

WHEN RECORDED RETURN TO:

University of Utah
Real Estate Administration
505 Wakara Way, Suite 210
Salt Lake City, Utah 84108
1829215 KM-1

12975986
4/26/2019 2:58:00 PM \$26.00
Book - 10774 Pg - 2662-2670
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 9 P.

Affects Parcel ID Nos.: 26-14-200-018;
26-14-202-010; 26-14-226-009

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "**Declaration**") is made by and among VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company ("**Founder**"); VP DAYBREAK DEVCO LLC, a Delaware limited liability company ("**Seller**"); and THE UNIVERSITY OF UTAH, a body politic and corporate of the State of Utah (the "**U of U**"). Founder, Seller, and the U of U are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS:

A. Seller owns certain real property in the community commonly known as "Daybreak" located in South Jordan City ("**City**"), Salt Lake County ("**County**"), State of Utah ("**State**"), more specifically described in Exhibit A attached hereto (the "**Parcel**").

B. Founder is an affiliate of Seller, and as the "Founder" of the Daybreak community, which Founder is in the process of developing as a mixed-use master planned community, Founder recorded the Covenant and the Charter (as those terms are defined in the Exemption Letter, defined below) against the Parcel (collectively, the "**Daybreak CC&Rs**").

C. The U of U either as itself or through a State of Utah entity controlled by or under common control with the U of U (a "**U of U Affiliate**"), is considering purchasing the Parcel from Seller pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of July 16, 2018, by and between the U of U and VP DAYBREAK INVESTMENTS LLC, a Delaware limited liability company ("**Original Seller**"), as amended by that certain First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of September 10, 2018, Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of November 14, 2018, Third Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of January 14, 2019, Fourth Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of February 1, 2019, Fifth Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of February 4, 2019, and Sixth Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of March 28, 2019, and as assigned by that certain Assignment and Assumption of Purchase and Sale Agreement dated April 2, 2019 (collectively, as amended and assigned, and assigned by Original Seller to Seller (collectively, as amended and assigned, the "**Purchase Agreement**").

D. The term "**Property**" as used in this Declaration means the portion of the Parcel owned by the U of U or a U of U Affiliate.

E. By that certain letter dated *April 26*, 2019 from Founder to the U of U (the "**Exemption Letter**"), Founder exempted the Property from the Daybreak CC&Rs for the "**Exempt**

Period", defined as the period of time commencing on the recording of the deed from Seller to the U of U and/or a U of U Affiliate for the Parcel, and so long as the U of U or a U of U Affiliate owns the Property.

F. The Exemption Letter and this Declaration apply only to the Property and in the event any portion of the Parcel is not owned by the U of U and/or a U of U Affiliate (e.g., such portion is conveyed to a third party) then thereafter the Exemption Letter and this Declaration shall no longer apply to such portion of the Parcel and such portion of the Parcel shall be subject to the Covenant and the Charter.

G. The Parties have agreed to enter into this Declaration in order to establish certain covenants, conditions, and restrictions with respect to the development of the Property.

H. This Declaration shall be recorded against the Parcel in the official records of the County upon conveyance of the Parcel to the U of U, and the Parties agree that the provisions of this Declaration shall be covenants running with the land, or equitable servitudes, as the case may be, as to the Property. In the event any portion of the Parcel is no longer part of the Property, then the Parties shall cause to be executed and record in the official records of the County documentation sufficient to terminate of record this Declaration with respect to the portion of the Parcel that is no longer part of the Property.

AGREEMENT

NOW, THEREFORE, as partial consideration for the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto declare and agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into this Declaration and may be used in the interpretation of this Declaration.

2. **Acknowledgement of Governmental Entity.** The Parties acknowledge that: (i) the U of U is a governmental entity of the State, and (ii) as provided for in Utah Code Section 63A-5-206(6)(d) and in Utah Administrative Code R23-9-3 and R23-9-4, construction on State property, including land owned by the U of U, is not subject to the planning and zoning authority of local governments (including the City or County) or local governmental building permit requirements or plan reviews, provided, however, when determining the location and design of facilities to be constructed on U of U property, the U of U shall consider input received from local governments and, as appropriate, local government planning and zoning requirements that would apply if such property were not owned by the U of U, a State entity. Pursuant to Utah Administrative Code R23-9-4, this may include discussion with local government planning officials and/or a review of some or all of the following local government documents: (a) the local government master plan; (b) zoning ordinance; and (c) requirements for ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, and pedestrian circulation.

