

After recording, please send to:

South Jordan City  
Attn: City Recorder  
1600 West Towne Center Drive  
South Jordan, Utah 84009

Tax Parcel Number(s): 26-14-176-009, 26-14-176-002, 26-14-176-003, 26-14-176-004, 26-14-176-005, 26-14-176-006 and 26-14-176-007

### PRIVATE STORM DRAINAGE UTILITIES EASEMENT AGREEMENT

This Private Storm Drainage Utilities Easement Agreement (this "**Agreement**") is made this 16<sup>th</sup> day of September, 2109, by and between VP DAYBREAK INVESTMENTS LLC, a Delaware limited liability company, VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company collectively, "**Grantor**", and the City of South Jordan, a Utah municipal corporation ("**Grantee**").

#### RECITALS

A. Grantor is the owner of certain real property identified as Assessor's Parcel Number(s): 26-14-176-009, 26-14-176-002, 26-14-176-003, 26-14-176-004, 26-14-176-005, 26-14-176-006 and 26-14-176-007 (the "**Property**").

B. Grantor has agreed to grant Grantee a private storm drainage utilities easement on certain portions of the Property as more particularly set forth below.

#### AGREEMENT

The parties agree as follows:

1. **STORM DRAINAGE UTILITIES EASEMENT.** Grantor hereby grants to Grantee, its successors and assigns, and Grantee hereby accepts from Grantor, a storm drainage utilities easement (the "**Easement**") under, across, over and through those certain portions of the Property as more particularly depicted in Exhibit A, and more fully described in Exhibit B (the "**Easement Area**"), which are attached hereto and incorporated herein.

2. **STATEMENT OF PURPOSE.** The Easement shall be for storm drainage utilities and Grantee shall have reasonable rights of ingress and egress to the Easement Area for the purpose of installing, repairing, testing, maintaining, and replacing the utilities, as more specifically provided herein.

3. **TYPE OF EASEMENT.** The Easement shall be non-exclusive and Grantor (or its invitees, guests or successors in interest) may use the surface of the Easement Area for any purpose, business or otherwise; provided that such use does not interfere with the rights granted to Grantee hereunder. The Easement Area shall remain unobstructed from buildings and other such structures; however, Grantor may place parking lots, sidewalks or other paved structures on the Easement Area. Grantor shall provide notice to Grantee prior to permitting any other utilities to be located within the Easement Area, which other utilities shall not interfere with Grantee's rights hereunder.

4. **REPAIR AND MAINTENANCE.** Grantor or its assignee shall be responsible for the maintenance of the storm drainage equipment and facilities located in the Easement Area and shall keep the same in a good, clean, safe and functional condition. Grantor or its assignee shall be responsible for landscape and surface maintenance within the Easement Area. In the event Grantor or its assignee fails to adequately maintain and repair the storm drainage equipment and facilities located in the Easement Area as required herein, Grantee may notify Grantor of such failure in writing. In the event Grantor fails to remedy such default within thirty (30) days after receipt of such notice or, if such default cannot be cured within thirty (30) days, in the event Grantor fails to commence the cure of such default within such thirty (30) day period and diligently pursues such cure to completion, Grantee may undertake such repairs or maintenance and shall be entitled to recover from Grantor the charges, fees, costs and expense incurred by Grantee in connection therewith.

5. **TERM.** The Easement granted pursuant to this Agreement shall run with the land and shall be effective and binding on the parties hereto upon the execution of this Agreement and shall be perpetual in its term, and shall not be extinguished by transfer of any interest in the Property.

6. **NO REPRESENTATIONS AND WARRANTIES.** Grantor makes no warranties or representations concerning the Easement hereby granted, or its suitability for the intended use, the cost of maintenance or otherwise.

