

2-1

**RECORDING REQUESTED BY  
AND AFTER RECORDING RETURN TO:**

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

APNs: 26-23-151-002 and 26-22-426-002

12974637  
04/25/2019 01:19 PM \$29.00  
Book - 10773 Pg - 5637-5646  
**RASHELLE HOBBS**  
RECORDER, SALT LAKE COUNTY, UTAH  
OLD REPUBLIC TITLE DRAPER/OREM  
898 NORTH 1200 WEST  
OREM UT 84057  
BY: RWP, DEPUTY - WI 10 P.

**THIRD AMENDMENT TO EASEMENT AGREEMENT**

THIS THIRD AMENDMENT TO EASEMENT AGREEMENT (this “**Third Amendment**”) is entered into this 23<sup>rd</sup> day of April, 2019 (the “**Effective Date**”), by and between VP DAYBREAK INVESTMENTS LLC, a Delaware limited liability company (“**Daybreak**”), as successor-in-interest to OM ENTERPRISES COMPANY, a Utah corporation (“**OME**”), and BOARD OF EDUCATION OF JORDAN SCHOOL DISTRICT, a body corporate and politic of the State of Utah (“**JSD**”), as successor-in-interest to THE LAST HOLDOUT, LLC, a Utah limited liability company (“**The Last Hold Out**”); individually a “**Party**”; and collectively, the “**Parties**”.

**RECITALS:**

A. KENNECOTT UTAH COPPPER CORPORATION, a Delaware corporation, as predecessor-in-interest to OME, and MARGARET S. BASTIAN, individually and as Trustee of the Sheltered Trust under Will of Elmer P. Bastian, deceased, MARY E. BASTIAN, EMILY B. MARKHAM and DAVID S. BASTIAN, as predecessors-in-interest to The Last Holdout, entered into that certain Easement Agreement dated as of August 18, 2000, recorded on August 21, 2000, in the Official Records of Salt Lake County, State of Utah (the “**Official Records**”), as Instrument No. 7701767, in Book 8382, Page 1514 (the “**Original Easement Agreement**”), as amended by that certain Amendment to Easement Agreement dated as of August 12, 2002, recorded on August 22, 2002, in the Official Records as Entry No. 8329277, in Book 8638, Page 3717 (the “**First Amendment**”), and as further amended by that certain Second Amendment to Easement Agreement dated as of July 2, 2010, recorded on August 20, 2010, in the Official Records as Entry No. 11014719, in Book 9850, Page 8557 (the “**Second Amendment**”, and together with the Original Easement Agreement and the First Amendment, collectively, the “**Easement Agreement**”).

B. The Easement Agreement granted nonexclusive access easements over and across the Kennecott East Parcel (the “**East Easement**”) and the Kennecott West Parcel (the “**West Easement**”), which area of land is more particularly described on Exhibit A attached hereto and incorporated herein.

C. The Parties desire to, among other things, relocate the East Easement as more particularly set forth below.

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

1. Recitals/Defined Terms. The foregoing Recitals are hereby incorporated herein in their entirety. Capitalized terms used herein and not defined herein shall have the meaning ascribed to such terms in the Easement Agreement.

2. Relocation of East Easement. The Parties hereby amend the Easement Agreement to relocate the East Easement to that area legally described on Exhibit B attached hereto and incorporated herein (the "**Relocated East Easement**"). The Relocated East Easement is visually depicted on Exhibit C attached hereto and incorporated herein.

3. Termination of Relocated East Easement. The Parties acknowledge and agree that Daybreak intends to construct certain improvements along 11800 South which will cause the Relocated East Easement to be unusable. At such time, the Parties agree to enter into an agreement terminating the Relocated East Easement. Notwithstanding the foregoing, Daybreak agrees it shall not construct those certain improvements until that date which is at least fifteen (15) months from the Effective Date of this Third Amendment.

4. West Easement. At such time that the Relocated East Easement is terminated by the Parties, the Parties shall reassess the viability of the West Easement and shall enter into a new agreement memorializing their agreement.

5. No Other Revisions. Except as expressly modified hereby, all other terms and provisions of the Easement Agreement shall remain in full force and effect, are incorporated herein by this reference, and shall govern the conduct of the parties hereto; provided, however, to the extent of any inconsistency between the provisions of the Easement Agreement and the provisions of this Third Amendment, the provisions of this Third Amendment shall control.

6. Miscellaneous.

6.1 Governing Law. This Third Amendment is governed by Utah law. Should any action be brought to enforce or interpret the terms of this Third Amendment, such action shall be brought in a state or federal court located in Salt Lake County.

6.2 Counterparts and Recording. This Third Amendment may be executed in counterparts and, when assembled with the signature page of each Party, shall be considered one agreement and may be recorded.

6.3 Covenants to Run with Land. Each Party hereby declares its express intent that the covenants set forth herein shall be covenants running with the land and shall pass to and be binding upon such Party's successors in title including any purchaser, grantee, encumbrancer, or lessee of any portion of the applicable Party's property and any other person or

entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of such Party and any purchaser, grantee, encumbrancer, or lessee of any portion of such Party's property and any other person or entity having any right, title or interest therein.

