

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:

Daybreak Communities LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, UT 84009
Attention: Scott R. Kaufmann

12960734
4/2/2019 1:05:00 PM \$34.00
Book - 10766 Pg - 2594-2601
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 8 P.

Above Space for Recorder's Use

**PARTIAL ASSIGNMENT AND ASSUMPTION
OF MASTER DEVELOPMENT AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT ("Agreement") is made as of April 2, 2019, by and between **VP DAYBREAK INVESTMENTS LLC**, a Delaware limited liability company ("Assignor"), and **VP DAYBREAK DEVCO LLC**, a Delaware limited liability company ("Assignee"); individually, a "Party", and collectively, the "Parties".

RECITALS

A. VP Daybreak Investments LLC, a Delaware limited liability company ("Seller"), has entered into that certain Purchase and Sale Agreement with Assignee dated as of March 25, 2019 ("Purchase Agreement") regarding the purchase and sale of certain real property located in the City of South Jordan, County of Salt Lake, State of Utah, as more particularly described in **Exhibit A** attached hereto and incorporated herein ("Property"). The Property is within a planned development known as the "Kennecott Master Subdivision #1 Project" ("Project").

B. The Property and the Project are subject to that certain Master Development Agreement for the Kennecott Master Subdivision #1 Project dated March 18, 2003, by and between OM Enterprises Company, a Utah corporation ("OME"), and South Jordan City, a Utah municipal corporation ("City"), which was recorded on March 26, 2003 in the Salt Lake County Recorder's Office as Instrument No. 8581557 (as amended, supplemented and assigned from time to time, collectively, the "MDA").

C. Assignor is the successor in interest to OME's rights and obligations as "Master Developer" under the MDA with respect to the Property.

D. In connection with the conveyance of the Property by Seller to Assignee, Assignor desires to assign certain rights and to delegate certain of its obligations under the MDA, to the extent they relate to the Property, to Assignee, and Assignee desires to accept such assignment and delegation.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below.

1. ASSIGNMENT OF MDA. Pursuant to **Section 11** of the MDA, Assignor (as "Master Developer" thereunder) hereby assigns to Assignee (as "Developer" thereunder) all of its rights under the MDA with respect to the Property including, without limitation, (a) all rights to develop the Property in the manner set forth in the MDA; and (b) all impact fee credits and/or reimbursements relative to the Property and accruing to the owner thereof under the MDA after the date hereof, if any ("Assignment"), subject, however, to the following:

1.1 As set forth in Section 11(b)(2) of the MDA, Assignee shall not in each case without the prior written consent of Assignor, which may be granted or withheld in Assignor's sole and absolute discretion:

- (i) submit any design guidelines to the City with respect to the Property, and/or propose any amendments, modifications or other alterations to any design guidelines previously submitted by Assignor to the City with respect to the Property;
- (ii) process any preliminary or final subdivision plats or site plans for the Property, and/or propose any amendments, modifications or other alterations of any approved final subdivision plats and/or site plans procured by Assignor for the Property; or
- (iii) propose any amendments, modifications or other alterations to the MDA.

1.2 Assignee acknowledges that the City has agreed (pursuant to Section 11(b)(2) of the MDA) not to accept or process any of the foregoing matters from Assignee unless the matter has been previously approved by Assignor.

2. DELEGATION AND ASSUMPTION. Assignor hereby delegates to Assignee all of its obligations under the MDA to the extent such obligations relate to the Property and Assignee hereby accepts such delegation. Assignee hereby assumes, agrees to be bound by, and agrees to perform all such obligations under the MDA as the same specifically relate to the Property, including, without limitation, the indemnification obligation of Assignor with respect to the Property set forth in Section 8(c) of the MDA.

3. RETAINED RIGHTS. Assignor retains all rights under the MDA to modify, amend or terminate the MDA with respect to all other areas within the Project excluding the Property; provided, however, that Assignor shall not modify or alter the MDA in a manner which would materially interfere with Assignee's rights under the MDA with respect to the Property without Assignee's prior written consent, which shall not be unreasonably withheld or delayed. Assignee acknowledges and agrees that all matters regarding the Project (excluding the Property) and the development thereof shall be determined by Assignor in its sole and absolute discretion and Assignee shall have no interest or right to participate therein.

4. COOPERATION. The Parties hereto agree to cooperate with each other in carrying out the purpose and intent of this Agreement, including cooperating to obtain the consent of the City Council to the delegation of duties under the MDA described above.

6. GOVERNING LAW. This Agreement shall be governed by and construed under the laws of the State of Utah without regard to choice of law rules.

