

RECORDING REQUESTED AND  
WHEN RECORDED RETURN TO:

14256367 B: 11500 P: 897 Total Pages: 12  
06/25/2024 09:20 AM By: dsalazar Fees: \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

c/o LHMRE, LLC  
9350 South 150 East, Suite 140  
Sandy, Utah 84070  
Attention: Aida Neimarlija

A Portion of Assessor Parcel No.: 26-13-352-005-0000

### ACCESS AND PARKING EASEMENT AGREEMENT

THIS ACCESS AND PARKING EASEMENT AGREEMENT (this "Agreement") is made and entered into as of June 24, 2024 (the "Effective Date"), by VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company ("Grantor") and DTDB 5, LLC, a Utah limited liability company ("DTDB 5 Grantee"). Grantor and DTDB 5 Grantee are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

### RECITALS

WHEREAS, Grantor is, or at the time this Agreement is recorded will be, the Owner (defined later) of that certain real property known as Assessor Parcel Number 26-13-352-005-0000, in the City of South Jordan, State of Utah, which real property is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Grantor Property").

WHEREAS, DTDB 5 Grantee is, or at the time this Agreement is recorded will be, the Owner of that certain real property located near the Grantor Property, which real property is more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (the "DTDB 5 Property").

WHEREAS, the Grantor Property and the DTDB 5 Property are shown on the site plan attached hereto as Exhibit "C" and incorporated herein by reference ("Site Plan").

WHEREAS, the Grantor Property will be developed with certain parking, driveway and related improvements substantially as shown on the Site Plan.

WHEREAS, the DTDB 5 Property will be developed with office and commercial retail buildings substantially as shown on the Site Plan.

WHEREAS, it is the intent and desire of the Parties and the purpose of this Agreement to provide for an easement for access and parking by the Permittees (defined below) on the Grantor Property, and to provide for the ongoing operation, maintenance, repair, and insurance of the parking easement area and related improvements, all on terms and conditions more particularly hereinafter set forth below.

## AGREEMENT

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

### 1. PRELIMINARY.

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

1.2 Definitions.

(a) **“Owner(s)”** means the record fee simple owner of the Grantor Property, the DTDB 5 Property, and their successors or assigns.

(b) **“Permittees”** means the Owners and their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of any such tenants.

### 2. EASEMENTS.

2.1 Grant of Easement for Access. Grantor hereby grants to the Owners of the DTDB 5 Property, as grantee, for the benefit of the DTDB 5 Property, and as a burden upon the Grantor Property, a nonexclusive easement for use by the Permittees for reasonable ingress and egress by vehicular and pedestrian traffic upon, over, and across those portions of the Grantor Property designed for such purposes by the Owner of the Grantor Property to access the DTDB 5 Property (the **“Access Easement”**).

2.2 Grant of Easement for Parking. Grantor hereby grants to the Owner of the DTDB 5 Property, as grantee, for the benefit of the DTDB 5 Property, and as a burden upon the Grantor Property, a nonexclusive easement for use by the Permittees for non-reserved, non-overnight, parking of passenger vehicles in fifty-nine (59) parking stalls on the Grantor Property, in parking areas more particularly depicted in red on Exhibit “D” attached hereto and incorporated herein by reference (the **“Parking Easement”**).

2.3 Limitations. The Permittees shall use, and cause to be used, the Access Easement and the Parking Easement in such a manner as to not unreasonably interfere with use of the Grantor Property by its Owner and such Owner’s tenants, contractors, employees, agents, licensees and invitees. Without the prior written consent of the other Owners, the Permittees shall not place, or cause to be placed, any obstruction on the easement areas or permit any activity thereon which would permanently or unreasonably impede the flow of vehicular and/or pedestrian traffic upon, over or across the easement areas.

2.4 Future Development. Notwithstanding anything contained herein to the contrary, the Owner of the Grantor Property shall have the unfettered right to develop the Grantor Property in any

manner and to relocate or reconfigure the location of the Access Easement area or Parking Easement area to different locations on the Grantor Property in the sole and absolute discretion of the Owner of the Grantor Property; provided, however, that (x) the rights granted hereunder to the Owner of the DTDB 5 Property, including but not limited to the aforementioned parking ratio, shall not be reduced or otherwise materially adversely affected; (y) the rights granted hereunder to the Owner of the Grantor Property shall not negatively impact the office and/or commercial retail use of the DTDB 5 Property; and (z) the Owners of the DTDB 5 Property shall have the right to approve in advance, such approval not to be unreasonably withheld, any development of a parking structure (above-grade, below-grade, or otherwise) on the Grantor Property. During any period of construction on the Grantor Property, the Owner of the Grantor Property may fulfill its obligations hereunder by providing an alternate location(s) for some or all of the fifty-nine (59) parking stalls, provided such alternate parking is substantially similar to the parking facilities on the Grantor Property, is reasonably convenient to the DTDB 5 Property, and is otherwise acceptable to the Owner of the DTDB 5 Property in its commercially reasonable business judgment.

