

CTIA # 15155-WHP

WHEN RECORDED, RETURN TO:

VP Daybreak Operations LLC
11248 S. Kestrel Rise Road, Suite 201
South Jordan, UT 84009

13938179 B: 11331 P: 6109 Total Pages: 9
04/22/2022 02:54 PM By: bmeans Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: CSC ERECORDING
919 N 1000 WLOGAN, UT 84321

Affects a Portion of Tax Id. No.: 26-24-353-001

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (this “**Agreement**”) is made and entered into as of the 22nd day April, 2022 (the “**Effective Date**”), by and between **WDG TRAIL CROSSING, LLC**, a Utah limited liability company (“**Trail Crossing**”), and **VP DAYBREAK OPERATIONS LLC**, a Delaware limited liability company (“**Operations**”). The foregoing are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Trail Crossing is the fee simple owner of that certain real property located at approximately 5422 West Daybreak Parkway, South Jordan, Utah [Tax Parcel No. 26-24-353-001] (the “**Property**”); and

WHEREAS, Trail Crossing has agreed to grant Operations a right of first refusal to purchase that certain portion of the Property, more particularly described on Exhibit A and depicted on Exhibit B attached hereto and made a part hereof by reference (such real property, together with all of Trail Crossing’s right, title and interest in and to all rights and privileges appurtenant thereto, the “**ROFR Property**”), on the terms and conditions set forth in this Agreement.

AGREEMENT AND GRANT

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Right of First Refusal. Operations shall have the right of first refusal to purchase any qualifying portion of or all of the ROFR Property upon the terms and conditions set forth in this Section 1 (the “**ROFR**”). Trail Crossing may not sell, transfer, lease or otherwise dispose of all or any part of the ROFR Property unless the provisions of this Section 1 have been satisfied. If at any time Trail Crossing shall receive a bona fide offer from a third party for the purchase, transfer, lease, or other conveyance of all or any part of the ROFR Property (whether or not solicited by Trail Crossing), and Trail Crossing either has accepted such offer or shall desire to accept such offer, Trail Crossing shall notify Operations of any such offer (the “**Offering Notice**”) by notice to Operations specifying the following terms and information: (a) the name and address of the third-party offeror, (b) the purchase price for the ROFR Property or any portion of the ROFR Property, and (c) any other terms and conditions set forth in such offer or, if applicable, the purchase agreement between Trail Crossing and such third-party offeror (the “**Third-Party Purchase Agreement**”). The rights granted to Operations in this Section 1 shall not apply to a granting of a mortgage, deed of trust or other security agreement in favor of a third party (a

“**Mortgage**”) or to the foreclosure, delivery of a deed in lieu of foreclosure or similar action of a Mortgage.

(a) Time Period to Exercise. Operations shall have fourteen (14) business days from the date of delivery of a complete Offering Notice to Operations to exercise the ROFR. The ROFR shall be exercisable by Operations notifying Trail Crossing in writing (within such 14-business day period) of Operations’ irrevocable election to purchase the ROFR Property or the portion of the ROFR Property which is the subject of the applicable Offering Notice, on the terms and conditions set forth in the Offering Notice (the “**Exercise Notice**”). If Operations does not timely deliver Operations’ Exercise Notice (within such 14-business day period), Operations shall be deemed to have elected to not exercise the ROFR as to the portion of the ROFR Property described in the Offering Notice only. In the event Operations does not desire to purchase the ROFR Property, or any portion thereof, on the terms set forth in the Offering Notice, Operations agrees to deliver to Trail Crossing a written notice indicating that Operations is not exercising its rights as provided in this Section 1. Within twenty (20) business days of the delivery of the Exercise Notice, Operations and Trail Crossing shall enter into a mutually agreeable purchase agreement incorporating the terms of the Offering Notice.

