

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:

Daybreak Communities LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, UT 84009
Attention: Scott R. Kaufmann
1939802HM

13358547
8/12/2020 12:38:00 PM \$40.00
Book - 10997 Pg - 4749-4760
RASHELLE HOBBS
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE DRAPER/OREM
BY: eCASH, DEPUTY - EF 12 P.

ACCESS AND PARKING EASEMENT AGREEMENT

THIS ACCESS AND PARKING EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of August 10, 2020, by VP DAYBREAK SODA ROW LLC, a Delaware limited liability company (“**Daybreak**”), and G.F.C. GLENDALE ASSOCIATES, LLC, a California limited liability company (“**GFC**”) (Daybreak and GFC are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Daybreak is the Owner (defined later) of that certain real property located at approximately 11259 S Kestrel Rise Road, in the City of South Jordan, State of Utah, which real property is more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (the “**Daybreak Property**”).

WHEREAS, GFC is, or at the time this Agreement is recorded will be, the Owner of that certain real property located immediately adjacent to the Daybreak Property, which real property is more particularly described on Exhibit “B” attached hereto and incorporated herein by reference (the “**GFC Property**”).

WHEREAS, the Daybreak Property and the GFC Property are shown on the site plan attached hereto as Exhibit “C” and incorporated herein by reference (“**Site Plan**”).

WHEREAS, the Daybreak Property has been developed with certain parking, driveway and related improvements substantially as shown on the Site Plan.

WHEREAS, the GFC Property has been developed with commercial retail buildings substantially as shown on the Site Plan.

WHEREAS, it is the intent and desire of the Parties and the purpose of this Agreement to provide for an easement for parking by the Permittees (defined below) on the Daybreak Property, and to provide for the ongoing operation, maintenance, repair, and insurance of the parking

easement area and related improvements, all on terms and conditions more particularly hereinafter 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. **PRELIMINARY.**

1.1 Incorporation of Recitals. The above Recitals are hereby incorporated in and made an integral part of this Agreement.

1.2 Definitions.

(a) **“Owner”** means the record fee simple owner of either the Daybreak Property or the GFC Property, respectively, and their successors or assigns.

(b) **“Permittees”** means the Owners and their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of any such tenants.

2. **EASEMENTS.**

2.1 Grant of Easement for Access. Daybreak, as grantor, hereby grants to the Owner of the GFC Property, as grantee, for the benefit of the GFC Property, and as a burden upon the Daybreak Property, a nonexclusive easement for use by the Permittees for reasonable ingress and egress by vehicular and pedestrian traffic upon, over, and across those portions of the Daybreak Property designed for such purposes by the Owner of the Daybreak Property to access the GFC Property (the **“Access Easement”**).

2.2 Grant of Easement for Parking. Daybreak, as grantor, hereby grants to the Owner of the GFC Property, as grantee, for the benefit of the GFC Property, and as a burden upon the Daybreak Property, a nonexclusive easement for use by the Permittees for non-reserved, and non-overnight, parking of passenger vehicles in fifty-four (54) parking stalls on the Daybreak Property, in parking areas reasonably designed for such purposes by the Owner of the Daybreak Property (the **“Parking Easement”**).

2.3 Limitations. The Permittees shall use, and cause to be used, the Access Easement and the Parking Easement in such manner as will not unreasonably interfere with use of the Daybreak Property by its Owner and such Owner’s tenants, contractors, employees, agents, licensees and invitees. Without the prior written consent of the other Owner, the Permittees shall not place, or cause to be placed, any obstruction on the easement areas or permit any activity

thereon which would permanently or unreasonably impede the flow of vehicular and/or pedestrian traffic upon, over or across the easement areas.

2.4 Future Development. Notwithstanding anything contained herein to the contrary, the Owner of the Daybreak Property shall have the unfettered right to develop the Daybreak Property in any manner and to relocate or reconfigure the location of the Access Easement area or Parking Easement area to different locations on the Daybreak Property in the sole and absolute discretion of the Owner of the Daybreak Property; provided, however, that (x) the rights granted hereunder to the Owner of the GFC Property, including but not limited to the aforementioned parking ratio, shall not be reduced or otherwise materially adversely affected; (y) the rights granted hereunder to the Owner of the Daybreak Property shall not negatively impact the commercial retail use of the GFC Property; and (z) the Owner of the GFC Property shall have the right to approve in advance, such approval not to be unreasonably withheld, any development of a parking structure (above-grade, below-grade, or otherwise) on the Daybreak Property. During any period of construction on the Daybreak Property, the Owner of the Daybreak Property may fulfill its obligations hereunder by providing an alternate location(s) for some or all of the 54 parking stalls, provided such alternate parking is substantially similar to the parking facilities on the Daybreak Property, is reasonably convenient to the GFC Property, and is otherwise acceptable to the Owner of the GFC Property in its commercially reasonable business judgment.

