

**MAINTENANCE AGREEMENT
BY AND BETWEEN
CITY OF MORENO VALLEY
AND
DAYBREAK COMMUNITY ASSOCIATION**

This Maintenance Agreement ("**Agreement**") is made and entered into effective on the date ("**Effective Date**") the Mayor signs this Agreement. This Agreement is by and between DAYBREAK COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation ("**Association**"), and the CITY OF MORENO VALLEY (the "**City**"). Each of Association and the City are sometimes hereinafter referred to as a "Party" and collectively as the "Parties".

PREAMBLE

A. Association is an incorporated homeowners' association responsible for the operation and maintenance of Association Property (as hereinafter defined) of a single-family residential development known as "Daybreak" located on Tract No. 31592 in the City of Moreno Valley, County of Riverside, State of California ("**Project**"). Association's maintenance responsibilities are set forth in Article 7 of the Declaration of Covenants, Conditions and Restrictions, and Establishment of Easements for Daybreak recorded against the Project (the "**Declaration**"). Unless otherwise expressly provided, all capitalized terms used in this Agreement shall have the definition and meanings set forth in the Declaration.

B. In satisfaction of the City conditions of approval for development of the Project, Association is required to enter into an agreement for the City to provide certain services relating to maintenance ("**Maintenance**") of certain improvements within the Project which are the responsibility of Association pursuant to the Declaration, including without limitation, certain water quality basins; which are located within the real property to be owned by the Association ("**Association Property**"), all as more fully described in **Exhibit "A"**.

NOW THEREFORE, in consideration of the promises contained herein, the City and Association agree as set forth below:

1. **Term.** Subject to applicable law, the term ("**Term**") of this Agreement shall commence as of the Effective Date of this Agreement, and shall remain in effect for thirty (30) years from the Effective Date of this Agreement. At the end of such thirty (30) year period, this Agreement shall be extended for successive terms of thirty (30) years unless a document executed by each of the Parties hereto or their respective successors-in-interest cancels this Agreement or any portion hereof and said document is recorded in the office of the County Recorder of Riverside County. If applicable law limits the duration of the Term, then this Agreement shall be deemed to have a Term equal to the maximum Term permitted by law, and shall, unless affirmatively terminated by the parties hereto, shall be deemed to be renewed and extended for successive maximum terms as permitted by law. The Maintenance shall commence at such time as such maintenance is required following the Effective Date of this Agreement. During the Term of this Agreement, the Parties hereby covenant and agree to negotiate in good faith any changes to the terms set forth herein as then required by law or otherwise reasonably required.

2. **Maintenance of Association Property by the City.** After the termination of the Establishment Period (as defined in **Exhibit "B"**), and throughout the remaining term of this Agreement, the City shall directly provide all Maintenance of Association Property depicted on

Exhibit "A" attached hereto. Such Maintenance shall include, without limitation, the maintenance responsibilities described on **Exhibit "B"** attached hereto and incorporated herein." For as long as it is authorized to do so, the City shall assess an annual levy, parcel charge, or fee (however such amount shall be denominated, the "**Annual Levy**") against the Lots within the Project designed and intended for the construction of a Residence and ownership by an individual Owner (hereinafter referred to as the "**Residential Lots**") for the cost and expenses related to the Maintenance. As of the date of recordation of this Agreement, it is anticipated such Annual Levy shall be collected via the County tax assessment levied against the Residential Lots.

3. Suspension of Payments of the City. For a period ("**Suspension Period**") commencing on the Effective Date of this Agreement and continuing to the date as of which the City is no longer able to assess, through Annual Levies, adequate charges against the Residential Lots within the Project for expenses incurred by the City relating to the Maintenance, Association shall not be responsible for the payment of any cost or expenses related to the Maintenance. Upon receipt of written notice from the City to Association at the address listed in **Section 7** hereof (or such other address of which Association shall have previously notified the City in writing in accordance with **Section 7** hereof), informing Association of the City's inability to assess all or any portion of the Annual levies sufficient for the Maintenance, the Suspension Period shall terminate and Association shall have the absolute obligation to pay the City the full amount necessary to cover all costs and expenses related to the City's Maintenance of Association Property in excess of the amount that the City is able to assess directly against the Residential Lots (the "**HOA Payment Obligations**"). Further, Association hereby assigns to the City, and the City shall have, the first right to any amounts collected by Association from owners of Residential Lots ("**Owners**") in such amounts as necessary to satisfy the HOA Payment Obligations.

