

RECORDING REQUESTED AND
WHEN RECORDED, RETURN TO:

VP Daybreak Operations LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, UT 84009
Attn: Gary Langston

13248006
4/20/2020 3:07:00 PM \$40.00
Book - 10930 Pg - 3004-3011
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 8 P.

APN: 26-14-300-007

(Space Above This Line For Recorder's Use)

TEMPORARY ACCESS EASEMENT AGREEMENT

(Salt Lake County, Utah)

THIS TEMPORARY ACCESS EASEMENT AGREEMENT (this "Agreement") is executed this 14 day of APRIL, 2020, by and between **JORDAN SCHOOL DISTRICT**, a body corporate and politic of the State of Utah ("**Grantor**"), and **VP DAYBREAK OPERATIONS, LLC**, a Delaware limited liability company ("**Grantee**"), Grantor and Grantee may be referred to collectively as the "Parties" or individually as a "Party" all as governed by the context in which such terms are used.

RECITALS

- A. Grantor is the owner of certain real property legally described on Exhibit "A" attached hereto and incorporated herein by this reference ("**Grantor's Property**").
- B. Grantee is the owner of certain real property located adjacent to Grantor's Property ("**Grantee's Property**").
- C. Grantee desires to temporarily use a portion of Grantor's Property for the purpose of accessing Grantee's Property and constructing improvements thereon.
- D. Grantor agrees to grant Grantee a temporary access easement according to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Grantor hereby grants to Grantee a temporary, non-exclusive easement, right of way, and right of ingress and egress (the "**Access Easement**"), approximately fifty feet (50') in width on, over, through, and across a portion of Grantor's Property in that area legally described on Exhibit "B" and depicted on Exhibit "B-1" attached hereto and incorporated herein (the "**Easement Area**"), which Access Easement shall include the right of private access to and

from Grantee's Property for the movement of construction vehicles relating to any construction activities conducted on Grantee's Property by Grantee or Grantee's contractors and/or subcontractors. Grantee shall be permitted to construct a fifty foot (50') wide haul road over the Easement Area which construction shall include scraping the topsoil from the Easement Area and creating a berm delineating the boundary of the Easement Area on Grantor's Property. The easement granted in this Section is non-exclusive and does not preclude Grantor or its invitees, guests or successors-in-interest from using Grantor's Property for any purpose, business, or otherwise. Grantor or its successors-in-interest are free to grant to other persons or entities the right to use Grantor's Property for any purpose, so long as such use does not unreasonably interfere with the rights granted to Grantee under this Agreement.

2. Notwithstanding anything contained herein to the contrary, Grantor and Grantee hereby agree that Grantor shall have the right, at its discretion and with written notice to Grantee, to reasonably relocate the Easement Area to a different area on Grantor's Property, or to adjust the width of such Easement Area in order to facilitate and accommodate Grantor's future development and/or re-development of Grantor's Property as determined by Grantor; *provided, however*, that Grantee shall continue to have the easement right granted to Grantee pursuant to the Access Easement in such relocated easement area; and such relocated easement area shall be substantially the same width as the Easement Area established pursuant to this Agreement. Grantor and Grantee shall use commercially reasonable good faith efforts to prepare, execute, deliver and record an amendment to this Agreement to memorialize and depict the relocated easement area if Grantor makes such election as part of any future development, and/or re-development of Grantor's Property.

3. Grantee agrees that it shall utilize the Access Easement granted herein in such manner as to minimize, to the extent reasonably possible, interference with Grantor's (and its tenants', employees', customers', and invitees') use, enjoyment and development of Grantor's Property. Nothing in this Agreement shall prevent or preclude Grantor or its representatives, heirs, successors or assigns from developing all or a portion of Grantor's Property. In such event, Grantor shall have the right, at its discretion and upon written notice to Grantee, to terminate this Agreement in accordance with Section 6 of this Agreement.

4. Grantee agrees to indemnify, protect, defend, hold and save Grantor harmless, from any and all damages arising from Grantee's (or its agents', employees', contractors', or other invitees') use of the rights, easements, and rights-of-way herein granted and agrees to promptly repair and/or restore (to substantially the same condition as existing prior to such damage), any and all damage to Grantor's Property and any improvements thereon (including roadway improvements) which may be occasioned by or arise through Grantee's use of the Access Easement herein granted during any construction, repair, installation, maintenance, upgrade, or replacement of any improvements installed by, or at the request of, Grantee on Grantee's Property. Upon completion of any development or other construction on Grantee's Property, Grantee shall be responsible for promptly removing any excessive dirt, mud, or debris brought on to the road surface of the Easement Area (or other parts of Grantor's Property) arising as a result of Grantee's use of the Easement Area. Upon termination of this Agreement, Grantee shall make commercially reasonable efforts to return the Easement Area to substantially the same condition as existing prior to this Agreement.