2.5 Maintenance and Repair of Parking Surface and Other Improvements on the Grantor Property. The Owner of the Grantor Property shall maintain, or cause to be maintained the parking area and access improvements located on the Grantor Property at all times in good and clean condition and repair.

2.6 Operation Costs and Property Taxes. The Owner of the Grantor Property shall be responsible for the timely payment of (i) any utility costs or expenses (e.g., electricity, water, etc.) incidental or related to the parking and access improvements and the use of the Parking Easement and Access Easement by the Permittees hereunder, (ii) the maintenance costs required under Section 2.5, and (iii) property taxes and assessments attributable to the Grantor Property ((i) – (iii), collectively, the “Costs and Expenses”).

2.7 Allocation of Costs and Expenses. Commencing on the Effective Date and continuing throughout the duration of this Agreement, the Owner of the DTDB 5 Property shall pay to the Owner of the Grantor Property its pro-rata portion of the Costs and Expenses. The DTDB 5 Property’s pro-rata portion shall be based on a fraction, the numerator of which is 59 of spaces allocated to DTDB 5 Grantee and the denominator of which is the total number of parking spaces on the Grantor Property which is total 768 of parking spaces. The Owner of the DTDB 5 Property’s payment of its share of Costs and Expenses shall be payable in quarterly installments on or before the 1<sup>st</sup> day of each calendar quarter throughout the term of this Agreement based on annual estimates of the Costs and Expenses prepared by Grantor in its reasonable business judgment with annual reconciliation based on actual Costs and Expenses made within ninety (90) days after the end of each calendar year.

### 3. **INDEMNIFICATION AND INSURANCE.**

3.1 Indemnification of Owners. Each Owner hereby indemnifies, holds harmless and agrees to defend the 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 in the parking area or

the access area on the Grantor Property, caused by the willful acts or active or passive negligence of the indemnifying Owner, or its Permittees, or its or their respective agents, servants or employees; provided, the indemnifying Owner does not indemnify the other Owner against any injury, loss of life, or damage which is caused by the willful acts or the active or passive negligence of the other Owner, or its tenants, or its or their agents, servants or employees.

3.2 Liability Insurance Coverage and Limits. Each Owner agrees to maintain and/or cause to be maintained, at its sole cost and expense, liability insurance insuring its interests against claims for bodily injury, death and property damage occurring on, in or about the Grantor Property and the ways immediately adjoining such areas, with a "Combined Single Limit" (covering bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000) for total claims for any one (1) occurrence. Any required insurance may be in the form of blanket coverage, so long as such blanket policy does not reduce the limits nor diminish the coverage required herein.

3.3 Performance of Indemnity Agreements. All policies of insurance required under this Section shall insure the performance of the Owner insured thereunder of the indemnity agreements contained herein, and shall contain a provision that the insurance company will give the other Owners thirty (30) days advance written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. Upon request, each Owner shall deliver, or cause to be delivered, to the requesting Owner a certificate of insurance, reasonably satisfactory in form and substance, evidencing all insurance required to be maintained hereunder. Each Owner shall promptly notify the other Owners of any asserted claim with respect to which such Owner is or may be indemnified against hereunder, and shall deliver to such Owner copies of process and pleadings.

#### 4. CONDEMNATION.

4.1 Owner's Right to Award. Nothing herein shall be construed to give the Owner of the DTDB 5 Property any interest in any award or payment made to the Owner of the Grantor Property in connection with any exercise of eminent domain, or transfer in lieu thereof, affecting the Owner of the Grantor Property, or to give the public or any government any rights in any property. In the event of any exercise of eminent domain, or transfer in lieu thereof, of any part of the parking area or access area of the Grantor Property, the award attributable to the land and improvements taken shall be payable only to the Owner of the Grantor Property in fee thereof, and no claim thereto shall be made by the Owner of the DTDB 5 Property. Notwithstanding the foregoing, in the event of any condemnation proceeding affecting the Grantor Property, the Owner of the DTDB 5 Property shall have the right to make a separate claim for an award or payment related thereto so long as such award or payment does not reduce the award or payment made to the Owner of the Grantor Property.

