

14203757 B: 11471 P: 2177 Total Pages: 8
02/12/2024 11:08 AM By: zjorgensen Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

WHEN RECORDED RETURN TO:

VP Daybreak Devco 2, Inc.
9350 S. 150 E., Suite 900
Sandy, UT 84070
Attention: Natalie Gordon

SEND SUBSEQUENT TAX BILLS TO:

Daybreak Community Association, Inc.
11248 S. Kestrel Rise Road, Ste. 201
South Jordan, UT 84009
Attention: Cameron Jackson

APN: 26-22-177-008-0000

GIFT DEED
(Containing a Possibility of Reverter)

8th THIS GIFT DEED (Containing a Possibility of Reverter) (this “**Deed**”), dated as of the 8th day of FEB., 2024 (the “**Effective Date**”), is made and entered into by and between VP DAYBREAK DEVCO 2, INC., a Utah corporation (as successor-in-interest to Kennecott Land Company, a Delaware corporation) (“**Grantor**”), and DAYBREAK COMMUNITY ASSOCIATION, INC., a Utah nonprofit corporation (“**Grantee**”) (Grantor and Grantee are occasionally referred to herein individually as a “**Party**” and collectively as the “**Parties**”), with reference to the following:

A. Grantor owns certain real property in Salt Lake County, State of Utah, as described on Exhibit A attached hereto and incorporated herein (the “**Land**”).

B. The Land is located within a master planned community project located in South Jordan City commonly known as *Daybreak* and is governed by that certain Community Charter for Daybreak, recorded on February 27, 2004 as Entry No. 8989518, in Book 8950, beginning at page 7784 of the official records of the Salt Lake County Recorder, as amended and/or supplemented from time to time (collectively, the “**Community Charter**”); and that certain Covenant for Community recorded on February 27, 2004 as Entry No. 8989517, in Book 8950, beginning at page 7722 of the official records of the Salt Lake County Recorder, as amended and/or supplemented from time to time (collectively, the “**Covenant**”).

C. Grantor and Grantee intend this Deed to create a fee simple determinable in Grantee, with Grantor retaining a possibility of reverter, so that fee simple title to the Land or

11391 S. BINGHAM PTM RD
P-106 V9 P3

portions thereof will be held and owned by Grantee, its successors and assigns, for so long as the Land is used for the Acceptable Purposes (defined below).

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms used in this Deed without otherwise being defined shall have the meanings set forth in the Community Charter. In the event of any inconsistency or conflict between the provisions of this Deed and the Community Charter, the Community Charter shall control.

2. **Quitclaim.** Grantor hereby quitclaims to Grantee all of Grantor's right, title and interest to the Land and the improvements thereon, subject to all reservations contained in this Deed, all building codes, and other applicable laws, ordinances and governmental regulations affecting the Land, all encumbrances of record, including those contained in the Community Charter, and in the Covenant, and all easements, restrictions, rights-of-way, covenants or other property interests enforceable at law or in equity, shortages in area and all other matters that would be disclosed by an accurate survey or inspection of the Land, all unpaid taxes and assessments for the year 2022 and all subsequent years.

3. **Reservations.** Grantor hereby retains and reserves: (a) all oil, gas and minerals under or appurtenant to the Land, together with all rights to use or extract the same, except that Grantor shall not have the right to enter upon or disturb the first 500 feet below the surface of the Land to use or extract the same, (b) all water flowing or located under, within, or over, and all water rights or water shares in any way connected or associated with or appurtenant to, the Land, and (c) any and all pipes, drains, and ancillary equipment or fixtures constituting the storm water drainage system, infiltration basin and retention system that may run on, under or through the Land.

4. **Well Prohibition Covenants.** Grantor and Grantee agree that the provisions of Paragraph 10 of Exhibit B to that certain Deed effective October 16, 2002 from Kennecott Utah Copper Corporation, as grantor, to OM Enterprises Company, as grantee, recorded on December 2, 2002, in the Official Records of Salt Lake County as Entry No. 8442505, including, without limitation, the "Well Prohibition Covenant" [which prohibits drilling of water wells on the land] and the "Subsequent Transfer Covenant" [which requires that the Well Prohibition Covenant be inserted in all future deeds for such land] (as such terms are defined in such Paragraph 10), are hereby incorporated into this Deed and shall be binding on Grantee, its successors and assigns.

