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Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 9 P.

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:

OM-Enterprises Company
c/o Kennecott Land Company
4700 Daybreak Parkway, 3S
South Jordan, UT 84095
Attention: Senior Associate, Contracts
and Risk Management

Above Space for Recorder's Use

FIRST AMERICAN TITLE
CV# 5103610 **PARTIAL ASSIGNMENT AND ASSUMPTION**
OF MASTER DEVELOPMENT AGREEMENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT ("Agreement") is made as of December 4, 2008, by and between **OM ENTERPRISES COMPANY**, a Utah corporation ("**Assignor**"), and **DAYBREAK SCHOOL DEVELOPMENT, L.L.C.**, a Utah limited liability company ("**Assignee**"); individually, a "**Party**", and collectively, the "**Parties**".

RECITALS

- A. Kennecott Land Residential Development Company, a Delaware corporation ("**KLRDC**") is a wholly owned subsidiary of Assignor.
- B. KLRDC has entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions with Assignee dated as of October 13, 2008 ("**Purchase Agreement**") regarding the purchase and sale of certain real property located in the City of South Jordan, County of Sale 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**").
- C. 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 Assignor 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 by that certain Agreement Regarding Daybreak Development dated as of July 9, 2007, which was recorded on November 19, 2007, in the Salt Lake County Recorder's Office as Instrument No. 10279353 (as amended, the "**MDA**").
- D. In connection with the conveyance of the Property by KLRDC to Assignee, Assignor desires: (a) 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; and (b) to assign certain entitlements rights and obligation relative to the Site Plan Approval (defined below); on the terms and conditions more particularly set forth herein.

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

Confidential

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 Assignors' 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 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 (including the Preliminary Site Plan [defined below]) 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. ASSIGNMENT OF RIGHTS UNDER SITE PLAN APPROVAL. In connection with Assignor's conveyance of the Property to Assignee as set forth in the Purchase Agreement, KLRDC has agreed to use (and to cause Assignor to use) commercially reasonable efforts to obtain approval of Assignee's preliminary site plan for the Property ("**Preliminary Site Plan**"). The City's approval of Assignee's Preliminary Site Plan, so obtained by Assignor, shall be hereinafter referred to as the "**Site Plan Approval**". Assignor hereby assigns to Assignee all of Assignor's rights in the Site Plan Approval including, without limitation, the entitlements rights granted by the City (and all other applicable governing bodies) pursuant to the Site Plan Approval which shall permit Assignee to develop a facility on

the Property containing a maximum of (collectively, through its various phases of development) 43,110 square feet of building area and 64,530 square feet for future building. A copy of the Preliminary Site Plan is attached hereto as Exhibit B and incorporated herein by reference.

5. **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 incurred 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.

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

Assignor:

OM ENTERPRISES COMPANY,
a Utah corporation

By: _____



Name: Dean H. Anderson

Title: Vice President Finance

Assignee:

DAYBREAK SCHOOL DEVELOPMENT, L.L.C.
a Utah limited liability company

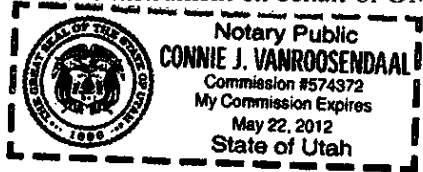
By: _____

Name: Jed Stevenson

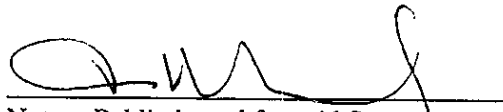
Title: Managing Member

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

On December 4, 2008, personally appeared before me, a Notary Public, Dean H. Anderson, as Vice President Finance of **OM ENTERPRISES 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 **OM ENTERPRISES COMPANY**.



WITNESS my hand and official Seal.



Notary Public in and for said State

My commission expires: 5-22-2012

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

On December _____, 2008, personally appeared before me, a Notary Public, Jed Stevenson, as Managing member of **DAYBREAK SCHOOL DEVELOPMENT, L.L.C.**, 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 **DAYBREAK SCHOOL DEVELOPMENT, L.L.C.**.

WITNESS my hand and official Seal.

Notary Public in and for said State

My commission expires: _____

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

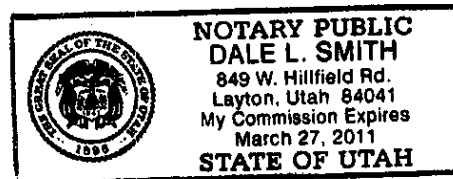
On December _____, 2008, personally appeared before me, a Notary Public, Dean H. Anderson, as Vice President Finance of **OM ENTERPRISES COMPANY**, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of **OM ENTERPRISES COMPANY**.

WITNESS my hand and official Seal.

Notary Public in and for said State

My commission expires: _____

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



On December 9th, 2008, personally appeared before me, a Notary Public, Jed Stevenson, as Managing member of **DAYBREAK SCHOOL DEVELOPMENT, L.L.C.**, 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 **DAYBREAK SCHOOL DEVELOPMENT, L.L.C.**.

WITNESS my hand and official Seal.

A handwritten signature in cursive script, appearing to read 'Dale L. Smith', written over a horizontal line.

Notary Public in and for said State

My commission expires: 3-27-2011

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot C-101 inclusive of that certain map entitled "Kennecott Daybreak **Plat 3C** Subdivision Amending Lots T4 and V4A of the Kennecott Master Subdivision #1 Amended" recorded on **November 26, 2008**, as Entry No. 10569159, Book 2008P, at Page 291 of the Official Records of Salt Lake County, Utah.

Portion of Tax Parcel Nos. 26-24-400-010-0000 and 26-24-400-009-0000

EXHIBIT B

PRELIMINARY SITE PLAN

[Attach Preliminary Site Plan and building guidelines approved by the City as part of the Site Plan Approval.]