3. **Use and Development.**

(a) **Permitted Uses.** For purposes of this Agreement, "**University Uses**" shall mean any uses, operations, and activities consistent with any uses, operations, or activities conducted on the U of U's main campus in Salt Lake City, now or in the future, such as, but not limited to: (i) research and teaching and the buildings or other facilities therefor and in support thereof, including, without limitation, teaching, research and/or health sciences facilities, athletic facilities, academic facilities, housing, and a research park, (ii) other educational, research, health sciences, and administrative operations, functions, and facilities consistent with the U of U's mission, and (iii) support services incidental to and in support of the above, such as, but not limited to, food services, campus stores, banking services, postal services, child care

facilities, and other retail or commercial services. Permitted uses of the Property shall be uses consistent with the University Uses.

(b) Seller Consultation and Approval. Seller acknowledges that the vision and planning for the development of the Property is in its infancy and will be subject to the processes and approvals applicable to all proposed development of U of U real property. As the U of U's development plans for the Property progress, the U of U will consult with Seller on the development of the Property. The U of U understands and acknowledges that various development aspects of the Property are important to Seller, such as the master planning process, site planning, phasing, integration with the overall Daybreak community, parking location and screening, walkability, sustainability, exterior aesthetics, and incorporation of current practices of new urbanism. The Parties will work together in good faith (i) towards their mutual goal of alignment of the Property with the general planning principles of the Daybreak community, and (ii) to develop a master planning document for development of the Property (the "**Property Development Plan**") that contains key planning principles that enable the development on the Property to align with the Daybreak Master Plan. U of U and Seller will work together in good faith on all site plan and building elevation approvals to ensure alignment of development of the Property with the Property Development Plan and planning principles of the Daybreak community. Without limiting the generality of the foregoing, the character and composition of the building elevations on Grandville Avenue frontage and the layout, location and design of primary roadways and cross sections within the Property shall be subject to Seller's approval, which approval shall not be unreasonably withheld or delayed. In certain circumstances that warrant exception, Seller agrees to a reasonable waiver of the restrictions on a case by case basis. For purposes of clarity, the Property Development Plan will not address or control operations on the Property. The Parties will work together in an effort to adjust the Property's entitlement to a level that enables the reasonable execution of the Property Development Plan. The Property Development Plan and any revisions thereof shall be subject to the U of U's compliance with the development restrictions set forth in this Declaration, matters of record, and applicable law.

(c) Coordination with Local Government/Approvals. Seller and U of U will together coordinate discussions with local government planning officials concerning the matters set forth in Section 3 herein. Any approvals, permits, and/or consents required from the State pertaining to the Property and the U of U's construction on or use thereof shall be obtained by the U of U. Upon request from the U of U, Seller agrees to cooperate with the U of U in good faith in connection with the U of U's efforts to obtain such approvals, permits, and or consents. U of U agrees to cooperate with Seller in good faith in connection with Seller's performance of its obligations with respect to the Property under the Master Development Agreement (as defined in the Charter).

(d) Construction on the Property. Construction, development, and/or operation of the Property may be accomplished through non-traditional arrangements such as public/private partnerships as determined by the U of U in the U of U's discretion.

4. Easements and Programs. The Daybreak CC&R's provide for various easements and community programs, services, and organizations that benefit and burden certain areas of the Daybreak community. By the Exemption Letter, the Property was made exempt from the Daybreak CC&R's. As the U of U's development plans for the Property progress, the Parties will negotiate in good faith easement, participation, and/or other agreements relating to utilities, access, community programs, services, and organizations to best facilitate the development and integration of the Property with the surrounding and the overall Daybreak community.

5. Term/Modification and Termination. The term of this Declaration shall commence as of the date of recordation of this Declaration (the "**Effective Date**") and shall continue in full force and effect until the expiration of the Exempt Period, unless earlier terminated by a written instrument duly

executed and acknowledged by the Parties and recorded in the office of the County recorder. Upon expiration of the Exempt Period, this Declaration shall automatically become null and void and of no further force or effect. This Declaration may not be modified, amended, or supplemented in any respect whatsoever, in whole or in part, except by a written instrument duly executed and acknowledged by the Parties and recorded in the office of the County recorder.

6. **Covenant Running with Land.** The provisions of this Declaration shall be deemed to be covenants running with the title to the Property, or equitable servitudes, as the case may be, and, accordingly, shall bind each and every portion of the Property and shall not constitute merely personal covenants. All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

7. **Notice.** All notices and other communications hereunder shall be in writing and shall be given by any of the following means: (i) personal service; (ii) certified or registered mail, return receipt requested, postage prepaid; and (iii) FedEx or other nationally recognized overnight courier service, to the following addresses. Such addresses may be changed by notice to the other Parties in the same manner as provided above. Notices are deemed effective upon delivery. Refusal to accept delivery shall be deemed to be delivery thereof.

