

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Jordan Valley Water
Conservancy District
8215 South 1300 West
West Jordan, Utah 84088
Attn: Property Manager

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11/21/2019 01:38 PM \$0.00
Book - 10863 Pg - 590-600A
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
JORDAN VALLEY WATER
CONSERVANCY DISTRICT
8215 S 1300 W
WEST JORDAN UT 84088
BY: CBA, DEPUTY - WJH P.

[PARCEL ID #26-13-101-001
26-13-101-013
26-13-100-017]

RIGHT-OF-WAY AND EASEMENT AGREEMENT

This Right-of-Way and Easement Agreement (this "Agreement"), is made and entered into this 11 day of NOVEMBER, 2019 (the "Effective Date"), by and between VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company ("Daybreak"), and Jordan Valley Water Conservancy District, a local district organized under the laws of the State of Utah ("District").

WITNESSETH:

WHEREAS, District desires to construct and thereafter maintain a buried culinary water pipeline for the purpose of providing culinary water to its customers within its service area (the "Pipeline") on certain portions of the Daybreak Property (defined below); and

WHEREAS, the proposed Pipeline will bisect the Bingham Creek channel, hereinafter referred to as "Bingham Creek"; and

WHEREAS, District, pursuant to Utah Code Ann. §§ 78B-6-501(5), 78B-6-502(2), 17B-1-103(h) and 73-1-6, has the express power of eminent domain to condemn private property for the right-of-way and easement described in this Agreement; and

WHEREAS, both parties believe that eminent domain proceedings are better avoided;

WHEREAS, Daybreak is willing to provide District a right-of-way and easement for such purpose on the following terms and conditions;

NOW, THEREFORE, the parties hereby agree as follows:

AGREEMENT:

1. Daybreak hereby grants District, its successors and assigns, a right-of-way and easement, 20 feet in width, lying 10 feet on each side of the hereinafter four described center lines (the "Easement Area"), for the purposes hereafter stated, through, across and under that certain property situated in Salt Lake County, State of Utah, more particularly described as;

A strip of land located in the West half of Section 13, Township 3 South, Range 2 West, Salt Lake Base and Meridian, which strip is twenty feet (20') wide, ten feet (10') on each side of and lying parallel and perpendicular to the following described centerline:

Commencing at the Northwest Corner of said Section 13 (Basis of Bearing being South 00°02'50" West - 2672.400 feet between the Northwest Corner and the West Quarter Corner of said Section 13) and running South 00°02'50" West along the east line of Section 13 for 802.451 feet; thence South 89°57'10" East perpendicular to said section line for 14.542 feet to the POINT OF BEGINNING; thence South 00°17'48" West for 20.000 feet; thence with a curve to the left having a radius of 100.000 feet, with a central angle of 45°17'48" (chord bearing and distance of South 22°21'06" East- 77.015 feet) for an arc length of 79.058 feet; thence South 45°00'00" East for 131.517 feet; thence with a curve to the right having a radius of 100.000 feet, with a central angle of 45°00'00" (chord bearing and distance of South 22°30'00" East - 76.537 feet) for an arc length of 78.540 feet; thence South 00°00'00" East for 273.289 feet; thence with a curve to the right having a radius of 100.000 feet, with a central angle of 45°00'00" (chord bearing and distance of South 22°30'00" West - 76.537 feet) for an arc length of 78.540 feet; thence South 45°00'00" West for 148.128 feet to the END of said description.

Together with:

A strip of land located in the East half of Section 14 and the West half of Section 13, Township 3 South, Range 2 West, Salt Lake Base and Meridian, which strip is twenty feet (20') wide, ten feet (10') on each side of and lying parallel and perpendicular to the following described centerline:

Commencing at the Northwest Corner of said Section 13 (Basis of Bearing being South 00°02'50" West - 2672.400 feet between the Northwest Corner and the West Quarter Corner of said Section 13) and running South 00°02'50" West along the west line of Section 13 for 2404.578 feet; thence North 89°57'10" West perpendicular to said section line for 14.741 feet to the POINT OF BEGINNING; thence South 00°00'00" West for 7.081 feet; thence South 45°00'00" East for 14.142 feet; thence South 00°00'00" West for 451.239 feet; thence South 45°00'00" West for 14.142 feet; thence South 00°00'00" West for 8.792 feet to the END of said description (collectively, the "Daybreak Property").