7. **INDEMNITY.**

a. Grantee shall defend, indemnify, and hold Grantor and its respective successors, assigns, corporate parents, affiliates and subsidiaries, and their respective officers, directors, shareholders, representatives, contractors, agents and employees harmless from and against any action, cause of action, suit, proceeding, claim or demand of any kind asserted by or against the Grantor (collectively, "**Claims**") and any and all liabilities, regardless of whether such liabilities are based upon contract, warranty, tort, (including negligence of any nature), violation of laws, damages, losses, obligations, costs and expenses of every kind, including, without limitation, reasonable attorneys' fees, expert witness fees, and other costs and expenses (collectively, "**Liabilities**"), for injuries to or the death of any person, loss of or damage to the property of any person or the assertion of any other Claims or Liabilities by any person caused by the acts or omissions of Grantee or its agents in exercising its right under this Agreement.

b. Grantor shall defend, indemnify, and hold Grantees and their respective successors, assigns, corporate parents, affiliates and subsidiaries, and their respective officers, directors, shareholders, representatives, contractors, agents and employees harmless from and against any action, cause of action, suit, proceeding, claim or demand of any kind asserted by or against the Grantees (collectively, "**Claims**") and any and all liabilities, regardless of whether such liabilities are based upon contract, warranty, tort, (including negligence of any nature), violation of laws, damages, losses, obligations, costs and expenses of every kind, including, without limitation, reasonable attorneys' fees, expert witness fees, and other costs and expenses (collectively, "**Liabilities**"), for injuries to or the death of any person, loss of or damage to the property of any person or the assertion of any other Claims or Liabilities by any person caused by the acts or omissions of Grantor or its agents in exercising its right under this Agreement.

8. **SEVERABILITY.** If any clause, sentence, or other portion of the terms, conditions, covenants, and restrictions of this Agreement becomes illegal, null, or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.

9. **RECORDATION.** The Agreement shall be recorded in the real property records of Salt Lake County, State of Utah. By executing this Agreement, Grantor consents to Grantee's recordation of this Agreement.

10. **FURTHER DOCUMENTS.** Grantor will execute any and all further documents, which Grantee reasonably requests to assure Grantee the rights granted in this Agreement.

11. **AMENDMENTS.** This Agreement may only be amended by a written document signed by each of the parties.

12. **APPLICABLE LAW.** The Agreement shall be construed and interpreted under, and governed and enforced according to, the laws of the State of Utah without regard for that state's principles of conflict of law.

13. **ATTORNEY FEE.** In case of suit or action is instituted in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party for reasonable attorney fees and costs.


*[Signatures on following page]*

This Agreement is effective on the date that the last party executes this Agreement as indicated by the date stated under that party's signature line.

**GRANTOR:**

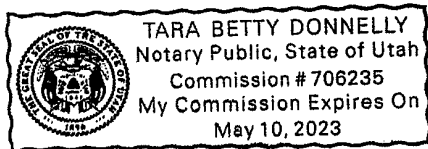
**VP DAYBREAK INVESTMENTS LLC,**  
a Delaware limited liability company

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

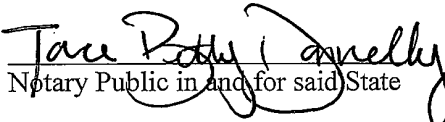
By:   
Ty McCutcheon its President & CEO

STATE OF UTAH           )  
                                      )  
COUNTY OF SALT LAKE   )

On September 17, 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.



WITNESS my hand and official Seal.

  
Notary Public in and for said State


My commission expires: 5-10-2023

[SEAL]

*[Signatures continue on following pages]*

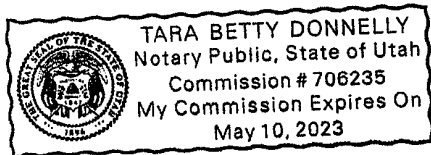
**VP DAYBREAK OPERATIONS LLC,**  
a Delaware limited liability company

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

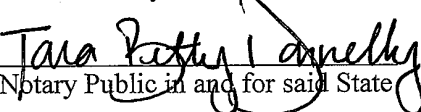
By:   
Ty McCutcheon its President & CEO

STATE OF UTAH                     )  
  )  
COUNTY OF SALT LAKE        )

On September 17, 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 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.



