politic and corporate of the State of Utah, on behalf of its University of Utah Hospitals and Clinics ("**Tenant**"), Tenant is the lessee of certain real property which is a portion of the Restricted Property and is more particularly described in Exhibit B which is attached hereto and incorporated herein by this reference (the "**Property**").
- C. Declarant desires to subject the Restricted Property to certain restrictive covenants for the benefit of Tenant, on terms and conditions more particularly set forth in this Declaration.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares and agrees as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein and made a part hereof. Capitalized terms used herein and not defined herein shall have the meanings given to such terms in the Lease.
2. Grant of Exclusive Rights. Declarant hereby grants Tenant certain exclusive rights for developing and operating health care related facilities within the Restricted Property

from the date hereof to the first to occur of either: (i) discontinuance of Tenant's medical operations on the Property; or (ii) January 1, 2030 (the "Exclusivity Period"). During the Exclusivity Period, no other health care organization will be permitted to develop or operate a facility or provide health care related services within the Restricted Property, to the extent such facility or services would unreasonably compete with a facility or service offered or likely to be offered by Tenant, without the express and written approval of Tenant, which approval shall not be unreasonably withheld or delayed. A facility or service will be deemed "likely to be offered" by Tenant if Tenant commits in writing to begin providing such facility or service within thirty six (36) months after a request for approval of a use covered under this exclusivity provision from Declarant or Landlord is presented to Tenant and thereafter takes all steps reasonably required to fulfill such commitment. If Tenant fails to make such commitment within thirty (30) days after presentment of such request or thereafter fails to take such steps to fulfill such commitment or to begin providing such facility or service within such thirty six (36) month period, then Tenant's exclusive rights with respect to such facility or service will terminate. Specifically, Declarant agrees that, throughout the Exclusivity Period:

- (i) Tenant will be the exclusive provider of all Medical Facility Services within the Restricted Property. For purposes of this Declaration, "Medical Facility Services" are defined as hospitals, ambulatory surgical centers, imaging centers, oncology services, radiation therapy services, urgent care, and emergency services.
- (ii) Declarant will not permit any services typically provided by primary care physicians, mid-level providers (e.g., advanced nurse practitioners, physician assistants, midwives) and physical therapists ("Provider Services") by any regional or national healthcare entity employing health care providers at any location within the Restricted Property; provided that Declarant may permit primary care Provider Services by independent physicians, mid-level providers and physical therapists, who are not affiliated with any such regional or national healthcare entity and whose offices are located beyond a one mile radius of the intersection of Daybreak Parkway (114th South) and Grandville Avenue (Trax-line).
- (iii) Declarant will not permit any ancillary non-physician services (such as pharmacy or optometric services) within a 500 yard radius from the intersection of Daybreak Parkway (114th South) and Grandville Avenue (Trax-line).

3. Covenants Running with the Land. The terms and provisions of this Declaration shall constitute covenants running with the land, as a burden upon the Restricted Property (except for the Property), and shall be binding upon all owners and occupants thereof, and all owners of any interest in the Restricted Property and their successors and assigns, and may be enforced by Tenant and/or Declarant. In the event of a breach of the exclusive rights granted to Tenant above, the enforcing party shall be entitled to pursue any remedy available at law or in equity, including an action for injunctive relief.

4. Term; Method of Termination. Unless earlier terminated in accordance with the terms and conditions hereof, this Declaration shall continue in full force and effect until January 1, 2030. This Declaration may otherwise be terminated or amended at any time if such termination or amendment is approved by the affirmative written consent of Tenant and is recorded in the Official Records of Salt Lake County, Utah.

5. Effect of Waiver or Breach or Failure to Enforce. No waiver of a breach of any of the covenants, conditions, or restrictions herein shall be construed to be a waiver of any other breach of the same or other covenants, conditions or restrictions; nor shall failure to enforce any one of such restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

6. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

7. Captions and Titles. All captions, titles or headings in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof.

8. Governing Law. This Declaration shall be construed, interpreted and applied in accordance with the laws of the State of Utah.

9. No Dedication. This Declaration is not intended to, and shall not be construed to dedicate any property or any interest therein to the general public, nor shall this Declaration be construed to restrict the use and/or development of the Restricted Property and/or the Property, except as specifically set forth herein.

10. Survival. This Declaration shall survive and not be affected by Tenant's acquisition of fee title to the Property and the termination of the Lease in connection with such acquisition.

11. Attorneys' Fees. If an action is commenced to interpret or enforce any of the terms of this Declaration or because of a breach of this Declaration, the losing party shall pay the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment, and including all such fees, costs, and expenses incurred with respect to appeals, arbitrations, and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which such fees, costs, and expenses were incurred.

[Signature on Next Page]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above.

**KENNECOTT LAND RESIDENTIAL
DEVELOPMENT COMPANY,**
a Delaware corporation

By: Scott R. Kaufmann
Name: SCOTT R. KAUFMANN
Title: Vice President Commercial Development

OM ENTERPRISES COMPANY,
a Utah corporation

By: Scott R. Kaufmann
Name: SCOTT R. KAUFMANN
Title: Vice President Commercial Development

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

The foregoing instrument was acknowledged before me this 23rd day of April, 2010, by Scott Kaufmann, the Vice President of Kennecott Land Residential Development Company.



Kristie Swain
Notary Public

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

The foregoing instrument was acknowledged before me this 23rd day of April, 2010, by Scott Kaufmann, the Vice President of OM Enterprises Company.



Kristie Swain
Notary Public

Exhibit A

Legal Description of the Daybreak Community

That certain real property located in Salt Lake County, Utah and described as Kennecott Master Subdivision #1 recorded March 26, 2003 as Entry No. 8581557 in Book 8762 at Page 7103 of the Official Records of the Salt Lake County, Utah.

PART OF
TAX PARCEL NO. 26-14-100-020-0000

Exhibit A - 1

Exhibit B

Legal Description of Property

BEING A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 24,
TOWNSHIP 3 SOUTH, RANGE 2 WEST, OF THE S.L.B.M., BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS C-101, C-102, C-104 AND C-105, OF KENNECOTT DAYBREAK UNIVERSITY
MEDICAL #1 AMENDING A PORTION OF LOT T4 OF THE KENNECOTT MASTER
SUBDIVISION #1 AMENDED AS RECORDED AT THE SALT LAKE COUNTY
RECORDERS OFFICE, IN BOOK 2009P AT PAGE 182 AND AS ENTRY NUMBER
10861027.

TAX PARCEL NOS.

C101	26-24-405-001-0000
C102	26-24-405-002-0000
C104	26-24-405-005-0000
C105	26-24-405-004-0000