

13023198  
7/3/2019 2:40:00 PM \$40.00  
Book - 10799 Pg - 8332-8345  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
OLD REPUBLIC TITLE DRAPER/OREM  
BY: eCASH, DEPUTY - EF 14 P.

Recording Requested by and  
When Recorded, Mail To:

VP DAYBREAK OPERATIONS LLC  
11248 S. Kestrel Rise Road, Suite 201  
South Jordan, Utah 84009  
Attention: Gary Langston

Tax Parcel Number(s): 26-24-400-025 & 26-24-400-026

18332716 HM

## SEWER MAIN AND WATER RETENTION EASEMENT AGREEMENT

**THIS SEWER MAIN AND WATER RETENTION EASEMENT AGREEMENT** (this “**Easement Agreement**”) is made this 3<sup>rd</sup> day of July, 2019, by and between **THE UNIVERSITY OF UTAH**, a body politic and corporate of the State of Utah (together with its successors and/or assigns, “**Grantor**”), **VP DAYBREAK OPERATIONS LLC**, a Delaware limited liability company (together with its successors and/or assigns, “**VPDBO**”), and **GARDNER-DAYBREAK OFFICE 1, L.C.**, a Utah limited liability company (together with its successors and/or assigns, “**Gardner**”) (VPDBO and Gardner are sometimes referred to collectively herein as “**Grantee**”).

### RECITALS

A. Grantor is the record owner of certain real property located in Salt Lake County, Utah, as more fully described on Exhibit A attached hereto (the “**Grantor Property**”).

B. VP Daybreak Devco LLC, a Delaware limited liability company (“**VPDBD**”), is the record owner of certain land located adjacent to the Grantor Property, as more fully described on Exhibit B attached hereto (the “**Daybreak Property**”). VPDBD has contracted VPDBO to construct certain improvements for the Daybreak Property.

C. VPDBO desires to obtain a non-exclusive easement and right of use in, through, over, under, across and within certain areas of the Grantor Property for the purpose of constructing a sewer main (the “**Sewer Main Easement**”) that will serve certain improvements located on the Daybreak Property.

D. Grantor and Gardner have entered into that certain Ground Lease Agreement dated as of [ July 2, 2019] (the “**Ground Lease**”), whereby Gardner has leased the surface of the Grantor Property in order to develop the Grantor Property and construct certain improvements thereon.

E. In connection with its development of the Grantor Property, Gardner desires to obtain a non-exclusive easement and right of use in, through, over, under, across and within certain areas of the Grantor Property for the purpose of constructing and maintaining a storm drain gallery and dry well basin (the “**Water Retention Facilities Easement**”) that will accommodate water

discharged from an adjacent public right of way, the Grantor Property, and the Daybreak Property.

F. Grantor desires to grant such easements on the terms and conditions set forth herein.

## **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby declare, covenant and agree as follows:

**1. Grant of Sewer Main Easement.** In connection with its development of the Daybreak Property, VPDBO will construct and install within a twenty (20) foot wide easement area a sewer main pipeline, valves, valve boxes and other sewer transmission and distribution structures and facilities for the express purpose of benefitting a townhome subdivision to be constructed on the Daybreak Property (collectively, the “**Sewer Facilities**”), the approximate location of which is single-hatched on Exhibit C attached hereto and incorporated herein (the “**Sewer Main Easement Area**”). The Sewer Facilities shall be constructed in accordance with Sewer Plans, which VPDBO will submit to Grantor and Gardner for their approval, which approval will not be unreasonably withheld, conditioned or delayed (the “**Sewer Plans**”) Grantor hereby grants, establishes and conveys for the benefit of VPDBO, South Valley Sewer District (“**SVSD**”), and the Daybreak Property a perpetual, non-exclusive easement and right of use, in, through, on, over, under, across and within the Sewer Main Easement Area.

