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

WHEN RECORDED, RETURN TO:

Kennecott Land Company  
4700 Daybreak Parkway, 3S  
South Jordan, UT 84095  
Attention: Senior Associate, Contracts  
and Risk Management

11CS 370762

**SUPPLEMENT TO COVENANT FOR COMMUNITY FOR DAYBREAK,**

**AND**

**SUPPLEMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR DAYBREAK VILLAGE,  
SUBMITTING ADDITIONAL PROPERTY  
(DAYBREAK APARTMENT VENTURE #1)**

**THIS SUPPLEMENT TO COVENANT FOR COMMUNITY FOR DAYBREAK,  
AND SUPPLEMENT TO AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR DAYBREAK VILLAGE,  
SUBMITTING ADDITIONAL PROPERTY (DAYBREAK APARTMENT VENTURE #1)**  
(this "Supplement") is made this 3<sup>rd</sup> day of ~~July~~, 2009, by **KENNECOTT LAND \* AUGUST**  
**COMPANY**, as founder under the Covenant for Community for Daybreak, recorded February  
27, 2004, as Entry No. 8989517, in Book 8950, beginning at Page 7722 (as amended and  
supplemented from time to time, the "Covenant"), and as declarant ("**Declarant**") under the  
Amended and Restated Declaration of Covenants, Conditions and Restrictions for Daybreak  
Village, recorded on December 30, 2005, as Entry No. 9598233, in Book 9237, beginning at  
Page 5395 (as amended and supplemented from time to time, the "**Declaration**") and is  
consented to by Kennecott Land Investment Company LLC, a Delaware limited liability  
company ("**KLIC**").

**RECITALS**

- A. Declarant executed and recorded the Covenant and Declaration, which documents shall collectively govern the certain aspects and uses of the development commonly known as "Daybreak" located in South Jordan, Utah.
- B. Kennecott Land Residential Development Company, a subsidiary of Declarant, has previously recorded that certain subdivision map entitled "Kennecott Daybreak Apartment Venture #1 Amending Lots V2 & T4 of the Kennecott Master Subdivision #1" which relates to the real property more particularly described on Exhibit A attached hereto (the "**Property**"). KLIC is the current owner of the Property.

- C. Declarant desires to submit and subject the Property to the Covenant and the Declaration, including, without limitation, the terms, conditions, covenants and restrictions thereof as they now exist or may hereafter be amended.

NOW, THEREFORE, Declarant hereby declares the following:

1. **Definitions.** Unless otherwise defined herein, all capitalized terms shall have the meaning assigned to them in the Declaration.
2. **Submission to Declaration and Covenant.** Pursuant to Section 5.2 of the Covenant and Section 15.1 of the Declaration, Declarant hereby submits and subjects the Property to the Covenant and the Declaration, including, without limitation, all terms, conditions, covenants, easements, restrictions, liens, charges, and assessments contained therein. KLIC consents to the submission and subjection of the Property to the Covenant and the Declaration.
3. **Additional Covenants, Conditions and Restrictions to Declaration.** Pursuant to Section 15.3 of the Declaration, any supplement that the Declarant records may add to, create exceptions to or otherwise modify the terms of the Declaration as it applies to the property described in the supplement in order to reflect the different character and intended use of such property. Accordingly, Declarant hereby declares that, notwithstanding any other provision in the Declaration to the contrary, the Property may be used as a residential apartment facility, with associated improvements and facilities, without compliance with any of the conditions, restrictions or requirements set forth in Section 7.1 of the Declaration, except for the second (2nd) sentence of the first (1st) paragraph of Section 7.1 and the last paragraph of Section 7.1 beginning with "In addition to . . ." and including subsections "(a)" through "(n)". Additionally, pursuant to Section 16.7 of the Declaration, Declarant hereby authorizes the Owner of the Property to use the name "Daybreak" and any derivative of such name in connection with the Property.
4. **Additional Covenants, Conditions and Restrictions to Covenant.** Pursuant to Section 5.16 of the Covenant, this Supplement is being recorded during the Founder Control Period and can be amended unilaterally by Declarant. Accordingly, Declarant hereby declares that, notwithstanding any other provision in the Covenant to the contrary, in no event shall the Property or the Owner of the Property be assessed or charged the Community Enhancement Fee (as defined in the Covenant).
5. **Cap on Fees and Assessments under Declaration and Covenant.** Declarant hereby declares that, notwithstanding any provision in the Declaration or the Covenant to the contrary, in no event shall the Property or the Owner of the Property be assessed or charged for any Common Expenses, Service Area Expenses, Base Assessments, Service Area Assessment, Special Assessments, Specific Assessments (as such terms are defined in the Declaration) or any other charges, assessments, fees or expenses referenced in Chapter 12 of the Declaration, or any charges, assessments, fees or expenses referenced in the Covenant (collectively, "**Total Fees and Assessments**"), in excess of the following amounts:

