

12919523
01/15/2019 02:28 PM \$28.00
Book - 10746 Pg - 27-36
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
OLD REPUBLIC TITLE DRAPER/OREM
898 NORTH 1200 WEST
OREM UT 84057
BY: MBP, DEPUTY - WI 10 P.

RECORDING REQUESTED BY:

VP DAYBREAK INVESTMENTS LLC
11248 S. Kestrel Rise Road, Suite 200
South Jordan, Utah 84009

WHEN RECORDED MAIL TO:

DAYBREAK WATER COMPANY
11274 S. Kestrel Rise Road, Suite F
South Jordan, Utah 84009
Attention: Suzanne Gamvroulas

APN: 26-14-202-010

WATER PIPE LINE EASEMENT AGREEMENT

THIS WATER PIPE LINE EASEMENT AGREEMENT (this "Easement Agreement") is entered into this 2 day of JANUARY, 201 9, by and between VP DAYBREAK INVESTMENTS LLC, a Delaware limited liability company ("Grantor"), and DAYBREAK WATER COMPANY, a Utah nonprofit corporation ("Grantee").

The following Recitals are a material part of this Agreement:

A. Grantor is the owner of that certain real property situated in Salt Lake County, Utah, Salt Lake County Assessor Parcel Number 26-14-202-010 ("Grantor's Property").

B. Grantor desires to grant to Grantee a non-exclusive secondary water distribution pipe line easement on certain portions of Grantor's Property as more particularly set forth below.

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

1. Grant of Easement.

1.1 Grantor hereby conveys to Grantee a permanent, non-exclusive easement solely for the construction, operation, inspection, maintenance, repair, replacement, alteration and removal of two (2) underground secondary water distribution pipe lines, together with vents, valves, drain lines, service vaults and other appurtenant facilities (collectively, the "Lines") across Grantor's Property, which easement area is more particularly described on Exhibit "A", and depicted as the cross-hatched area on Exhibit "A-1", attached hereto and incorporated herein by reference (the "Easement Area").

1.2 The use of the Easement Area by Grantee shall be in a manner calculated to cause the least inconvenience to the ownership, use and enjoyment by Grantor of the Easement Area and other property of Grantor, consistent with the practical use thereof by Grantee for the purposes above stated.

1.3 The Lines shall be constructed and maintained at a minimum depth of four (4) feet below surface grade (measured to the top of the Lines); provided, however, that appurtenant facilities such as vents, valves, drain lines and service vaults may be constructed and maintained at or below surface grade.

1.4 Grantee shall (i) obtain, at Grantee's sole cost and expense, all necessary permits and licenses from public authorities for the activities permitted herein; and (ii) comply with all applicable laws and regulations regarding such activities.

1.5 Promptly after any activity permitted under this Easement Agreement that causes disturbance of the surface area of the Easement Area, Grantee shall use commercially reasonable efforts to restore the Easement Area, as nearly as practicable, to its original condition.

2. Use of Easement Area by Grantor. Grantee hereby agrees that Grantor and its employees, agents, invitees, lessees and assigns may use the Easement Area for any purpose that does not materially interfere with Grantee's use and enjoyment of the Easement Area as provided for in Section 1.

3. Indemnification. Grantee agrees to indemnify and hold harmless Grantor, its parents and affiliates, and all of their respective officers, directors, employees and agents (collectively, the "**Grantor Indemnitees**") from and against any and all loss and expense, including attorneys' fees and other legal expenses, by reason of liability imposed or claimed to be imposed by law upon any Grantor Indemnitee and arising out of or in any manner connected with Grantee's exercise of its rights or performance of its obligations under this Easement Agreement, including liability and claims for (i) damage because of bodily injuries, including death, sustained by any person or persons; (ii) damage to property sustained by any person or persons; (iii) damages, costs or claims arising from or relating to actual or alleged environmental contamination or pollution or the actual or alleged violation of any current or future federal, state or local environmental law, regulation or ruling; (iv) any other loss or damage suffered or incurred by any Grantor Indemnitee (items (i) through (iv) are collectively referred to as "**Liabilities**"). Grantee shall indemnify and save the Grantor Indemnitees harmless from and against Liabilities, whether or not such Liabilities arise or are claimed to have arisen in whole or in part out of negligence or any other grounds of legal liability, including violation of any duty imposed by statute, ordinance or regulation, but excluding any Liabilities caused by the gross negligence or willful misconduct of a Grantor Indemnitee.

4. Relocation. If at any time Grantee's use of the Easement Area or any portion thereof shall interfere with any operations of Grantor, whether or not such operations are now in existence, Grantee shall, upon request from Grantor, relocate the Lines or portion thereof on other land provided by Grantor so as to avoid such interference. In such event, Grantee shall execute and deliver a recordable instrument terminating this Easement Agreement as to the affected portion of the Easement Area, and Grantor shall grant Grantee an easement on the land upon which the Lines are to be relocated and the parties shall enter into a new agreement on terms and conditions similar to those contained in this Easement Agreement. The reasonable cost of such relocation shall be borne by Grantor.