If to Founder: **VP Daybreak Operations LLC**
11248 Kestrel Rise Road, Ste. 201
South Jordan, UT 84009
Attention: Scott Kaufmann

With a copy to: **Värde Partners**
Legal Department
901 Marquette Ave S., Ste. 3300
Minneapolis, Minnesota 55402
Attention: Nick Moulton

If to Seller: **VP Daybreak Devco LLC**
11248 Kestrel Rise Road, Ste. 201
South Jordan, UT 84009
Attention: Scott Kaufmann

With a copy to: **Ward | Molloy, P.C.**
68 South Main Street, Ste. 800
Salt Lake City, Utah 84101
Attention: Curtis R. Ward

If to U of U: **University of Utah**
Real Estate Administration
505 Wakara Way, Ste. 210
Salt Lake City, UT 84108
Attention: Executive Director

With a copy to: **University of Utah**
Office of General Counsel
201 S. Presidents Circle, Rm 309
Salt Lake City, UT 84112
Attention: General Counsel

8. **Waiver.** No waiver by any Party of any breach by another Party of any term or provision of this Declaration shall be construed to be or constitute a waiver of any succeeding breach of the same or any other term or provision of this Declaration. No term or provision of this Declaration shall be deemed to have been waived by a Party unless such waiver shall be set forth in writing.

9. **Severability.** If any term or provision of this Declaration or the application thereof 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 held 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 fullest extent permitted by law.

10. **Entire Agreement.** This Declaration, and the Exemption Letter, reflect the entire agreement of the Parties with respect to the subject matter thereof. Seller's consultation privileges and

approval rights set forth in Section 3(b) above replace and supersede all prior consultation, review, and/or approval rights of Seller and/or Founder with respect to the Property, including without limitation, those set forth in the Purchase Agreement.

11. **Further Assurances.** The Parties acknowledge and agree that the U of U's plans for the development of the Property are in their infancy and that it is likely that this Declaration will require amendment and modification as such plans progress. The Parties agree to work together in good faith in connection such amendments and modifications to this Declaration, and the negotiation and execution of such other documents as are reasonably necessary to better effectuate the Parties' intent and the terms and provisions of this Declaration and the Purchase Agreement.

12. **Miscellaneous.** This Declaration shall be construed in accordance with the laws of the State of Utah. This Declaration may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. In the event of any controversy, claim, or dispute relating to this Declaration or any breach thereof, the prevailing Party shall be entitled to recover from the other Party or Parties its reasonable attorney fees and costs.

[Signatures and Acknowledgements Follow]

[U of U Daybreak Campus – Declaration of CC&Rs – Founder’s Signature Page]

IN WITNESS WHEREOF, the Parties have executed this instrument as of the Effective Date.

FOUNDER:

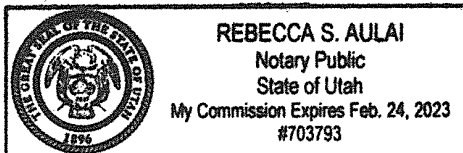
VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

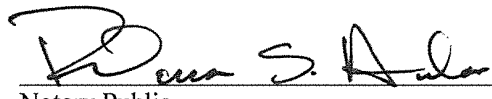
By: Daybreak Communities LLC,
a Delaware limited liability company
Its: Project Manager

By: 
Name: Ty McCutcheon
Its: President & CEO

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

On April 24, 2019, 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 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

[Signatures and Acknowledgements Continue on Following Pages]

[U of U Daybreak Campus – Declaration of CC&Rs – Seller’s Signature Page]

SELLER:

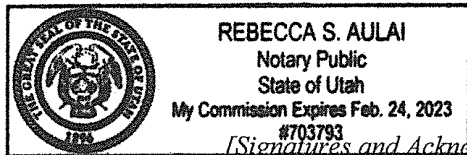
VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

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

By: Ty McCutcheon
Name: Ty McCutcheon
Its: President & CEO

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

On April 24, 2019, 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.



Reena S. Aul
Notary Public


[Signatures and Acknowledgements Continue on Following Page]

THE UNIVERSITY OF UTAH,
a body politic and corporate of the State of Utah

By: Patricia A. Ross
CHIEF BUSINESS STRATEGY OFFICER

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

The foregoing instrument was acknowledged before me this 24 day of APRIL, 2019, by Patricia A. Ross, the Chief Business Strategy Officer of **THE UNIVERSITY OF UTAH**, a body politic and corporate of the State of Utah.


Notary Public

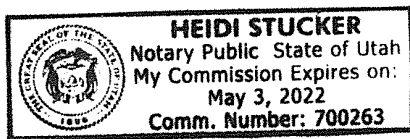


EXHIBIT A
Legal Description of the Property

Lot C-101, DAYBREAK NORTH STATION CAMPUS SUBDIVISION, amending Lots T3, OS2 & WTCI of the Kennecott Master Subdivision #1 Amended, recorded April 2, 2019 as Entry No. 12961137 in Book 2019P of Plats at Page 112, on file in the office of the Salt Lake County Recorder, State of Utah.

Exhibit A to
Declaration of Covenants, Conditions, and Restrictions

BK 10774 PG 2670