

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

Kennecott Land Company  
5295 South 300 West, Suite 475  
Murray, Utah 84107  
Attn: Greg Rasmussen

**9113992**  
07/07/2004 02:12 PM 22.00  
Book - 9011 Pg - 3816-3822  
**GARY W. OTT**  
RECORDED, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
BY: EHB, DEPUTY - WI 7 P.

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT ("Agreement") dated June 21 2004, by and between THE LAST HOLDOUT LLC, a Utah limited liability company, whose address is 50 North Lincoln Street in Midvale, Utah 84047 ("Grantor"), and KENNECOTT LAND COMPANY, a Delaware corporation, whose address is 5295 South 300 West, Suite 473, Murray, Utah 84107, its successors and assigns ("Grantee").

A. Grantor owns that certain parcel of real property ("Grantor Property") located in Salt Lake County, Utah and more particularly described on Exhibit A attached hereto and incorporated herein.

B. Grantee (or its affiliates) owns that certain real property ("Grantee Property") adjacent to the Grantor Property, commonly known as a part of Daybreak, the first phase of which is more particularly described on that certain Kennecott Daybreak Phase 1 Subdivision Map recorded on October 9, 2003, as Entry No. 8847908, in Book 2003P, at Page 325 of the Official Records of Salt Lake County.

C. Grantor has agreed to grant Grantee a non-exclusive easement as further described herein.

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

1. **Easement.** Grantor hereby grants to Grantee for the benefit of the Grantee Property, without warranty or representation, a perpetual, non-exclusive easement (the "Easement") in, over, under, upon, and through the property described on Exhibit B attached hereto and incorporated herein by reference (the "Easement Area"), for the limited and sole purpose of constructing and maintaining secondary water lines and appurtenant parts thereof, incident to the development of the Grantee Property.

2. **Easement is Non-Exclusive.** The Easement granted by this Agreement is non-exclusive and does not preclude Grantor or its invitees or guests or successors in interest from using the Easement Area for any purpose, business or otherwise. Grantor or its successors in interest are free to grant to other persons or entities the right to use the Easement Area for any purpose, so long as such use does not interfere with the limited use herein granted to Grantee.

3. **Free Rent.** Grantee is currently the lessor of approximately 3,500 acres of dry farm land that is leased by Grantor (the "Leased Property"). As consideration for the Easement hereby granted, Grantee hereby agrees to allow Grantor to use the Leased Property, rent free for the two year period commencing from the date of this Agreement.

4. **Development of Grantor Property.** Nothing in this Agreement shall prevent or preclude Grantor or its representatives, heirs, successors or assigns from developing all or a portion of the Easement Area, including, but not limited to, rezoning said property. In such event, Grantor reserves the right to use the Easement Area and grant easements across the Easement Area for the benefit of the Grantor Property (and other property owned by Grantor) and the owners and occupants thereof and their invitees and guests, so long as it does not interfere with the rights granted to Grantee under this Agreement.

5. **Term.** The Easement granted pursuant to this Agreement shall run with the land and shall be effective and binding on the parties upon the execution of this Agreement and shall be perpetual in their term, and shall not be extinguished by transfer of any interest in the properties affected by this Agreement.

6. **No Representations and Warranties.** Grantor makes no warranties or representations concerning the Easement hereby granted, or its suitability for the intended use, the cost of maintenance or otherwise.

7. **No Public Dedication.** Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Easement Area to the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purpose expressed herein. In the event Grantor subsequently consents to a public dedication, which consent will not be unreasonably withheld, such public dedication will be memorialized by an amendment to this Agreement, signed by both parties.

8. **Notices.** All notices, statements, demands, approvals, or other communications to be given with regard to this Agreement will be in writing, addressed to the parties at their respective addresses as provided below, and will be delivered in person, or by certified or registered mail, postage prepaid.

If mailed, the notice will be deemed to have been given 48 hours after the date of mailing.

