

**DONATION AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS DONATION AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is dated as of December __, 2020 (“**Effective Date**”) by and between **VP DAYBREAK DEVCO LLC**, a Delaware limited liability company (“**Donor**”), and **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah, for the benefit and purpose of Salt Lake County Arts and Culture Division (“**County**”).

SUMMARY OF KEY TERMS

Property:	As described in <u>Section 1</u> below.
Purchase Price:	As provided in <u>Section 2</u> below.
Deposit:	One Hundred Dollars (\$100.00).
Feasibility Period:	Commencing on the Effective Date and expiring ninety (90) days thereafter.
Outside Close of Escrow:	The later of (i) fifteen (15) days after expiration of the Feasibility Period, or (ii) ten (10) days after the recordation of the Final Plat (defined later).
Escrow and Title Company:	Old Republic National Title Insurance Company Attention: Hillary Morgan 898 North 1200 West, Suite 101 Orem, Utah 84057 Telephone No.: (801) 753-7700 e-mail: hmorgan@oldrepublictitle.com
County Closing Costs:	50% of escrow fees and recording costs, all due diligence investigation costs incurred by County, which may include a survey if obtained by County and environmental testing, additional costs to obtain an extended coverage title policy (if elected by County), and any endorsements desired by County.
Donor Closing Costs:	50% of escrow fees and recording costs, 100% of (i) rollback taxes (ii) any costs and fees payable in connection with the City of South Jordan, Utah, Special Assessment Bonds (Daybreak Assessment Area No. 1), and (iii) a standard coverage title policy and curative endorsements.

In the event there is a conflict between the terms set forth in this Summary and those in the Agreement, the terms of the Agreement shall control.

AGREEMENT

1. Agreement to Purchase/Sell.

Donor hereby agrees to donate, convey and assign to County, and County agrees to receive and accept from Donor, under the terms and conditions and for the purchase price hereinafter set forth, that certain real property containing approximately 5 acres located at or near the northwest corner of Grandville Avenue and Lake Avenue in South Jordan City (the "City"), Salt Lake County (the "County"), State of Utah, which is a portion of the land more particularly described on **Exhibit A** attached hereto. The boundaries of the real property to be conveyed to County hereunder (the "Land") shall be determined by County and Donor during the Feasibility Period. The Land, together with any and all rights, privileges and easements appurtenant to the Land owned by Donor is hereinafter collectively referred to as the "Property". The final legal description of the Property shall be determined by the Final Plat.

2. Purchase Price/Donation.

The Property shall be donated by Donor to County for no fee.

County shall deposit into Escrow (as defined in Section 4) cash in the amount of \$100.00 within three (3) business days of the Opening of Escrow (the "Deposit"). Except as otherwise expressly provided herein, the Deposit shall be applied as follows: (i) in the event that Close of Escrow occurs, the entire amount of the Deposit shall be returned to County; or (ii) in the event this Agreement is terminated after the expiration of the Feasibility Period (as defined below) for any reason except as a result of a default by Donor or a failure of a condition precedent to Close of Escrow, the Deposit and any interest thereon shall be non-refundable to County, shall be automatically released to Donor and shall constitute the liquidated damages of Donor pursuant to Section 12 below.

The Parties acknowledge and agree that Donor has calculated the fair market value of the Property as of the date of this Agreement to be approximately \$3,049,200.00 (\$609,840.00 per acre) ("**Donation Property Value**"). The Property is being donated by Donor to County in consideration of the conditions and restrictions pertaining to the design and construction of the Property as set forth in this Agreement and to improve the quality of life for Daybreak residents and the broader community. At Closing, County shall provide Donor with the Declaration of Donation in the amount of the Donation Property Value and otherwise in the form attached hereto as **Exhibit C**, accepted and signed by County and Salt Lake County Council (the "**Declaration of Donation**").

Donor understands that it is Donor's responsibility to understand and fulfill any obligations to lienholders, mortgagees, or others (collectively "**Third-Party-Interest holders**") who may have an interest in the Property or the proceeds from its sale. Donor shall indemnify County against any claims that Third-Party Interest holders may make as a result of this donation of the Property.

3. Contingencies.

County's obligation to receive the Property is conditioned on the following conditions precedent to County's obligation to close:

(a) **Title.**

(i) Within ten (10) business days following the Opening of Escrow, Donor shall cause to be delivered to County a preliminary title commitment on the Property (the "**Title**

Commitment”), together with legible copies of all documents (the **“Exception Documents”**) relating to the title exceptions referred to in the Title Commitment. County may, at County’s sole cost and expense, have a survey of the Property prepared for its use.

(ii) Within forty-five (45) days of County’s receipt of the Title Commitment and the Exception Documents, County shall notify Donor and Escrow Holder in writing of all disapproved title matters (the **“Disapproved Title Matters”**). All matters shown on the Title Commitment, except for Donor Liens (as defined below), as to which County does not provide a written objection before the end of such forty-five (45) day period shall constitute **“Permitted Exceptions”**. County’s failure to so notify Donor and Escrow Holder shall be deemed to mean that all title matters set forth in the Title Commitment are Permitted Exceptions. Within seven (7) business days after Donor receives County’s written notification of any Disapproved Title Matters, Donor shall notify County and Escrow Holder in writing of any Disapproved Title Matters which Donor is unable or unwilling to cause to be removed or insured against to County’s reasonable satisfaction. Donor’s failure to give such notice shall be deemed to be notice that Donor will not cause all Disapproved Title Matters to be removed or insured against. County shall then, within five (5) business days of its receipt of Donor’s notice (or deemed notice) stating that Donor will not remove or insure against any of such Disapproved Exceptions, elect, by giving written notice to Donor and Escrow Holder, either (A) to terminate this Agreement, or (B) to waive its disapproval of such exceptions (such exceptions shall then be deemed to be Permitted Exceptions). County’s failure to give such notice shall be deemed an election to waive its disapproval of such exceptions.

(iii) If the Title Company, prior to Close of Escrow, discloses to County a new exception, or amends any exception previously approved by County, or amends the terms under which the Title Company is willing to issue its policy of title insurance, then County shall have five (5) business days from its receipt of such disclosure, together with legible copies of all documents mentioned in such disclosure, to disapprove the same by written notice to Donor and Escrow Holder. County’s failure to so notify Donor shall be deemed to mean that such disclosures are acceptable to County. Any such disapproved disclosures shall be treated as Disapproved Title Matters and the procedures therefor set forth in Section 3(a)(ii) above shall be implemented.

(iv) Donor shall not be obligated to remove or secure title insurance over any Disapproved Title Matters other than monetary liens and monetary encumbrances created or suffered by Donor (**“Donor Liens”**) which are to be released from the Property upon the payment thereof by Donor at the Close of Escrow.

(v) In any event, County’s review of all title matters as set forth in this Section 3(a) shall be finalized on or before the expiration of the Feasibility Period.

(vi) Donor discloses that the Property is located within a special assessment area boundary and is subject to, and encumbered by, the terms and conditions of a special assessment area bond issued by the City (**“Assessment Area Bond”**), which Assessment Area Bond is being used by Donor and/or its affiliates to construct roadway and utility infrastructure and other improvements, to be dedicated to the City, in whole or in part, which improvements and infrastructure shall benefit the Properties and other areas of Donor’s master planned community. Information concerning the Assessment Area Bond (and the applicable assessment fees thereunder) is recorded of record against the Property. Notwithstanding anything contained herein to the contrary, at Close of Escrow, Donor shall be responsible for payment of the applicable assessment fee for the Property pursuant to the Assessment Area Bond.

(b) Feasibility Period. Prior to the expiration of the Feasibility Period, County shall have the right to obtain and/or review the documents and matters listed in this Section 3(b) below. The “**Feasibility Period**” shall commence on the Effective Date and shall expire at 5:00PM, Mountain Time, ninety (90) days thereafter.

(i) County shall have the right to approve or disapprove of the results of such physical inspection of the Property to be performed by or on the behalf of County as it deems advisable. On and after the Effective Date and until the Closing or the earlier termination of this Agreement, County and its agents, representatives, consultants, and contractors shall have the privilege, opportunity, and right of entering the Property in order to: (A) inspect and examine the Property and perform boundary, topographic, and like surveys and inspections of the Property; (B) conduct other tests and inspections including, without limitation, geotechnical and environmental tests, studies and examinations, soil tests, borings, and other tests needed to determine surface, subsurface and topographic conditions; (C) conduct appraisals and market feasibility studies; and (D) otherwise conduct such due diligence review of: (1) the Property, (2) the items to be furnished by Donor to County pursuant to Sections 3(b)(ii) and (iii) hereof, if any, and (3) all records and other materials related thereto; all as County deems appropriate. County’s right to access the Property to perform its due diligence shall be subject to and in accordance with the terms and conditions of the Access Agreement (as defined in Section 10 below).

(ii) Within five (5) business days after the Effective Date, Donor shall deliver to County copies of the documents and information set forth on **Exhibit I** attached hereto and incorporated herein by reference (the “**Documents and Materials**”). County acknowledges and agrees that all Documents and Materials made available by Donor are for informational purposes only, that Donor makes no representation or warranty with respect to the truth, accuracy, or completeness of any matters set forth in such documents. County further acknowledges and agrees that it is not relying on any information contained in such documents and, instead, is relying on its own investigation of the Property and related matters.