4. Budget and Reimbursement to the City. Following termination of the Suspension Period, the City shall prepare and provide to Association a budget for the next Fiscal Year (as defined below) for the Maintenance obligations described in **Exhibit "B"** ("**Budget**"), which Budget shall set forth the Fiscal Year expenses projected to be incurred by the City for Maintenance and operations of the City with respect to Association Property (including, without limitation, the City's administrative overhead). The expense projections in each year's Budget shall be based upon the Maintenance and operating expenses (including, without limitation, the City's administrative overhead) incurred by the City within the previous three (3) years, and may include (i) normal and customary reserves and contingencies, and (ii) cost of living increases based on the Los Angeles-Riverside-Orange County Regional Consumer Price Index, as published by the United States Department of Labor's Bureau of Labor Statistics. The Budget shall also reflect an amount for depreciation of facilities, if any, and a reserve for replacement of plants and other improvements. Following the termination of the Suspension Period and Association's receipt of the Budget, Association shall make annual payments to the City for Maintenance and operations expenses incurred by the City as set forth in such Budget by July 1 of the Fiscal Year to which such payment applies. For the purposes of this Agreement, the City's "Fiscal Year" shall be July 1 through June 30, unless Association is otherwise notified of a change pursuant to **Section 7** hereof.

Notwithstanding any other provision herein, the parties hereto acknowledge, understand and agree that in the event that the right of the City to impose the charges contemplated herein is or becomes prohibited, then, notwithstanding such prohibition, it is the intention of the parties hereto to continue to have the City perform the Maintenance as contemplated hereby, and to have the costs therefor charged to Association. In the event that Association fails or is unable to so assess the Owners for the amounts that the City is prohibited from assessing as contemplated hereby, then, after no less than sixty (60) days prior written notice by the City that Association is

in default, Association shall have the absolute obligation to pay the City, and the City shall have the right to collect the HOA Payment Obligations from Association. Further, if and to the extent that there is a change in applicable law, including, without limitation, Section 5655 of the California Civil Code (which the Parties acknowledge arguably prohibits an "Assignment" (as defined below)) such that an Assignment is clearly permitted (as reasonably determined by Association), the City shall have the option to require Association to assign to the City Association's right to directly assess Owners for such assessments, together with Association's corresponding remedies of lien and foreclosure provided in the Declaration in the event that any such Owner(s) fail to pay the required assessments (an "Assignment"). An Assignment pursuant to this paragraph is expressly subject to the following:

a. Any such delegation and/or assignment of assessment and/or lien rights shall be deemed a partial, non-exclusive assignment;

b. Association shall not make and expressly disclaims any representations and/or warranties that it has the right to assign any of its lien rights or rights to assess real property or levy assessments under the Declaration, and, if any assignment is made or deemed made, the City pursues same at its own risk; and

c. If any Assignment is determined, at any time, by any court or arbitrator, to not be permitted as a matter of law, the City shall immediately cease any actions related thereto.

5. **Special Assessments and Increases in Assessments.** This Agreement shall have no effect on Association's ability and right, in accordance with the terms of the Declaration, to (i) levy assessments, as may be required, or (ii) increase the budgeted amount of regular assessments, or (iii) to collect any parcel charges and to file assessment liens for such charges.

6. **Obligations of Association. Association agrees as follows:**

a. Association and its members shall not amend or repeal, directly or indirectly, the Declaration, or the restrictions described therein, and no rules or regulations of the Board of Association shall be adopted, amended, or repealed, in each case which in any manner increases or may increase the obligations of the City, or decreases or may decrease the obligations of Association, under this Agreement, without the prior written consent of the City, which consent the City may grant or withhold in its sole and absolute discretion;

b. Association may not assign, transfer, or hypothecate this Agreement or their rights or obligations hereunder; provided, however, that the parties hereto hereby agree and recognize that any right of the City to payment from Association in respect of the HOA Payment Obligations does not constitute an assignment or transfer of the rights or obligations under this Agreement. In addition, in view of the personal nature of this Agreement, Association agrees that, during the term of this Agreement, it will not sell, transfer, encumber, or otherwise dispose of Association Property, or any part thereof, without the prior written consent of the City, which consent the City may grant or withhold in its sole and absolute discretion, and any purported sale, transfer, hypothecation, or other disposition thereof, without such consent, shall be null and void ab initio; and

c. Association shall pay, the annual amount to the City required pursuant to **Section 4** hereof, if any.