(b) Escrow. Upon Operations giving Trail Crossing the Exercise Notice, Trail Crossing and Operations shall open an escrow account with a recognized title insurance or trust company selected by Operations. Such escrow shall be subject to the standard escrow instructions of the escrow agent to the extent such instructions are not inconsistent with the terms of this Section 1 or the terms of the Offering Notice. At or before the close of escrow, Trail Crossing shall deliver to the escrow agent its special warranty deed (or such other type of deed as is specified in the Offering Notice) conveying to Operations all of Trail Crossing’s right, title and interest in the ROFR Property or the portion of the ROFR Property which is the subject of the applicable Exercise Notice, free and clear of all liens and encumbrances. In the event Trail Crossing (in the exercise of Trail Crossing’s good faith reasonable efforts) is unable to convey title as required, Operations agrees that Operations’ sole remedy or recourse shall be one of the following: (i) to accept such title as Trail Crossing is able to convey, (ii) to bring an action for specific performance, or (iii) to elect not to consummate its exercise of the ROFR as to the ROFR Property or the portion of the ROFR Property which is the subject of the applicable Exercise Notice, in which case the ROFR shall lapse as to the ROFR Property or the portion of the ROFR Property which is the subject of the applicable Exercise Notice and Trail Crossing shall be entitled to sell and convey the ROFR Property or the portion of the ROFR Property which is the subject of the applicable Exercise Notice to the original third-party offeror identified in the applicable Offering Notice, or its permitted assignee, free and clear of any right granted to Operations under this Section 1; *provided, however,* if the applicable Offering Notice describes only a portion of the ROFR Property, then the rights granted to Operations under this Agreement shall continue in full force and effect as to the remaining ROFR Property.

(c) Close of Escrow. Notwithstanding any term or provision contained in the Third-Party Purchase Agreement to the contrary, the close of escrow of the sale of the ROFR Property, or the portion of the ROFR Property which is the subject of the applicable Exercise Notice, to Operations shall occur no later than the date that is sixty (60) days after Operations gives Trail Crossing the Exercise Notice.

(d) Limitation and Termination of Right. Notwithstanding any other provision or right contained in this Agreement to the contrary, in the event Operations shall exercise its ROFR to purchase the ROFR Property, or the portion of the ROFR Property which is the subject of the applicable Offering Notice, by giving the Exercise Notice, and Operations shall fail to purchase the ROFR Property or the portion of the ROFR Property which is the subject of the applicable Exercise Notice on the terms set forth or incorporated by reference in the Exercise Notice and in this Section 1 (except if such failure is

the result of a default by Trail Crossing of its obligations under this Section 1), the ROFR set forth in this Section 1 shall cease to exist only as to the ROFR Property or the portion of the ROFR Property set forth in the Exercise Notice.

(e) Subsequent Sale by Trail Crossing. In the event Operations waives or is deemed to have waived the ROFR to purchase the ROFR Property or any portion thereof, Trail Crossing shall have the right to sell and convey the ROFR Property, or the portion of the ROFR Property which is the subject of the applicable Offering Notice, to such third-party offeror on terms which are substantially similar to the terms set forth in the Offering Notice, and upon the consummation of such a sale, the ROFR shall cease to exist only as to the portion of the ROFR Property which is the subject of the applicable Offering Notice. In the event Trail Crossing does not consummate such a sale to the third party offeror on terms substantially similar to those terms contained in the Offering Notice or shall desire to sell the ROFR Property or any portion thereof to another third-party offeror on terms not substantially similar to the terms set forth in the Offering Notice (it being agreed an adjustment of purchase price by three percent (3%) is not a material change), then the ROFR shall remain in full force and effect, and Trail Crossing shall be required to again offer the ROFR Property or any portion thereof to Operations in accordance with this Section 1.

(f) Transferability of ROFR. Notwithstanding anything contained herein to the contrary, the rights granted to Operations under this Section 1 are personal to Operations, and the rights of Operations under this Section 1 may not be assigned, sold, pledge, encumbered, conveyed or otherwise transferred (whether directly, indirectly or as security) to any party without the prior written consent of Trail Crossing in each instance, which approval may be withheld at Trail Crossing's sole and absolute discretion; provided, however, the rights of Operations under this Agreement may be assigned without Trail Crossing's consent to any parent, subsidiary, affiliate, division, or entity controlling, controlled by, or under common control with Operations. Any assignment that is not permitted by this Agreement is and shall be null and void for all purposes.