WITNESS my hand and official Seal.

  
Notary Public in and for said State

My commission expires: 5-10-2023

[SEAL]

*[Signatures continue on following page]*

GRANTEE:

SOUTH JORDAN CITY,  
a Utah municipality

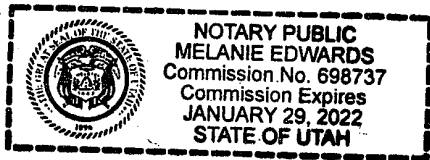
By: [Signature]  
Name: Gary L. Whitcomb  
Title: City Manager

ACKNOWLEDGMENT

STATE OF UTAH )  
COUNTY OF SALT LAKE )

On September 18, 2019, personally appeared before me, a Notary Public,  
Gary L. Whitcomb, the City Manager of SOUTH JORDAN CITY, a Utah  
municipal corporation, personally known or proved to me to be the person whose name is subscribed to  
the above instrument who acknowledged to me that he/she executed the above instrument on behalf of  
SOUTH JORDAN CITY.

WITNESS my hand and official Seal.



[Signature]  
Notary Public in and for said State

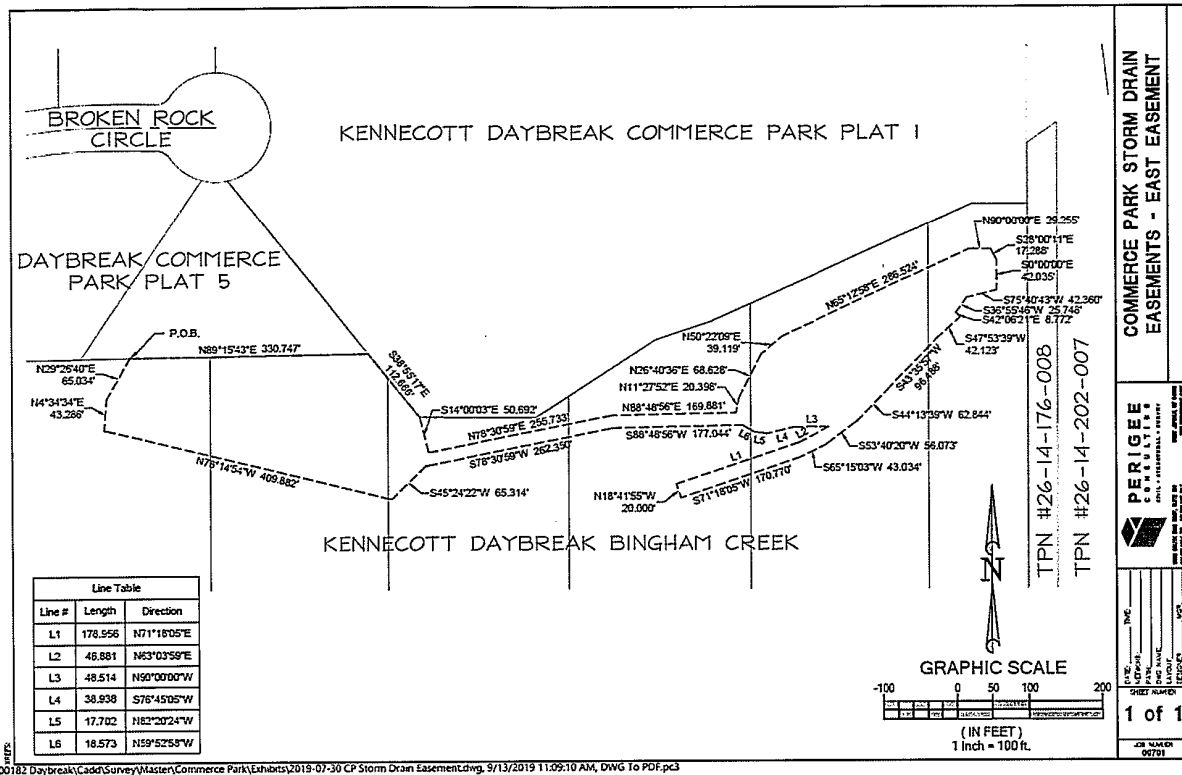
My commission expires: January 29, 2022

[SEAL]