5. Termination. This Easement Agreement shall terminate if the Easement Area is not used for the purposes permitted herein for a continuous period of one (1) year. Upon any termination of this Easement Agreement, Grantee shall, upon the request of Grantor, (i) promptly remove all Lines and restore the Easement Area in accordance with Section 1.5, above, and (ii) execute and deliver to Grantor a recordable instrument reasonably acceptable to Grantor terminating this Easement Agreement.

6. Assignment. Grantee shall not assign this Easement Agreement or otherwise transfer or encumber the Easement Area or the other rights granted herein without the prior written consent of Grantor, which Grantor may approve or deny in Grantor's sole and absolute discretion. Notwithstanding the foregoing, Grantee shall be permitted to assign this Easement Agreement to an entity acquiring all or substantially all of the assets of Grantee without the consent of Grantor.

7. No Warranties. Grantee hereby accepts the Easement Area in its "AS IS" condition. Grantor makes no representations or warranties concerning the physical condition of the Easement Area or its suitability for Grantee's intended purpose. The easement hereby granted is subject to (i) all matters of record; (ii) other existing private, public and utility easements, if any; (iii) roads and highways, if any; (iv) drainage ditches, feeds, laterals, drain tile, pipes or other conduits, if any; (v) zoning laws and ordinances; and (vi) all matters (including but not limited to encroachments) which would be disclosed by an accurate survey and/or physical inspection of the Easement Area.

8. Covenants Running with the Land. All provisions of this Easement Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

9. Severability. If any clause, sentence, or other portion of the terms, conditions, covenants, and restrictions of this Easement Agreement becomes illegal, null, or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.

10. Recordation. This Easement Agreement shall be recorded in the real property records of Salt Lake County, State of Utah.

11. Amendments. This Easement Agreement may only be amended by a written document signed by each of the parties or their applicable successors or assigns.

12. Applicable Law. The Easement Agreement shall be construed and interpreted under, and governed and enforced according to, the laws of the State of Utah without regard for that state's principles of conflict of law.

[Signatures and Acknowledgements on Following Pages]