2. Miscellaneous.

(a) Covenant Running With the Land. This Agreement's covenants, conditions, and restrictions shall touch, concern, and run with the ROFR Property, and shall be binding upon and inure to the benefit of Trail Crossing, Operations, and their respective successors and assigns.

(b) Continued Effectiveness. Subject to the provisions of Section 1(g), if Trail Crossing sells, transfers, leases or otherwise disposes of less than all of the ROFR Property or sells, transfers, leases or otherwise disposes of a portion of the ROFR Property in conjunction with other Trail Crossing's properties which are not subject to this Agreement, then the rights granted to Operations under this Agreement shall continue in full force and effect as to the remaining ROFR Property not sold or transferred.

(c) Termination upon Transfer to Operations. Upon any vesting of all or any portion of the ROFR Property's title in Operations, all covenants, conditions, restrictions, and reservations imposed under this Agreement shall automatically terminate and be of no further force and effect as to that portion of the ROFR Property vested in Operations.

(d) No Further Recording. The Parties agree that no further recording shall be necessary.

(e) Enforceability. This Agreement may be executed in one or more counterparts, each of which, when taken together, constitutes the original. If any term, provision or condition contained

in this Agreement shall to any extent be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) Notice. All notices, waivers, statements, demands, approvals or other communications to be given under or pursuant to this Agreement shall be in writing, addressed to the Parties at their respective addresses as provided below, and shall be delivered by certified or registered mail, postage prepaid, as follows:

If to Operations:

VP Daybreak Operations LLC
11248 S. Kestrel Rise Road, Suite 201
South Jordan, UT 84009

With a copy to:

Wade Budge, Esq.
Snell and Wilmer L.L.P.
15 W. South Temple, Suite 1200
Salt Lake City, Utah 84101
Email: wbudge@swlaw.com

If to Trail Crossing:

WDG Trail Crossing, LLC
1178 Legacy Crossing Blvd, Suite 100
Centerville, Utah 84014
Attn: Spencer Wright
Email: spencer@wrightdevelopment.com

With a copy to:

Wright Development Group, Inc.
1178 Legacy Crossing Blvd, Suite 100
Centerville, Utah 84014
Attn: Amy Dolce
Email: amy@wrightdevelopment.com

(g) Amendment. This Agreement may only be amended or modified, in whole or in part, by recording, in the official records of Salt Lake County, Utah, an instrument in writing reciting such amendment, bearing the acknowledged signatures of the Parties.

(h) Non-Waiver. The failure of either Party to insist upon strict performance of any covenants, conditions, or terms of this Agreement shall not be construed as a waiver or relinquishment of any such covenants, conditions or terms, but the same shall be and remain in full force and effect.

(i) Headings. The captions and headings used herein are for convenience of reference only and shall not affect the interpretation of this Agreement.

(j) Construction. This Agreement shall be construed in accordance with the laws of the State of Utah and both Parties shall be considered the drafters of this Agreement.

(k) Attorneys' Fees. Each Party will be responsible for payment of their respective attorneys' fees in the negotiation and execution of this Agreement. In the event of any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive its costs and attorneys' fees.

(l) Recordation. Within ten (10) days of the Effective Date, Operations will record this Agreement with the Salt Lake County Recorder's Office as against the ROFR Property.

(m) Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are superseded by and merged into this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned Parties have created this Agreement effective as of the Effective Date.

