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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
SOUTH JORDAN
1600 W TOWNE CENTER DR
SOUTH JORDAN UT 84095-8265
BY: STA, DEPUTY - WI 7 P.

AFTER RECORDED, MAIL TO:
South Jordan City
Attn: City Recorder
1600 W. Towne Center Drive
South Jordan, UT 84009

Tax Parcel No.'s: 26-14-152-001 and 26-15-276-005

PUBLIC STORM DRAINAGE UTILITIES EASEMENT AGREEMENT

This Public Storm Drainage Utilities Easement Agreement with a reference date of January 31, 2020 (the "Easement") by and between VP DAYBREAK INVESTMENTS LLC, a Delaware limited liability company ("VDI"), SHORT DAYBREAK HOLDINGS 1, LLC, a Utah limited liability company ("SDH1")(collectively, "Grantor"), and the City of South Jordan, a Utah municipal corporation ("Grantee") (the Grantor and Grantee collectively as "the Parties") is based on the following:

RECITALS

- A. Grantor is the owner of certain real property identified as Assessor's Parcel Number(s): 26-14-152-001 and 26-15-276-005 (the "Property"); and
- B. Based upon the foregoing to implement this Easement more particularly described as set forth below.

AGREEMENT

The parties agree as follows:

1. **IMPLEMENTATION OF 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") to implement two (2) storm drainage improvements under, across, over and through those certain portions of the Property, as more particularly described in **Storm Drainage Easement 1**, and as depicted with the accompanying **Exhibit 1B** (the "Easement Area"), which are attached hereto and incorporated herein.
2. **STATEMENT OF PURPOSE.** The Easement shall be for storm drainage purposes for the Property, adjacent parcels, and to benefit the public storm drainage plan for the immediate area near the Property. 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.
3. **TYPE OF EASEMENT.** The Easement shall be non-exclusive; provided, however that Grantee shall have the exclusive right to construct, install, maintain, operate and access the storm drain lines, drainage utilities, and all related facilities within the Easement Area. 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 or adjacent to the Easement Area so long as such use does not materially interfere with the function of the drainage. 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. **MAINTENANCE.** Grantee 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 shall be responsible for landscape and surface maintenance within the functional condition. Grantor shall be responsible for landscape and surface maintenance within the Easement Area. Grantee's use of the Easement shall not unreasonably interfere with Grantor's use of its Property. Grantee shall be responsible to return the landscaping and surface condition of the Property after installing, repairing, testing, connecting, maintaining, and replacing any drainage improvements on the Property.

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. **MUTUAL 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 Granter or its agents in exercising its right under this Agreement.

c. Grantor and Grantee shall revoke a prior Public Storm Drainage Utilities Easement Agreement, with a reference date of September 16, 2019 (the "Agreement") in favor of Grantee, recorded by the Salt Lake Co. Recorder on October 9, 2019, as entry 13095655, book 10843, pages 5601-5610, which has functionally been superseded by the Easement set forth here, within three (3) months of the recording of this Easement.

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 only after the recording of the Revocation, identified in **Recital D**, *supra*. 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. **DISPUTES.** In any dispute, claim, or controversy arising out of or relating to this Easement, or the breach, termination, enforcement, interpretation or validity thereof, the Parties agree to first submit the matter to mediation in good faith. The Parties to the dispute shall arrange the terms

and procedure for mediation. No disputes under this Agreement shall be required to be arbitrated through AAA procedures. All Parties shall initially share the cost of mediation. However, nothing in this section shall prevent a Party from filing suit or seeking injunctive relief if there is a good faith basis that there is the likelihood of suffering immediate and irreparable harm.

14. **ATTORNEY'S FEES.** 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's fees and costs.

This Agreement is effective on the date indicated above.