6.4 Legal Fees. In the event a Party commences a legal proceeding to enforce any of the terms of this Third Amendment, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party to be fixed by the court in the same action. The term "legal proceedings" as used above shall be deemed to include appeals from a lower court judgment and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters.

6.5 Further Assurances. Each Party agrees to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Third Amendment.


6.6 Amendment. The Parties agree that the provisions of this Third Amendment may be modified or amended, in whole or in part, or terminated, only by the written consent of each Party, evidenced by a document that has been executed and acknowledged by both Parties and recorded with the Salt Lake County Recorder.

*[Signatures on Following Pages]*

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the day and year first above written by their duly authorized signatories.

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

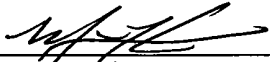
By: Daybreak Communities LLC,  
a Delaware limited liability company  
Its: Project Manager

By:   
Ty McCutcheon, President & CEO

**ACKNOWLEDGMENT**

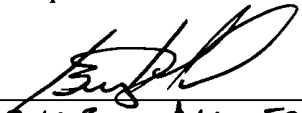
STATE OF UTAH )  
 ) :ss.  
COUNTY OF SALT LAKE )

On April 24, 2019, 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 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.

  
NOTARY PUBLIC



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

By:   
Name: BRYCE DUNFORD  
Title: BOARD PRESIDENT

**ACKNOWLEDGMENT**

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

On Apr 23, 2019 personally appeared before me, a Notary Public,  
BRYCE DUNFORD, the President 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.

  
NOTARY PUBLIC

[SEAL]



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF EASEMENT AREA**

**EAST EASEMENT:**

A 120.00-foot wide access easement, lying 60.00 feet measured perpendicularly to on each side of and parallel to the following described centerline, and being more particularly described as follows:

Commencing at the Southeast Corner of said Section 22, (basis of bearing being North 89°49'08" West 2644.339 feet between the Southeast Corner and the South Quarter Corner of said Section 22) and running North 89°49'08" West along the south line of Said Section 22 for 77.277 feet; thence North 00°10'52" East perpendicular to said section line for 40.000 feet to a point on the southerly boundary of the Amended Kennecott Master Subdivision #1 recorded in Book 2003P at Page 303 in the office of the Salt Lake County Recorder said point also being the POINT OF BEGINNING; thence North 00°04'27" West for 2807.00 feet; thence North 29°41'43" West for 323.52 feet; thence North 00°04'22" West for 2160.14 feet to a point on the north line of said Section 22 said point also being the END of said centerline.

AND

**WEST EASEMENT:**

The Southernmost 120 feet of Section 15, Township 3 South, Range 2 West, Salt Lake Base and Meridian.

**EXHIBIT "B"**

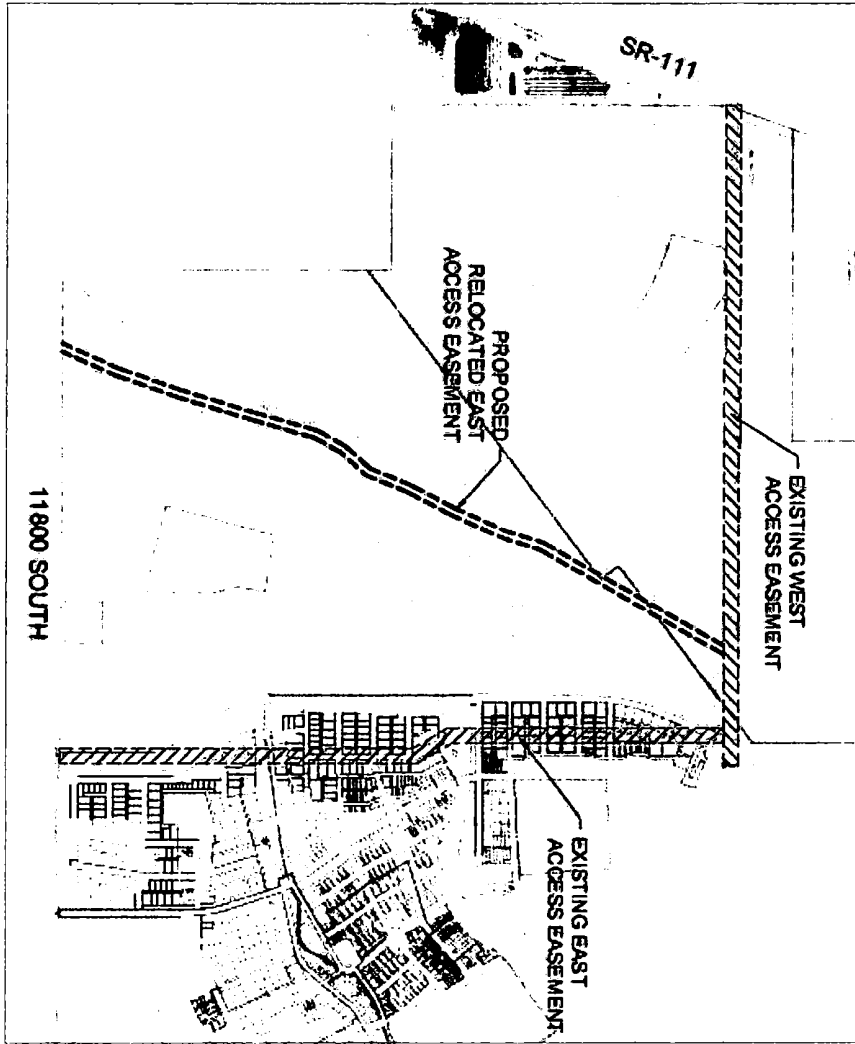
**LEGAL DESCRIPTION OF RELOCATED EAST EASEMENT**