(iii) County shall have the right to approve or disapprove all contracts, licenses, plans, construction agreements, permits, approvals, licenses, warranties or other agreements, instruments or information (collectively, the “**Contracts**”) affecting the Property. County shall also have the right to review all applicable laws, regulations, and ordinances (collectively, the “**Laws**”) affecting the Property and County’s intended use of the Property. Donor shall provide County with full and complete copies of all Contracts for the Property, if any, within five (5) business days after the Effective Date.

(iv) County may obtain an appraisal of the Property and acknowledges that, if an appraisal is obtained, County is solely responsible to pay the cost of the appraisal. County shall have the ability to review and approve of the appraisal during the Feasibility Period.

If, at any time during the Feasibility Period, County determines that it is dissatisfied with any aspects of the Property (including the appraisal), with any of the Documents and Materials, or with any Contract or Laws, or if County otherwise elects to terminate this Agreement, for any or no reason, in County’s sole discretion, County may terminate this Agreement and the Escrow by giving Donor and Escrow Holder notice of County’s termination. County’s failure to give timely written notice to Donor of its approval of the Property or its election to terminate this Agreement shall be deemed County’s election and notice to terminate this Agreement. In the event of such termination, the Deposit (including any interest earned thereon) shall be returned to County, and all documents deposited into Escrow by either party shall be returned to the party which deposited the same. Additionally, County shall return all of

Donor's Documents and Materials to Donor, and neither party shall have any further right or remedy against the other except as may expressly survive the termination of this Agreement.

(c) Platting. The parties acknowledge that Donor would not normally create a parcel in the size and configuration of the Property but is doing so solely to facilitate the donation contemplated hereby. An express condition to the parties' obligations hereunder is approval by all appropriate governmental entities of a new plat creating the Property as a separate legal parcel and the recording of such plat in the Salt Lake County Recorder's Office. The parties agree to work together in good faith to finalize the plat. The plat shall be subject to the approval of Donor and County, which approval shall not be unreasonably withheld or delayed (such approved plat being referred to herein as the "**Final Plat**"). Failure to obtain governmental approval, or the parties' approval, of the plat after exercising good faith efforts to do so shall not be a default hereunder by Donor but instead shall be automatically treated as a failure of a mutual condition to Close of Escrow terminating this Agreement (whereupon the Deposit provided by County shall be returned to County in full). The new legal parcel constituting the Property shall be subject to the approving agencies' standard plat conditions and dedications.

(d) Infrastructure. Donor or Donor's affiliate, at its sole cost and expense, to the extent not already completed, shall construct to substantial completion the infrastructure improvements described on Schedule 3(d) attached hereto and incorporated herein by reference at the time set forth below (the "**Infrastructure**"). County acknowledges that its final site plan shall provide for retention of storm water generated on the Property up to a 100-year rain event. Nothing contained in this Agreement shall be construed as requiring Donor or any of its affiliates to construct any improvements, amenities or services other than the Infrastructure. County acknowledges that there may be limited access to, and limited water and utilities available on, the Property during construction and that, due to construction of the Infrastructure, County may have limited access to the Property and/or utilities at the Property until such time as the Infrastructure has been completed and is available for use. The Infrastructure shall be completed to the standards, rules, and regulations of the City or other entity with jurisdiction to regulate the compliance of such Infrastructure. As used herein, "substantial completion" shall mean the County could reasonably commence construction activities on the Property, even though there may be certain items which need to be repaired or there is a "punch list" of items to be completed. The Parties acknowledge that it is unlikely that the Infrastructure will be substantially completed by the Close of Escrow. Notwithstanding anything to the contrary contained herein, if Donor has not substantially completed the Infrastructure and all other conditions to the Closing of Escrow have been satisfied or waived by Donor and County, then Donor and County shall proceed with the Close of Escrow and Donor shall substantially complete the Infrastructure within nine (9) months subject to extensions due to weather conditions and other matters beyond Donor's reasonable control (excluding financial matters) of written notice from County to Donor of County's intention to promptly (and in any event, within 60 days after such notice) begin construction of the Performing Arts Center (defined below in Section 8(e)). If Donor fails to complete the Infrastructure as provided herein, and County has performed its obligations hereunder, then Donor shall reimburse County for all reasonable actual out-of-pocket costs and expenses paid by County to unrelated third parties as a direct result of Donor's failure to complete the Infrastructure as herein provided, including, but not limited to, any additional construction costs, expenses, or penalties incurred by County. Donor's obligation to construct the Infrastructure as provided in this paragraph shall survive Closing. This Section 3(d) shall also survive Closing.

(e) Waiver; Failure of Condition; No Default. Prior to Close of Escrow, County may waive any of the contingencies set forth in Section 3(a) or 3(b) by the delivery of written notice thereof to Donor and Escrow Holder. The failure of the Escrow to close by reason of County's disapproval of any contingency for County's benefit described in this Section 3 (other than Section 3(d), which, if County elects to proceed with the transaction contemplated hereby beyond the Feasibility Period, shall constitute both a condition precedent to County's obligations hereunder as well as a contractual obligation of

Donor), or Donor's failure to cure such disapproved contingency, shall not constitute a default by Donor under this Agreement.

(f) Donor's Right to Studies. County shall, within ten (10) business days after receipt of a request from Donor, deliver to Donor, and Donor shall be entitled to retain, at no cost or expense to Donor, electronic copies of all surveys, reports, studies, and test results prepared by County's environmental consultants regarding the environmental conditions at the Property. Provided, however, that County shall not be obligated to disclose any proprietary or confidential information, including any portion thereof that may be protected by the attorney/client privilege or work product doctrines. Donor may, subject to the rights of and limitations imposed by the third-party providers of such documentation and information, use and distribute any and all such documentation and information as it shall elect in its sole and absolute discretion. All information delivered to Donor pursuant to this Section 3(f) is delivered without any representation or warranty by County as to the completeness or accuracy thereof.

(g) [Intentionally Omitted]

4. Escrow.

(a) Escrow Holder. An escrow account for the donation of the Property (the "**Escrow**") has or will be established at the office of the Escrow and Title Company shown in the Summary of Key Terms (the "**Escrow Holder**").

(b) Opening and Close of Escrow. The Escrow shall be deemed open (the "**Opening of Escrow**") upon the date of this Agreement. Escrow shall close (the "**Close of Escrow**") the later of (i) fifteen (15) days after expiration of the Feasibility Period, or (ii) ten (10) days after the recordation of the Final Plat (the "**Closing Date**"). Escrow shall be deemed to have closed at the time the Deed is filed for record in the Official Records of the County.

(c) Escrow Instructions. This Agreement shall constitute the escrow instructions of County and Donor to the Escrow Holder.

(d) Donor Deposits into Escrow. Donor shall deliver or cause to be delivered to Escrow Holder in a timely manner to permit the closing of the transaction contemplated hereby by the Close of Escrow, the following:

(i) A duly executed and acknowledged Special Warranty Deed in the form attached hereto as **Exhibit D** (the "**Deed**");

(ii) Three duly executed and acknowledged originals of the Notice of Purchase Rights ("**Notice of Purchase Rights**") in the form attached hereto as **Exhibit J**;

(iii) A letter from Donor, or its applicable affiliate, as "Founder" of Daybreak regarding the operation of its governing documents with respect to the Property in the form attached hereto as **Exhibit K** (the "**Letter**");

(iv) A duly executed Non-Foreign Affidavit in the form of **Exhibit E** attached hereto (the "**Non-Foreign Affidavit**");

(v) Three duly executed Partial Assignment and Assumption of Master Development Agreement in the form attached hereto as **Exhibit G** (the "**Partial Assignment of MDA**");

(vi) A duly executed Notice of Application of Daybreak Community Documents regarding the application of certain documents in the form attached hereto as **Exhibit H** (the "**Notice of Application**");

(vii) Such evidence, indemnification agreements, escrow agreements and other documents and all escrow funds as may be reasonably required by the Title Company relating to: (i) mechanics' or materialmen's liens to enable the Title Company to issue the Title Policy or the ALTA Policy, as the case may be, insuring that title to the Property is being conveyed free and clear of any mechanics' or materialmen's liens; (ii) parties in possession; (iii) the status and capacity of Donor and the authority of the person or persons who are executing the documents on behalf of Donor in connection with the sale of the Property; (iv) a gap indemnity; and (v) any other matters reasonably required to enable such Title Company to issue the Title Policy or the ALTA Policy, as the case may be, and endorsements thereto;

(viii) A duly executed closing statement reflecting the adjustments and prorations required by this Agreement (the "**Closing Statement**");

(ix) Any funds payable by Donor hereunder as shown on the Closing Statement;

(x) A duly executed original of the Declaration of Donation signed on behalf of County; and

(xi) Such other instruments as may be reasonably required to consummate the transactions contemplated by this Agreement.

(e) County Deposits into Escrow. County shall deliver or cause to be delivered to Escrow Holder in a timely manner to permit the closing of the transaction contemplated hereby by the Close of Escrow, the following:

(i) A duly executed original of the Declaration of Donation signed on behalf of County and the Salt Lake County Council;

(ii) Any closing costs payable by County hereunder as shown on the Closing Statement;

(iii) Three duly executed and acknowledged originals of the Notice of Purchase Rights and the Partial Assignment of MDA;

(iv) A duly executed Closing Statement; and

(v) Such other instruments as may be reasonably required to consummate the transactions contemplated by this Agreement.