2.5 Maintenance and Repair of Parking Surface and Other Improvements on the Daybreak Property. The Owner of the Daybreak Property shall maintain, or cause to be maintained the parking area and access improvements located on the Daybreak Property at all times in good and clean condition and repair.

2.6 Operation Costs and Property Taxes. The Owner of the Daybreak Property shall be responsible for the timely payment of (i) any utility costs or expenses (e.g., electricity, water, etc.) incidental or related to the parking and access improvements and the use of the Parking Easement and Access Easement by the Permittees hereunder, (ii) the maintenance costs required under Section 2.5, and (iii) property taxes and assessments attributable to the Daybreak Property (“**Costs and Expenses**”).

2.7 Allocation of Costs and Expenses. Commencing on the date of this Agreement and continuing throughout the duration of this Agreement, the Owner of the GFC Property shall pay to the Owner of the Daybreak Property (as such Owner may direct) a percentage of the Costs and Expenses as provided in this Section. Until such time (the “**Trigger Date**”) as one or more commercial buildings are constructed and open for business on the Daybreak Property or the lots within the boundary of the block formed by the streets commonly known as Daybreak View Parkway, Clear Blue Drive, Daybreak Rim Way and Kestrel Rise Road (excluding the GFC Property), the Owner of the GFC Property shall pay 100% of the Costs and Expenses. From and after the Trigger Date, the Owner of the GFC Property shall pay a portion of the Costs and Expenses based on a fraction, the numerator of which is fifty-four (54) and the denominator of

which is the total number of parking spaces on the Daybreak Property. GFC's payment of its share of Costs and Expenses shall be payable in quarterly installments on or before the 1st day of each calendar quarter throughout the term of this Agreement based on annual estimates of Costs and Expenses prepared by Daybreak in its reasonable business judgment with annual reconciliation based on actual Costs and Expenses made within 90 days after the end of each calendar year.

3. INDEMNIFICATION AND INSURANCE.

3.1 Indemnification of Owners. Each Owner hereby indemnifies, holds harmless and agrees to defend the other Owner from and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring in the parking area or the access area on the Daybreak Property, caused by the willful acts or active or passive negligence of the indemnifying Owner, or its tenants, or its or their respective agents, servants or employees; provided, the indemnifying Owner does not indemnify the other Owner(s) against any injury, loss of life, or damage which is caused by the willful acts or the active or passive negligence of the other Owner(s), or its tenants, or its or their agents, servants or employees.

3.2 Liability Insurance Coverage and Limits. Each Owner agrees to maintain and/or cause to be maintained, at its sole cost and expense, liability insurance insuring its interests against claims for bodily injury, death and property damage occurring on, in or about the Daybreak Property and the ways immediately adjoining such areas, with a "Combined Single Limit" (covering bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000) for total claims for any one (1) occurrence. Any required insurance may be in the form of blanket coverage, so long as such blanket policy does not reduce the limits nor diminish the coverage required herein.

3.3 Performance of Indemnity Agreements. All policies of insurance required under this Section shall insure the performance of the Owner insured thereunder of the indemnity agreements contained herein, and shall contain a provision that the insurance company will give the other Owner thirty (30) days advance written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. Upon request, each Owner shall deliver, or cause to be delivered, to the requesting Owner a certificate of insurance, reasonably satisfactory in form and substance, evidencing all insurance required to be maintained hereunder. Each Owner shall promptly notify the other Owner of any asserted claim with respect to which such Owner is or may be indemnified against hereunder, and shall deliver to such Owner copies of process and pleadings.

4. CONDEMNATION.

4.1 Owner's Right to Award. Nothing herein shall be construed to give the GFC Property Owner any interest in any award or payment made to the Daybreak Property Owner in connection with any exercise of eminent domain, or transfer in lieu thereof, affecting the Owner of the Daybreak Property, or to give the public or any government any rights in any property. In the event of any exercise of eminent domain, or transfer in lieu thereof, of any part of the parking area or access area of the Daybreak Property, the award attributable to the land and improvements taken shall be payable only to the Owner of the Daybreak Property in fee thereof, and no claim thereto shall be made by the Owner of the GFC Property. Notwithstanding the foregoing, in the event of any condemnation proceeding affecting the Daybreak Property, the Owner of the GFC Property shall have the right to make a separate claim for an award or payment related thereto so long as such award or payment does not reduce the award or payment made to the Owner of the Daybreak Property.