7. **Notices.** All notices, statements, or other documents which any party shall be required or desire to give to any other party hereunder must be in writing and shall be given by the party only in one of the following ways: (i) by personal delivery, or (ii) by addressing it as indicated below, and by depositing it, registered or certified mail, postage prepaid, in the United States mail. If so delivered or mailed, each such notice, statement, or other document shall be conclusively deemed to have been given when personally delivered, or forty-eight (48) hours after the date of mailing (excluding Saturdays, Sundays, and federal holidays), as the case may be. The addresses for notices and other communications, until further notice, are:

THE CITY: City of Moreno Valley
14177 Frederick Street
Moreno Valley, California 92553
Attn: Land Development Division

ASSOCIATION: Daybreak Community Association
c/o KB Home California LLC
36310 Inland Valley Drive
Wildomar, California 92595
Attn: _____

8. **Resolution of Certain Disputes.** Any dispute between the City and Association, which relates to this Agreement shall be settled between them by Judicial Reference as provided by California Law. Accordingly, any such dispute shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure, §§638 - 645.1, inclusive, and in connection therewith:

a. The Parties to such dispute shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Agreement;

b. The Parties to such dispute shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon. If the Parties are unable to agree upon a referee within ten (10) days of a written request to do so by any party, then any party may seek to have a referee appointed pursuant to the California Code of Civil Procedure §§638 and 640;

c. Subject to the limitations of this Section, the referee shall have the right to award all legal or equitable relief appropriate under the circumstances of the controversy before him or her;

d. The cost of such proceeding shall be apportioned among the Parties to the dispute in accordance with California Code of Civil Procedure §645.1. In no event shall any such reference proceeding or any appeal therefrom result in an award of punitive damages, and all such damages are hereby waived.

9. Indemnity.

a. Association agrees to indemnify, save, defend, and hold harmless the Community Services District of the City of Moreno Valley, the City, the Moreno Valley Redevelopment Agency, and their respective officers, agents and employees (all of the foregoing persons, other than Association, are collectively referred to as the "City Indemnitees") from and against any claim, action, damages, costs (including, without limitation, all attorney's fees and litigation costs), injuries, or liability (collectively referred to as "Claims") arising out of the performance of any action contemplated by this Agreement by Association. Should any of the City Indemnitees be named in any suit, or should any claim be brought against any of the City Indemnitees by suit or otherwise, arising out of performance by Association of services rendered pursuant to this Agreement, Association will defend each such City Indemnitee (at each such City Indemnitee's request and with counsel satisfactory to each such City Indemnitee) and will indemnify each such City Indemnitee for any judgment rendered against it or any sums paid out in settlement or costs incurred in defense otherwise; provided, however, that this indemnification and hold harmless shall not include any Claims arising from the gross negligence or willful misconduct of such City Indemnitee.

b. The City agrees to indemnify, save, defend and hold harmless the Association and its officers, agents and employees from any and all liability, claims, damages or injuries to any person, including injury to the City's employees and all claims which arise from or are connected with the negligent performance or failure to perform the services or other obligations of the City under this Agreement, or are caused or claim to be caused by the negligent acts of the City, its officers, agents or employees, or its subcontractor(s) or any person acting for the City or under its control or direction; provided, however, that, this indemnification and hold harmless shall not include any Claims arising from the gross negligence or willful misconduct of the Association, its officers, agents or employees.

10. Insurance.

a. Before commencing performance under this Agreement, and at all other times this Agreement is effective, Association will procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	Limits (combined single)
Commercial general liability:	\$1,000,000 per occurrence \$ 500,000 Property Damage \$2,000,000 aggregate
Workers' compensation	Statutory requirement.

b. Commercial general liability insurance will meet or exceed the requirements of ISO-CGL Form No. CG 00 01 11 85 or 88. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies Will be endorsed (i) to name the City, Moreno Valley Community Services District, Redevelopment Agency of the City of Moreno Valley, and their respective officials and employees as "additional insured" under said insurance coverage, and (ii) to state that such insurance will be deemed "primary" such that any other insurance that may be carried by any of the City Indemnitees will be excess thereto. Such insurance will be on an "occurrence," not a "claims made," basis and will not be cancellable or subject to reduction except upon thirty (30) days prior written notice to the City Indemnitees.

c. [Intentionally Omitted]

d. [Intentionally Omitted]

e. Each of the City Indemnitees shall be named as additional insured on all policies of insurance except errors and omissions and workers' compensation.

f. Association will furnish to the City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement, endorsements as required herein, and such other evidence of insurance or copies of policies as may be reasonably required by the City from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A-VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage.

g. Should Association, for any reason, fail to obtain and maintain the insurance required by this Agreement, the City may obtain such coverage at Association's expense and deduct the cost of such insurance from payments due to Association under this Agreement or terminate.

h. If the definitive insurance policy meeting the terms of **Section 10** and corresponding to the pro forma policy is not issued within ninety (90) days from the Effective Date of this Agreement, then Association covenants and hereby agrees without defense or future objection that until such time as the insurance policy meeting the requirements of **Section 10** is obtained, the City may do the following without any liability whatsoever:

i. Cease issuing building permits for the Project; and

ii. Cease issuing or otherwise approving certificates of occupancy for any aspect of the Project regardless of the date the building permit was issued.

i. Association further acknowledges and agrees that notwithstanding **Subsections 10(g)** and **10(h)** above, all of its other obligations under this Agreement will become effective and remain in full force and effect upon the execution and delivery of this Agreement and the delivery and acceptance by the City of the documents and material described in **Subsection 10(f)** above and/or the insurance policy.

