

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:

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

13577390
2/24/2021 2:28:00 PM \$42.00
Book - 11124 Pg - 7602-7608
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 7 P.

Tax ID: 27-18-151-020, 27-18-151-021, 27-18-151-022, 27-18-151-023, 27-18-151-024, 27-18-151-025, 27-18-151-026, 27-18-151-027, 27-18-151-028, 27-18-151-029, 27-18-151-030, 27-18-151-031, 27-18-151-032

File 2153412JM

DECLARATION OF ACCESS EASEMENT

THIS DECLARATION OF ACCESS EASEMENT (this "Declaration") is made and entered into as of February 24, 2021 by VP DAYBREAK DEVCO LLC, a Delaware limited liability company ("**Declarant**").

RECITALS:

WHEREAS, Declarant is the Owner (defined later) of that certain real property shown and described as "Boardwalk Road (Private Right-of Way)" and "Rubicon Road (Private Right-of-Way)" (collectively, the "**Private Roadways**") on the subdivision plat more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**North Shore Plat**").

WHEREAS, it is the intent and desire of Declarant and the purpose of this Declaration to provide for a non-exclusive perpetual, and irrevocable easement for access, ingress and egress by the Permittees (defined below) upon, over and across the Private Roadways, subject to the terms and conditions set forth in this Declaration.

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

1. PRELIMINARY.

1.1 Incorporation of Recitals. The above Recitals are hereby incorporated in and made an integral part of this Declaration.

1.2 Definitions.

(a) **“Owner”** or **“Owners”** means the record fee simple owner of the Private Roadways and/or any portion of the lots located within the boundaries of the real property created by the North Shore Plat, as more particularly described on Exhibit B attached hereto and incorporated by reference (the **“North Shore Lots”**), and their successors or assigns.

(b) **“Permittees”** means each Owner and its respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of any such tenants. The term Permittees shall include visitors of the Owners and their respective tenants, governmental authorities, police/fire, postal and other delivery personnel.

2. EASEMENT.

2.1 Grant of Easement for Access. Declarant, as grantor, hereby grants to each Owner, as grantee, for the benefit of the North Shore Lots, and as a burden upon the Private Roadways, a nonexclusive perpetual, and irrevocable easement for use by the Permittees for reasonable access, ingress and egress by vehicular and pedestrian traffic upon, over, and across those the Private Roadways.

2.2 Limitations. The Permittees shall use, and cause to be used, the Private Roadways in such manner as will not unreasonably interfere with use thereof by any other Permittees. The Permittees shall not place, or cause to be placed, any obstruction on the Private Roadways or permit any activity thereon which would permanently or unreasonably impede the flow of vehicular and/or pedestrian traffic upon, over or across the Private Roadways. No party shall be permitted to construct a gate or any other barrier to any entrance to the Private Roadways from the public roads or from the North Shore Lots. Notwithstanding the foregoing, the Owner of the Private Roadways may temporarily restrict or limit vehicular traffic upon, over and across the Private Roadways from time to time in conjunction with street fairs and similar activities upon not less than five (5) business days’ notice to the Owners; *provided, however*, that the rights granted hereunder shall not be materially adversely affected and at no time shall access to and from the North Shore Lots be entirely impeded or blocked.

2.3 Reconfiguration. Notwithstanding anything contained herein to the contrary, the Owner of the Private Roadways shall have the right, at its expense, to reconfigure the layout of the Private Roadways and the improvements thereon in its commercially reasonable discretion (and with prior written notice to the Owners of the North Shore Lots); *provided, however*, that the rights granted hereunder shall not be materially adversely affected. For the avoidance of doubt, any such reconfiguration that (i) affects curb cuts on or into an Owner’s lot shall require the consent of such Owner, and (ii) limits or restricts access to public roads shall be deemed material and adverse.

2.4 Transfer of Private Roadways to Association. It is Declarant's intent to transfer ownership of the Private Roadways to Daybreak Village Association, Inc., a Utah non-profit corporation (the "**Association**"), to be held, operated and maintained as common area under that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Daybreak Village dated December 28, 2005, and recorded December 30, 2005, as Entry No. 9598233, in Book 9237, Page 5395, in the Salt Lake County Recorder's Office in Salt Lake County, Utah ("**Commercial CC&R's**"), *provided, however*, that the transfer of such ownership shall be subject to the terms and conditions of this Declaration and shall not affect the rights granted to the Owners under this Declaration. Declarant shall be responsible for the maintenance and operation of the Private Roadways prior to the transfer of the Private Roadways to the Association.

