

RECORDING REQUESTED AND
WHEN RECORDED, RETURN TO:

14104011 B: 11418 P: 3258 Total Pages: 10
05/10/2023 01 13 PM By: tpham Fees: \$40.00
Rashelle Hobbs, Recorder Salt Lake County, Utah
Return To LARRY H MILLER REAL ESTATE
9350 S 150 E, SUITE 100SANDY UT 84070



Larry H. Miller Real Estate
9350 S. 150 E., Suite 100
Sandy, Utah 84070
Attention: John Warnick

APN: 26-15-276-006

(Space Above This Line For Recorder's Use)

TEMPORARY ROADWAY ACCESS AND MAINTENANCE AGREEMENT
(Salt Lake County, Utah)

THIS TEMPORARY ROADWAY ACCESS AND MAINTENANCE AGREEMENT (this "Agreement") is executed this 8 day of MAY, 2023 (the "Effective Date"), by and between VP DAYBREAK INVESTCO 12, a Utah limited liability company ("Grantor"), and CRAGHEAD BUILDING COMPANY, a Utah corporation ("Grantee"). Grantor and Grantee may be referred to collectively herein as the "Parties" or individually as a "Party" all as governed by the context in which such terms are used.

RECITALS

- A. Grantor is the owner of certain real property legally described on Exhibit "A" attached hereto and incorporated herein by this reference ("Grantor's Property").
- B. Grantee is the owner of certain real property located adjacent to Grantor's Property ("Grantee's Property").
- C. Grantee desires to temporarily use a portion of Grantor's Property for the purpose of accessing Grantee's Property and constructing improvements thereon.
- D. Grantor agrees to grant Grantee a temporary easement for roadway access and Grantee agrees to make certain roadway improvements and maintain such improvements according to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Grant of Easement for Access.** Grantor hereby grants to Grantee a temporary, non-exclusive easement, right of way, and right of ingress and egress (the "Access Easement") on, over, through, and across a portion of Grantor's Property in that area legally described on Exhibit "B" and depicted on Exhibit "B-1" attached hereto and incorporated herein (the "Easement

Area"), which Access Easement shall include the right of private access to and from Grantee's Property for the movement of vehicles relating to any construction activities conducted on Grantee's Property by Grantee or Grantee's contractors and/or subcontractors. The easement granted in this Section is non-exclusive and does not preclude Grantor or its invitees, guests or successors-in-interest from using Grantor's Property for any purpose, business, or otherwise. Grantor or its successors-in-interest are free to grant to other persons or entities the right to use Grantor's Property for any purpose, so long as such use does not unreasonably interfere with the rights granted to Grantee under this Agreement.

2. **Roadway Improvements and Maintenance.** Grantee, at Grantee's sole cost and expense and in compliance with all applicable laws, ordinances, codes, rules and regulations, shall construct any improvements on the Easement Area required to facilitate Grantee's use of the Access Easement. Grantee shall keep and maintain any and all improvements and facilities made or placed on or within the Easement Area in good condition and state of repair and shall make all repairs, replacements and renewals in order to maintain the same in such condition and repair, as and when such maintenance or repair is necessary or required. All such work shall be commenced and performed expeditiously following notice to Grantee (or Grantee's first learning) of the need therefore and diligently prosecuted to completion in accordance with good construction practices and all applicable laws, ordinances, codes, rules and regulations. Without limiting the foregoing, the standards of maintenance to be followed with respect to such improvements and facilities shall include, but not be limited to: (i) maintaining all surfaces in a smooth and evenly covered condition; (ii) removal of all trash, debris, ice and/or snow; and (iii) placing, keeping in repair and replacing any appropriate or required directional signs, markers and lines. Upon completion of any development or other construction on Grantee's Property, Grantee shall be responsible for promptly removing any excessive dirt, mud, or debris brought on to the surface of the Easement Area (or other parts of Grantor's Property) arising as a result of Grantee's use of the Easement Area. Upon termination of this Agreement, Grantee shall remove all improvements or facilities and shall make commercially reasonable efforts to return the Easement Area to substantially the same condition as existing prior to this Agreement.