5. **Reservation of Easements.** Grantor hereby retains and reserves all rights of Founder under the Community Charter, including but not limited to those in Chapter 13 of the Community Charter, with respect to easements and the power to grant easements to third parties. Grantor hereby retains and reserves a transferable easement on, over or under the Land, or any portion thereof, for the purpose of constructing, installing, maintaining, repairing, replacing, inspecting and operating pipes, valves, meters and all other associated facilities and appurtenances, for the transportation of secondary water for irrigation which easement shall

terminate automatically with no further documentation upon the expiration of the Founder Control Period. Grantor reserves and retains an easement and right-of-way, in, on and over the Land for the purpose of construction, maintenance, repair, location, installation, inspection and operation of any improvements on the Land for the benefit of Grantee and its members, which easement shall terminate automatically with no further documentation on that date which is ten (10) years from the date hereof.

6. **Dedication to South Jordan.** Grantee covenants and agrees portions of the Land, as determined from time to time by Grantor and the City, are subject to dedication to South Jordan City (the "City") for use by the public. If, during the Founder Control Period, Grantor and the City determine that portions of the Land (the "Public Use Land") should be dedicated for use as parks and/or open spaces for public access, and/or for public recreational trails on or across the Land (which would constitute a change in the development plan pursuant to Section 9.1 of the Community Charter), as soon as practicable Grantee covenants and agrees to convey to the City the Public Use Land pursuant to a special warranty deed, free of all encumbrances placed on the Public Use Land by Grantee or during the period of Grantee's ownership, unless otherwise approved by Grantor in writing at the time of such transfer. If Grantee does not, after a period of six (6) months after Grantor gives written notice to Grantee describing the Public Use Lands, convey the required portions of the Land to the City, then the Public Use Land shall automatically revert to Grantor or to Grantor's designees, successors and assigns, free of all encumbrances placed on such land by Grantee or during the period of Grantee's ownership, unless otherwise approved by Grantor in writing at the time of such reversion, PROVIDED HOWEVER, that any forbearance by Grantor to notify Grantee of such failure to convey shall not be deemed or construed to be a waiver by Grantor of any of Grantor's rights under this Deed. For purposes of Section 9.1 of the Community Charter, such transfer of the Land shall be deemed to be a transfer of unimproved real property.

7. **Common and Limited Common Areas.** Grantor and Grantee agree that the Land shall be deemed "Common Area" and/or "Limited Common Area", as applicable, under the Community Charter, and Grantee shall manage and maintain the Land as prescribed by the Community Charter. Grantor and Grantee agree that during the Founder Control Period the Land shall (subject to Grantor's rights hereunder) be used exclusively by the residents of Daybreak and their guests and invitees. If, during the Founder Control Period, Grantor and Grantee determine that the Land (or any part thereof) shall be open to public access, Grantee shall allow public access to such land with restrictions as agreed to by Grantor and Grantee, or if requested by Grantor, Grantee shall record a perpetual public access easement, a conservation easement and/or such other document as Grantor requires, on or across such land for the benefit of the public and/or the City, such easement and/or document in form and substance acceptable to Grantor.

8. **Condition of Land.** Grantee accepts the Land on an "AS IS", "WHERE IS," "WITH ALL FAULTS" basis, and without any warranties, representations or guarantees, either express or implied, of any kind, nature, or type whatsoever, including, but not limited to, any warranty as to the fitness for a particular purpose or merchantability.

9. **Fee Simple Determinable; Acceptable Purposes.**

(a) In the event the Land, or any portion thereof, ever ceases to be used for parks and/or open space by the residents of Daybreak (collectively, the "Acceptable Purposes") during the Founder Control Period, and/or Grantee ever purports to transfer title to the Land or any portion thereof to any entity or person other than the Public Use Lands to the City or to Grantor or Grantor's affiliate during the Founder Control Period, fee title to such portions of Land shall automatically revert to Grantor, free of all encumbrances placed on such land by Grantee or during the period of Grantee's ownership, unless otherwise approved by Grantor in writing at the time of such reversion. Grantor and Grantee intend this Deed to create a fee simple determinable in Grantee, with Grantor retaining a possibility of reverter, so that fee simple title to the Land or portions thereof will be held and owned by Grantee, its successors and assigns, for so long as the Land is used for the Acceptable Purposes, but in the event any portion of the Land or portions thereof ceases being used for the Acceptable Purposes during the Founder Control Period, it is intended that all right, title and interest of Grantee, its successors and assigns, be automatically forfeited and that such portion of the Land or portions thereof immediately revert to and vest in Grantor without any further action being required by Grantor, its successors and assigns. In the event the Land, or any portion thereof, shall cease being used for the Acceptable Purposes for a period of six (6) months after Grantor gives written notice to Grantee of such cessation, then such portions of the Land shall automatically revert to Grantor, or to Grantor's designees, successors and assigns, PROVIDED, HOWEVER, that any forbearance by Grantor to notify Grantee of such cessation shall not be deemed or construed to be a waiver by Grantor of any of Grantor's rights under this Deed.