(f) Authorization to Close Escrow. Provided that (1) Escrow Holder shall not have received written notice from County or Donor of the failure of any conditions precedent or of the termination of the Escrow, (2) County and Donor have deposited into the Escrow the items required by this Agreement, and (3) the Title Company is irrevocably committed to issue a title policy in the form required in Section 7 below, concurrently with the Close of Escrow, Escrow Holder shall in the following order:

(i) Deliver to County the Deed by causing it to be recorded in the Official Records of the County and requesting that it be mailed to County after it has been recorded;

(ii) Cause to be recorded in the Official Records of the County in the following order: (A) one (1) original of the Notice of Purchase Rights, (B) one (1) original of the Notice of Application, and (C) one (1) original of the Partial Assignment of MDA; and deliver one (1) original of the Notice of Purchase Rights and Partial Assignment of MDA to each of Donor and County;

(iii) Deliver to Donor any amounts payable to Donor as shown on the Closing Statement;

(iv) Deliver to County the Letter and the Non-Foreign Affidavit; and

(v) Cause the Title Policy to be issued to County and Donor by Title Company.

5. Closing Costs.

(a) Donor shall pay (i) 50% of all escrow fees of the Escrow Holder, (ii) all rollback taxes due on the Property, if any, and (iii) any costs and fees payable in connection with the City of South Jordan, Utah, Special Assessment Bonds (Daybreak Assessment Area No. 1).

(b) County shall pay (i) the fees for recording the Deed, (ii) 50% of all escrow fees of the Escrow Holder, and (iii) the cost of any title endorsement requested by County.

(c) Donor shall pay the cost of the Title Policy and the cost of any curative endorsement. If County elects to obtain an ALTA Policy as provided below, County shall be solely responsible for any difference in premium or charge between the Title Policy and the ALTA Policy and for all survey and other costs associated with such ALTA Policy. County shall also be responsible for the additional premium for any separate lender's policy of title insurance.

(d) Any other costs of the Escrow or of closing pertaining to this transaction not otherwise expressly allocated between County and Donor under this Agreement shall be apportioned in the manner customary in the County.

(e) Notwithstanding the foregoing provisions of this Section 5, if the Escrow fails to close for any reason (other than the breach of this Agreement by one or both of the parties), the costs incurred through the Escrow, including the cost of the Title Commitment, shall be borne equally by County and Donor. Otherwise, the party who breached this Agreement first shall bear all the costs incurred through the Escrow, including the cost of the Title Commitment.

6. Prorations and Adjustments.

Current real property taxes and assessments (excluding the Assessment Area Bond) shall be prorated as of 12:01 a.m. on the Close of Escrow, on the basis of a 365-day year.

7. Title.

(a) **Possession.** County shall be placed in possession of the Property as of the Close of Escrow.

(b) **Deed.** Donor shall convey to County good and marketable fee simple title to the Property by the Deed.

(c) **Policy.** On or before the expiration of the Feasibility Period, County shall arrange with the Title Company that title to the Property to be conveyed to County shall be insured by an ALTA Owner's Standard Coverage Policy of Title Insurance (form 6-17-06) (the "**Title Policy**") with liability in the amount of the Donation Property Value, dated the date of the Close of Escrow, issued by the Title Company, insuring that County is vested with fee simple title in the Land, subject only to the Permitted Exceptions; provided, however, County may arrange that in lieu of the Title Policy, the Title Company shall issue an ALTA Owner's Extended Coverage Policy of Title Insurance (the "**ALTA Policy**") with such liability and coverage. The issuance of the Title Policy is a condition precedent to the Close of Escrow, entitling County to a return of the Deposit if not met prior to Close of Escrow. Notwithstanding the foregoing, however, the issuance of an ALTA Policy is not a condition precedent to the Close of Escrow and the failure of Escrow to close by reason of such failure shall not entitle County to the return of the Deposit.

(d) **Reservations and Restrictions.** Donor shall reserve all minerals, coal, carbons, hydrocarbons, oil, gas, chemical elements and compounds, whether in solid, liquid or gaseous form, and all steam and other forms of thermal energy on, in, under or appurtenant the Property, together with the rights to remove or extract the same, provided that Donor does not have the right to enter upon the surface and the first 500 feet below the surface of the Land to remove or extract the same, nor does Donor reserve the right to use the surface of the Property in connection with the rights reserved herein. In addition, Donor shall reserve for itself or its affiliates 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. These reservations shall appear in the Deed. In addition, the Deed shall contain certain restrictions regarding the drilling of wells on the Property.

8. Representations, Warranties and Covenants of County.

County hereby represents, warrants and covenants to Donor that the following matters are true and correct as of the execution of this Agreement and also will be true and correct as of the Close of Escrow:

(a) County is a body corporate and politic of the State of Utah duly formed, validly existing, and in good standing under the laws of the State of Utah.

(b) This Agreement and all the documents to be executed and delivered by County to Donor pursuant to the terms of this Agreement, (i) have been or will be duly authorized, executed and delivered by County by Close of Escrow, (ii) are or will be legal, valid and binding obligations of County as of the date of their respective executions, (iii) are or will be enforceable in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally), and (iv) to County's knowledge, do not, and will not at, the Close of Escrow, violate any provisions of any agreement to which County is a party.

(c) County hereby agrees and acknowledges that, except as otherwise set forth herein, (i) it is buying the Property on an "**AS-IS**" basis; (ii) it has made or will have made its own investigations and inspections of the Property, including, without limitation, the physical aspects of the Property and the Property's compliance with all laws applicable to the Property's current or intended use or development; (iii) in connection with its investigations and inspections of the Property it has contracted or had the opportunity to contract with certain advisors and consultants, including, but not limited to, environmental consultants, engineers and geologists, to conduct such environmental, hazardous material, geological, soils, hydrology, seismic, endangered species, archeological, physical, structural, mechanical and other inspections of the Property as County deemed to be necessary; (iv) it has reviewed, or will have reviewed

by the end of the Feasibility Period, the reports of such advisors and consultants; (v) it is relying solely on such reports and its own investigations as to the Property, its condition and other characteristics and compliance with laws; (vi) except for the representations and warranties set forth in this Agreement, in any documents that survive Close of Escrow, and in the documents executed and delivered by Donor at the Close of Escrow pursuant to this Agreement, it is not making the purchase of the Property in reliance upon any statements or representations, express or implied, made by Donor or its agents or brokers, as to the condition of or characteristics of the Property, its fitness for use for any particular purpose, or the Property's compliance with any zoning or other rules, regulations, laws or statutes applicable to the Property, or the uses permitted on or the development requirements for or any other matters relating to the Property. Except as set forth in this Agreement, Donor has no liability nor responsibility to County in connection with the matters set forth in this Section 8(c), including, without limitation, any liability under any laws, rules, regulations or ordinances regulating the environment, hazardous materials, or human health and safety, or any latent or patent defects.

COUNTY'S INITIALS: _____

(d) Effective on the Close of Escrow, and except as otherwise set forth in this Agreement, County hereby releases Donor from and waives all claims against Donor, at law or in equity, whether known or unknown, suspected or unsuspected which County has or may have, arising out of or related to the physical condition of the Property, its compliance with applicable law or its fitness for County's intended purpose.

COUNTY'S INITIALS: _____

(e) County represents and warrants that it is accepting donation of the Property with the intent to seek funding for the construction and operation of a performing arts center owned and operated by the County on the Property (the "**Performing Arts Center**"). Donor, County and the architect selected by County shall work cooperatively to establish a design and layout for the Performing Arts Center that is reasonably consistent with the design guidelines and themes used within Daybreak, and shall comply with all matters of record, including without limitation the "Town Center" streetscape requirements.

(f) County will seek to obtain funding for the Performing Arts Center to be owned and operated by the County on the Property on or before the day that is five years after the Close of Escrow (the "**Funding Deadline**") and shall thereafter exercise good faith, due diligence and reasonable efforts to commence construction and complete the Performing Arts Center, which will be solely owned and operated by the County, as soon as reasonably practicable. "Commence construction" as used herein means that County has, designed and contracted for the construction of the Performing Arts Center and the construction of the footings and foundation of the Performing Arts Center has been completed. If it appears that funding will not be available by the Funding Deadline, the Parties may extend the Funding Deadline for up to two years by written agreement signed prior to the expiration of the Funding Deadline.

(g) Donor shall have the opportunity to the extent permitted by law (i) to provide input to the County for naming of the Performing Arts Center, subject to the right of County to make a final determination of such name and the provisions of Chapter 2.48 of the Salt Lake County Code; (ii) to participate in the design and execution of the "public scoping and programing" process regarding the Performing Arts Center; and (iii) to engage directly with County and applicable authorities regarding compatibility with adjacent land uses, final site plan and facility design and approval thereof. Notwithstanding the foregoing, Donor shall have no right to participate in or control the programming or operations of the Performing Arts Center.

(h) County shall be solely responsible for all design, development, permitting, fees (including impact fees) and constructions costs associated with the development of the Property and construction and operation of the Performing Arts Center to be owned and operated by County.

(i) The provisions of this Section 8 shall survive Closing.

9. Representations, Warranties and Covenants of Donor.

Donor hereby represents, warrants and covenants to County that the following matters are true and correct as of the execution of this Agreement and will also be true and correct as of the Close of Escrow:

(a) Donor is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware and qualified to do business in the State of Utah.