**1.1 Temporary Construction Easement to VPDBO.** VPDBO shall have the temporary, non-exclusive use of the Sewer Main Easement Area to construct the Sewer Facilities, at its sole cost and expense. Without limitation, the Sewer Main Easement allows VPDBO the following rights with respect to the Sewer Main Easement Area: to construct and install the Sewer Facilities and any other equipment necessary to provide water or sewer service to the Daybreak Property; to operate equipment; to grade the Sewer Main Easement Area; and to perform other work reasonably necessary to construct and install the Sewer Facilities; provided, VPDBO will not stage any construction equipment or materials on Grantor’s Property without the consent of Gardner. In addition, VPDBO shall have the right to enter and cross such portions of Grantor’s Property as may be reasonably necessary in order to access the Sewer Main Easement Area for any purposes related to purposes set forth herein. Notwithstanding the foregoing, VPDBO shall coordinate with Grantor and Gardner on the final location of the Sewer Facilities and the schedule of associated work, such work shall be conducted so as to not unreasonably interfere with the construction of improvements on Grantor Property or, if applicable, with any business, tenants, subtenants, or invitees of the Grantor Property.

**1.2 Quality of Work.** All work done by VPDBO shall be done in a good and workmanlike manner, free and clear of any and all liens, and in compliance with all matters of record and all applicable laws and the Sewer Plans. Such work may commence on or before June 15, 2019 and shall be completed no later than September 30, 2019.

**1.3** Restoration of Property. To the extent required as a direct result of VPDBO exercise of the rights granted herein, VPDBO hereby agrees to restore any portion of Grantor Property, including, without limitation, all sidewalks, utility lines, curb and gutter, to substantially the same physical condition that existed at the time Grantee and its contractors first entered upon Grantor Property.

**1.4** Insurance. During the exercise of its rights under this Section 1, VPDBO shall, at its sole cost and expense, keep in full force and effect, or cause its contractor(s) to keep in full force and effect, a policy of Commercial General Liability Insurance with limits of not less than \$2,000,000 each occurrence and \$5,000,000 in the aggregate (which amounts may be satisfied through an umbrella coverage policy). Such policy shall name Grantor and Gardner as an additional insured and shall provide that coverage for the additional insured is primary and not contributory with other insurance. VPDBO shall at all times during the term of this Agreement when it is accessing Grantor's Property provide Grantor and Gardner with evidence of current insurance coverage.

**1.5** Indemnity. VPDBO agrees to indemnify, defend and hold harmless Grantor, Gardner, and each of their respective officers, employees, agents, contractors, tenants, subtenants and invitees from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property to the extent caused from the exercise of the rights under this Section 1 by VPDBO, its agents, contractors or employees, or arising out of the performance or nonperformance of any of the obligations of VPDBO, its agents, contractors or employees set forth in this Easement Agreement.

**1.6** Cooperation. VPDBO, Gardner and Grantor shall cause their respective contractors to cooperate and coordinate with regard to use of the Sewer Main Easement Areas, provided, in the event of a conflict of the use of the area, Gardner's rights with respect to such area shall take priority. Without limiting the generality of the foregoing, Gardner may by delivering notice to VPDBO require VPDBO to temporarily suspend the use of the Sewer Main Easement Areas if Gardner's construction activities on the Grantor Property require the exclusive use of the Sewer Main Easement Area.

**1.7** Perpetual Easement to South Valley Sewer District. Prior to commencing construction of the Sewer Facilities, Grantor and SVSD will enter into an agreement granting to a SVSD perpetual rights-of-way and easements to maintain, operate, repair, inspect, protect, install, remove and replace the Sewer Facilities, which will be in form and substance acceptable to SVSD, Grantor and Gardner.

**2. Grant of Stormwater Retention Facilities Easement.** In connection with its development of the Grantor Property, Gardner intends to construct a temporary storm drain basin which will be relocated and combined with a permanent underground storm drain gallery and dry well (collectively, the "**Stormwater Retention Facilities**"), the approximate location of which is cross-hatched on Exhibit C attached hereto and incorporated herein (the "**Stormwater Retention**

