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Book - 11095 Pg - 5277-5290  
RASHELLE HOBBS  
RECORDER, SALT LAKE COUNTY, UTAH  
SOUTH JORDAN  
1600 W TOWNE CENTER DR  
SOUTH JORDAN UT 84095-8265  
BY: CBA, DEPUTY - WI 14 P.

After recording, please mail to:

City of South Jordan  
Attn: City Recorder  
1600 Towne Center Drive  
South Jordan, Utah 84095

Affects Parcel No(s): 26-13-301-003

Property/Subdivision: Daybreak Development

Project Name: Village 10 North Plat 3 (Crescent Apartments)

### STORMWATER FACILITIES MAINTENANCE AGREEMENT

This Stormwater Facilities Maintenance Agreement (this "Agreement") is made between the City of South Jordan, a Utah municipal corporation (the "City"), and by VP Daybreak Operations LLC, a a Delaware limited liability company ("Owner").

### RECITALS

A. The City is authorized and required to regulate and control the disposition of storm and surface waters within the City, as set forth in the South Jordan City Stormwater Ordinance, as amended ("Ordinance"), adopted pursuant to the Utah Water Quality Act, as set forth in Utah Code § 19-5-101, *et seq.*, as amended ("Act").

B. The Owner hereby represents and acknowledges that it is the owner in fee simple of certain real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property").

C. The Owner desires to build or develop the Property and/or to conduct certain regulated construction activities on the Property which will alter existing storm and surface water conditions on the Property and/or adjacent lands.

D. In order to accommodate and regulate these anticipated changes in existing storm and surface water flow conditions, the Owner desires to build and maintain, at the Owner's expense, a storm and surface water management facility and control measures ("Stormwater Facilities") on the Property.

E. The Stormwater Facilities are more particularly described and shown in the final civil engineering plan or subdivision plat approved for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with, and have been approved by, the City, and are hereby incorporated herein by this reference ("Development Plan").

F. As a condition of Development Plan approval, and as required as part of the City's Small MS4 UPDES General Permit from the State of Utah, the Owner is required to enter into this Agreement addressing the maintenance requirements for the Stormwater Facilities.

The parties agree as follows:

1. **Construction of Stormwater Facilities.** The Owner shall, at its sole cost and expense, construct the Stormwater Facilities in accordance with the plans and specifications identified in the Development Plan and any amendments thereto, which have been approved by the City.

2. **Maintenance of Stormwater Facilities.** The Owner shall, at its sole cost and expense, adequately maintain the Stormwater Facilities on the Property. Owner's maintenance obligations shall include all pipes and channel built to convey stormwater, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance, for purposes of this Agreement, is defined as keeping the Stormwater Facilities in good working condition so that the Stormwater Facilities are performing their design functions. In the event that a maintenance schedule is set forth in the Development Plan, such maintenance schedule shall be followed.

3. **Annual Inspection of Stormwater Facilities.** The Owner shall, at its sole cost and expense, inspect the Stormwater Facilities and submit an inspection report and certification to the City annually. The purpose of the inspection and certification is to assure safe and proper functioning of the Stormwater Facilities. The annual inspection shall cover all aspects of the Stormwater Facilities, including, but not limited to, the structural improvements, berms, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies shall be noted in the inspection report. The report shall also contain a certification as to whether adequate maintenance has been performed and whether the structural controls are operating as designed to protect water quality. The annual inspection report and certification shall be due by July 31<sup>st</sup> of each year, commencing the year after the Stormwater Facilities is constructed and complete, and shall be on forms acceptable to the City.

4. **City Oversight Inspection Authority.** The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Stormwater Facilities whenever deemed necessary by the City. The City shall give the Owner not less than 48 hours prior notice of an inspection, except in the event of an emergency. Inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspections shall be to determine and ensure that the Stormwater Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the Development Plan. The Owner shall be entitled to have its representative accompany the City's inspectors on the Property.

5. **Notice of Deficiencies.** If the City reasonably finds that the Stormwater Facilities contain any defects or are not being adequately maintained, the City shall send the Owner written notice of the defects or deficiencies and provide Owner with a reasonable time to cure such defects or deficiencies ("Notice of Deficiency" or "Notice"). The Notice shall be hand-delivered to the Owner or sent certified mail to the Owner at the Property address.