(b) This Agreement and all the documents and items to be executed and delivered by Donor to County pursuant to the terms of this Agreement, (i) have been or will be duly authorized, executed and delivered by Donor, (ii) are or will be legal, valid and binding obligations of Donor as of the date of their respective executions, (iii) are or will be enforceable in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally); (iv) do not and will not, at the Close of Escrow, violate any provisions of any agreement to which Donor is a party.

(c) To Donor's actual knowledge, except for the Permitted Exceptions and except for agreements entered into pursuant to this Agreement, there are no other agreements or instruments in force and effect, oral or written, that grant to any person whomsoever or any entity whatsoever any right, title, interest, or benefit in or to all or any part of the Property which will survive the Close of Escrow or be binding upon County.

(d) There are no actions, suits, condemnation or other taking by eminent domain, or proceedings pending or, to Donor's actual knowledge, threatened by any governmental agency against Donor with respect to the Property, nor does Donor know of any basis for such action. Donor has not submitted any currently pending application for changes in the zoning applicable to the Property or any portion thereof.

(e) There are no pending or, to Donor's actual knowledge, threatened proceedings that could have the effect of impairing or restricting access between the Property and adjacent public roads.

(f) To Donor's actual knowledge, Donor has not received any written notice of any violation of law, ordinances, or other legal requirements with respect to the Property, except as may be disclosed in the Documents and Materials.

(g) To Donor's actual knowledge, other than Donor's rights hereunder, no person or entity (other than County) has any right or option to acquire any portion of the Property.

(h) Donor is not a "foreign person" which would subject County to the withholding tax provisions of Section 1445 of the Internal Revenue Code of 1986, as amended.

(i) It shall be a condition precedent to County's obligations under this Agreement that on the Closing Date, all of the representations and warranties of Donor set forth in this Section 9 shall be true, accurate, and complete in all material respects.

The representations and warranties of Donor set forth in this Agreement shall survive the Closing for a period of five (5) years. Notwithstanding anything else contained in this Agreement, if any representation or warranty made by Donor hereunder is true and correct as of the execution of this Agreement but is not true and correct as of the Close of Escrow, so long as the same has not occurred by reason of Donor's willful act or omission, then Donor shall not be liable to County in damages by reason thereof and County's sole remedy shall be to terminate this Agreement, in which event the Deposit shall be returned to County in full, and neither party shall have further rights or obligations under this Agreement. Donor's actual knowledge as used herein shall mean the actual knowledge, without independent inquiry, of Scott Kaufmann, VP Commercial Development, Daybreak Communities.

10. Right to Enter Property.

Commencing on the Opening of Escrow and continuing thereafter until the Close of Escrow or termination of this Agreement, County and its consultants, contractors, agents, and servants (collectively, the "**County Parties**") shall have the right, at County's sole cost and expense, to enter onto the Property at reasonable times and in a reasonable manner for the purpose of making such tests and inspections as County deems necessary in connection with this Agreement (including, without limitation, soil samples, geotechnical tests, environmental site assessments and surveys); provided, however, that County and Donor first enter into an Access Agreement, the form of which is attached hereto as **Exhibit L**. Any liability of County to Donor with respect to the indemnity contained in the Access Agreement shall not be limited to or defined by the liquidated damages provision set forth in Section 12 below. Notwithstanding the foregoing, County does not waive any defenses of governmental immunity under Utah Code Annotated Sections 63G-7-101, *et seq.* Nothing contained in this Agreement shall be construed to increase County's liability beyond that set forth in the Governmental Immunity Act.

11. Loss by Condemnation; Risk of Loss.

(a) In the event that prior to the Close of Escrow, the Property, or any portion thereof, is subject to a taking by a public authority, then County shall have the right, exercisable by giving notice to Donor within 15 days after receiving written notice of such taking, either (i) to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder, and the Deposit shall be returned to County less County's share of transaction costs determined pursuant to Section 5(e), or (ii) to accept the Property in its then condition and proceed to close this transaction, and to receive an assignment of all of Donor's rights to any condemnation awards payable by reason of such taking. If County elects to proceed under clause (ii) above, Donor shall not compromise, settle or adjust any claims to such awards without County's prior written consent, which consent shall not be unreasonably withheld. Donor agrees to give County prompt notice of any taking of the Property promptly after Donor receives notice of the same.

(b) Except as otherwise specifically set forth herein, all risk of loss and destruction of the Property, and all Property expenses and insurance, shall be borne by Donor until Close of Escrow, at which time all said risk shall pass to County.

12. Default of County or Donor.

(a) Substantial damages will be suffered by Donor in the event of failure to close due to County's default under this Agreement. The parties agree that it would be extremely difficult and impracticable, if not impossible, to ascertain with any degree of certainty the amount of damages which would be suffered by Donor in the event of County's default under this Agreement. Therefore, in the event County defaults in its obligation to close the acquisition of the Property for any reason other than Donor's default, the Deposit shall be paid or delivered to and retained by Donor as liquidated damages which (subject to

paragraph (b) of this section 12) shall be Donor's sole remedy hereunder by reason of such default. The parties hereto expressly agree and acknowledge that the amount of the Deposit represents the parties' reasonable estimate of Donor's damages in the event of such default. County and Donor expressly agree that the foregoing liquidated damages provision is not intended to define or limit any indemnity liability of County to Donor under Section 10 above or any provision contained in this Agreement for the payment of attorneys' fees.

DONOR'S INITIALS: DM COUNTY'S INITIALS: _____

(b) If County shall default in its obligations hereunder and shall fail to cooperate fully in the immediate cancellation of Escrow and the release to Donor of the Deposit as liquidated damages then, notwithstanding the parties' agreement to limit damages to liquidated damages, and in addition to all other rights and remedies, the following provisions will apply: (i) In the event County agrees to cancellation of the Escrow but not to the release of the Deposit as liquidated damages, then the prevailing party in any dispute shall be entitled to recover its costs of enforcement, including reasonable attorneys' fees. If Donor is the prevailing party in such dispute, Donor shall also be entitled to the Deposit as liquidated damages; (ii) In the event County shall fail or refuse to agree to the cancellation of the Escrow or shall commence an action for specific performance and/or file a notice of lis pendens, then the prevailing party in any such dispute shall be entitled to recover its actual damages (and Donor shall not be limited to liquidated damages), plus costs of enforcement including reasonable attorneys' fees. Notwithstanding the foregoing, County does not waive any defenses of governmental immunity under Utah Code Annotated Sections 63G-7-101, *et seq.* Nothing contained in this Agreement shall be construed to increase County's liability beyond that set forth in the Governmental Immunity Act.

(c) Should Donor default or fail to perform according to this Agreement, County may: (i) terminate this Agreement, whereupon the Deposit shall be released to County; and/or (ii) pursue any other remedy available at law or in equity, including an action for specific performance.

13. Intentionally Omitted.

14. Repurchase Right.

(a) County and Donor acknowledge and agree that if funding is obtained for the construction of the Performing Arts Center to be owned and operated by the County on the Property, the County shall exercise reasonable efforts to base the design of the Performing Arts Center on the prototype for "Metro" Regional Performing Arts Centers as reflected in County's 2008 Cultural Facilities Master Plan. If County fails to obtain funding for the Performing Arts Center on the Property by the Funding Deadline and County and Donor have not agreed in writing to extend the Funding Deadline as provided herein, or County and Donor have extended the Funding Deadline as provided herein and County fails to obtain funding for the Performing Arts Center on the Property during such extended period, Donor shall have the right to repurchase the Property from County upon notice thereof from Donor to County. Once County has obtained funding for the construction of the Performing Arts Center, it shall thereafter exercise good faith, due diligence and reasonable efforts to commence construction and complete the Performing Arts Center as soon as reasonably practicable.

(b) If Donor exercises its right to repurchase the Property, County shall sell the Property, to Donor, in cash, for an amount equal to TEN DOLLARS (\$10.00) and otherwise on terms and conditions substantially similar to those contained in this Agreement; provided, however, that (i) County shall make standard representations and warranties relating to due authorization and execution (such as those set forth in Sections 9(a) and (b) hereof), (ii) the special warranty deed conveying title to Donor shall not contain the reservations and restrictions set forth in Section 7(d) hereof, and (iii) County shall not retain any

repurchase right to the Property as set forth in this Section. The closing costs shall be allocated between Donor and County consistent with the terms of this Agreement, with County paying Donor's closing costs, and Donor paying County's closing costs. County shall cause any financial encumbrances, such as mortgages, deeds of trust and liens to be released at the closing.

(c) If County cannot obtain funding for the construction of the Performing Arts Center on the Property by the Funding Deadline (including any extension thereof) and Donor does not exercise its option to repurchase the Property from County, County may require Donor to repurchase the Property upon the terms and conditions set forth in Section 14(b).

(d) Donor's right to repurchase the Property shall be binding on any successor-in-interest to County, subsequent owner and/or any other subsequent interest holder in the Property. If County obtains funding before the Funding Deadline (including any extension thereof), then Donor and County shall execute and record a release of the notice of the repurchase right. This Section shall survive Close of Escrow and shall be binding upon any transferee, assignee or successor-in-interest of either party for a period of ten (10) years or until released as provided in this Subsection 14(d). The parties shall execute and cause to be recorded a notice of Donor's repurchase right in the form attached as **Exhibit J** hereto, which notice shall be recorded on the title to the Property immediately following the recordation of the Deed.