The requirements for the insurance shall only terminate upon termination of this Agreement as specified in **Section 1** hereof.

11. Recordation. This Agreement and any amendment thereto shall be recorded within the records of the Office of the Recorder for the County of Riverside and shall constitute a covenant running with the land for all the parcels within the Project and shall be binding on Association, all property owners, administrators, executors, assigns, heirs, and all other successors in interest.

12. Default and Remedies. In the event Association fails to make the payments required under **Section 4** hereof, fails to obtain the insurance required under **Section 10** hereof, or fails to take any other required action under this Agreement, the City may take whatever action at law or in equity or under this Agreement to which it is entitled, including but not limited to an action for damages or for specific performance or otherwise to enforce performance and observance of any obligation, condition or covenant of Association under this Agreement.

Notwithstanding anything else in this Agreement, if Association fails to obtain the insurance required under **Section 10** hereof, the City may obtain such insurance insuring the City, and if available, Association, and charge Association for same. As permitted under the Declaration, the City may recover such insurance costs and other costs associated with the remedies permitted hereby through the Regular Assessment as defined in the Declaration. In addition, the City shall be entitled to all of its costs associated with enforcing the terms of this Agreement, including, without limitation, attorneys' fees and costs, and court costs. Such costs may also be enforced through the Regular Assessments.

13. Miscellaneous. As used in this Agreement, all words in the masculine, feminine, or neuter gender, and the plural or singular number, shall each be construed to include the others whenever the context so requires. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Time is of the essence of this Agreement. No change in or addition to, or waiver or termination of this Agreement or any part thereof, shall be valid unless in writing and signed on behalf of each of the Parties hereto. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or unenforceability shall not affect the validity of the remainder of this Agreement. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Association:

City:

DAYBREAK COMMUNITY ASSOCIATION,
a California non-profit mutual benefit
corporation

CITY OF MORENO VALLEY

By: 

By: _____

Name: CORINNE MOSTAD

Name: _____

Title: VICE PRESIDENT

Title: _____

Effective Date: _____

Attest:

City Clerk

Date

Approved As To Form:

City Attorney

Date

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Riverside }

On March 28, 2018 before me, Brittney Lobo, Notary Public, personally appeared Corinne Mostad, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Brittney Lobo



(SEAL)

EXHIBIT "A"

Association Property

LOTS D, E, F, G and H OF TRACT 31592, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER THAT TRACT MAP RECORDED IN BOOK _____, PAGE(S) _____, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

EXHIBIT "B"

Maintenance of Association Property by the City

The purpose of the maintenance services program is to ensure the protection of water quality and stormwater control by the successful implementation of those landscape and irrigation improvements, located within Association Property identified in **Exhibit "A"**.

These maintenance guidelines are specifically tailored to establish and sustain material installed within Association Property. The City personnel with experience and knowledge in first flush/water quality ponds, plant habitat creation/preservation and landscaping and irrigation management will supervise all maintenance personnel.

For a minimum period of one hundred twenty (120) days ("**Establishment Period**") following completion of the initial material installation including completion of the landscape and irrigation improvements by Association, Association will be responsible for the care and maintenance of all material and improvements. Association's involvement during this period is proven to increase the successful adaptation of the plant material.

Within fourteen (14) calendar days, following the Establishment Period and the submittal to the City of "As-Built" planting, irrigation and grading plans for all areas to maintained under this Agreement, the City will evaluate Association Property for health of plant material and determine whether the landscape and irrigation systems are fully operable. If judged satisfactory by the City, the Establishment Period will be considered concluded and the City will notify Association pursuant to **Section 7** of this Agreement. At that time, the long-term maintenance program will begin, and the City will assume the maintenance services identified herein. Should the City judge the health of plant material and/or the landscape and irrigation systems are not fully operable, the City will not assume maintenance services and will notify Association at the address set forth in **Section 7** of this Agreement (or such other address of which Association shall have previously notified the City in writing in accordance with **Section 7** hereof) of its decision.

Maintenance Services

In accordance with the City's Plant and Irrigation Maintenance Specifications and in accordance with all storm water maintenance requirements, and all applicable law or regulations, the City will perform the maintenance services on an as-needed basis within Association Property. The determination of when such services are needed will be in the City's sole discretion.

The City shall not perform or otherwise be responsible to implement any monitoring or mitigation compliance or certify to monitoring or mitigation compliance affecting Association Property pursuant to, (i) any conservation covenant or easement, and (ii) any permits issued by the United States Army Corps of Engineers or other similar governmental regulatory agencies.

No other services by the City may be implied or inferred without amendment or modification to this Agreement.