The right-of-way and easement shall be used by District solely for the purpose of constructing, reconstructing, operating, repairing, replacing, inspecting, protecting, removing and maintaining the Pipeline and for no other purpose(s). District shall have the right of reasonable ingress and egress to and from the Easement Area to construct, reconstruct, operate, repair, replace, inspect, protect, remove and maintain the same. District may use temporarily such portion of the Daybreak Property hereinabove described, along and adjacent to said right-of-way and easement as may be reasonably necessary in connection with the construction, reconstruction, operation, repair, replacement, inspection, protection, removal, and maintenance of the Pipeline. Daybreak shall have the right to use the Daybreak Property for any purpose, except that Daybreak shall not construct permanent structures or improvements within the Easement Area other than the existing Bingham Creek Channel and/or a bridge or roadway, provided that all of these uses shall not interfere with the Pipeline, nor obstruct or hinder District's access to the Easement Area or any other right granted to District hereunder.

2. As consideration for Daybreak's providing said right-of-way and easement, District agrees to pay Daybreak the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, which amount is to be paid upon the execution of this Agreement.

3. The Pipeline, where it crosses underneath Bingham Creek, shall be suitably protected and of sufficient depth to avoid damage from erosion or Daybreak's equipment operations in cleaning and maintenance work of the Creek. Plans and specifications relating to the crossing of the Daybreak Property must be approved by Daybreak prior to the commencement of construction of the Pipeline, which approval shall not be unreasonably withheld.

4. District shall obtain all necessary permits and licenses from public authorities for the installation of the Pipeline and shall bear the entire cost and expense in connection with the construction, reconstruction, operation, repair, replacement, inspection, protection, removal, and maintenance of the Pipeline.

5. After District begins transporting water through the Pipeline, subsequent nonuse of the Pipeline for the purpose for which it was originally constructed, which nonuse persists for a period of one year or greater, shall constitute an abandonment thereof by District and of the right-of-way and easement herein made, and in case of such abandonment or the breach by District of any of the conditions, agreement and covenants herein contained, Daybreak shall have the right to terminate this Agreement at any time by giving thirty (30) days' notice in writing to District of its intention to terminate the same and at the expiration of said thirty (30) days' notice, the right-of-way and easement herein provided shall terminate and District shall be without recourse or redress of any character against Daybreak by reason thereof; but nothing herein shall be construed as a limitation of

District's power to exercise its power of eminent domain in accordance with law to reacquire this right-of-way and/or easement by condemnation should it choose to do so.

6. Daybreak excepts and reserves a perpetual easement, right and privilege on the part of itself, its successors, lessees, licensees and assigns, at any and all times hereafter, to discharge over and upon each and every portion of the Daybreak Property, any and all gases, dust, dirt, fumes, particulates, liquids and other substances and matter which may be released, given, thrown or blown off, flow or seep, emitted or discharged in the course of, by, or through the existence, or operations, of any and all of the smelting plants, reduction works, mines, mills, refineries, power plants, manufactories, tailing deposits and other works or factories which are now or which may hereafter at any time be lawfully established or operated by Daybreak or its successors, grantees, lessees, licensees or assigns, or any of them, within Salt Lake or Tooele Counties, State of Utah.