15. Broker's Commission.

County and Donor each represent to the other that they have not entered into any agreement or incurred any obligation which might result in the obligation to pay a sales or brokerage commission or finder's fee with respect to this transaction. County and Donor each agree to indemnify, defend, protect, and hold the other harmless from and against any and all losses, claims, damages, costs or expenses (including attorneys' fees) which the other may incur as a result of any claim made by any person to a right to a sales or brokerage commission or finder's fee in connection with this transaction to the extent such claim is based, or purportedly based, on the acts or omissions of Donor or County, as the case may be. The obligations of County and Donor under this Section shall survive the Close of Escrow.

16. Notices.

All notices, requests and demands to be made hereunder to the parties hereto shall be made in writing to the addresses set forth below and shall be given by any of the following means: (a) personal service; (b) electronic communication, including facsimile or e-mail transmission (provided, however, that notice is also given by one of the other means set forth in Subparagraph 16(a), (c), or (d)); (c) certified or registered mail, postage prepaid, return receipt requested; or (d) courier or delivery service. Such addresses may be changed by notice to the other party given in the same manner as provided above. Any notice, demand or request sent pursuant to either subsection 16(a), (b) or (d) hereof shall be deemed received upon the actual delivery thereof, and, if sent pursuant to subsection 16(c) shall be deemed received five (5) days following deposit in the mail. Refusal to accept delivery of any notice, request or demand shall be deemed to be delivery thereof.

To Donor: VP Daybreak Devco LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, Utah 84009
Attention: Ty McCutcheon
E-mail Address: TMcCutcheon@daybreakcommunities.com
Telephone No.: (801) 204-2770

With copy to: Ward | Molloy, P.C.

800 McIntyre Building
68 South Main Street
Salt Lake City, Utah 84101
Attention: Curtis R. Ward
E-mail Address: cward@wardmolloy.com
Telephone No.: (801) 258-9801
Facsimile No.: (801) 355-1008

To County: Salt Lake County
Salt Lake County Real Estate Section
2001 S. State Street, S3-110
Salt Lake City, Utah 84190
Attention: Derrick L. Sorensen
E-mail Address: dlsorensen@slco.org
Telephone No.: (385) 468-0341

With a copy to: Salt Lake County
Salt Lake County Arts and Culture Division
8030 South 1825 West
West Jordan, Utah 84088
Attention: Matthew Castillo
E-mail Address: mcastillo@slco.org
Telephone No.: (385) ___ - ____

To Escrow Holder: Old Republic National Title Insurance Company
Attention: Hillary Morgan
898 North 1200 West, Suite 101
Orem, Utah 84057
Telephone No.: (801) 753-7700
E-mail: hmorgan@oldrepublictitle.com

17. Miscellaneous Provisions.

(a) Incorporation of Prior Agreements. This Agreement contains the entire understanding of County and Donor with respect to the subject matter hereof, and supersedes all prior or contemporaneous written or oral agreements and understandings between the parties hereto pertaining to any such matter. No provision of this Agreement may be amended, modified, supplemented, or added to except by an agreement in writing, expressly stating that such agreement is an amendment of this Agreement, signed by the parties to this Agreement or their respective successors-in-interest.

(b) Right to Assign.

(i) County shall have no right to assign or transfer any of its rights or responsibilities hereunder to any person or entity without Donor's prior written consent which may be given, conditioned, or withheld in Donor's reasonable discretion. Any attempt by County to assign or transfer any of its rights or responsibilities hereunder without Donor's written consent shall be void.

(ii) Donor shall have no right to assign or transfer any of its rights or responsibilities hereunder to any person or entity without County's prior written consent which may be given, conditioned, or withheld in County's reasonable discretion. Any attempt by Donor

to assign or transfer any of its rights or responsibilities hereunder without County's written consent shall be void.

(c) Attorneys' Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party attorneys' fees, costs and expenses actually incurred in connection with the prosecution or defense of such action.

(d) Time is of the Essence. Time is of the essence of this Agreement. No waiver of any breach of any covenant or provision in this Agreement will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act will extend the time for performance of any other obligation or act.

(e) Successors and Assigns. Subject to any limitations on the rights of the parties to transfer their respective interests in this Agreement set forth in Section 17(b), this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns.

(f) Governing Law; Choice of Forum. This Agreement shall be construed in accordance with and governed by the internal laws of the State of Utah, without giving effect to any "conflict of law" rules of such state. County and Donor each acknowledge and agree that the Third District Court of the State of Utah in and for the County shall have exclusive jurisdiction to hear and decide any dispute, controversy or litigation regarding the enforceability or validity of this Agreement or any portion thereof.

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

(h) Interpretation. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement.

(i) Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly against the party who drafted such language.

(j) Exhibits. All Exhibits attached hereto are incorporated herein by reference and made a part hereof for all purposes.

(k) No Recordation. This Agreement shall not be recorded or filed in the public records of any jurisdiction by either party. Any attempt to do so shall be a breach of this Agreement.

(l) Business Days. As used in this Agreement, a "business day" shall mean a day other than Saturday, Sunday, or any day on which banking institutions in the City of Salt Lake are authorized by law or other governmental action to close. All other references to "days" in this Agreement shall refer to calendar days.

(m) Further Assurances. County and Donor each agree to execute any and all other documents, instruments, deeds, writings, drawings, permits, or applications relating to this Agreement or the Property as reasonably requested by the other party to better effectuate the terms and provisions of this Agreement.

18. Confidentiality.

(a) Donor acknowledges that this Agreement and other documents are subject to public disclosure by County upon approval and ratification of this Agreement by the County Council pursuant to the Utah Government Records Access Management Act (“GRAMA”), Utah Code Ann. §§ 63G-2-101, *et seq.* If Donor deems any documents or portions of documents to be proprietary and protected, Donor must make those designations in accordance with GRAMA. Disclosure of any documents or portions of documents designated as proprietary by Donor will be pursuant to GRAMA and at the sole discretion of County.

19. Ethical Standards.

Donor represents that it has not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County’s Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

20. Campaign Contributions.

Donor acknowledges the prohibition of campaign contributions by contractors to County candidates, pursuant to Chapter 2.72A, Salt Lake County Code of Ordinances, 2001. Donor also acknowledges and understands this prohibition means that any person, business, corporation or other entity that enters into a contract or is engaged in a contract with County maybe prohibited from making certain campaign contributions to County candidates. Donor further acknowledges that violation of this prohibition may result in criminal sanctions as well as termination of this Agreement. Donor represents, by executing this Agreement, that Donor has not made or caused others to make any campaign contribution to any County candidate in violation of the above-referenced County ordinance.

21. Joint and Several Obligations.

In the event that this Agreement is executed by more than one party as County, all obligations of County hereunder shall be deemed to be joint and several.

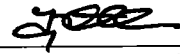
[Remainder Of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, County and Donor have executed this Agreement as of the day and year first above written.

“DONOR”

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

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

By: 
Name: Ty McCutcheon
Title: President & CEO

“COUNTY”

SALT LAKE COUNTY, a body corporate and
politic of the State of Utah

By: _____
Mayor or Designee

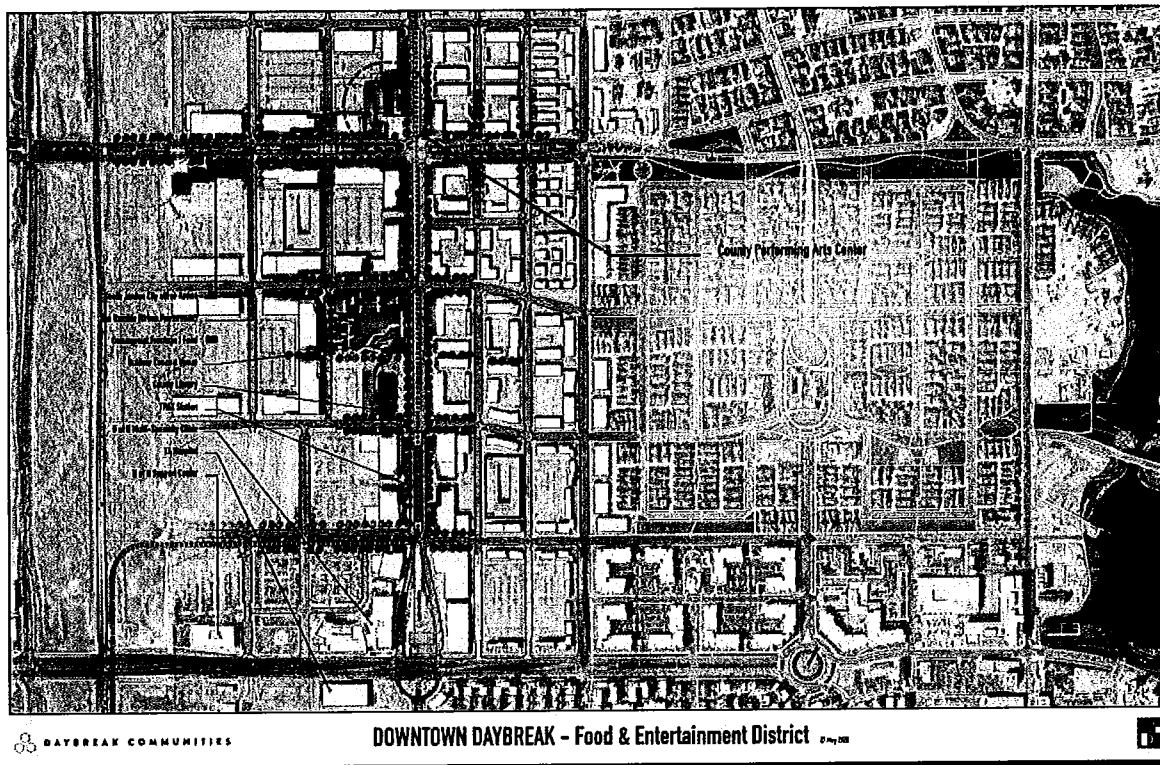
Department Approval:

Matthew Castillo, Director
Salt Lake County Arts and Culture



EXHIBIT A

DEPICTION OF THE PROPERTY



The legal description of the approximately 5 acres located at or near the northwest corner of Grandville Avenue and Lake Avenue in South Jordan City, which is a portion of the parcel of land currently identified as Parcel No. 26-24-155-001, will be prepared as part of the Final Plat.