**Facilities Easement Area”**) (The Stormwater Retention Facilities Easement Area and the Sewer Main Easement Area are sometimes referred to collectively herein as the “**Easement Areas**”). The Stormwater Retention Facilities will be designed and sized to satisfy the water retention needs for development of the Grantor Property, the Daybreak Property, and the adjacent public right of way. Grantor hereby grants, establishes and conveys to Gardner a perpetual, non-exclusive easement and right of use, in, through, on, over, under, across and within the Stormwater Retention Facilities Easement Area for the purpose of constructing, installing and maintaining the Stormwater Retention Facilities. Without limitation, the Stormwater Retention Facilities Easement allows Gardner the following rights with respect to the Stormwater Retention Facilities Easement Area: to construct, install, upsize, improve, operate, maintain, repair and replace the Stormwater Retention Facilities; to operate and store equipment; to grade the Stormwater Retention Facilities Easement Area; to stockpile or store construction materials and supplies; and to perform other work reasonably necessary to construct, maintain, repair or replace the Stormwater Retention Facilities. Notwithstanding the foregoing, Gardner shall coordinate with Grantor and VPDBO on the final location of the Stormwater Retention Facilities and the schedule of associated work. On or around the date hereof, VPDBO and Gardner shall enter into a separate agreement whereby the parties shall agree to allocate the costs to design and construct the Stormwater Retention Facilities (excluding landscaping) based on a pro rata share of the parties’ usage of the Stormwater Retention Facilities. The construction, operation, maintenance, restoration, insurance, and indemnity obligations applicable to the Improvements under the Ground Lease shall apply with respect to the Stormwater Retention Facilities, each of which obligations are incorporated herein by reference.

3. **Termination.** This Easement Agreement shall automatically terminate upon the first to occur of either: (i) Grantee’s decision that it will no longer use the Easement Area(s) and gives Grantor written notice thereof; or (ii) SVSD or Grantee’s abandonment or removal of the Sewer Facilities or the Stormwater Retention Facilities. Upon the occurrence of such event, Grantee will execute and record an instrument terminating this Easement Agreement.

4. **Access; Release.** Subject to the provisions set forth in Section 1 and Section 2 above, Grantee shall have non-exclusive use of the Easement Areas for the purposes set forth in this Easement Agreement; provided, however, that the Sewer Facilities and Stormwater Retention Facilities must be designed and located in a manner that reasonably limits and avoids material adverse effects on the development of the Grantor Property. Grantee and its invitees, guests, agents, employees, consultants, contractors and subcontractors (collectively, “**Grantee’s Agents**”) shall have the right to enter upon the Easement Areas for the purposes permitted by this Easement Agreement. Grantee and Grantee’s Agents will enter upon the Easement Areas from existing roads.

5. **Run with the Land; Successors and Assigns.** All of the provisions of this Easement Agreement, including the benefits and burdens, shall touch, concern and run with the Easement Areas and be binding upon and inure to the benefit of the heirs, assigns, successors, tenants and transferees of Grantor and Grantee. The easement rights conveyed to Grantee herein may be exercised by any successor or assignee of Grantee.

6. **Attorneys' Fees.** If any party institutes any action or proceeding against any other party relating to the provisions of this Easement Agreement, or any default hereunder, the unsuccessful party in such action or proceeding will reimburse the successful party therein for the reasonable out of pocket expenses of attorneys' fees and disbursements incurred by the successful party.

7. **Notices.** All notices required or permitted under this Easement Agreement shall be in writing and shall be served on the parties at the addresses or email addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by electronic mail. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

If to Grantor: University of Utah – Real Estate Administration  
505 Wakara Way, Suite 210  
Salt Lake City, Utah 84108  
Attention: Jonathon Bates

If to VPDBO: VP Daybreak Operations LLC  
11248 Kestrel Rise Road, Suite 201  
South Jordan, Utah 84009  
Attention: Gary Langston

With copies to: Ward | Molloy, P.C.  
68 South Main Street, Suite 800  
Salt Lake City, Utah 84109  
Attention: Curtis R. Ward

If to Gardner: Gardner-Daybreak Office 1, L.C.  
201 Main Street, Suite 2000  
Salt Lake City, UT 84111  
Attention: Christian Gardner

With copies to: Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Attention: Lamont R. Richardson

8. **Counterparts.** This Easement Agreement may be executed in any number of identical counterparts which may be exchanged by traditional or electronic means. Each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement.

9. **Further Assurances.** The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Easement Agreement.

