

8-377

When Recorded, Return to:

Kennecott Land Company
Attn: Senior Associate, Contracts
and Risk Management
4700 West Daybreak Parkway
South Jordan, UT 84009

12312668
07/01/2016 10:03 AM \$401.00
Book - 10448 Pg - 4386-4393
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: SRA, DEPUTY - WI 8 P.

**AMENDMENT NO. 1
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GARDEN PARK VILLAGE**

THIS AMENDMENT NO. 1 TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GARDEN PARK VILLAGE (this "**Amendment**") is made and executed as of June 14, 2016 by KENNECOTT LAND COMPANY, a Delaware corporation, as successor-in-interest to Daybreak Development LLC, a Delaware limited liability company (formerly known as Kennecott Land Residential Development Company, a Delaware corporation) ("**Declarant**").

RECITALS:

A. Certain real property in Salt Lake County, Utah, more particularly described in Exhibit A, was subjected to certain covenants, conditions and restrictions pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Garden Park Village recorded on October 16, 2009, as Entry No. 10818988, in Book 9771, Pages 6207-6261, in the Salt Lake County Recorder's Office (the "**Declaration**").

B. Declarant under the Declaration hereby adopts this Amendment and certifies that all of the requirements to amend the Declaration have been satisfied, Declarant is in control of the Association, and this amendment is adopted prior to the termination of the Declarant Control Period pursuant to the authority granted in Section 16.5 of the Declaration and in the Bylaws (as defined in the Declaration).

NOW, THEREFORE, Declarant, for good and valuable consideration, the adequacy of which is hereby acknowledged, hereby amends the Declaration as follows:

AMENDMENT:

1. **Definitions.** Except to the extent otherwise defined herein, all capitalized terms used in this Amendment shall have the meaning ascribed thereto in the Declaration.

2. **Deleted Provision.** Section 10.12 of the Declaration is hereby deleted in its entirety.

3. **Added Provisions.** Article 16 of the Declaration is hereby amended by adding the following as new Section 16.13:

“16.13. Dispute Resolution and Limitation on Litigation/Covenant Not to Sue.

(a) **Litigation.** Declarant, the Association, all Owners, and all other persons or entities subject to this Declaration (collectively, the “**Bound Party(ies)**”) agree to encourage the amicable resolution of disputes involving the Project or any portion thereof, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that any and all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Project, including by way of illustration but not limitation any and all claims, grievances or disputes arising out of or relating to the construction or design of improvements within the Project by Declarant, any builder, or any director, officer, manager, partner, employer, contractor, design professional, consultant, subcontractor or agent of Declarant, any builder, or any other person or entity involved in the original construction of the Units or any common area (collectively, a “**Declarant Party**”), or arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws or the Articles (individually a “**Claim,**” and collectively “**Claims**”) shall be resolved by good faith negotiation, and if negotiations fail, then (upon compliance with subsections (b) – (e) below as to Claims against a Declarant Party), by mediation, and if mediation fails, then by binding arbitration in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim. The Bound Parties hereby waive their rights to a jury trial with respect to any Claim. Notwithstanding the foregoing, none of the following shall be subject to the provisions of this Section 16.13: (i) any suit by the Association to collect assessments, to obtain a temporary restraining order or other emergency relief as a court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the governing documents of the Association and the Project, including, without limitation, this Declaration, the Master Residential Declaration, the Covenant, the Articles, and the Bylaws (the “**Governing Documents**”); (ii) any suit between Owners which does not include Declarant or the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Governing Documents; (iii) any suit in which any indispensable party to such suit is not bound by this Declaration; and (iv) any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required by Section 16.13(b) below, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may be reasonably necessary to comply with this Section 16.13.