3. INDEMNIFICATION. Each Owner shall indemnify, hold harmless and defend each other Owner from and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring on the Private Roadways and the ways immediately adjoining such area, caused by the willful acts or active or passive negligence of the indemnifying Owner, or its tenants, or its or their respective agents, servants or employees; provided, the indemnifying Owner does not indemnify the other Owner(s) against any injury, loss of life, or damage which is caused by the active or passive negligence of the other Owner(s), or its tenants, or its or their agents, servants or employees.

4. GENERAL PROVISIONS.

4.1 Successors and Assigns. This Declaration and the easements herein granted shall run with the land and shall inure to the benefit of and be binding upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring any interest in the North Shore Lots.

4.2 Duration. This Declaration and the easements herein granted shall remain in full force and effect for thirty (30) years from the date hereof. After such thirty (30) year period, this Declaration shall be extended automatically for successive ten (10) year periods unless terminated in accordance with the provisions of the Section 4.3 below.

4.3 Modification and Termination. This Declaration may not be modified or terminated, in whole or in part, except as expressly provided herein or otherwise with the consent of all of the Owners and any first mortgagee of record of any Owner, and then only by written instrument duly executed, acknowledged and recorded in the office of the recorder of Salt Lake County. Nothing in this Declaration shall prevent or preclude Declarant or its representatives, heirs, successors or assigns from conveying or transferring the Private Roadways (or any portion thereof) to the Association as Common Area or as an Area of Common Responsibility (as those terms are defined in the Commercial CC&R's), *provided, however*, that the transfer of such

ownership shall be subject to the terms and conditions of this Declaration and shall not affect the rights granted to the Owners under this Declaration.

4.4 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any property to the general public or for the general public or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

4.5 Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

4.6 Recordation. This Declaration shall be recorded in the Office of the Recorder of Salt Lake County, Utah.

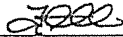
[Signatures on Next Page]

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

Declarant: **VP DAYBREAK DEVCO LLC,**
a Delaware limited liability company

By: **DAYBREAK COMMUNITIES LLC,**
a Delaware limited liability company

Its: **Project Manager**

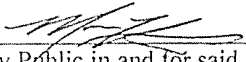
By: 
Name: Ty McCutcheon
Title: President & CEO

ACKNOWLEDGMENT

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

On February 18, 2021, 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.


Notary Public in and for said State
My commission expires: June 13, 2021

[SEAL]

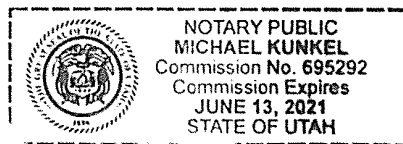


EXHIBIT "A"

LEGAL DESCRIPTION OF NORTH SHORE PLAT

DAYBREAK NORTH SHORE VILLAGE CENTER AMENDING LOT A-1 OF THE KENNECOTT DAYBREAK OQUIRRH LAKE PLAT, LOT C-101 OF THE KENNECOTT DAYBREAK OQUIRRH LAKE PLAT AMENDED AND INCLUDING A VACATED PORTION OF SOUTH JORDAN PARKWAY RECORDED JUNE 26, 2020 AS ENTRY NO. 13310847 IN BOOK 2020P OF PLATS AT PAGE 158, ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

EXHIBIT "B"

LEGAL DESCRIPTION OF NORTH SHORE LOTS

LOTS C-101 THROUGH C-111, INCLUSIVE, DAYBREAK NORTH SHORE VILLAGE CENTER AMENDING LOT A-1 OF THE KENNECOTT DAYBREAK OQUIRRH LAKE PLAT, LOT C-101 OF THE KENNECOTT DAYBREAK OQUIRRH LAKE PLAT AMENDED AND INCLUDING A VACATED PORTION OF SOUTH JORDAN PARKWAY RECORDED JUNE 26, 2020 AS ENTRY NO. 13310847 IN BOOK 2020P OF PLATS AT PAGE 158, ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.