EXHIBIT B

Intentionally Omitted

EXHIBIT C

**DECLARATION OF DONATION
COUNCIL APPROVAL**

For County Council's approval consistent with Policy 1006
(Cash donations above \$5,000, property donations above \$1,000; Testamentary donations.)

VP Daybreak Devco LLC, a Delaware limited liability company (hereafter "Grantor"), has agreed to convey title to the property described below to Salt Lake County (hereafter "Grantee") pursuant and subject to the terms and conditions (including but not limited to Grantor's repurchase rights) of that certain Donation Agreement and Joint Escrow Instructions dated as of December __, 2020, by and between Grantee and Grantor ("Donation Agreement").

Description of donation:

A portion of REAL PROPERTY located at or near the northwest corner of Grandville Avenue and Lake Avenue in Salt Lake County, Utah and more particularly described as follows on Exhibit A attached hereto and incorporated herein by reference (the "Property").

Estimated value of the Property \$3,049,200.00 (estimated by the donor).

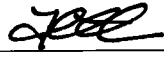
Date and transfer of title and delivery: Grantor shall deliver possession of the Property to Grantee at the Close of Escrow (as defined in the Donation Agreement). If funding is timely obtained by Grantee, the Property shall be used for a performing arts center owned and operated by Salt Lake County.

SALT LAKE COUNTY

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

Elected Official/Mayor or Designee

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

By: 

Ty McCutcheon, President & CEO

DATE: 1 _____

DATE: 12.4.20 _____

Salt Lake County hereby accepts the above donation under the conditions specified within this Declaration of Donation form, but makes no judgment as to the value of the Donation.

SALT LAKE COUNTY COUNCIL:

Chair Date

ATTEST:

Sherrie Swensen, County Clerk

EXHIBIT D

FORM OF SPECIAL WARRANTY DEED

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
DEED TO:**

SENT TAX NOTICES TO:

(Tax Identification No _____)

SPECIAL WARRANTY DEED

VP DAYBREAK DEVCO LLC, a Delaware limited liability company with its principal office at 11248 Kestrel Rise Road, Suite 201, South Jordan, County of Salt Lake, State of Utah 84009 ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) paid to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby **CONVEY and WARRANT** against all who claim by, through, or under the Grantor to **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah, ("**Grantee**"), certain land being more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "**Land**"), together with (i) all improvements, if any, located thereon, (ii) any and all rights, privileges and easements appurtenant to the Land, and (iii) all right, title and interest of Grantor (if any) in, to and under adjoining streets, rights of way and easements, **SUBJECT TO** all reservations contained in this Deed and all encumbrances of record, all building codes and other applicable laws, ordinances and governmental regulations affecting the Land and all other matters reasonably identifiable from an inspection or survey of the Land.

Grantor hereby retains and reserves (i) 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 surface and the first 500 feet below the surface of the Land to use or extract the same, and (ii) 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; 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; provided the reservation of geothermal rights by Grantor will not prohibit Grantee, if it so desires, from installing and operating a ground source heat exchange system on the Land to service the building improvements constructed on the Land.

Grantor and Grantee agree that the provisions of Paragraph 10 of Exhibit B to that certain Deed dated October 16, 2002 from Kennecott Utah Copper Corporation, as grantor, to OM

Enterprises Company, as grantee, recorded in the Official Records of Salt Lake County as Instrument 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.

Grantor reserves the exclusive right to construct and operate, and to authorize the construction and operation, of commercial cellular, microwave and other wireless communication towers, antennas and related facilities ("Commercial Wireless Facilities") within the Daybreak master planned community, as legally described in that certain Community Charter for Daybreak recorded on February 27, 2004 as Entry No. 8989518 in Book 88950 at Page 7784 in the official records of the Salt Lake County Recorder, Utah, as amended and supplemented from time to time, and that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Daybreak Village recorded on December 30, 2005, as Entry No. 9598233, in Book 9237, beginning at Page 5395 of the official records of the Salt Lake County Recorder, as amended and supplemented from time to time. Accordingly, Grantee agrees that the Land shall not be used for the construction or operation of Commercial Wireless Facilities; provided that nothing herein shall exclude Grantee's constructions, operation, and use of facilities for its own purposes. Such restriction shall run with the Land for the benefit of Grantor and its successors and assigns operating Commercial Wireless Facilities within Daybreak.

IN WITNESS WHEREOF, Grantor has caused its duly authorized representative to execute this instrument as of the date hereinafter written.

DATED: _____

GRANTOR:

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

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

By: _____
Name: Ty McCutcheon
Title: President & CEO

ACKNOWLEDGMENT

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

On _____, 202_, 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 DEVCO 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 DEVCO LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.

 Notary Public in and for said State

My commission expires: _____

[SEAL]

**EXHIBIT A
TO SPECIAL WARRANTY DEED**

Legal Description

EXHIBIT E

DONOR'S NON-FOREIGN AFFIDAVIT

VP DAYBREAK DEVCO LLC, a Delaware limited liability company (“**Transferor**”), is the transferor of that certain real property located in the County of Salt Lake, State of Utah and more particularly described in Exhibit A attached hereto (the “**Property**”).

Section 1445 of the Internal Revenue Code of 1986 (the “**Code**”) provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445) the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity.

To inform the transferee that withholding of tax is not required upon the disposition of the Property by Transferor pursuant to that certain Donation Agreement and Joint Escrow Instructions dated as of _____ by and between Transferor and SALT LAKE COUNTY, a body corporate and politic of the State of Utah, the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Code and the regulations promulgated thereunder;
2. Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);
3. Transferor’s U.S. employer identification number is _____; and
4. Transferor’s office address is 11248 Kestrel Rise Road, Suite 201, South Jordan, Utah 84009.

Transferor understands that this certificate may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and, to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Date: _____

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

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

By: _____
Name: Ty McCutcheon
Title: President & CEO

EXHIBIT A
TO DONOR NON-FOREIGN AFFIDAVIT

Legal Description of Property

EXHIBIT F

[INTENTIONALLY OMITTED]

EXHIBIT "G"

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:

VP Daybreak Devco LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, Utah 84009
Attention: Ty McCutcheon

Above Space for Recorder's Use

**PARTIAL ASSIGNMENT AND ASSUMPTION
OF MASTER DEVELOPMENT AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER DEVELOPMENT AGREEMENT ("Agreement") is made as of _____, 202_, by and between **VP DAYBREAK DEVCO LLC**, a Delaware limited liability company ("**Assignor**"), and **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah ("**Assignee**"); individually, a "**Party**", and collectively, the "**Parties**".

RECITALS

A. VP Daybreak Devco LLC, a Delaware limited liability company ("**Donor**") has entered into that certain Donation Agreement with Assignee dated as of _____, 2020 (as amended, the "**Donation Agreement**") regarding the purchase and sale of certain real property located in the City of South Jordan, County of Salt Lake, State of Utah, as more particularly described in **Exhibit A** attached hereto and incorporated herein ("**Property**"). The Property is within a planned development known as the "**Kennecott Master Subdivision #1 Project**" ("**Project**").

B. The Property and the Project are subject to that certain Master Development Agreement for the Kennecott Master Subdivision #1 Project dated March 18, 2003, by and between Assignor (as successor in interest to Kennecott Land Residential Development Company, a Delaware corporation, and South Jordan City, a Utah municipal corporation ("**City**"), which was recorded on March 26, 2003 in the Salt Lake County Recorder's Office as Instrument No. 8581557, as amended by that certain Agreement Regarding Daybreak Development dated as of July 9, 2007, which was recorded on November 19, 2007, in the Salt Lake County Recorder's Office as Instrument No. 10279353 (as amended, the "**MDA**").

C. In connection with the conveyance of the Property by Donor to Assignee, Assignor desires to assign certain rights and to delegate certain of its obligations under the MDA, to the

extent they relate to the Property, to Assignee, and Assignee desires to accept such assignment and delegation.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below.