(a) Prior to receiving a certificate of occupancy (or similar certification) for the improvements on the Property from the applicable governmental authority ("**Certificate of Occupancy**"), the Total Fees and Assessments shall be zero;

(b) During the one (1) year period immediately following receipt of the Certificate of Occupancy ("**First Year**"), the Total Fees and Assessments shall not exceed an amount equal to \$16.67 (the "**Per Unit Basis**") per Unit within the Property (subject to any increase pursuant to the last paragraph of this Section 5), multiplied by fifty percent (50%);

(c) During the one (1) year period immediately following the First Year ("**Second Year**"), the Total Fees and Assessments shall not exceed an amount equal to the Per Unit Basis per Unit within the Property (subject to any increase pursuant to the last paragraph of this Section 5), multiplied by seventy percent (70%); and

(d) From and after the expiration of the Second Year, the Total Fees and Assessments shall not exceed an amount equal to the Per Unit Basis per Unit within the Property (subject to any increase pursuant to the last paragraph of this Section 5), multiplied by ninety percent (90%).

The foregoing Per Unit Basis is equivalent to one-third (1/3) of the current per Unit charge for all Common Expenses, Service Area Expenses, Base Assessments, Service Area Assessments, Special Assessments, Specific Assessments (as such terms are defined in the Charter, as defined below) and any other charges, assessments, fees or expenses referenced in Chapter 12 (collectively, the "**Comparative Per Unit Basis**") under that certain Community Charter for Daybreak executed by Kennecott Land Company, a Delaware corporation, recorded on February 27, 2004 as Entry No. 8989518 in Book 8950 at Page 7784 of Official Records of Salt Lake County, Utah (as amended and supplemented from time to time, the "**Charter**"). In making the calculations contemplated in paragraphs 5(b), 5(c) and 5(d) above, the Per Unit Basis may increase annually on each anniversary of the date hereof by the lesser of (a) the percentage increase, if any, in the Comparative Per Unit Basis for the applicable year as compared to the Comparative Per Unit Basis for the immediately preceding year, (b) the percentage increase, if any, in the Consumer Price Index - All Urban Consumers (CPI-U), U. S. City Average, All Items, Not Seasonally Adjusted (1982-84=100 Base) as issued by the U. S. Bureau of Labor Statistics (the "**CPI**") reported for the most recent month as of such adjustment date as compared to the CPI reported for the same month as of the immediately preceding adjustment date (or the date hereof for the adjustment on the first anniversary), and (c) five percent (5%) as compared to the Per Unit Basis for the immediately preceding year. If the CPI ceases to be published, is published less frequently or is altered in any material respect, then Declarant and Owner shall adopt, in their reasonable discretion, a substitute index or substitute procedure which reasonably reflects and monitors changes in consumer prices.


6. **Full Force and Effect.** The Covenant and the Declaration, as supplemented hereby, shall remain in full force and effect.
7. **Incorporation by Reference.** The Recitals and Exhibit to this Supplement are hereby incorporated into the Supplement by this reference.

**[Signatures on Next Page]**

IN WITNESS WHEREOF, as of this 3<sup>RD</sup> day of ~~July~~ <sup>AUGUST</sup>, 2009, Declarant has executed this Supplement, and KLIC has consented to the same.