A sixty (60) foot wide access easement, located in Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian, U.S. Survey, said easement extending thirty (30) feet on each side of and lying parallel and adjacent to a line of reference and projection thereof, more particularly described as follows:

Beginning at a point on the South Line of the VP Daybreak Operations Parcel No. 26-22-401-002, said point lies North 89°49'44" West 700.507 feet along the Section Line and North 40.000 feet from the South Quarter Corner of Section 22, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 24°04'06" East 480.728 feet; thence North 19°30'02" East 535.746 feet; thence North 17°02'51" East 582.231 feet; thence North 15°55'45" East 537.048 feet; thence North 29°14'04" East 235.037 feet; thence North 42°06'38" East 279.448 feet; thence North 22°03'55" East 338.197 feet; thence North 28°00'02" East 421.121 feet; thence North 24°02'25" East 447.002 feet; thence North 17°08'53" East 291.163 feet; thence North 30°00'17" East 1662.324 feet to the South Line of an existing West Easement as described in Entry No. 7701767 recorded in the Office of the Salt Lake County Recorder and the point of terminus.

EXHIBIT "C"

DEPICTION OF RELOCATED EAST EASEMENT



DATE: \_\_\_\_\_ TIME: \_\_\_\_\_  
BY: \_\_\_\_\_  
CHECKED BY: \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_  
BY: \_\_\_\_\_  
CHECKED BY: \_\_\_\_\_



**RELOCATED BASTIAN EAST  
ACCESS EASEMENT**



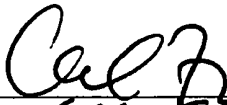
**LENDER'S CONSENT AND SUBORDINATION**

**THIRD AMENDMENT TO EASEMENT AGREEMENT –  
PARCEL I.D. # 26-23-151-002 & 26-22-426-002**

THE UNDERSIGNED, THE BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST, DATED DECEMBER 19, 2016, ENCUMBERING THE HEREIN DESCRIBED REAL PROPERTY (THE "DEED OF TRUST"), HEREBY EXPRESSLY CONSENTS TO AND JOINS IN THE EXECUTION AND RECORDING OF THAT CERTAIN THIRD AMENDMENT TO EASEMENT AGREEMENT, DATED AS OF April 23, 2019, BETWEEN VP DAYBREAK OPERATIONS LLC, A DELAWARE LIMITED LIABILITY COMPANY, VP DAYBREAK INVESTMENTS LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND SOUTH JORDAN SCHOOL DISTRICT, A BODY CORPORATE AND POLITIC OF THE STATE OF UTAH (THE "THIRD AMENDMENT"), TO WHICH THIS LENDER'S CONSENT AND SUBORDINATION IS ATTACHED.

THE UNDERSIGNED LENDER HEREBY CONSENTS TO THE THIRD AMENDMENT AND MAKES THE LIEN OF THE DEED OF TRUST SUBORDINATE THERETO. THIS LENDER'S CONSENT AND SUBORDINATION SHALL NOT OTHERWISE AFFECT THE PRIORITY OF MORTGAGES AND/OR LIENS AGAINST THE REAL PROPERTY DESCRIBED HEREIN, BUT SHALL SOLELY EVIDENCE THE LENDER'S INTENT TO SUBORDINATE ITS LIEN OF THE DEED OF TRUST TO THE THIRD AMENDMENT. THE UNDERSIGNED REPRESENTS THAT HE OR SHE HAS FULL POWER AND AUTHORITY TO EXECUTE THIS LENDER'S CONSENT AND SUBORDINATION ON BEHALF OF THE LENDER.

**U.S. BANK NATIONAL ASSOCIATION**  
d/b/a Housing Capital Company

By:   
Name: Carl F. Swanson  
Title: SVP

[SIGNATURE MUST BE NOTARIZED]  
[Notary acknowledgement on following page]

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF FRESNO

On April 23, 2019 before me, Lori Beckman, Notary Public,  
(here insert name of the officer)

personally appeared Carl F. Swanson who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lori Beckman (Seal)