DAYBREAK WATER COMPANY,
a Utah nonprofit corporation

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

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC

 **NOTARY PUBLIC**
MICHAEL KUNKEL
Commission No. 695292
Commission Expires
JUNE 13, 2021
STATE OF UTAH

EXHIBIT A

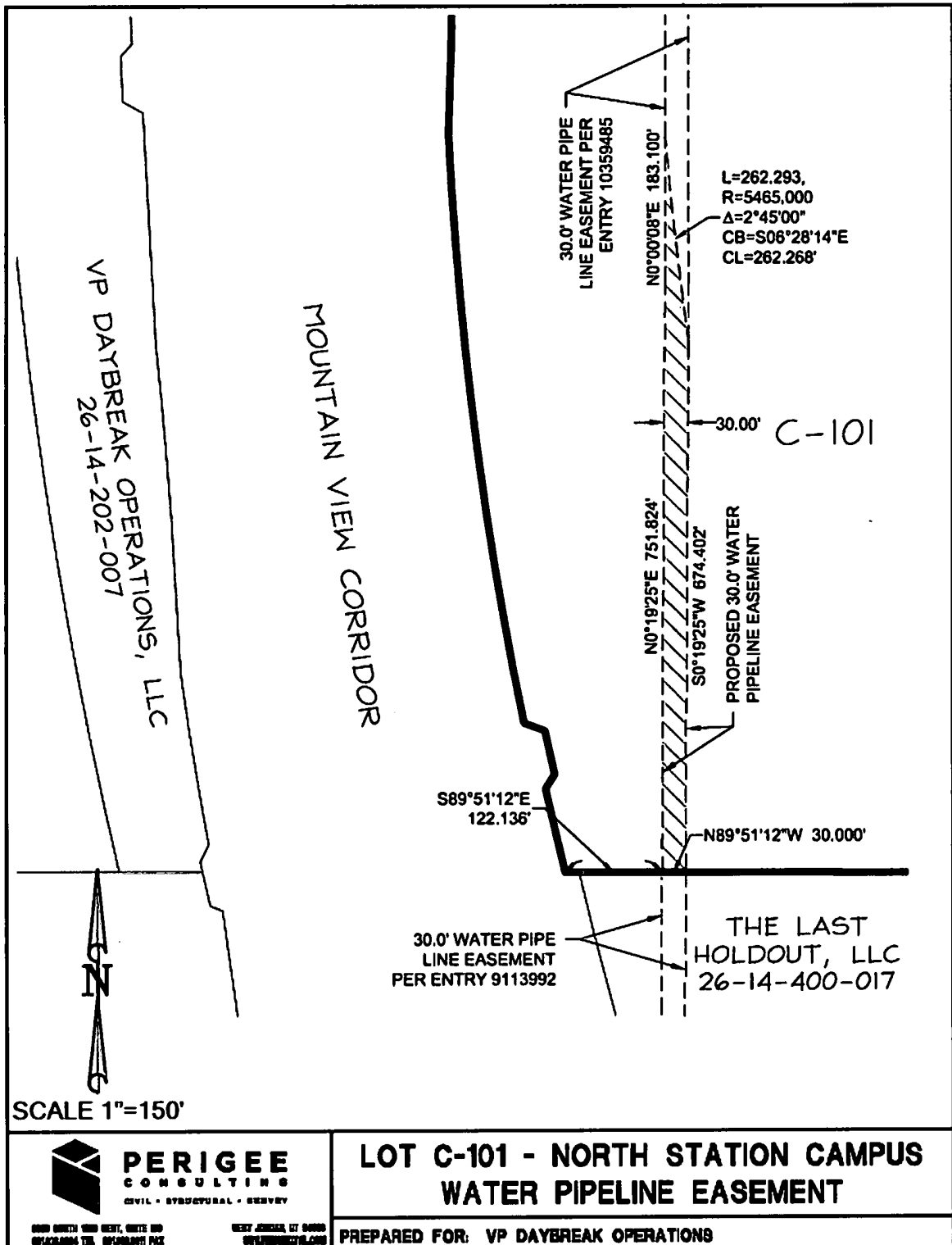
EASEMENT AREA

Beginning at a point on the South Line of Lot C-101 of the Daybreak North Station Campus subdivision, said point lies South 89°55'04" East 1161.545 feet along the Section Line and South 3980.660 feet from the North Quarter Corner of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said point also being South 89°51'12" East 122.136 feet along said South Line from the Southwest Corner of said Lot C-101 and running thence North 00°19'25" East 751.824 feet; thence North 00°00'08" East 183.100 feet to a point on the Southerly Line of a Water Pipe Line Easement as described in Entry 10359485 as recorded in the Office of the Salt Lake County Recorder and a point on a 5465.000 foot radius non tangent curve to the left, (radius bears North 84°54'16" East, Chord: South 06°28'14" East 262.268 feet); thence along said Water Pipe Line Easement and the arc of said curve 262.293 feet through a central angle of 02°45'00"; thence South 00°19'25" West 674.402 feet to the said South Line of Lot C-101; thence along said South Line of Lot C-101 North 89°51'12" West 30.000 feet to the point of beginning.

Property contains 0.547 acres, 23825 square feet.

EXHIBIT A-1

EASEMENT AREA DEPICTION



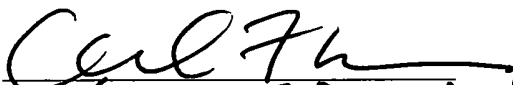
LENDER'S CONSENT AND SUBORDINATION

WATER PIPE LINE EASEMENT AGREEMENT – PARCEL I.D. #26-14-202-010
LOT C-101 DAYBREAK NORTH STATION CAMPUS
AMENDING LOTS T3, OS2 & WTC1 OF THE KENNECOTT
MASTER SUBDIVISION #1 AMENDED

THE UNDERSIGNED, THE BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST, DATED DECEMBER 19, 2016, ENCUMBERING THE HEREIN DESCRIBED REAL PROPERTY (THE "DEED OF TRUST"), HEREBY EXPRESSLY CONSENTS TO AND JOINS IN THE EXECUTION AND RECORDING OF THAT CERTAIN WATER PIPE LINE EASEMENT AGREEMENT, DATED AS OF JANUARY 2, 2019, FROM VP DAYBREAK INVESTMENTS LLC, A DELAWARE LIMITED LIABILITY COMPANY TO DAYBREAK WATER COMPANY, A UTAH NONPROFIT CORPORATION (THE "EASEMENT AGREEMENT"), TO WHICH THIS LENDER'S CONSENT AND SUBORDINATION IS ATTACHED.

THE UNDERSIGNED LENDER HEREBY CONSENTS TO THE EASEMENT AGREEMENT AND MAKES THE LIEN OF THE DEED OF TRUST SUBORDINATE THERETO. THIS LENDER'S CONSENT AND SUBORDINATION SHALL NOT OTHERWISE AFFECT THE PRIORITY OF MORTGAGES AND/OR LIENS AGAINST THE REAL PROPERTY DESCRIBED HEREIN, BUT SHALL SOLELY EVIDENCE THE LENDER'S INTENT TO SUBORDINATE ITS LIEN OF THE DEED OF TRUST TO THE EASEMENT AGREEMENT. THE UNDERSIGNED REPRESENTS THAT HE OR SHE HAS FULL POWER AND AUTHORITY TO EXECUTE THIS LENDER'S CONSENT AND SUBORDINATION ON BEHALF OF THE LENDER.

U.S. BANK NATIONAL ASSOCIATION
d/b/a Housing Capital Company

By: 
Name: CARL F. SWANSON
Title: SVP

[SIGNATURE MUST BE NOTARIZED]
[Notary acknowledgement on following page]

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 FRESNO

On January 8, 2019, before me, **Lori Beckman, a Notary Public**, personally appeared **Carl F. Swanson** 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 

[SEAL]