The address of the parties to which such notices are to be sent will be those of which the other party or parties actually receive notice, and until further notice are as follows:

<b><u>Grantee:</u></b>	Kennecott Land Company 5295 South 300 West, Suite 473 Murray, Utah 84107 Attn: Greg Rasmussen
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Grantor:

The Last Holdout, LLC  
50 North Lincoln Street  
Murray, Utah 84107  
Attn: David S. Bastian

with a copy to:

Daniel W. Anderson, Esq.  
Fabian & Clendenin  
215 South State Street, Twelfth Floor  
Salt Lake City, Utah 84111

9. **Severability.** If any clause, sentence, or other portion of the terms, conditions, covenants, and restrictions of this 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 Agreement shall be recorded in the real property records of Salt Lake County, Utah. By executing this Agreement, Grantor consents to Grantee's recordation of this Agreement.

11. **Further Documents.** Grantor will execute any and all further documents, which Grantee reasonably requests to assure Grantee the rights granted in this Agreement.

12. **Amendments.** This Agreement may only be amended by a written document signed by each of the parties.

13. **Applicable Law.** This 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

Grantor:

THE LAST HOLDOUT LLC,  
a Utah limited liability company

By Dave S. Bastian  
Dave S. Bastian  
Its: Manager

Grantee:

KENNECOTT LAND COMPANY, a  
Delaware corporation

By: John T. Potts  
Name: John T. Potts  
Its: Chief of Operations  
Vice President Development

## ACKNOWLEDGMENT

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

On June 29, 2004, personally appeared before me, a Notary Public, David S. Bastian, the Manager of **THE LAST HOLDOUT LLC**, a Utah 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 said limited liability company and that said company executed the same.

WITNESS my hand and official Seal.



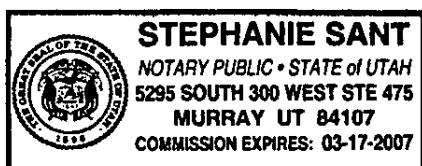
Christy McCarthy  
Notary Public in and for said State

My commission expires: 1-13-07

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

On this 21 day of June, 2004, personally appeared before me

JOHN T. POTTS, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn, did say that he/she is the CHIEF OF OPERATIONS, VICE PRESIDENT DEVELOPMENT of **KENNECOTT LAND COMPANY**, a Delaware corporation, and that said document was signed by him/her in behalf of said corporation by authority of its bylaws, and said acknowledged to me that said corporation executed the same.



  
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Notary Public

**EXHIBIT A**

**GRANTOR PROPERTY LEGAL DESCRIPTION**

Salt Lake County Parcel No. 26-14-300-004

The South 80 rods of Section 14, Township 3 South, Range 2 West, Salt Lake Meridian;  
less tracts deeded to Utah Power & Light Company.

Containing 151.05 acres, more or less.

## **EXHIBIT B**

### **EASEMENT AREA**

#### **30-foot Wide Secondary Water Line Easement**

A perpetual non-exclusive easement upon part of a tract of property located in Salt Lake County known as Parcel No. 26-14-300-004, located in the SE1/4 of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian, for the purpose of constructing and maintaining a secondary water line and appurtenant parts thereof, incident to the DAYBREAK Development. The boundaries of said perpetual easement are described as follows:

Beginning at a point that is North 89°58'54" East 1891.67 along the section line from the South Quarter Corner of said Section 14; and running thence North 37°24'22" West 40.25 feet; thence North 37°25'52" West 591.15 feet; thence North 37°56'16" West 512.24 feet; thence North 37°10'34" West 53.81 feet; thence North 00°19'26" East 365.72 feet to the north boundary line of said entire tract; thence along said north boundary South 89°51'12" East 30.00 feet; thence South 00°19'26" West 355.63 feet; thence South 37°10'34" East 43.42 feet; thence South 37°56'16" East 512.17 feet; thence South 37°25'52" East 591.28 feet; thence South 37°24'22" East 63.19 feet to the south boundary of said entire tract; thence along said south boundary South 89°58'54" West 37.76 feet to the point of beginning. The above described easement contains 1.08 acres or 46,933 square feet.