7. SUCCESSORS AND ASSIGNS. Each and all of the covenants and conditions of this Agreement will inure to the benefit of and be binding upon the successors in interest of Assignor and the successors, heirs, representatives and assigns of Assignee. As used in this Section, "successors" means successors to the Parties' interest in the Property, successors to all or substantially all of the Parties' assets, and successors by merger or consolidation.

8. ATTORNEYS' FEES. If any action, arbitration, judicial reference or other proceeding is instituted between Assignor and Assignee in connection with this Agreement, the losing Party shall pay to

the prevailing Party a reasonable sum for attorneys' and experts' fees and costs actually incurred (based on such attorneys normal and customary hourly rates for services actually rendered) in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment.

9. SEVERABILITY. If any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement will not be affected thereby and will remain in force and effect to the fullest extent permissible by law.

10. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless it is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

11. COUNTERPARTS. This Agreement may be executed in counterparts, each of which, when taken together, will constitute a fully executed original.

[Signatures on Next Page]

[Partial Assignment and Assumption of MDA – Assignor’s Signature Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

ASSIGNOR:

VP DAYBREAK INVESTMENTS LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

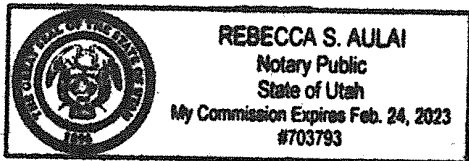
By: Ty McCutcheon
Name: Ty McCutcheon
Title: President & CEO

ACKNOWLEDGMENT

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

On April 1, 2019, 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 INVESTMENTS 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 INVESTMENTS LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.



Rebecca S. Aulai
Notary Public in and for said State

My commission expires: 2/24/23

[SEAL]

[Signatures Continue on Next Page]

[Partial Assignment and Assumption of MDA – Assignee’s Signature Page]

ASSIGNEE:

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

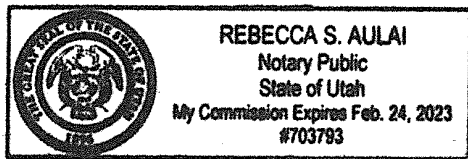
By: *Ty McCutcheon*
Name: Ty McCutcheon
Title: President & CEO

ACKNOWLEDGMENT

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

On April 1, 2019, 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 DEVCO 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 DEVCO LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.



Rebecca S. Aulai
Notary Public in and for said State

My commission expires: 2/24/23

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1: Daybreak VA Plat (26-24-400-025, 26-24-400-026)

All of Parcel A as shown on the Kennecott Daybreak Plat 3E Subdivision, recorded as Entry No. 11072222 in Book 2010P at Page 176 in the Office of the Salt Lake County Recorder, more particularly described as follows:

Beginning at the Southernmost Corner of Parcel A of the Kennecott Daybreak Plat 3E Subdivision, also being on the Easterly right-of-way line of Veruca Way, said point lies North 89°56'03" West 7326.768 feet along the Daybreak Baseline South (Basis of bearings is South 89°56'03" East 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 1205.578 feet from the Southeast Corner of said Section 19, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said point also being South 89°58'42" East 637.730 feet along the Section Line and North 1201.269 feet from the South Quarter Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Parcel A the following (12) courses: 1) North 36°32'54" West 331.988 feet; 2) North 54°53'01" East 310.991 feet to a point on a 1073.500 foot radius tangent curve to the left, (radius bears North 35°06'59" West); 3) along the arc of said curve 26.832 feet through a central angle of 01°25'56"; 4) North 53°27'06" East 45.145 feet to a point on a 130.500 foot radius non tangent curve to the left, (radius bears North 43°44'46" East); 5) along the arc of said curve 139.594 feet through a central angle of 61°17'18"; 6) South 36°32'54" East 67.114 feet; 7) South 53°27'06" West 67.000 feet to a point on a 41.000 foot radius tangent curve to the left, (radius bears South 36°32'54" East); 8) along the arc of said curve 64.403 feet through a central angle of 90°00'00"; 9) South 36°32'54" East 170.345 feet; 10) South 53°27'06" West 78.000 feet; 11) North 36°32'54" West 55.965 feet; 12) South 53°27'06" West 283.000 feet to the point of beginning.