(b) After the Founder Control Period, if the foregoing possibility of reverter has not gone into possession of Grantor, or its successors or assigns, it shall automatically lapse and Grantee, its successors or assigns, will own the Land in fee simple absolute.

(c) The foregoing possibility of reverter reflects the following facts: (i) Grantor transferring the Land to Grantee in order to provide the Land used for parks and/or open space by the residents of Daybreak, (ii) Grantor does not want the Land used for any other purpose; and (iii) the Land is being quitclaimed without payment by Grantee.

(d) Grantor and Grantor's agents may enter upon the Land at reasonable times in order to monitor and confirm Grantee's compliance with the covenants and restrictions in this Deed, provided that such entry shall not unreasonably interfere with Grantee's use of the Land.

10. **Indemnification.** Grantee hereby agrees to indemnify, defend and hold harmless Grantor and its affiliates from any claims, losses, damages, demands, liabilities, costs, expenses, actions and causes of action of every kind and nature whatsoever arising out of, in connection with, and or related to the ownership, use, development, construction, and/or maintenance, repair or replacement of the Land and/or any improvements thereon, from and after the date hereof.

11. **General Provisions.**

(a) Each Party shall, whenever and as often as it shall be requested by the other Party, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged

and delivered, such further instruments and documents as may be necessary in order to complete and evidence the assignment, conveyance and transfer herein provided and to do all things as may be reasonably requested in order to carry out the intent and purpose of this Deed.

(b) If any provision herein shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party under this Deed will not be materially and adversely affected thereby, (i) such holding or action shall be strictly construed; (ii) such provision shall be fully severable; (iii) this Deed shall be construed and enforced as if such provision had never comprised a part hereof; (iv) the remaining provisions of this Deed shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Deed; and (v) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Deed a legal, valid and enforceable provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible.

(c) Nothing contained in this Deed shall be construed to create a partnership or joint venture between the Parties or their successors in interest.

(d) The execution, delivery, and performance of this Deed has been duly authorized by all necessary action of the Parties, and when duly executed and delivered, will be a legal, valid and binding obligation, enforceable in accordance with its terms.

(e) No change, modification, addition, or termination of this Deed shall be enforceable unless in writing and signed by the Party against whom enforcement is sought.

(f) The headings of the Sections contained herein are for convenience only and do not define, limit, or construe their contents.

(g) This Deed shall be governed by and interpreted in accordance with the laws of the State of Utah.

(h) In the event of any litigation by any Party to enforce the terms of this Deed, the prevailing Party in such litigation shall be entitled to receive from the other Party payment of attorneys' fees incurred (whether before or after commencement of such litigation) by the prevailing Party.

(i) This Deed may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures on following pages]

Executed to be effective as of the Effective Date.

GRANTOR:

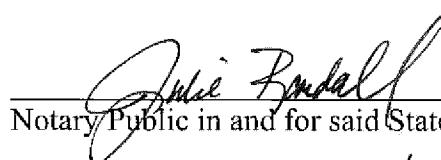
VP DAYBREAK DEVCO 2, INC.,
a Utah corporation

By: 
Eric Carlson, Vice President

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

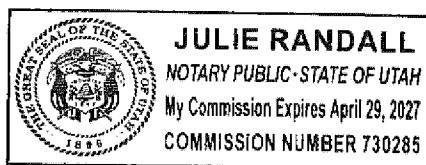
On February 8, 2024, personally appeared before me, a Notary Public, Eric Carlson, the Vice President, a Utah corporation, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of VP DAYBREAK DEVCO 2, INC., a Utah corporation.

WITNESS my hand and official Seal.



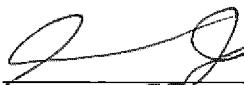
Notary Public in and for said State
My commission expires: April 29, 2027

[SEAL]



GRANTEE:

DAYBREAK COMMUNITY ASSOCIATION,
INC., a Utah nonprofit corporation

By: 
Name: CAMERON JACKSON
Its: board president

ACKNOWLEDGMENT

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

On FEB 8, 2024, personally appeared before me, Cameron Jackson,
the President of DAYBREAK COMMUNITY ASSOCIATION, INC., a Utah
nonprofit 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 DAYBREAK COMMUNITY ASSOCIATION, INC., a Utah nonprofit
corporation.

WITNESS my hand and official Seal.



Notary Public in and for said State

My commission expires: April 29, 2027

[SEAL]



Exhibit A

(Legal Description)

LOT P-106 OF THE DAYBREAK VILLAGE 9 PLAT 3 AMENDING LOT Z101 OF THE VP DAYBREAK OPERATIONS - INVESTMENTS PLAT 1, ALSO AMENDING LOT V5 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED ACCORDING TO THE OFFICIAL PLAT THEREOF.

Tax Parcel No.: 26-22-177-008-0000