(b) **Notice and Opportunity to Cure.** Anything to the contrary notwithstanding, each Bound Party hereby covenants and agrees that no mediation, arbitration, or litigation of a Claim may be commenced by a Bound Party against a Declarant Party until the following has been complied with: the Bound Party shall give Declarant written notice which shall include a detailed description of any and all Claims of the Bound Party, the

date upon which each such Claim was first discovered, and dates and times when the Association, Owner, or their agent, as applicable, will be available during ordinary business hours, so that service calls or inspections by Declarant, or its agent, can be scheduled. In its sole discretion, Declarant shall be entitled to inspect the applicable property and cure the circumstances giving rise to such Claim(s). Nothing contained in this Section shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase or alter in any way Declarant's legal obligations to the Association or any Owner. Written notice delivered to Declarant shall be a condition precedent to any Bound Party's right to pursue any other remedies available to it at law or otherwise, including without limitation, mediation, arbitration or litigation of a Claim, until Declarant has had the reasonable opportunity to inspect and cure any claimed defect. During the term of any written warranty provided to the original Owner of a Unit by a Declarant Party, any conflict between the provisions of this Section and the warranty shall be resolved in favor of the warranty. The Declarant Parties shall not be liable for any general, special, or consequential damage, cost, diminution in value or other loss which the Association or any Owner may suffer as a result of any claimed defect in a Unit or common area which reasonably might have been avoided had the Association or the applicable Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the claimed defect. Nothing contained herein shall establish any contractual duty or obligation on the part of any Declarant Party to repair, replace or cure any claimed defect. The Owners' and the Association's continuing obligation under this covenant shall be binding upon all Owners and their successors and assigns. The Association and all Owners shall accept Declarant's reasonable measures to cure any claimed defect.

(c) Legal Opinion. Additionally, no mediation, arbitration, or litigation of a Claim may be commenced by the Association against Declarant or a Declarant Party which shall or may require the Association to incur or suffer attorneys' fees and costs until the Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to pursue such action, taking into account the anticipated costs and expenses, the options available to address the problems at issue, the likelihood of success on the merits of the Claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "**Claim Budget**");

(d) Approval of Owners. A copy of the opinion letter shall be provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision to pursue the subject action must be approved by Owners (excluding Declarant) who collectively hold at least seventy-five (75%) percent of the total votes in the Association; and

(e) Collection of Funds. The Association must collect funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Claim Budget.

If any Claims or actions falling within the scope of this Section 16.13 are filed without satisfying all of the requirements set forth above, such Claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs."

4. **Full Force and Effect**. Except to the limited extent expressly amended by this Amendment, the Declaration shall remain and continue in full force and effect in accordance with its terms.

5. **Incorporation by Reference**. The Recitals and Exhibits to this Amendment are hereby incorporated into this Amendment by this reference.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amendment as of the day and year first above written.

Declarant:

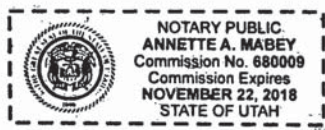
KENNECOTT LAND COMPANY,
a Delaware corporation

By : *Ty McCutcheon*
Ty McCutcheon,
Vice President Daybreak

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

On June 28, 2016 personally appeared before me, a Notary Public, Ty McCutcheon, Vice President Daybreak of KENNECOTT LAND COMPANY, a Delaware corporation 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 KENNECOTT LAND COMPANY, a Delaware corporation.

WITNESS my hand and official Seal.



Annette A. Mabey
Notary Public in and for said State

My commission expires: 11/22/2018

[SEAL]

Exhibit A

Legal Description

That certain real property located in the City of South Jordan, County of Salt Lake, State of Utah, being more particularly described as follows:

Lots 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, and 122 of "Kennecott Daybreak Village 4A Plat 1 Subdivision Amending Lot V2 of the Kennecott Master Subdivision # 1 Amended" recorded on February 25, 2009, as Entry No. 10631230, Book 2009P, at Page 27 of the Official Records of Salt Lake County, Utah.

Kennecott Daybreak Village 4A Plat 1 tax parcel nos.

101	26-24-226-002-0000	115	26-24-227-011-0000
102	26-24-226-003-0000	116	26-24-227-012-0000
103	26-24-226-004-0000	117	26-24-227-013-0000
104	26-24-226-005-0000	118	26-24-227-014-0000
105	26-24-227-020-0000	119	26-24-227-015-0000
106	26-24-227-019-0000	120	26-24-227-016-0000
107	26-24-227-002-0000	121	26-24-227-017-0000
108	26-24-227-003-0000	122	26-24-227-018-0000
109	26-24-227-004-0000		
110	26-24-227-005-0000		
111	26-24-227-006-0000		
112	26-24-227-007-0000		
113	26-24-227-008-0000		
114	26-24-227-010-0000		

AND

Lots 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, and 141 of "Amended Kennecott Daybreak Village 4A Plat 2 Subdivision" recorded on June 22, 2009, as Entry No. 10735633, Book 2009P, at Page 82 of the Official Records of Salt Lake County, Utah.