4.2 Restoration of Access Area and Parking Area. In the event any portion of the parking area or access area of the Daybreak Property are so condemned or transferred, then the remaining portion of such areas, as the case may be, shall be restored by the Owner of the Daybreak Property, as near as reasonably practicable to at least the condition thereof immediately prior to such condemnation or transfer. In such event, the Owners agree to work together in good faith to minimize any interference with the continued use and enjoyment of those portions of the Daybreak Property that are not so condemned.

5. GENERAL PROVISIONS.

5.1 Successors and Assigns. This Agreement and the easements herein granted shall run with the land and shall inure to the benefit of and be binding upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring any interest in either the Daybreak Property or the GFC Property.

5.2 Duration. This Agreement and the easements herein granted shall remain in full force and effect until terminated in accordance with the provisions of the Section 5.3 below.

5.3 Modification and Termination. This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners, and then only by written instrument duly executed and acknowledged by the Owners and recorded in the office of the recorder of Salt Lake County.

5.4 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

5.5 Attorneys' Fees. In the event an Owner commences a legal proceeding to enforce any of the terms of this Agreement, 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.

5.6 Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

5.7 Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between any Owners.

5.8 No Third-Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.

5.9 Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

5.10 Entire Agreement. This Agreement contains the entire agreement of the Parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

5.11 Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

5.12 Recordation. This Agreement shall be recorded in the Office of the Recorder of Salt Lake County, Utah.

5.13 Authority of Signatories. Each person executing this Agreement individually and personally represents and warrants that he is duly authorized to execute and deliver the same on behalf of the entity for which he is signing (whether it be a corporation, limited liability company, general or limited partnership, or otherwise), and that this Agreement is binding upon said entity in accordance with its terms.

- SIGNATURE PAGE TO FOLLOW -

[SoDa Row Retail – Access and Parking Easement Agreement – Daybreak Signature Page]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

Daybreak: VP DAYBREAK SODA ROW LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company
Its: Project Manager

By: *[Signature]*
Name: Ty McCutcheon
Title: President & CEO

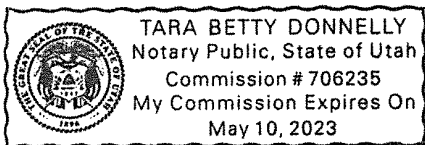
ACKNOWLEDGMENT

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

On August 1, 2020, 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 SODA ROW 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 SODA ROW LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.

Tara Betty Donnelly
Notary Public in and for said State
My commission expires: 5-10-23



[SoDa Row Retail – Access and Parking Easement Agreement – GFC Signature Page]

GFC: G.F.C. GLENDALE ASSOCIATES, LLC,
a California limited liability company

By: _____

Name: Frank Chen

Title: Manager

A handwritten signature in black ink, appearing to be 'Frank Chen', is written over a horizontal line. The signature is stylized and somewhat cursive.

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)
) ss:

COUNTY OF Los Angeles)

On August 10th, 2020 before me, Elizabeth Ochoa, Notary Public
(insert name and title of the officer),

personally appeared Frank Chen, 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: Elizabeth Ochoa



EXHIBIT "A"

Legal Description of the Daybreak Property

The following real property located in Salt Lake County, Utah and described as:

LOTS C-206, C-207, C-208 and C-209 OF KENNECOTT DAYBREAK VILLAGE CENTER
1A AMENDING PARCEL A AND PARCEL B OF THE KENNECOTT PHASE II,
ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE
SALT LAKE COUNTY RECORDER'S OFFICE.

Parcels 27-19-153-007
27-19-153-006
27-19-153-008
27-19-153-009

Exhibit "B"

Legal Description of the GFC Property

The following real property located in Salt Lake County, Utah and described as:

LOTS C-204 and C-205 OF KENNECOTT DAYBREAK VILLAGE CENTER 1A
AMENDING PARCEL A AND PARCEL B OF THE KENNECOTT PHASE II, ACCORDING
TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE
COUNTY RECORDER'S OFFICE.

Parcel : 27-19-153-003
27-19-153-004

Exhibit "C"

Site Plan

GFC Property is shown as 1 & 2 below

Daybreak Property is shown as 3, 4, 5 and 6 below