4.2 Restoration of Access Area and Parking Area. In the event any portion of the parking area or access area of the Grantor Property are so condemned or transferred, then the remaining portion of such areas, as the case may be, shall be restored by the Owner of the Grantor Property, as near as reasonably practicable to at least the condition thereof immediately prior to such condemnation or transfer. In such event, the Owners agree to work together in good faith to

minimize any interference with the continued use and enjoyment of those portions of the Grantor Property that are not so condemned.

## 5. GENERAL PROVISIONS.

5.1 Successors and Assigns. This Agreement 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 either the Grantor Property or the DTDB 5 Property.

5.2 Duration. This Agreement and the easements herein granted shall remain in full force and effect until terminated in accordance with the provisions of the Section 5.3 below.

5.3 Modification and Termination. This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except by and/or with the consent of the Owners, and then only by written instrument duly executed and acknowledged by the Owners and recorded in the office of the recorder of Salt Lake County.

5.4 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 the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

5.5 Attorneys' Fees. In the event an Owner commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the non-prevailing party, to be fixed by the court in the same action.

5.6 Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement 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 Agreement shall be valid and shall be enforced to the extent permitted by law.

5.7 Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between any Owners.

5.8 No Third-Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.

5.9 Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

5.10 Entire Agreement. This Agreement contains the entire agreement of the Parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

5.11 Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

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

5.13 Authority of Signatories. Each person executing this Agreement individually and personally represents and warrants that he is duly authorized to execute and deliver the same on behalf of the entity for which he is signing (whether it be a corporation, limited liability company, general or limited partnership, or otherwise), and that this Agreement is binding upon said entity in accordance with its terms.

- SIGNATURE PAGE TO FOLLOW -

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

**GRANTOR:**

**VP DAYBREAK OPERATIONS LLC,**  
a Delaware limited liability company

By: LHMRE, LLC  
Its: Operating manager

By: *BR*  
Name: Brad Holmes  
Its: President

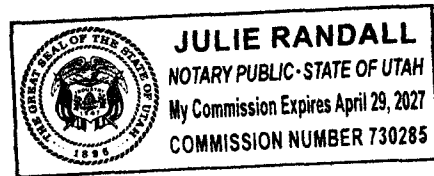
**ACKNOWLEDGMENT**

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

On June 24, 2024, personally appeared before me, a Notary Public, Brad Holmes the President of LHMRE, LLC the operating 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 Utah limited liability company.

WITNESS my hand and official Seal.

*Julie Randall*  
Notary Public in and for said State  
My commission expires: April 29, 2027



**DTDB 5 GRANTEE:**

DTDB 5, LLC,  
a Utah limited liability company

By: [Signature]  
Name: Brad Holmes  
Its: President

**ACKNOWLEDGMENT**

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

On June 24, 2024, personally appeared before me, a Notary Public, Brad Holmes the President of DTDB 5, LLC, a Utah 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 DTDB 5, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

[Signature]  
Notary Public in and for said State  
My commission expires: April 29, 2027

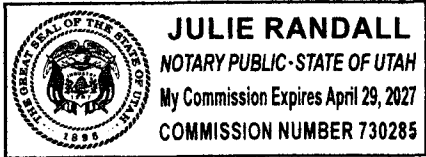




EXHIBIT "A"

Legal Description of the Grantor Property Parking Easement

The following real property located in Salt Lake County, Utah and described as:

LOT 1, DAYBREAK VILLAGE 7A PLAT 3 SUB AMD

(A portion of Parcel #26-13-352-005-0000)

Beginning at a point that lies South 89°55'30" East 1499.605 feet along the Daybreak Baseline Southeast (Basis of bearings is South 89°55'30" East 10641.888' between Southwest Corner of Section 24, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 4580.423 feet from the Southwest Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 36°32'55" West 535.000 feet; thence North 53°27'06" East 517.004 feet; thence South 36°32'55" East 535.000 feet; thence South 53°27'06" West 517.004 feet to the point of beginning.

Parcel contains 6.350 acres.

Exhibit "B"

Legal Description of the DTDB 5 Property

The following real property located in Salt Lake County, Utah and described as:

LOT C-110 OF DAYBREAK URBAN CENTER PLAT 1 AMENDING LOT T3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED AND PRIVATE RIGHTS-OF-WAY OF THE EAST TOWN CENTER ROADWAY DEICATION PLAT IN LIEU OF CONDEMNATION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

Preliminary Assessor Parcel No: 26-24-101-020-0000