Kennecott Daybreak Village 4A Plat 2 tax parcel nos.

123	26-24-229-032-0000	133	26-24-229-021-0000
124	26-24-229-031-0000	134	26-24-229-019-0000
125	26-24-229-030-0000	135	26-24-229-018-0000
126	26-24-229-029-0000	136	26-24-229-017-0000
127	26-24-229-028-0000	137	26-24-228-007-0000
128	26-24-229-022-0000	138	26-24-228-008-0000
129	26-24-229-023-0000	139	26-24-228-009-0000
130	26-24-229-024-0000	140	26-24-228-011-0000

131 26-24-229-025-0000
132 26-24-229-026-0000

141 26-24-228-012-0000

AND

All of the real property described on that certain plat entitled "KENNECOTT DAYBREAK VILLAGE 4A PLAT 3 SUBDIVISION AMENDING LOTS V2 & T4 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED," recorded on November 20, 2009, as Entry No. 10843004, Book 2009P, at Page 166 of the Official Records of Salt Lake County, Utah.

AND

All of the real property described on that certain plat entitled "KENNECOTT DAYBREAK VILLAGE 4A PLAT 4 SUBDIVISION AMENDING LOTS V2 & T4 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED," recorded on November 1, 2011, as Entry No. 11271941, Book 2011P, at Page 139 of the Official Records of Salt Lake County, Utah.

AND

All of the real property described on that certain plat entitled "KENNECOTT DAYBREAK VILLAGE 4A PLAT 5 SUBDIVISION AMENDING LOTS V2 & T4 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED," recorded on February 8, 2012, as Entry No. 11329461, Book 2012P, at Page 14 of the Official Records of Salt Lake County, Utah.

AND

All of the real property described on that certain plat entitled "KENNECOTT DAYBREAK VILLAGE 4A PLAT 6 SUBDIVISION AMENDING LOT V2 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED AND LOTS 181-183 OF KENNECOTT DAYBREAK VILLAGE 4A PLAT 3 SUBDIVISION," recorded on September 4, 2013, as Entry No. 11718261, Book 2013P, at Page 175 of the Official Records of Salt Lake County, Utah.

AND

All of the real property described on that certain plat entitled "KENNECOTT DAYBREAK VILLAGE 4A PLAT 7 SUBDIVISION AMENDING LOTS V2 AND T4 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED AND PARCELS M AND N OF KENNECOTT DAYBREAK VILLAGE 4A MULTI FAMILY #1 SUBDIVISION AND PARCELS W AND X OF KENNECOTT DAYBREAK VILLAGE 4A PLAT 5 SUBDIVISION," recorded on January 9, 2015, as Entry No. 11973869, Book 2015P, at Page 6 of the Official Records of Salt Lake County, Utah.

AND

All of the real property described on that certain plat entitled "KENNECOTT DAYBREAK VILLAGE 4A PLAT 8 SUBDIVISION AMENDING LOT T4 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED," recorded on July 23, 2015, as Entry No. 12097822, Book 2015P, at Page 163 of the Official Records of Salt Lake County, Utah.

AND

All of the real property described on that certain plat entitled "KENNECOTT DAYBREAK VILLAGE 4A MULTI FAMILY #1 SUBDIVISION AMENDING PARCELS C, D, E, F, I AND J OF THE KENNECOTT DAYBREAK VILLAGE 4A PLAT 3 SUBDIVISION," recorded on December 30, 2009, as Entry No. 10869683, Book 2009P, at Page 195 of the Official Records of Salt Lake County, Utah.

AND

All of the real property described on that certain plat entitled "KENNECOTT DAYBREAK VILLAGE 4A MULTI FAMILY #2 SUBDIVISION AMENDING PARCELS O AND P OF KENNECOTT DAYBREAK VILLAGE 4A PLAT 4 SUBDIVISION AND AMENDING PARCELS U AND V OF KENNECOTT DAYBREAK VILLAGE 4A PLAT 5 SUBDIVISION," recorded on August 10, 2012, as Entry No. 11448429, Book 2012P, at Page 124 of the Official Records of Salt Lake County, Utah.

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