6. **Owner to Make Repairs.** The Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the Stormwater Facilities within the cure period stated in the Notice of Deficiency.

7. **The City's Corrective Action Authority.** If the Owner fails to correct the items in the Notice of Deficiency, the City may enter upon the Property and take whatever steps are reasonably required to correct any deficiencies and may charge the costs of such repairs to the Owner. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Stormwater Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City. The actions described in this Section are in addition to and not in lieu of any and all legal remedies available to the City as provided by law for Owner's failure to remedy deficiencies or any other failure to perform under the terms and conditions of this Agreement.

8. **Reimbursement of Costs.** In the event the City performs any work or funds to correct any deficiency in the Notice, including without limitation, labor, use of equipment, supplies, materials, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt of supporting documentation. After said thirty (30) days, such amount shall be deemed delinquent and shall be subject to interest at the rate of ten percent (10%) per annum. The Owner shall also be liable for any collection costs, including attorneys' fees and court costs, incurred by the City in collection of delinquent payments or enforcement of this Agreement.

9. **Successor and Assigns.** This Agreement shall be recorded in the Salt Lake County Recorder's Office and the covenants and agreements contained herein shall run with the land and whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Agreement which shall apply to, bind and be obligatory upon the Owner hereto, its operators, successors, or assigns, and shall bind all present and subsequent owners of the Property.

10. **Severability Clause.** The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Owner, its successors and assigns, is held invalid, the remainder of this Agreement shall not be affected thereby.

11. **Utah Law and Venue.** This Agreement shall be interpreted under the laws of the State of Utah. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Salt Lake County, Utah.

12. **Indemnification.** The Owner specifically and expressly agrees to indemnify, and save and hold harmless the City (including without limitation its elected and appointed officers, employees, successors, and assigns) from and against any and all demands, liabilities, claims, damages, actions, attorney fees, or other costs incurred by the City and/or proceedings in law or equity (including reasonable attorneys' fees and costs of suit), to the extent caused by or resulting from any negligence, gross negligence, intentional misconduct, or under any other actionable fault of the Owner (including without limitation its employees, agents, operators, subcontractors, or contractors) in the performance or failure of performance of the Owner provided herein, or to be provided hereunder.

13. **Amendments.** This Agreement shall not be modified except by written instrument executed by the City and the Owner of the Property at the time of modification, and no modification shall be effective until recorded in the Salt Lake County Recorder's Office.

14. **Subordination Requirement.** If there is a lien, trust deed or other property interest recorded against the Property, the trustee, lien holder, etc., shall be required to execute a subordination agreement or other acceptable recorded document agreeing to subordinate their interest to the Agreement.

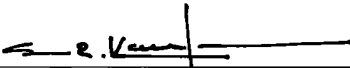
*[Signature page to follow]*



**“OWNER”**

VP Daybreak Operations LLC,  
a Delaware limited liability company

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

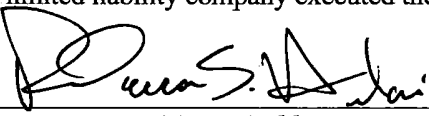
By: 

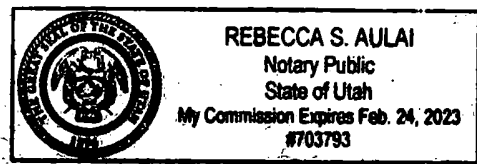
Its: Senior Vice President of Commercial Development

**(Complete if Developer is a Limited Liability Company)**

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

On the 13 day of October, 2020, personally appeared before me Scott Kaufmann who being by me duly sworn did say that he is the Senior Vice President of Commercial Development of Daybreak Communities LLC, a Delaware limited liability company, the project manager of **VP Daybreak Operations LLC, a Delaware limited liability company** and that the within and foregoing instrument was duly authorized by the limited liability company at a lawful meeting held by authority of its operating agreement; and duly acknowledged to me that said limited liability company executed the same.