Parcel 2: Daybreak North Station Campus (26-14-200-018, 26-14-202-010, 26-14-226-009)

Beginning at a point on the East Line of Mountain View Corridor, said point lies South 89°55'04" East 750.355 feet along the Section Line and South 940.024 feet from the North Quarter Corner of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence South 89°55'07" East 151.030 feet to the Northwest Corner of Lot P-120, Kennecott Daybreak Bingham Creek Amending Portions of Lots B1, B2, OS1, OS2, WTC1 and V3 of the Kennecott Master Subdivision #1 Amended; thence along said Bingham Creek Plat South 05°11'00" East 471.576 feet to a Northerly Line of a Utah Department of Transportation parcel; thence along said Utah Department of Transportation parcel the following (3) courses: 1) South 61°46'52" West 30.753 feet; 2) South 07°19'21" East 140.371 feet; 3) North 64°06'48" East 24.653 feet to the Westerly Line of Lot P-120 of said Bingham Creek Plat; thence along said Bingham Creek Plat the following (6) courses: 1) South 05°11'00" East 120.410 feet to a point on a 2050.000 foot radius non tangent curve to the right, (radius bears South 16°42'10" East); 2) along the arc of said curve 597.610 feet through a central angle of 16°42'10"; 3) East 519.548 feet to a point on a 950.000 foot radius non tangent curve to the left, (radius bears North); 4) along the arc of said curve 233.045 feet through a central angle of 14°03'19"; 5) North 75°56'41" East 221.429 feet; 6) North 00°04'56" East 561.555 feet to the Northeast Corner of Lot P-111 of said Bingham Creek Plat, also being a point on the South line of a Utah Power & Light parcel; thence along said South Line South 89°55'07" East 32.486 feet a point on the West Line of a South Jordan City Parcel; thence along said South Jordan City parcel the following (14) courses: 1) South 02°35'23" East 59.719 feet; 2) South 225.904 feet; 3) South 03°48'51" West 165.366 feet; 4) South 117.576 feet; 5) South 75°56'41" West 10.309 feet; 6) South 494.778 feet; 7) South 01°44'09" West 346.620 feet; 8) South 705.707 feet to a point on a 516.500 foot radius tangent curve to the left, (radius bears East); 9) along the arc of said curve 18.629 feet through a

central angle of 02°04'00"; 10) South 02°04'00" East 489.849 feet; 11) South 43.872 feet to a point on a 1263.500 foot radius tangent curve to the left, (radius bears East); 12) along the arc of said curve 246.433 feet through a central angle of 11°10'30" to a point of reverse curvature with a 83.500 foot radius tangent curve to the right, (radius bears South 78°49'30" West); 13) along the arc of said curve 5.128 feet through a central angle of 03°31'07" to a point of reverse curvature with a 1269.000 foot radius tangent curve to the left, (radius bears North 82°20'37" East); 14) along the arc of said curve 124.906 feet through a central angle of 05°38'22" to the North Line of The Last Holdout, LLC parcel; thence along said North Line and North Line Extended North 89°51'12" West 1552.664 feet more or less to a point on a 4958.577 foot radius non tangent curve to the right, (radius bears North 76°08'59" East), also being a point on said East Line of Mountain View Corridor; thence along said East Line the following (23) courses: 1) along the arc of said curve 108.319 feet through a central angle of 01°15'06"; 2) North 32°33'39" East 21.270 feet; 3) North 12°16'47" West 57.001 feet; 4) North 69°39'33" West 28.160 feet to a point on a 4967.578 foot radius non tangent curve to the right, (radius bears North 78°24'31" East); 5) along the arc of said curve 754.322 feet through a central angle of 08°42'01"; 6) North 01°43'15" East 134.472 feet to a point on a 4958.577 foot radius non tangent curve to the right, (radius bears North 88°39'29" East); 7) along the arc of said curve 16.070 feet through a central angle of 00°11'08"; 8) North 01°09'23" West 154.672 feet; 9) North 46°46'04" East 22.270 feet; 10) North 06°17'04" West 135.852 feet; 11) North 43°21'51" West 20.050 feet to a point on a 8032.625 foot radius non tangent curve to the left, (radius bears South 88°34'46" West); 12) along the arc of said curve 293.785 feet through a central angle of 02°05'44"; 13) North 00°11'59" West 135.822 feet to a point on a 8041.320 foot radius non tangent curve to the left, (radius bears South 85°31'04" West); 14) along the arc of said curve 94.631 feet through a central angle of 00°40'27"; 15) North 05°09'23" West 118.162 feet; 16) North 33°35'38" East 36.751 feet; 17) North 05°30'25" West 101.902 feet; 18) North 56°24'22" West 40.241 feet; 19) North 05°09'23" West 154.812 feet; 20) North 84°50'37" East 16.420 feet; 21) North 05°09'23" West 252.674 feet; 22) South 84°50'37" West 16.420 feet; 23) North 05°09'23" West 434.801 feet to the point of beginning.

