

RECORDING REQUESTED AND
WHEN RECORDED, RETURN TO:

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

14249021 B: 11496 P: 1544 Total Pages: 9
06/05/2024 01:35 PM By: srigny Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: LARRY H MILLER REAL ESTATE
9350 S 150 E STE 100 SANDY, UT 84070



APN: 26152760060000

(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 16th day of May, 2024 (the "**Effective Date**"), by and between **VP DAYBREAK INVESTCO 12, LLC**, a Utah limited liability company ("**Grantor**"), and **SHORT DAYBREAK HOLDINGS 1, LLC**, a Utah limited liability company ("**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 onto 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 here under 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:

SHORT DAYBREAK HOLDINGS 1, LLC
6379 W Crimson View Drive, Suite 103
South Jordan, Utah 84009
Attention: Alex Short

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.

VP DAYBREAK INVESTCO 12 LLC,
a Utah limited liability company

By: MRE INVESTMENT MANAGEMENT,
L.L.C., a Utah limited liability company
Its: Operating Manager

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

By: [Signature]
Name: Michael Kunkel
Title: Treasurer

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

On the 16th day of May, 2024, personally appeared before me,
Michael Kunkel, the Treasurer of Miller Family Real Estate,
L.L.C., a Utah limited liability company, the Operating Manger of MRE Investment Management, L.L.C.,
a Utah limited liability company, the Operating Manager of VP DAYBREAK INVESTCO 12, LLC, a Utah
limited liability company, who being duly sworn, did say that he/she is the signer of the foregoing
instrument and record owner of said property, who duly acknowledged to me the he executed the same on
behalf of VP DAYBREAK INVESTCO 12 LLC, a Utah limited liability company.

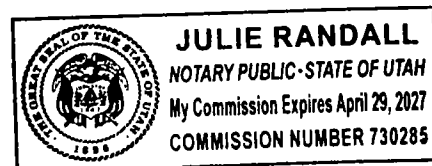
[Signature]
Notary Public

My commission Expires:

April 29, 2027

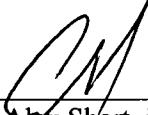
Residing at:

Sandy, Utah 84070



GRANTEE:

SHORT DAYBREAK HOLDINGS 1, LLC
a Utah limited liability company

By: 
Name: Alex Short, its Manager

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

On the 17 day of May, 2024, personally appeared before me, Alex Short, who being duly sworn, did say that he is the signer of the foregoing instrument and record owner of said property, who duly acknowledged to me the he executed the same on behalf of SHORT DAYBREAK HOLDINGS 1, LLC, a Utah limited liability company.


Notary Public

My commission Expires:
March 21, 2027

Residing at:
Lehi, Utah

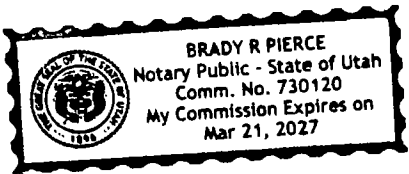
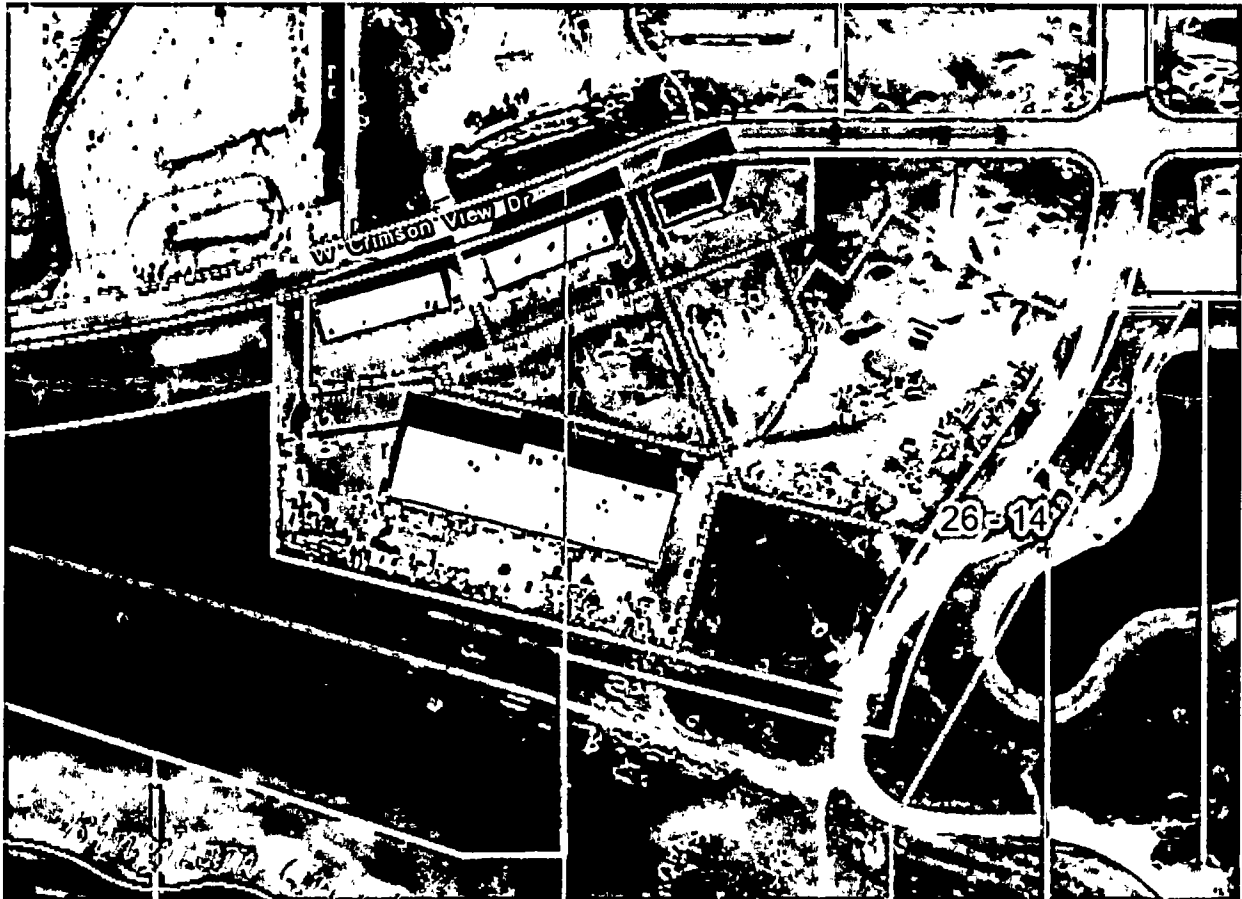