  
Notary Public



**EXHIBIT A**

(Property Legal Description)

### **Proposed Lot C-101**

Beginning at a point on a Right-of-Way Quitclaim Deed recorded as Entry No. 10429973 in Book 9607 at Page 4745 in the Office of the Salt Lake County Recorder, said point also being a point on a 1136.500 foot radius non tangent curve to the right, (radius bears North 89°52'26" East, Chord: North 00°03'47" West 2.502 feet), said point lies North 89°57'41" East 20.280 feet along the Daybreak Baseline Northeast (being North 89°57'41" East 10613.975 feet between the Northwest Corner of Section 13, T3S, R2W and the Northeast Corner of Section 18, T3S, R1W) and South 3611.994 feet from the Northwest Corner of Section 13, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Right-of-Way Quitclaim Deed the following (2) courses: 1) along the arc of said curve 2.502 feet through a central angle of 00°07'34"; 2) North 667.318 feet to a point on the proposed South right-of-way line of Lake Run Road; thence along said proposed Lake Run Road the following (3) courses: 1) East 117.723 feet to a point on a 165.500 foot radius tangent curve to the right, (radius bears South, Chord: South 63°16'27" East 148.858 feet); 2) along the arc of said curve 154.396 feet through a central angle of 53°27'06"; 3) South 36°32'54" East 415.349 feet to the proposed Northerly right-of-way line of Pipestone Way; thence along said proposed Pipestone Way the following (3) courses: 1) South 53°27'06" West 396.915 feet to a point on a 167.000 foot radius tangent curve to the right, (radius bears North 36°32'54" West, Chord: South 71°43'33" West 104.731 feet); 2) along the arc of said curve 106.528 feet through a central angle of 36°32'54"; 3) West 79.706 feet to the point of beginning.

**Property contains 5.140 acres.**

### **Proposed Lot C-102**

Beginning at a point on the Northerly right-of-way line of South Jordan Parkway, said point lies North 89°57'41" East 769.585 feet along the Daybreak Baseline Northeast (being North 89°57'41" East 10613.975 feet between the Northwest Corner of Section 13, T3S, R2W and the Northeast Corner of Section 18, T3S, R1W) and South 3684.809 feet from the Northwest Corner of Section 13, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said South Jordan Parkway South 53°27'06" West 531.496 feet; thence North 36°33'00" West 232.339 feet; thence North 20°00'00" West 151.290 feet to the proposed Southerly right-of-way line of Pipestone Way and a point on a 233.000 foot radius non tangent curve to the left, (radius bears North 13°01'30" West, Chord: North 65°12'48" East 94.991 feet); thence along said proposed Pipestone Way the following (2) courses: 1) along the arc of said curve 95.661 feet through a central angle of 23°31'25"; 2) North 53°27'06" East 395.415 feet to the proposed Westerly right-of-way line of Lake Run Road; thence along said proposed Lake Run Road South 36°32'54" East 358.000 feet to the point of beginning.

**Property contains 4.329 acres.**

### **Proposed Lot C-103**

Beginning at a point on a Right-of-Way Quitclaim Deed recorded as Entry No. 10429973 in Book 9607 at Page 4745 in the Office of the Salt Lake County Recorder, said point also being a point on a 1136.500 foot radius non tangent curve to the right, (radius bears North 62°04'42" East, Chord: North 15°41'19" West 481.623 feet), said point lies North 89°57'41" East 152.579 feet along the Daybreak Baseline Northeast (being North 89°57'41" East 10613.975 feet between the Northwest Corner of Section 13,



T3S, R2W and the Northeast Corner of Section 18, T3S, R1W) and South 4141.763 feet from the Northwest Corner of Section 13, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Right-of-Way Quitclaim Deed along the arc of said curve 485.302 feet through a central angle of 24°27'58" to a point on the proposed South right-of-way line of Pipestone Way; thence along said proposed Pipestone Way the following (2) courses: 1) East 77.642 feet to a point on a 233.000 foot radius tangent curve to the left, (radius bears North, Chord: North 83°29'15" East 52.853 feet); 2) along the arc of said curve 52.967 feet through a central angle of 13°01'30" to the proposed Northeasterly Corner of Proposed Lot C-103 of the Proposed Daybreak Village 10 North Plat 3 subdivision; thence along said Proposed Lot C-103 the following (2) courses: 1) South 20°00'00" East 151.290 feet; 2) South 36°33'00" East 232.339 feet to the Northerly Right-of-Way of South Jordan Parkway; thence along said South Jordan Parkway South 53°27'06" West 236.542 feet to the point of beginning.