1. ASSIGNMENT OF MDA. Pursuant to **Section 11** of the MDA, Assignor (as “Master Developer” thereunder) hereby assigns to Assignee (as “Developer” thereunder) all of its rights under the MDA with respect to the Property including, without limitation, (a) all rights to develop the Property in the manner set forth in the MDA; and (b) all impact fee credits and/or reimbursements relative to the Property and accruing to the owner thereof under the MDA after the date hereof, if any (“**Assignment**”), subject, however, to the following:

1.1 As set forth in **Section 11(b)(2)** of the MDA, Assignee shall not in each case without the prior written consent of Assignor, which may be granted or withheld in Assignor’s sole and absolute discretion:

- (i) submit any design guidelines to the City with respect to the Property, and/or propose any amendments, modifications or other alterations to any design guidelines previously submitted by Assignor to the City with respect to the Property;
- (ii) process any preliminary or final subdivision plats or site plans for the Property, and/or propose any amendments, modifications or other alterations of any approved final subdivision plats and/or site plans procured by Assignor for the Property; or
- (iii) propose any amendments, modifications or other alterations to the MDA.

1.2 Assignee acknowledges that the City has agreed (pursuant to **Section 11(b)(2)** of the MDA) not to accept or process any of the foregoing matters from Assignee unless the matter has been previously approved by Assignor.

2. DELEGATION AND ASSUMPTION. Assignor hereby delegates to Assignee all of its obligations under the MDA to the extent such obligations relate to the Property and Assignee hereby accepts such delegation. Assignee hereby assumes, agrees to be bound by, and agrees to perform all such obligations under the MDA as the same specifically relate to the Property, including, without limitation, the indemnification obligation of Assignor with respect to the Property set forth in **Section 8(c)** of the MDA.

3. RETAINED RIGHTS. Assignor retains all rights under the MDA to modify, amend or terminate the MDA with respect to all other areas within the Project excluding the Property; provided, however, that Assignor shall not modify or alter the MDA in a manner which would materially interfere with Assignee’s rights under the MDA with respect to the Property. Assignee acknowledges and agrees that all matters regarding the Project (excluding the Property)

and the development thereof shall be determined by Assignor in its sole and absolute discretion and Assignee shall have no interest or right to participate therein.

4. COOPERATION. The Parties hereto agree to cooperate with each other in carrying out the purpose and intent of this Agreement, including cooperating to obtain the consent of the City Council to the delegation of duties under the MDA described above.

5. GOVERNING LAW. This Agreement shall be governed by and construed under the laws of the State of Utah without regard to choice of law rules.

6. SUCCESSORS AND ASSIGNS. Each and all of the covenants and conditions of this Agreement will inure to the benefit of and be binding upon the successors in interest of Assignor and the successors, heirs, representatives and assigns of Assignee. As used in this Section, "successors" means successors to the Parties' interest in the Property, successors to all or substantially all of the Parties' assets, and successors by merger or consolidation.

7. ATTORNEYS' FEES. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party attorneys' fees, costs and expenses actually incurred in connection with the prosecution or defense of such action.

8. SEVERABILITY. If any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement will not be affected thereby and will remain in force and effect to the fullest extent permissible by law.

9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless it is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

10. COUNTERPARTS. This Agreement may be executed in counterparts, each of which, when taken together, will constitute a fully executed original.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Assignor:

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

By: _____

Name: Ty McCutcheon

Title: President & CEO

Assignee:

SALT LAKE COUNTY,
a body corporate and politic of the State of Utah

By: _____

Mayor or Designee

ACKNOWLEDGMENT

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

On _____, 202_, 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 DEVCO 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 DEVCO LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.

Notary Public in and for said State

My commission expires: _____

[SEAL]

ACKNOWLEDGMENT

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

On this ____ day of _____, 202_, personally appeared before me _____, who being duly sworn, did say that (s)he is the _____ of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.

NOTARY PUBLIC
Residing in Salt Lake County

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT H

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

VP Daybreak Devco LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, Utah 84009
Attention: Ty McCutcheon

(Tax Identification No. _____)

**NOTICE OF APPLICATION OF
DAYBREAK COMMUNITY DOCUMENTS**

NOTICE IS HERBY GIVEN of the following. Salt Lake County (“**SLCO**”) is owner of the certain real property located in South Jordan, Utah, more particularly described on **Exhibit A** attached hereto and incorporated herein (the “**Property**”), upon which it plans to obtain funding to construct and operate a Performing Arts Center (the “**Performing Arts Center**”). The Property is located within a community commonly known as Daybreak, which is governed by the certain Community Charter For Daybreak (the “**Charter**”) and that certain Covenant for Community For Daybreak (the “**Covenant**”). VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company, is the successor “**Founder**” of Daybreak under the Charter and Covenant.

Founder hereby exempts SLCO from the payment of Base Assessments, Service Area Assessments, Special Assessments, and Specific Assessments as set forth on Chapter 12 of the Charter, for so long as SLCO owns the Property and operates the Performing Arts Center on the Property. Further, Founder hereby exempts SLCO from participating in the dispute resolution process set forth in Chapter 18 of the Charter, for as long as SLCO owns the Property and operates the Performing Arts Center on the Property.

Founder hereby exempts SLCO from the payment of the Community Enhancement Fee as set forth in Section 2.3 of the Covenant, for transfers to and by the SLCO. In furtherance of the foregoing, Founder hereby exempts SLCO from payment of the Community Enhancement Fee in connection with the transfer of the Property to SLCO. Founder also hereby exempts SLCO from payment of any Annual Assessment, for as long as SLCO owns the Property and operates the Performing Arts Center on the Property. Further, Founder hereby exempts SLCO from participating in the dispute resolution process set forth in Chapter 3 of the Covenant, for as long as SLCO owns the Property and operates the Performing Arts Center on the Property.

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

By: _____

Name: Ty McCutcheon
Title: President & CEO

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

On _____, 202_, 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 OPERATIONS 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 OPERATIONS LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.

Notary Public in and for said State

My commission expires: _____

[SEAL]

**EXHIBIT A
TO NOTICE OF APPLICATION**

LEGAL DESCRIPTION

[Attach legal description of Property and Tax ID #]

EXHIBIT I

List of Documents and Materials:

The following documents solely to the extent applicable to the Property and in Donor's possession or reasonable control:

- Environmental, Soils and Hazardous Substance Survey and/or Reports.
- Current Title Commitment/Search Data Reports (Transit Easement, Grazing Rights, etc.).
- Land Surveys and/or Plat Reports.
- Topographical Surveys and/or Reports.
- Subsurface Structures Surveys and/or Reports (Storm Drainage, Utilities, etc.).

EXHIBIT J

FORM OF NOTICE OF PURCHASE RIGHTS

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

VP Daybreak Devco LLC
11248 Kestrel Rise Road, Suite 201
South Jordan, UT 84009
Attention: Ty McCutcheon
(Tax Parcel # _____)

(Space Above for Recorder's Use Only)

NOTICE OF PURCHASE RIGHTS

NOTICE IS HEREBY GIVEN THAT VP DAYBREAK DEVCO LLC, a Delaware limited liability company ("Donor"), and SALT LAKE COUNTY, a body corporate and politic of the State of Utah ("County"), have entered into that certain Donation Agreement and Joint Escrow Instructions, dated _____, 2020 (the "Donation Agreement"), regarding that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property").

Pursuant to the terms of the Donation Agreement, Donor has certain rights to purchase the Property in the event County fails to obtain funding for the construction of a public Performing Arts Center owned and operated by County ("Performing Arts Center") on the Property within a certain time period; all as more particularly provided in the Donation Agreement. This Notice of Purchase Rights shall automatically terminate and have no further force or effect on the date that is the earlier of (A) ten (10) years after the date this Notice of Purchase Rights is recorded in the Official Records of Salt Lake County, Utah, and (B) the date Donor and County record a release of this Notice of Purchase Right.

DATED this __ day of _____, 202__.

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

By: _____
Name: Ty McCutcheon
Title: President & CEO

SALT LAKE COUNTY, a body corporate
and politic of the State of Utah

By: _____
Mayor or Designee

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

On _____, 202_, 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 DEVCO 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 DEVCO LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.

Notary Public in and for said State

My commission expires: _____

[SEAL]

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

On this ____ day of _____, 202_, personally appeared before me _____, who being duly sworn, did say that (s)he is the _____ of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.

NOTARY PUBLIC
Residing in Salt Lake County

[SEAL]

**EXHIBIT A
TO NOTICE OF PURCHASE RIGHTS**

LEGAL DESCRIPTION

[Attach legal description of Property and Tax ID #]

EXHIBIT K
FORM OF LETTER

_____, 202__

Re: _____ Performing Arts Center

Dear _____:

This is being delivered at the closing of the transactions between Salt Lake County (“**SLCO**”) and VP Daybreak Devco LLC regarding the donation of property for the construction, pending the procurement of funding, of the Performing Arts Center, solely owned and operated by SLCO, on that property (the “**Performing Arts Center**”) located in Plat __ within Daybreak (“**Property**”). This letter sets forth VP DAYBREAK OPERATIONS LLC’s, understanding, as the Founder of Daybreak (“**Founder**”), of the operation of its governing documents, including the Covenant for Community for Daybreak (the “**Covenant**”), the Community Charter for Daybreak (the “**Charter**”) and Master Development Agreement For The Kennecott #1 Subdivision (the “**Master Development Agreement**”).

Communication Systems

Various provisions in the Charter reserve the right for Founder to provide certain communication systems, including telephone service within Daybreak. Founder negotiated with Qwest to provide telephone service to Daybreak. Nothing in the governing documents would prohibit or interfere with SLCO’s internal communication systems. Founder hereby agrees that if the home owner’s association charges a surcharge in addition to regular service fees for the telephone system, then SLCO is and will be exempt from payment of such surcharge for so long as SLCO operates the Performing Arts Center on the Property.