7. Daybreak does not assume any liability resulting from the granting of this right-of-way and easement or the exercise thereof, and District agrees to indemnify, save harmless, and defend Daybreak, its officers, directors, employees, agents, successors, assigns, corporate parents, affiliates and subsidiaries, and their respective officers, directors, shareholders, representatives, contractors, agents and employees (the "Indemnified Parties") from and against any and all losses, expenses, costs (including without limitation attorneys' fees), claims, actions, demands, damages and liabilities imposed or claimed to be imposed upon the Indemnified Parties because of bodily injuries, including death, or for damage to property, sustained by any person, including without limitation employees of the District, employees of Daybreak or employees of third parties, or environmental liabilities (excluding any environmental liability to the extent it

was or is the responsibility of Daybreak) arising out of or in consequence of District's construction, maintenance, operation, or existence of the Pipeline or use of said easement and right-of-way and such adjacent portions of the Daybreak Property as District shall utilize from time to time, and whether such bodily injuries, death or damage to property arise or are claimed to arise in whole or in part out of negligence or any other grounds for legal liability (including violation of any duty imposed by statute, ordinance or regulation) on the part of District, or of Daybreak, the employees or agents of any of them, or of any third party, including any liability caused by the sole negligence of the Indemnified Parties, but excluding the willful misconduct of Daybreak, its officers, directors, employees and agents. District specifically waives, with respect to any action brought against it by Daybreak, the defense that laws providing for workers' compensation shall bar recovery by Daybreak under this indemnification provision.

8. Daybreak expressly reserves the right to construct, operate and maintain roads, canals, ditches, culverts, pipelines or other drainage works, and any other facilities desired by Daybreak upon, along, under or across the Daybreak Property, provided only that such shall be constructed, operated and maintained by Daybreak so as not to interfere with the use of the right-of-way and easement thereof by District. District agrees to promptly repair or replace, at its sole cost and expense, any property or facilities of Daybreak damaged or injured by the acts or omissions of District, its employees, servants or agents in the construction, maintenance, operations, existence or use of said right-of-way and easement and such adjacent portions of the Daybreak Property as District shall utilize from time to time.

9. It is hereby understood that any parties securing this grant on behalf of District are

without authority to make any representations, covenants or agreement not herein expressed.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of
the Effective Date.

Jordan Valley Water Conservancy District,
a local district organized under the laws of
the State of Utah

By: Richard P. Bay
Richard P. Bay
Its General Manager/CEO

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: Daybreak Communities LLC,
a Delaware limited liability company
Its: Project Manager

By: Ty McCutcheon
Ty McCutcheon its President & CEO

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

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

The foregoing instrument was acknowledged before me this 21st day of November, 2019, by Richard P. Bay as General Manager/CEO of the Jordan Valley Water Conservancy District.

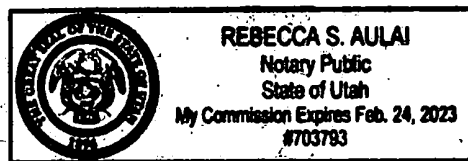
Beverly M Parry
Notary Public



STATE OF UTAH)
 :SS.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 11 day of 2019, by Ty McCutcheon, the President and 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.

Rebecca S. Aulai
Notary Public




LENDER'S CONSENT AND SUBORDINATION

RIGHT OF WAY AND EASEMENT AGREEMENT
PARCEL I.D. # 26-13-101-001, 26-13-101-013, 26-13-100-017
(JORDAN VALLEY WATER CONSERVANCY DISTRICT)

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 RIGHT OF WAY AND EASEMENT AGREEMENT, DATED AS OF NOVEMBER 11, 2019, FROM VP DAYBREAK OPERATIONS LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO JORDAN VALLEY WATER CONSERVANCY DISTRICT, A LOCAL DISTRICT ORGANIZED UNDER THE LAWS OF THE STATE OF UTAH (THE "RIGHT OF WAY AND EASEMENT AGREEMENT"), TO WHICH THIS LENDER'S CONSENT AND SUBORDINATION IS ATTACHED.

THE UNDERSIGNED LENDER HEREBY CONSENTS TO THE RIGHT OF WAY AND 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 RIGHT OF WAY AND 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 11/15/2019 before me, Lori Beckman, Notary Public,
(here insert name of the officer)

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 Lori Beck (Seal)