**Property contains 1.795 acres.**

UNIVERSITY OF UTAH  
26-14-426-001

GRANDVILLE AVENUE

VP DAYBREAK  
OPERATIONS, LLC  
26-13-301-003

C-101

C-102

C-103

SOUTH JORDAN PARKWAY

VP DAYBREAK  
OPERATIONS, LLC  
26-13-352-004



SCALE 1"=200'



**PERIGEE**  
CONSULTING  
CIVIL • STRUCTURAL • SURVEY

8000 SOUTH 1300 WEST, SUITE 100  
801522.0004 TEL. 801522.0011 FAX

WEST JORDAN, UT 84088  
WWW.PERIGEECVL.COM

## STORMWATER MAINTENANCE AGREEMENT - V10NP3

PREPARED FOR: DAYBREAK COMMUNITIES

**SUPPLEMENTAL CONTACT INFORMATION  
SHEET FOR  
SOUTH JORDAN CITY  
STORMWATER FACILITIES  
MAINTENANCE  
AGREEMENT**

**CONTACT INFORMATION**

Name (Main Contact): VP Daybreak Operations LLC Phone: 801-685-4230  
Address: 11248 Kestrel Rise Road, Suite 201  
City: South Jordan State: UT Zip: 84009  
Contact Person: Gary Langston Phone: 801-913-7016  
Contact Email: glangston@daybreakcommunities.com

**SECONDARY CONTACT INFORMATION (ASSIGNED/ OR DEPARTMENT)**

Name (Main Contact): VP Daybreak Operations LLC Phone: 801-685-4230  
Address: 11248 Kestrel Rise Road, Suite 201  
City: South Jordan State: UT Zip: 84009  
Contact Person: Zak Larsen Phone: 801-514-5221  
Contact Email: zlarsen@daybreakcommunities.com

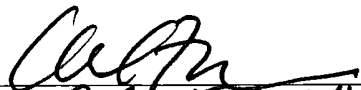
**LENDER'S CONSENT AND SUBORDINATION**

STORMWATER FACILITIES MAINTENANCE AGREEMENT-  
PARCEL I.D. # 26-13-301-003-0000  
VILLAGE 10 NORTH PLAT 3  
(TO CITY OF SOUTH JORDAN)

THE UNDERSIGNED, THE BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST, DATED DECEMBER 19, 2019, ENCUMBERING THE HEREIN DESCRIBED REAL PROPERTY (THE "DEED OF TRUST"), HEREBY EXPRESSLY CONSENTS TO AND JOINS IN THE EXECUTION AND RECORDING OF THAT CERTAIN STORMWATER FACILITIES MAINTENANCE AGREEMENT, DATED AS OF OCTOBER 13, 2020, BY AND BETWEEN VP DAYBREAK OPERATIONS LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND CITY OF SOUTH JORDAN, A UTAH MUNICIPAL CORPORATION (THE "AGREEMENT"), TO WHICH THIS LENDER'S CONSENT AND SUBORDINATION IS ATTACHED.

THE UNDERSIGNED LENDER HEREBY CONSENTS TO THE 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 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

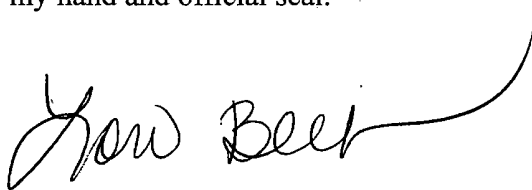
COUNTY OF FRESNO

On November 12, 2020, 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.