3. **Limitations.** Grantee agrees that it shall utilize the Access Easement granted herein in such manner as to minimize, to the extent reasonably possible, interference with Grantor's (and its tenants', employees', customers', and invitees') use, enjoyment and development of Grantor's Property. Nothing in this Agreement shall prevent or preclude Grantor or its representatives, heirs, successors or assigns from developing all or a portion of Grantor's Property.

4. **Indemnification and Insurance.**

4.1 **Indemnity.** Grantee agrees to indemnify, protect, defend, hold and save Grantor harmless, from any and all damages arising from Grantee's (or its agents', employees', contractors', or other invitees') use of the rights, easements, and rights-of-way herein granted and agrees to promptly repair and/or restore (to substantially the same condition as existing prior to such damage), any and all damage to Grantor's Property and any improvements thereon (including roadway improvements) which may be occasioned by or arise through Grantee's use of the Access Easement herein granted during any construction, repair, installation, maintenance, upgrade, or replacement of any improvements installed by, or at the request of, Grantee on Grantee's Property.

4.2 Liability Insurance Coverage and Limits. Grantee 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 Easement Area 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.

4.3 Performance of Indemnity Agreements. All policies of insurance required under this Section shall insure the performance of Grantee of the indemnity agreements contained herein, and shall contain a provision that the insurance company will give Grantor 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, Grantee shall deliver, or cause to be delivered, to Grantor a certificate of insurance, reasonably satisfactory in form and substance, evidencing all insurance required to be maintained hereunder.

5. No Liens. With respect to any work initiated by Grantee on or within the Easement Area, Grantee shall promptly pay when due all costs incurred in connection with the work. In the event any mechanics' liens are filed against any portion of the Grantor's Property as a result of services performed or materials furnished by or at the instance of Grantee, then Grantee hereby covenants to cause such lien to be discharged of record within twenty (20) days after notice to Grantee of such claim of lien, either by paying the indebtedness which gave rise to such lien, or by posting such bond or other securities as shall be required by law to obtain such release and discharge, and further agrees to indemnify, defend and hold harmless Grantor against all liability, loss, damage, costs or expenses, including attorneys' fees, on account of such claim of lien.

6. Representations. Grantor makes no warranties or representations concerning Grantor's Property, the easements hereby granted thereon, or its suitability for the intended use, the cost of maintenance of such easement or otherwise.

7. Termination. The easement granted hereunder is a private easement and not a public easement, and is not intended to confer any rights or benefits upon the general public. Upon a dedication, grant or conveyance of all or any portion of the foregoing easement to public use, a public right-of-way, or public easement, the acceptance of the dedication, grant or conveyance by the public agency and the obligation of the public agency for maintenance of such easements, this Agreement and the Access Easement granted hereunder shall automatically terminate, without the requirement to further file any document or agreement of termination.

8. Notices. Any notice or other communication required or desired to be given hereunder shall be in writing and shall be deemed to have been sufficiently given for all purposes (a) when delivered personally, or (b) on the day said communication is deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, or (c) on the next business day after said communication is deposited with a nationally recognized overnight courier service addressed as follows:

To Grantor:

VP DAYBREAK INVESTCO 12 LLC
c/o Larry H. Miller Real Estate
9350 S. 150 E. Suite 900
Sandy, Utah 84070
Attention: John Warnick

To Grantee:

CRAGHEAD BUILDING COMPANY
11602 S Redwood Rd #101
Riverton, Utah 84065
Attention: Sam Craghead

or at such other address as the parties may from time to time designate by notice in writing to the other Party.

10. General Provisions.

- 10.1 This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Utah.
- 10.2 This grant covers all the agreements between the parties relating to the matters addressed in this Agreement and no representations or statements, verbal or written, have been made modifying, adding to or changing the terms of this Agreement.
- 10.3 No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term or condition.
- 10.4 The rights and remedies of any of the Parties herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. The Parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Party aggrieved as against the other Party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the intent of the Parties that the respective rights and obligations of the Parties shall be enforceable in equity as well as at law or otherwise.
- 10.5 Grantor and Grantee shall reasonably cooperate with one other and promptly execute and deliver to the other such other instruments and documents and take such

other actions as may be reasonably requested from time to time by the other as necessary to carry out, evidence and confirm the intended purposes of this Agreement.

10.6 The provisions of this Agreement are not intended to create, nor will they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.

10.7 In any proceeding to enforce or interpret this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including reasonable attorneys' fees, whether such proceeding or remedy is pursued by filing suit or otherwise.