**Declarant:**

KENNECOTT LAND COMPANY,  
a Delaware corporation

By   
Name: SCOTT R. KAUFMANN  
Title: VICE PRESIDENT

**KLIC:**

KENNECOTT LAND INVESTMENT  
COMPANY LLC, a Delaware limited liability  
company

By   
Name: W. DONN WATTE  
Title: PRESIDENT

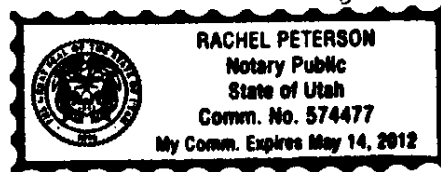
STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

On August 3, 2009 personally appeared before me, a Notary Public, Scott Kaufman, the vice president of **KENNECOTT LAND 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 **KENNECOTT LAND COMPANY**.

WITNESS my hand and official Seal.

Rachel Peterson  
Notary Public in and for said State

My commission expires: May 14, 2012



[SEAL]

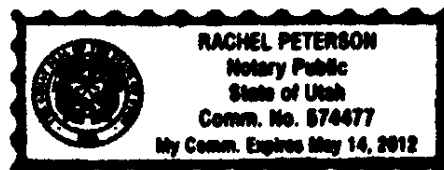
STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

On Aug. 3, 2009 personally appeared before me, a Notary Public, Don Whyte, the President of **KENNECOTT LAND INVESTMENT COMPANY LLC** 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 INVESTMENT COMPANY LLC**.

WITNESS my hand and official Seal.

Rachel Peterson  
Notary Public in and for said State

My commission expires: May 14, 2012



[SEAL]

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

Real property in the City of South Jordan, County of Salt Lake, State of Utah, described as follows:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 2 WEST SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING BEING NORTH 89°58'42" WEST - 2677.868 FEET BETWEEN THE SOUTHEAST CORNER AND THE SOUTH QUARTER CORNER OF SAID SECTION 24) AND RUNNING NORTH 89°58'42" WEST ALONG THE SOUTH LINE OF SECTION 24 FOR 1169.665 FEET; THENCE NORTH 00°01'18" EAST PERPENDICULAR TO SAID SECTION LINE FOR 2433.686 FEET TO THE POINT OF BEGINNING; THENCE NORTH 36°32'54" WEST FOR 98.922 FEET; THENCE NORTH 40°21'43" WEST FOR 75.177 FEET; THENCE NORTH 36°32'54" WEST FOR 384.067 FEET; THENCE NORTH 53°27'06" EAST FOR 1089.500 FEET; THENCE SOUTH 36°32'54" EAST FOR 434.202 FEET; THENCE WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 75.000 FEET, WITH A CENTRAL ANGLE OF 43°51'26" (CHORD BEARING AND DISTANCE OF SOUTH 14°37'12" EAST - 56.018 FEET) FOR AN ARC DISTANCE OF 57.409 FEET; THENCE WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 75.000 FEET, WITH A CENTRAL ANGLE OF 12°45'10" (CHORD BEARING AND DISTANCE OF SOUTH 13°41'06" WEST - 16.659 FEET) FOR AN ARC DISTANCE OF 16.693 FEET; THENCE WITH A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 235.640 FEET, WITH A CENTRAL ANGLE OF 13°56'01" (CHORD BEARING AND DISTANCE OF SOUTH 13°05'40" WEST - 57.164 FEET) FOR AN ARC DISTANCE OF 57.305 FEET; THENCE WITH A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 75.000 FEET, WITH A CENTRAL ANGLE OF 47°19'26" (CHORD BEARING AND DISTANCE OF SOUTH 29°47'23" WEST - 60.201 FEET) FOR AN ARC DISTANCE OF 61.947 FEET; THENCE SOUTH 53°27'06" WEST FOR 952.076 FEET TO THE POINT OF BEGINNING.

APN: 26-24-400-009-0000 and 27-19-100-006-0000