Permitted Uses of Property

The Charter contemplates that Units may only be used for certain purposes. The definition of a “Unit” only includes residential lots, and therefore the use restrictions set forth for a Unit do not apply to the Property. Further, pursuant to Section 14.7 of the Charter, Founder may designate sites within Daybreak to be used for educational purposes. Founder hereby confirms that the Property may be used for Performing Arts Center purposes and the recorded plat permits the Property to be used for a “Performing Arts Center”, which satisfies the requirements of Section 14.7.

Open Space

Section 17.10 of the Charter contemplates that "Open Space" within Daybreak may be owned and maintained by the homeowner's association, the City, the County, the SSD, or the Community Council. This list of owner's is not meant to be exclusive, and Section 12.72.160 of the Planned Community Zone (the "P-C Zone") which governs the Property indicates that open space may also be privately owned. Thus Founder hereby agrees that SLCO may own the Property even if a portion of the Property is also considered to be open space. SLCO agrees to cooperate with Founder concerning the use of such open space, but Founder acknowledges that any open space within the Property will ultimately be controlled by the SLCO.

Medical Services

Founder hereby acknowledges that SLCO is an entity of the State of Utah and, as such, may be required by law to allow state, county and other governmental agencies to provide certain medical and related services at the Performing Arts Center facilities located on the Property (e.g., blood drives, sight and hearing testing, emergency shelters and care units), and Founder acknowledges and agrees that such uses do not constitute Medical Facility Services (as defined in the University Medical Services Exclusive [defined below]) and do not unreasonably compete with the facilities operated by University of Utah (defined below) as contemplated by the University Medical Services Exclusive. As used herein, the "University Medical Services Exclusive" means those certain exclusive use provisions granted in favor of University of Utah, a body politic and corporate of the State of Utah, on behalf of its University of Utah Hospitals and Clinics ("University of Utah"), by Donor and OM Enterprises Company, a Utah corporation, as set forth in that certain Declaration of Certain Exclusive Rights, dated April 23, 2010, which was recorded on May 25, 2010 in the Salt Lake County Recorder's Office as Entry No. 10959255, in Book 9828, Pages 2811-2883 (a copy of which has been previously delivered to the SLCO).

Cellular Equipment Facilities

The Special Warranty Deed pursuant to which the SLCO receives title to the Property sets forth certain provisions relating to Cellular Equipment and Facilities relating to the Property.

Community-Wide Standard

The Charter provides that owners of property within Daybreak shall comply with a "Community-Wide Standard," basically that owners will be good neighbors in the way they maintain their property and treat other neighbors. To our knowledge this is how SLCO will act in Daybreak, and we assume that this standard won't be a concern for SLCO going forward.

I hope this is helpful in addressing the SLCO's interests. Please feel free to contact me to address any additional questions. We look forward to the completion of this exciting and innovative project.

Sincerely,

VP DAYBREAK OPERATIONS LLC,

a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

By: _____

Name: Ty McCutcheon

Title: President & CEO

EXHIBIT L

FORM OF ACCESS AGREEMENT

ACCESS AGREEMENT

VP DAYBREAK DEVCO LLC, a Delaware limited liability company, 11248 Kestrel Rise Road, Suite 201, South Jordan, Utah 84009 (“Owner”) and SALT LAKE COUNTY, a body corporate and politic of the State of Utah (“SLCO”) enter into this Access Agreement (“Agreement”) effective this _____, 2020 and agree as follows:

1. GRANT OF ACCESS. Owner hereby grants to SLCO and the consultants, contractors, agents, and servants of SLCO (collectively “SLCO Parties”) the right to access and enter _____ (the “Property”), to perform and obtain a variety of inspections, evaluations, surveys, sampling, and testing, including, but not limited to, soil samples, percolation and geotechnical tests, physical inspections of the Property, and Environmental Investigations (defined below) (collectively, the “Investigations”). The soil and other sampling and investigations completed relating to the environmental condition of the Property shall be referred to as the “Environmental Investigations.” Owner represents to SLCO that Owner possesses ownership interests in the Property sufficient to grant access to the Property and the rights granted hereunder to conduct the Investigations.

2. SLCO’S REPRESENTATIONS. SLCO will notify Owner, either in writing or verbally, at least 24 hours prior to desiring to commence Investigations on the Property so that Owner may, in its discretion, have representatives present during the Investigations. SLCO may perform such due diligence as it determines at its discretion. SLCO will, and will cause the SLCO Parties to, make reasonable efforts to: (a) minimize any inconvenience to Owner during its Investigations on the Property, (b) return the Property to the condition it was in at the time SLCO first entered the Property, and (c) consult with Owner to address any concerns Owner may have about the Investigations. SLCO shall use reasonable best efforts while completing the Investigations so as to not unreasonably disrupt or disturb any activities being conducted within the subdivision containing the Property, including any construction and sales activities being performed by Owner or any merchant builder or any of their employees or agents. SLCO shall comply, and shall require the SLCO Parties to comply, while on any portion of said subdivision or the Property, with reasonable safety standards, including (without limitation) all safety and security rules and regulations issued by Owner from time-to-time.

3. SPLIT SAMPLE. SLCO agrees to provide Owner with a sufficient portion of any sample taken on Owner’s Property to conduct the same analytical tests SLCO intends to conduct.

4. TERMINATION. The access granted by this Access Agreement will terminate thirty (30) days following receipt of written notice from SLCO stating the Investigations have been completed, but in no event later than _____, 2021.

5. INDEMNIFICATION. SLCO hereby indemnifies, defends and holds harmless Owner, and its parents, subsidiaries and affiliates and their officers, directors, employees and agents ("Owner Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, losses, demands, damages, liabilities, costs and expenses (including reasonable attorneys' fees and costs) (collectively, "Claims"), related to bodily injury, loss of life, or property damage caused by or arising from the acts or omissions of SLCO Parties related to the performance of the Investigations on (a) the Property, (b) other real property owned by Owner or its affiliates, (c) streets within Daybreak that are not freely accessible to the public, and/or (d) other real property located within Daybreak owned by any third party. This indemnity shall survive the expiration or termination of this Agreement. Notwithstanding anything to the contrary, SLCO shall not assume responsibility for, nor indemnify Owner or Owner Parties for any actions or claims not specifically described in this paragraph, including but not limited to the following: (i) pre-existing conditions on the Property, including hazardous materials; (ii) discovery or disturbance of any such pre-existing conditions or hazardous materials that may exist on the Property during the Investigations so long as the Investigations are consistent within industry standards and do not affect or sample groundwater; or (iii) Claims related to bodily injury, loss of life, or property damage caused by the acts or omissions of Owner and/or Owner Parties. Other than the actions described in this paragraph, SLCO shall not indemnify Owner or Owner Parties for any other Claims, including those related to the release of information in violation of this Agreement. Nothing herein shall prevent either party from pursuing any rights or remedies available at law or in equity directly against the other party related to a violation or breach of this Agreement. Notwithstanding the foregoing, County does not waive any defenses of governmental immunity under Utah Code Annotated Sections 63G-7-101, *et seq.* Nothing contained in this Agreement shall be construed to increase County's liability beyond that set forth in the Governmental Immunity Act.

6. REPORTS AND CONFIDENTIALITY. SLCO shall provide Owner, within ten (10) business days after receipt of a request from Owner, copies of all final reports, studies, and test results prepared by SLCO's environmental consultants regarding the environmental conditions at the Property through the Environmental Investigations (i.e., Phase Is, Phase IIs, etc.) (collectively, the "Environmental Reports").

Owner acknowledges that the Environmental Reports are potentially subject to public disclosure by SLCO pursuant to the Utah Government Records Access Management Act ("GRAMA"), Utah Code Ann. §§ 63G-2-101, *et seq.* If Owner deems any documents or portions of documents to be proprietary and protected, Owner must make those designations in accordance with GRAMA, and disclosure of any documents or portions of documents designated as proprietary by Owner will be pursuant to GRAMA and at the sole discretion of SLCO.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Owner and SLCO have executed this Agreement effective as of the date first written above.

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company

Its: Project Manager

By: _____

Name: Ty McCutcheon

Title: President & CEO

SALT LAKE COUNTY, a body corporate
and politic of the State of Utah

By: _____

Mayor or Designee

SCHEDULE 3(d)

DESCRIPTION OF INFRASTRUCTURE

Roadways necessary for access to the Property.

Infrastructure necessary to deliver necessary utility services (including, but not limited to water, sewer, electricity, gas, and telephone) to the boundary of the Property (or with respect to water services, to its current location along Lake Avenue)

The Infrastructure shall be completed in compliance with this Agreement and the standards, rules, and regulations set forth by the City or other governmental authority with jurisdiction to regulate the compliance of such Infrastructure.

County is responsible for storing any storm water generated up to a 100-year rain event on the Property, and as such County will design and construct the site to accommodate storm water storage and adequate percolation to drain the stored storm water within 48 hours.

Donor is not required to install infrastructure within the Property adequate to provide water, sewer, electricity, gas and telephone service capacity for use of the Property consistent with the entitlement for the Property at Closing as long as such infrastructure is available for future connections to serve the Property in reasonably close proximity to the Property. County is responsible to pay for any upsizing requirements above the standard install.