EXHIBIT A



A-1

Exhibit "B"

Access Easement

An access easement being a part of Parcel 26-15-276-006 in favor of Lot 8A, Daybreak Commerce Park Plat 5A – Amended Amending All of Daybreak Commerce Park Plat 5A recorded August 03, 2021 as Entry No. 13734644 in Book 2021 at Page 194 in the Office of the Salt Lake County Recorder. Said easement is located in the Northwest Quarter of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian and is described as follows:

Beginning at a northeasterly corner of said Lot 8A, Daybreak Commerce Park Plat 5A – Amended Amending All of Daybreak Commerce Park Plat 5A, which is 1328.17 feet East and 1308.98 feet South from the Northwest Corner of said Section 14; thence N.83°59'10"E. 75.83 feet; thence southerly 148.72 feet along the arc of a 855.44 feet non-tangent radius curve to the right, having a central angle of 09°57'38", (chord bears S.09°43'33"W. 148.53 feet) Radius point bears N.85°15'16"W.; thence along a line non-tangent to said curve, N.75°17'53"W., a distance of 26.10 feet; thence S.25°26'34"W. 49.91 feet; thence southerly 86.59 feet along the arc of a 846.65 feet non-tangent radius curve to the right, having a central angle of 05°51'36", (chord bears S.21°05'18"W. 86.56 feet) Radius point bears N.71°50'30"W.; thence along a line non-tangent to said curve, N.65°58'55"W., a distance of 40.50 feet to the easterly line of Lot 7A; thence northerly along said easterly line and the easterly line of Lot 8A 250.72 feet along the arc of a 782.49 feet non-tangent radius curve to the left, having a central angle of 18°21'28", (chord bears N.14°58'25"E. 249.64 feet) Radius point bears N.65°50'51"W. to the **Point of Beginning**.

The above-described access easement contains 15,587 square feet in area or 0.358 acres, more or less.

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





BASIS OF BEARING: N. 89°55'07" W. per said Daybreak Commerce Park Plat 5A – Amended Amending All of Daybreak Commerce Park Plat 5A along the Section line between the North Quarter and the Northeast Corner of Section 15, Township 3 South, Range 2 West, Salt Lake Base and Meridian.

LINE TABLE		
LINE #	LENGTH	BEARING
L1	75.83	N83° 59' 10"E
L2	26.10	N75° 17' 53"W
L3	49.91	S25° 26' 34"W
L4	40.50	N65° 58' 55"W

LOT 8A
84,046 SQ. FT.
1.929 ACRES
6273 W. CRIMSON VIEW DR.
OR
10408 S. PROSPERITY RD.
SHORT DAYBREAK HOLDINGS LLC
26-14-152-005

LOT 7A
162,898 SQ. FT.
3.740 ACRES
10442 S. PROSPERITY RD.
SHORT DAYBREAK HOLDINGS LLC
26-14-152-007

LEGEND

-  Boundary
-  Adjacent parcel
-  Access Easement
-  Lot Line

10.0' Existing PUE
20.0' Existing Tank 5a
Inlet Pipe Easement

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	148.72	855.44	9°57'38"	S9° 43' 33"W	148.53
C2	86.59	846.65	5°51'36"	S21° 05' 18"W	86.56
C3	250.72	782.49	18°21'28"	N14° 58' 25"E	249.64

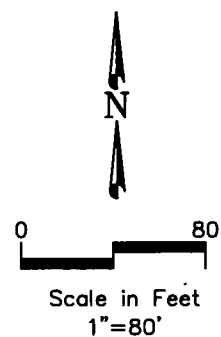


EXHIBIT "B-1"

Vp Daybreak Investco 12 LLC
Access Easement in Favor of Lot 8A

Assessor Parcel No:
26-15-276-006

Part of the Northwest Quarter
Sec. 14, T.3S., R.2W., S.L.B.&M.

PREPARED BY:



**CIVIL ENGINEERING
+ SURVEYING**

10718 South Beckstead Lane, Suite 102, South Jordan, Utah 84095
Phone: 435-503-7641

February 7, 2024

Page 2 of 2