GRANTOR:

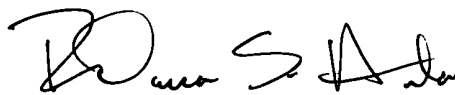
VP DAYBREAK HOLDINGS LLC,
A Delaware Limited Liability Company

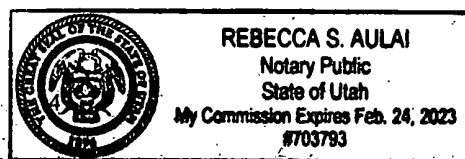
By: Daybreak Communities, LLC,
A Delaware Limited Liability Company
Its: Project Manager

By: 
Ty McCutcheon its President & CEO

State of Utah)
 :ss
County of Salt Lake)

On this March 02, 2020, 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, 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.

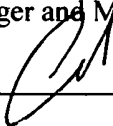

Notary Public



GRANTOR:

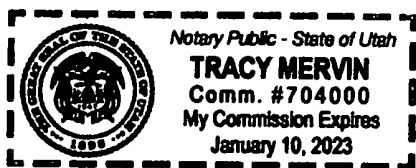
SHORT DAYBREAK HOLDINGS 1, LLC,
A Utah Limited Liability Company

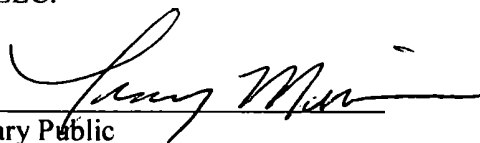
By: Alex Short
Its: Manager and Member

Signature: 

State of Utah)
:SS
County of Salt Lake)

On this February 28, 2020 personally appeared before me, a Notary Public, Alex Short, who proved to me to be the person whose name is subscribed to the above instrument and acknowledged to me that he executed the above instrument as the Member and Manager on behalf of SHORT DAYBREAK HOLDINGS 1, LLC.

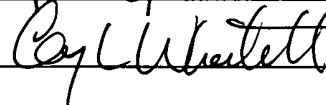



Notary Public

GRANTEE:

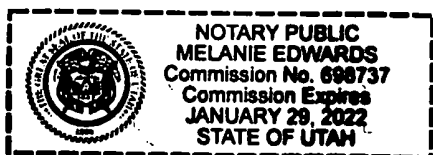
THE CITY OF SOUTH JORDAN,
A Utah Municipal Corporation

By: Gary L. Whistcott
Its: City Manager

Signature: 

State of Utah)
:SS
County of Salt Lake)

On this 4 of March, 2020 personally appeared before me, a Notary Public, Gary L. Whistcott who proved to me to be the person whose name is subscribed to the above instrument and acknowledged to me that he executed the above instrument on behalf of THE CITY OF SOUTH JORDAN.




Notary Public
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Storm Drain Easement 1B

A storm drain easement being a part of Lot C-121, Daybreak Commerce Park Plat 5 Amending Lot B2, OSI recorded November 16, 2018 as Entry No. 12887764 in Book 2018 of Plats, at Page 395 in the Office of the Salt Lake County Recorder and a part of the DRGRR Parcel of Amended Lots B2, B3, OS2, T4, V4, V7 & WTC2 Kennecott Master Subdivision # 1 recorded September 19, 2003 as Entry No. 8824749 in Book 2003 of Plats, at Page 303 in the Office of said Recorder. Said easement is located in the Northeast Quarter of Section 15, Township 3 South, Range 2 West, Salt Lake Base and Meridian. The boundary of said easement is described as follows:

Beginning at the northwesterly corner of said Lot C-121, Daybreak Commerce Park Plat 5; thence South 30.36 feet along the westerly line of said Lot C-121; thence N. 61°22'36" E. 69.89 feet; thence N. 71°39'21" E. 65.17 feet; thence N. 14°20'25" E. 9.04 feet to the northerly line of said Lot C-121 and the southerly right-of-way line of Crimson View Drive per that Kennecott Daybreak Crimson View Drive and Prosperity Road Dedication Plat recorded September 17, 2010 in Book 2010 of Plats, at Page 151 in the Office of said Recorder and a point of non-tangency with a 4261.18 – foot radius curve to the left, concave northerly (radius point bears N. 15°20'52" W); thence easterly 11.52 feet along the arc of said curve, through a central angle of 00°09'18" (Chord bears = N. 74°34'30" E. 11.52 feet); thence S. 14°20'25" W. 20.22 feet; thence S. 71°39'21" W. 69.74 feet; thence S. 61°22'36" W. 74.44 feet to said westerly line of Lot C-121; thence South 63.64 feet along said westerly line; thence S. 79°35'03" W. 220.94 feet; thence North 98.70 feet to said southerly right-of-way line of Crimson View Drive and a point of non-tangency with a 4261.18 – foot radius curve to the left, concave northerly (Radius point bears N. 10°37'01" W.); thence easterly 222.27 feet along the arc of said curve, though a central angle of 02°59'19" (Chord bears = N. 77°53'19" E. 222.24 feet) to the **Point of Beginning**.