OPERATIONS:

VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company

By: Miller Family Real Estate, L.L.C., a Utah limited liability company

Its: Manager

By: [Signature]

Name: Brad Holmes

Its: President

STATE OF UTAH)
) ss.
County of SALT LAKE)

The foregoing instrument was acknowledged before me this 19 day of April, 2022, by Brad Holmes, as President of Miller Family Real Estate, L.L.C., a Utah limited liability company, the Manager of VP Daybreak Operations LLC, a Delaware limited liability company.



[Signature]
Notary Public

TRAIL CROSSING:

WDG TRAIL CROSSING, LLC, a Utah limited liability company

By: _____

Name: Spencer H. Wright

Title: Manager

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of April, 2022, by Spencer H. Wright, the Manager of WDG TRAIL CROSSING, LLC, a Utah limited liability company, on behalf of said company.

Notary Public

IN WITNESS WHEREOF, the undersigned Parties have created this Agreement effective as of the Effective Date.

OPERATIONS:

VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company

By: Miller Family Real Estate, L.L.C., a Utah limited liability company

Its: Manager

By: _____

Name: Brad Holmes

Its: President

STATE OF UTAH)
) ss.
County of SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of April, 2022, by Brad Holmes, as President of Miller Family Real Estate, L.L.C., a Utah limited liability company, the Manager of VP Daybreak Operations LLC, a Delaware limited liability company.

Notary Public

TRAIL CROSSING:

WDG TRAIL CROSSING, LLC, a Utah limited liability company

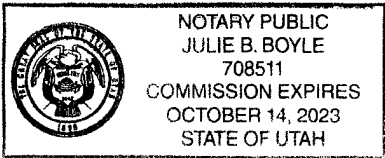
By: *Spencer H. Wright*

Name: Spencer H. Wright

Title: Manager

STATE OF Utah)
) ss.
County of Davis)

The foregoing instrument was acknowledged before me this 14 day of April, 2022, by Spencer H. Wright, the Manager of WDG TRAIL CROSSING, LLC, a Utah limited liability company, on behalf of said company.