5. Grantor makes no warranties or representations concerning Grantor's Property, the easements hereby granted thereon, or its suitability for the intended use, the cost of maintenance of such easement or otherwise.

6. This Agreement and the Access Easement granted hereunder shall terminate upon the earlier occurrence of: (i) Grantor's election to develop its property and written notice to Grantee; (ii) Grantee's completion of the improvements on Grantee's Property; or (iii) the termination date of May 1, 2021. Upon termination of this Agreement for reason other than the termination date specified in this Section, the Parties shall execute and record an instrument confirming such termination.

7. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Utah.

8. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term or condition.

9. The rights and remedies of any of the Parties herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. The Parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Party aggrieved as against the other Party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the intent of the Parties that the respective rights and obligations of the Parties shall be enforceable in equity as well as at law or otherwise.

10. Grantor and Grantee shall reasonably cooperate with one other and promptly execute and deliver to the other such other instruments and documents and take such other actions as may be reasonably requested from time to time by the other as necessary to carry out, evidence and confirm the intended purposes of this Agreement.

11. In any proceeding to enforce or interpret this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including reasonable attorneys' fees, whether such proceeding or remedy is pursued by filing suit or otherwise.

12. Each individual executing this instrument represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the Party for which he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the Party for which he/she signs.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this agreement as of the Effective Date.

GRANTOR:

BOARD OF EDUCATION OF JORDAN SCHOOL DISTRICT, a body corporate and politic of the State of Utah

By: [Signature]
Name: John Larsen
Title: Business Administrator

ACKNOWLEDGMENT

STATE OF UTAH)

) ss.

COUNTY OF SALT LAKE)

On April 14, 2020 personally appeared before me, a Notary Public, John Larsen, the business administrator for **BOARD OF EDUCATION OF JORDAN SCHOOL DISTRICT**, a body corporate and politic of the State of Utah, 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 **BOARD OF EDUCATION OF JORDAN SCHOOL DISTRICT**, a body corporate and politic of the State of Utah.

WITNESS my hand and official Seal.

[Signature]
Notary Public in and for said State

My commission expires: 6/26/20


[SEAL]



GRANTEE:

VP DAYBREAK OPERATIONS, LLC,
a Delaware limited liability company

By: Daybreak Communities LLC,
a Delaware limited liability company
Its: Project Manager

By: 
Ty McCutcheon, President & CEO

ACKNOWLEDGMENT

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

On April 17, 2020, personally appeared before me, a Notary Public, Ty McCutcheon, the President and CEO of Daybreak Communities LLC, a Delaware limited liability company, the Project Manager of VP DAYBREAK OPERATIONS 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 OPERATIONS LLC, a Delaware limited liability company.


NOTARY PUBLIC

My Commission Expires:

2/24/23

Residing at: South Jordan, UT

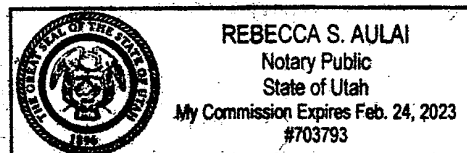


EXHIBIT "A"

Legal Description of Grantor's Property

The following described real property located in Salt Lake County, State of Utah:

LOT C-102, DAYBREAK VILLAGE 8, VILLAGE 9 & VILLAGE 13 SCHOOL SITE
SUBDIVISION AMENDING LOT V5 OF THE KENNECOTT MASTER SUBDIVISION #1
AMENDED & LOTS Z101 & Z105 OF THE VP DAYBREAK OPERATIONS-
INVESTMENTS PLAT 1

EXHIBIT "B"

Legal Description of Easement Area (Relocated Haul Road Easement)

Beginning at the South Quarter Corner of Section 14, Township 3 South, Range 2 West, Salt Lake Base & Meridian and running thence along the South Line of the Southwest Quarter of said Section 14 South 89°58'44" West 2648.798 feet to the Southwest Corner of said Section 14; thence along the West Line of said Southwest Quarter of Section 14 North 00°02'36" West 50.000 feet; thence North 89°58'44" East 2648.818 feet; thence North 89°58'54" East 89.864 feet; thence South 00°01'06" East 50.000 feet to a point on the South Line of the Southeast Quarter of said Section 14; thence along said South Line of the Southeast Quarter South 89°58'54" West 89.862 feet to the point of beginning.

Property contains 3.144 acres.