The above described easement contains 23,503 square feet in area or 0.540 acres, more or less.

EXHIBIT "B": By this reference, made a part hereof.

BASIS OF BEARING S. 89°55'21" E. per said Daybreak Commerce Park Plat 5 along the Section line between the Northeast Corner and the North Quarter Corner of said Section 15, Township 3 South, Range 2 West, Salt Lake Base and Meridian.

CRIMSON VIEW DRIVE
E#11033843, BK: 2010P, PG: 151

$R=4261.18'$ $L=222.27'$ $\Delta=2^{\circ}59'19''$
 $TAN=111.16'$ $CHB=N77^{\circ}53'19''E$ $CH=222.24'$

SOUTH 63.64'

$220.94'$ $S79^{\circ}35'03''W$ VP DAYBREAK INVESTCO 12 LLC
 $26-15-276-005$

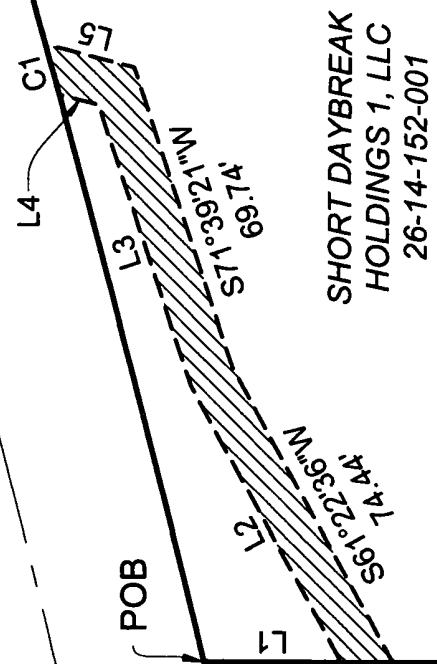
LOT OS1
AMENDED LOTS B2, B3, OS2, T4, V4, V7 & WTC2
KENNECOTT MASTER SUBDIVISION #1

EXHIBIT "B"

Short Daybreak Holdings 1, LLC
VP Daybreak Investco 12 LLC
Storm Drain Easement

Assessor Parcel No. s:
 $26-15-276-005, 26-14-152-001$
Part of the NE 1/4 of Section 15
Township 3 South, Range 2 West, S.L.B.&M.

CIR
ENGINEERING, L.L.C.
3032 SOUTH 1030 WEST, SUITE 202
SLC, Utah 84119 - 801-949-6296



SHORT DAYBREAK HOLDINGS 1, LLC
26-14-152-001

LOT 1-121
DAYBREAK COMMERCE PARK PLAT 5
AMENDING LOTS B2, OS1 AND THE DRGRR PARCEL OF
THE KENNECOTT MASTER SUBDIVISION #1 AMENDED

LINE TABLE	
LINE #	BEARING
L1	S0° 00' 01"W
L2	N61° 22' 36"E
L3	N71° 39' 21"E
L4	N14° 20' 25"E
L5	S14° 20' 25"W

CURVE TABLE				
CURVE #	LENGTH	RADIUS	DELTA	CH. LEN.
C1	11.52	4261.18	0.15	N74°34'30"E 11.52

LEGEND

- Lot Boundary
- Road Right-of-Way
- Adjacent Parcel
- Centerline of Road
- Storm Drain Easement