Approved as to Form:

[Signature]  
Attorney for South Jordan City

# EXHIBIT A



100182 Daybreak\Add\Survey\Master\Commerce Park\Exhibits\2019-07-30 CP Storm Drain Easement.dwg, 9/13/2019 11:09:10 AM, DWG To PDF.pc3

## **EXHIBIT B**

### **Commerce Park Storm Drain Easements**

#### **East Easement**

Beginning at a point on a Northerly Line of the Kennecott Daybreak Bingham Creek subdivision, said point also being on a Southerly Line of Daybreak Commerce Park Plat 5, said point lies North 89°55'21" West 964.811 feet along the Section Line and South 1473.626 feet from the North Quarter Corner of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Kennecott Daybreak Bingham Creek the following (2) courses: 1) North 89°15'43" East 330.747 feet; 2) South 38°55'17" East 112.666 feet; thence South 14°00'03" East 50.692 feet; thence North 78°30'59" East 255.733 feet; thence North 88°48'56" East 169.881 feet; thence North 11°27'52" East 20.398 feet; thence North 26°40'36" East 68.628 feet; thence North 50°22'09" East 39.119 feet; thence North 65°12'58" East 286.524 feet; thence East 29.255 feet; thence South 28°00'11" East 17.288 feet; thence South 42.035 feet; thence South 75°40'43" West 42.360 feet; thence South 36°55'46" West 25.748 feet; thence South 42°06'21" East 8.772 feet; thence South 47°53'39" West 42.123 feet; thence South 43°35'57" West 96.488 feet; thence South 44°13'39" West 62.844 feet; thence South 53°40'20" West 56.073 feet; thence South 65°15'03" West 43.034 feet; thence South 71°18'05" West 170.770 feet; thence North 18°41'55" West 20.000 feet; thence North 71°18'05" East 178.956 feet; thence North 63°03'59" East 46.881 feet; thence West 48.514 feet; thence South 76°45'05" West 38.938 feet; thence North 82°20'24" West 17.702 feet; thence North 59°52'58" West 18.573 feet; thence South 88°48'56" West 177.044 feet; thence South 78°30'59" West 262.350 feet; thence South 45°24'22" West 65.314 feet; thence North 76°14'54" West 409.882 feet; thence North 04°34'34" East 43.286 feet; thence North 29°26'40" East 65.034 feet to said Northerly Line and the point of beginning.

Property contains 2.717 acres.



**LENDER'S CONSENT AND SUBORDINATION**

PRIVATE STORM DRAINAGE UTILITIES EASEMENT –  
PARCEL I.D. # 26-14-176-009, 26-14-176-002, 26-14-176-003, 26-14-176-004, 26-14-176-005,  
26-14-176-006 AND 26-14-176-007  
(TO CITY OF SOUTH JORDAN)

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 PRIVATE STORM DRAINAGE UTILITIES EASEMENT AGREEMENT, DATED AS OF SEPTEMBER 16, 2019, FROM VP DAYBREAK OPERATIONS LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND VP DAYBREAK INVESTMENTS LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO CITY OF SOUTH JORDAN, A UTAH MUNICIPAL CORPORATION (THE "EASEMENT"), TO WHICH THIS LENDER'S CONSENT AND SUBORDINATION IS ATTACHED.

THE UNDERSIGNED LENDER HEREBY CONSENTS TO THE EASEMENT 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 EASEMENT. 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: CAROL 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 September 17, 2019 before me, Karianne Kasparian, Notary Public,  
(here insert name of the officer)

personally appeared Carl 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

Karianne Kasparian (Seal)