10.8 Each individual executing this instrument represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the Party for which he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the Party for which he/she signs. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same Agreement.

[Signatures on following pages]

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

GRANTOR:

VP DAYBREAK INVESTCO 12 LLC,
a Utah limited liability company

By: LHMRE, LLC,
a Utah limited liability company
Its: Authorized Manager

By: Michael Kunkel
Name: Michael Kunkel
Its: Treasurer

ACKNOWLEDGMENT

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

On May 8, 2023, personally appeared before me, a Notary Public, Michael Kunkel, the VP of Accounts of LHMRE, LLC, a Utah limited liability company, the Authorized Manager of VP DAYBREAK INVESTCO 12 LLC, a Utah 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 INVESTCO 12 LLC, a Utah limited liability company.



My Commission Expires: 5-10-23

Tara Betty Donnelly
NOTARY PUBLIC
Residing at: Salt Lake County

GRANITE:

CRAIGHEAD BUILDING COMPANY.
a Utah corporation

Dr. SAMUEL J. CRANTHON
Name: SAMUEL J. CRANTHON
Its: PRESIDENT

ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF SALT LAKE)

On April 25, 2023, personally appeared before me, a Notary Public,
Samuel Craghead, the President of Craghead Building Company, a Utah
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 executed the above instrument on behalf of
Craghead Building Company, a Utah corporation.

My Commission Project

June 8, 2024

NOTARY PUBLIC

Reading at

13281 S. Herriman Rose Blvd
Herriman UT 84096

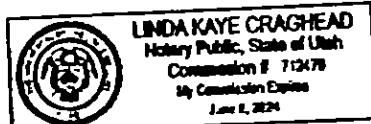


EXHIBIT "A"

Legal Description of Grantor's Property

The following described real property located in Salt Lake County, State of Utah:

Commerce Park Area Access Easement

Beginning at a Southwesterly Corner of the Kennecott Daybreak Commerce Park Plat 1, said point lies South 89°55'21" East 858.480 feet along the Section Line and South 1307.149 feet from the Northwest Corner of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Kennecott Daybreak Commerce Park Plat 1 North 83°59'10" East 86.653 feet to a Westerly Corner of the Daybreak Commerce Park Plat 5B and a point on a 867.500 foot radius non tangent curve to the right, (radius bears North 85°22'35" West, Chord: South 10°54'59" West 190.173 feet); thence along said Daybreak Commerce Park Plat 5B and the arc of said curve 190.556 feet through a central angle of 12°35'08"; thence South 89°15'43" West 89.863 feet to the Easterly Line of Daybreak Commerce Park Plat 5A Amended and a point on a 782.500 foot radius non tangent curve to the left, (radius bears North 70°45'46" West, Chord: North 12°30'57" East 183.163 feet); thence along said Daybreak Commerce Park Plat 5A Amended and the arc of said curve 183.584 feet through a central angle of 13°26'32" to the point of beginning.

Property contains 0.365 acres, 15899 square feet.

EXHIBIT "B"

Legal Description of Easement Area (Access Road Easement)

Beginning at a Southwesterly Corner of the Kennecott Daybreak Commerce Park Plat 1, said point lies South 89°55'21" East 858.480 feet along the Section Line and South 1307.149 feet from the Northwest Corner of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Kennecott Daybreak Commerce Park Plat 1 North 83°59'10" East 86.653 feet to a Westerly Corner of the Daybreak Commerce Park Plat 5B and a point on a 867.500 foot radius non tangent curve to the right, (radius bears North 85°22'35" West, Chord: South 10°54'59" West 190.173 feet); thence along said Daybreak Commerce Park Plat 5B and the arc of said curve 190.556 feet through a central angle of 12°35'08"; thence South 89°15'43" West 89.863 feet to the Easterly Line of Daybreak Commerce Park Plat 5A Amended and a point on a 782.500 foot radius non tangent curve to the left, (radius bears North 70°45'46" West, Chord: North 12°30'57" East 183.163 feet); thence along said Daybreak Commerce Park Plat 5A Amended and the arc of said curve 183.584 feet through a central angle of 13°26'32" to the point of beginning.

Property contains 0.365 acres, 15899 square feet.

EXHIBIT "B-1"

Depiction of Easement Area