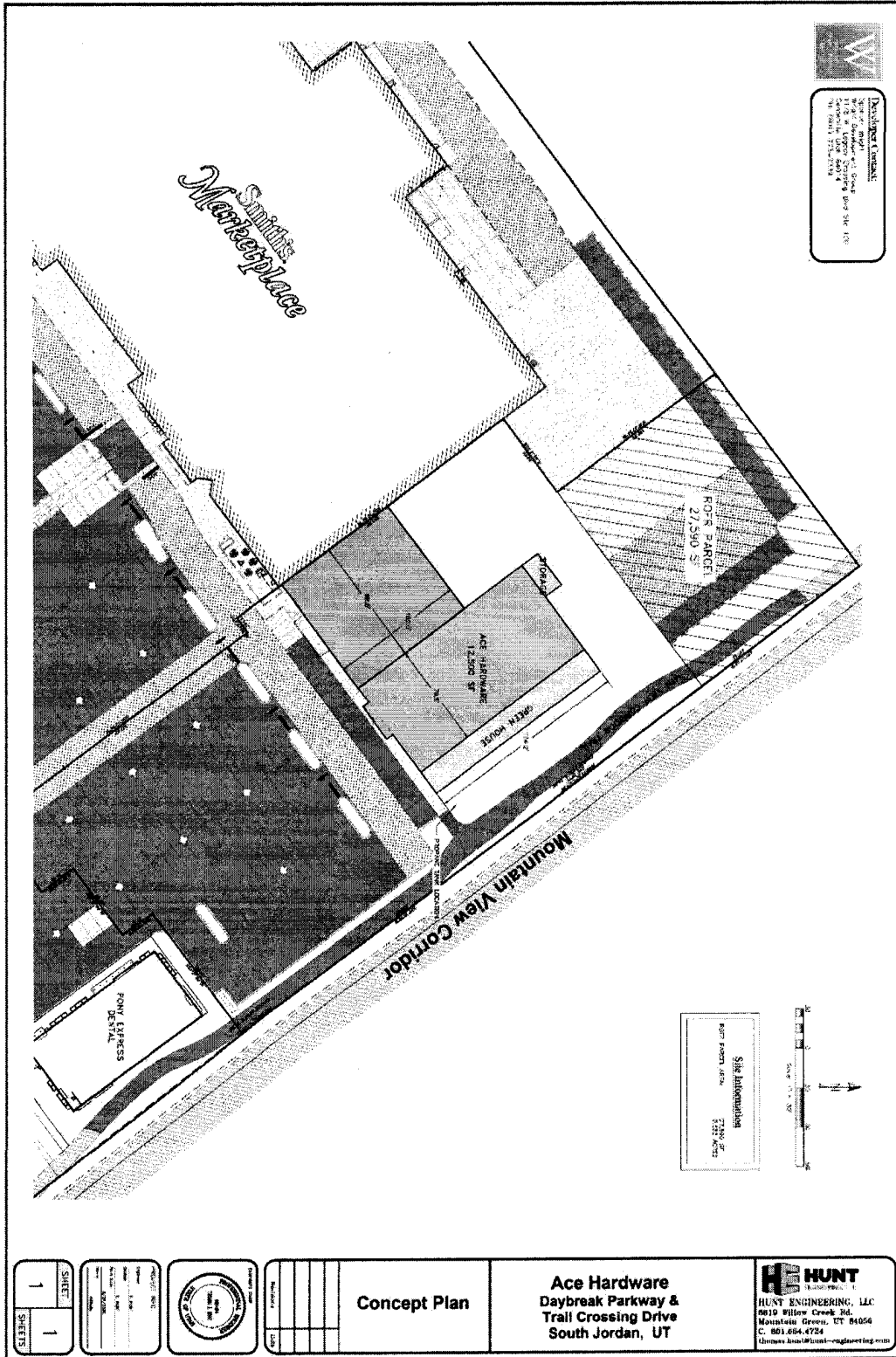
Julie B. Boyle
Notary Public

EXHIBIT A TO RIGHT OF FIRST REFUSAL
ROFR PROPERTY LEGAL DESCRIPTION

A portion of that certain real property located in Salt Lake County, State of Utah, and more particularly described as follows:

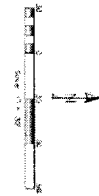
Lot C-109, KENNECOTT DAYBREAK VILLAGE 7A PLAT 1, according to the official plat thereof, recorded November 20, 2015 as Entry No. 12174130 in Book 2015P at Page 261 in the Salt Lake County Recorder's office.

EXHIBIT B TO RIGHT OF FIRST REFUSAL
DEPICTION OF ROFR PROPERTY



Professional Engineer:
 [Signature]
 State of Utah
 License No. 12345
 Expires 12/31/2024

Site Information
 27,580 SQ. FT.
 0.63 ACRES



<table border="1"> <tr><td>SHEET</td><td>1</td></tr> <tr><td>SHEETS</td><td>1</td></tr> </table>	SHEET	1	SHEETS	1	<table border="1"> <tr><td>DATE</td><td>11/15/2023</td></tr> <tr><td>SCALE</td><td>AS SHOWN</td></tr> <tr><td>PROJECT</td><td>ACE HARDWARE</td></tr> <tr><td>LOCATION</td><td>DAYBREAK PARKWAY & TRAIL CROSSING DRIVE</td></tr> <tr><td>CITY</td><td>SOUTH JORDAN, UT</td></tr> </table>	DATE	11/15/2023	SCALE	AS SHOWN	PROJECT	ACE HARDWARE	LOCATION	DAYBREAK PARKWAY & TRAIL CROSSING DRIVE	CITY	SOUTH JORDAN, UT		<p align="center">Concept Plan</p>	<p align="center">Ace Hardware Daybreak Parkway & Trail Crossing Drive South Jordan, UT</p>	<p align="center">HUNT HUNT ENGINEERING, LLC 8010 Willow Creek Rd. Mountain Green, UT 84054 P: 801.456.4754 E: chris@hunt-engineering.com</p>
SHEET	1																		
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