Parcel 3: Daybreak South Jordan City Public Safety Center (26-14-176-001, 26-14-176-002)

Beginning at a Southwest Corner of the Daybreak Lake Avenue East subdivision, said point also being on the Easterly line of a parcel owned by Utah Power & Light Company, said point lies North 89°56'03" West 9795.540 feet along the Daybreak Baseline South (Being North 89°56'03" West 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3162.707 feet from the Southeast Corner of Section 19, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said point also being South 0°00'12" West 2123.444 feet along the Section Line and East 845.885 feet from the Northwest Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along the Southerly Line of said Daybreak Lake Avenue East North 53°27'06" East 489.988 feet; thence South 36°32'54" East 305.000 feet; thence South 53°27'06" West 484.949 feet to said Easterly Line; thence along said Easterly Line North 37°29'42" West 305.042 feet to the point of beginning.

Parcel 4: Daybreak Communities/DEVCO Transfer Parcel (26-14-176-001, 26-14-176-002)

Beginning at the Westernmost corner of Lot C-106 of the Daybreak University Medical #2 subdivision, said point also being on the Southwest line of Lot T4 of the Kennecott Master Subdivision #1 Amended, said point lies North 89°58'44" West 602.643 feet along the Section Line and North 1559.595 feet from the South Quarter Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot T4 and Lot T3 of said Kennecott Master Subdivision #1 Amended North 37°29'42" West 2018.099 feet to a Southerly corner of Daybreak Lake Avenue East subdivision; thence along said Lake Avenue North 53°27'06" East 1256.488 feet to an Easterly Corner of said Daybreak Lake Avenue East, also being a point on a Right-of-Way Quitclaim Deed recorded as Entry No. 10429973 in Book 9607 at Page 4745 in the Office of the Salt Lake County Recorder; thence along said

Right-of-Way Quitclaim Deed the following (3) courses: 1) South 36°32'54" East 49.383 feet to a point on a 35063.500 foot radius tangent curve to the left, (radius bears North 53°27'06" East, Chord: South 36°38'04" East 105.291 feet); 2) along the arc of said curve 105.291 feet through a central angle of 00°10'19"; 3) South 36°43'14" East 862.138 feet to the Northerly Corner of the proposed Daybreak South Station Library subdivision; thence along said Daybreak South Station Library the following (3) courses: 1) South 53°28'22" West 367.747 feet; 2) South 53°27'06" West 69.000 feet; 3) South 36°32'54" East 303.814 feet to the Southeast line of Tax Parcel Number 26-24-176-004; thence along said Tax Parcel Number 26-24-176-004 the following (5) courses: 1) South 53°04'59" West 318.872 feet to a point on a 97.996 foot radius non tangent curve to the left, (radius bears South 25°41'53" West, Chord: North 85°06'55" West 69.640 feet); 2) along the arc of said curve 71.196 feet through a central angle of 41°37'35"; 3) North 36°32'54" West 3.916 feet; 4) South 53°27'06" West 381.520 feet; 5) South 37°29'42" East 745.390 feet to the Northwesterly line of said Lot C-106; thence along said Northwesterly line South 53°27'06" West 48.871 feet to the point of beginning.

LESS AND EXCEPTING Daybreak South Jordan City Public Safety Center:

Beginning at a Southwest Corner of the Daybreak Lake Avenue East subdivision, said point also being on the Easterly line of a parcel owned by Utah Power & Light Company, said point lies North 89°56'03" West 9795.540 feet along the Daybreak Baseline South (Being North 89°56'03" West 21225.293 feet between the Southwest Corner of Section 22, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3162.707 feet from the Southeast Corner of Section 19, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said point also being South 0°00'12" West 2123.444 feet along the Section Line and East 845.885 feet from the Northwest Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along the Southerly Line of said Daybreak Lake Avenue East North 53°27'06" East 489.988 feet; thence South 36°32'54" East 305.000 feet; thence South 53°27'06" West 484.949 feet to said Easterly Line; thence along said Easterly Line North 37°29'42" West 305.042 feet to the point of beginning.

Parcel 5: (26-24-456-012, 26-24-456-013, 26-24-456-014, 26-24-456-015, 26-24-456-016)

Lots C-102, C-103, C-104, C-105 and C-106, KENNECOTT DAYBREAK AMENDED 11400/MVC SE COMMERCIAL #1 SUBDIVISION, according to the official plat thereof on file and of record in the Salt Lake County Recorder's Office.

Together with a Cross Access Agreement recorded June 3, 2011 as Entry No. 11193390 in Book 9928 at Page 9152 of Official Records.