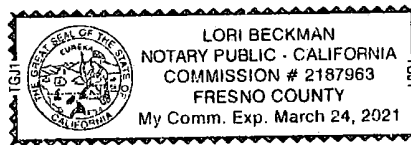
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

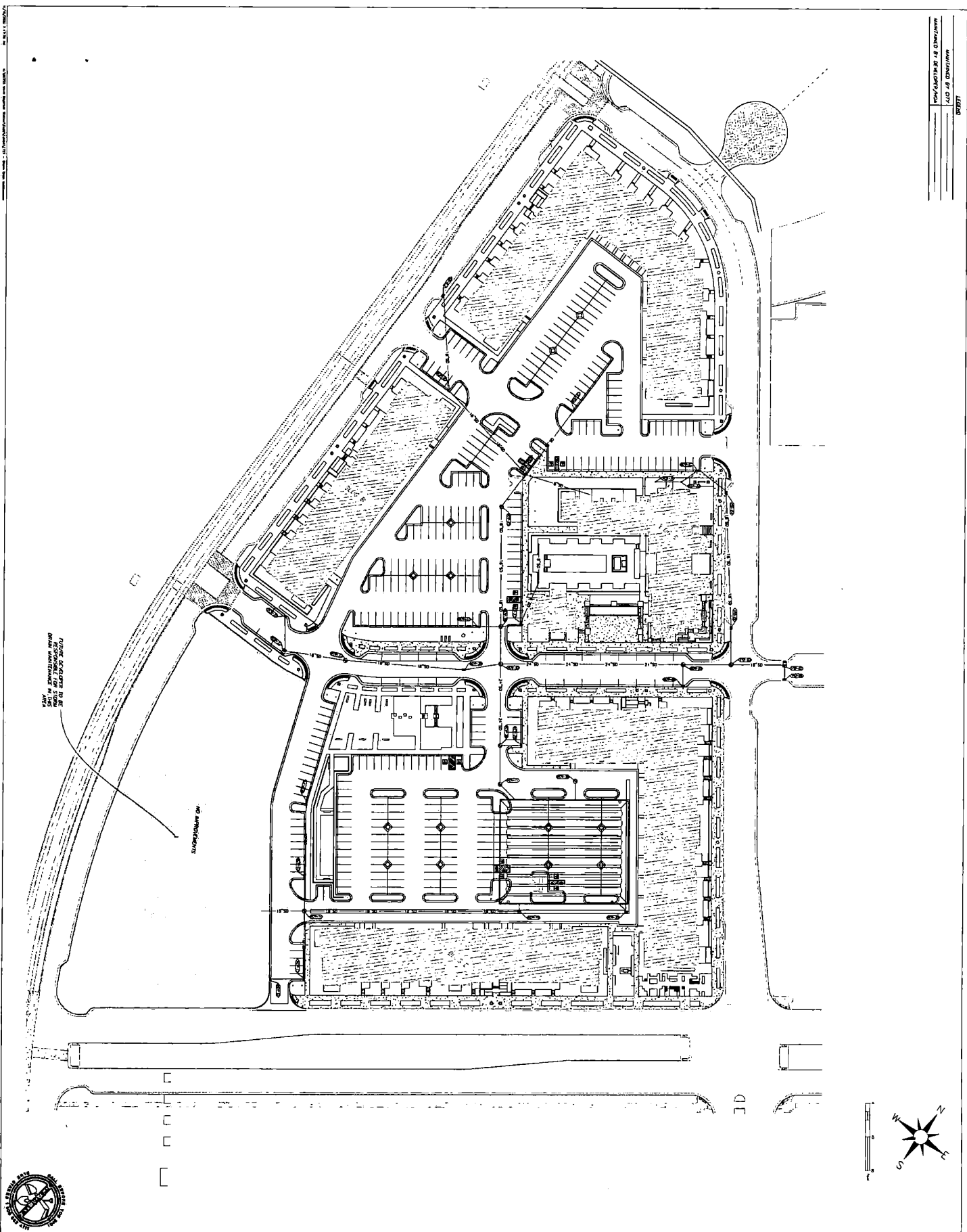
WITNESS my hand and official seal.

Signature



[SEAL]





NOV 14 2010 10:28 AM  
 ALL RIGHTS RESERVED  
 01/11/10



EXHIBIT 07

NO.	DESCRIPTION	DATE	BY

**NOVEL DAYBREAK**  
 STORM DRAIN MAINTENANCE

South Jordan, UT

BK 11095 PG 5290

CAINE CONSULTING

ARISENTE

UNIVERSITY OF UTAH