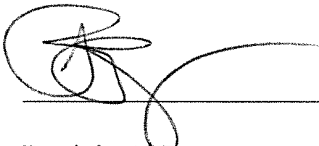
10. **Miscellaneous.** This Easement Agreement (including all attached Exhibits) constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Easement Agreement shall be binding unless in writing and executed by the parties hereto. This Easement Agreement shall be construed in accordance with and governed by the laws of the State of Utah. No waiver of any of the provisions of this Easement Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. The headings of this Easement Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. The Recitals set forth above are incorporated into this Easement Agreement by reference. If any provision of this Easement Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Easement Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect. This Easement Agreement is the result of negotiations among the parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Each party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Easement Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed this Easement or any earlier draft of the same.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned Grantor, VPBDO and Gardner have caused this Easement Agreement to be executed as of the day and year first written above.

**GRANTOR:**

**THE UNIVERSITY OF UTAH,**  
a body politic and corporate of the State of  
Utah

By:   
Name: Patricia A. Ross

Title: Chief Strategy Officer

**VPBDO:**

**VP DAYBREAK OPERATIONS LLC,**  
a Delaware limited liability company


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

By: \_\_\_\_\_  
Name: Ty McCutcheon  
Its: President & CEO

**GARDNER:**

**GARDNER-DAYBREAK OFFICE 1, L.C.,**  
a Utah limited liability company, by its  
manager

KC Gardner Company, L.C., a Utah limited  
liability company

By:   
Name: Christian Gardner  
Title: Manager

[ACKNOWLEDGMENTS FOLLOW]

IN WITNESS WHEREOF, the undersigned Grantor, VPBDO and Gardner have caused this Easement Agreement to be executed as of the day and year first written above.

**GRANTOR:**

**THE UNIVERSITY OF UTAH,**  
a body politic and corporate of the State of  
Utah

By: \_\_\_\_\_


Name: Patricia A. Ross

Title: Chief Strategy Officer

**VPBDO:**

**VP DAYBREAK OPERATIONS LLC,**  
a Delaware limited liability company


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

By:   
Name: Ty McCutcheon  
Its: President & CEO

**GARDNER:**

**GARDNER-DAYBREAK OFFICE 1, L.C.,**  
a Utah limited liability company, by its  
manager

KC Gardner Company, L.C., a Utah limited  
liability company

By:   
Name: Christian Gardner  
Title: Manager

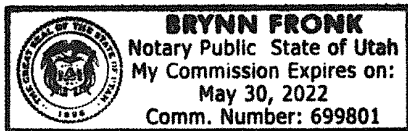
[ACKNOWLEDGMENTS FOLLOW]



**ACKNOWLEDGMENTS**

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

The foregoing instrument was acknowledged before me this 2nd day of July, 2019, by Patricia A. Ross, the Chief Strategy Officer of the University of Utah, a body politic and corporate of the State of Utah.



[Signature]  
Notary Public  
Residing at: Salt Lake City, UT  
My commission expires: 5/30/22

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

On \_\_\_\_\_, 2019, personally appeared before me, a Notary Public, Ty McCutcheon, the President & 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.


\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE]

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

The foregoing instrument was acknowledged before me this 22 day of April, 2019, by Christian Gardner, a manager of KC Gardner Company, L.C., a Utah limited liability company, the manager of Gardner-Daybreak Office 1, L.C., a Utah limited liability company.



  
\_\_\_\_\_  
Notary Public  
Residing at: DAVIS COUNTY, UT  
My commission expires: 10.16.20

**ACKNOWLEDGMENTS**

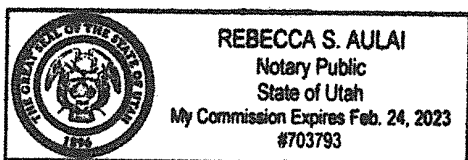
STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Patricia A. Ross, the Chief Strategy Officer of the University of Utah, a body politic and corporate of the State of Utah.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

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

On June 28, 2019, personally appeared before me, a Notary Public, Ty McCutcheon, the President & 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  
Residing at: Salt Lake Co.  
My commission expires: 2/24/23

[ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE]

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot C-101, DAYBREAK SOUTH STATION PLAT 2 SUBDIVISION, amending Lot T4 of the Kennecott Master Subdivision #1 Amended and also amending Lot O-103 of the Kennecott Daybreak Plat 4 Subdivision, recorded April 2, 2019 as Entry No. 12961128 in Book 2019P of Plats at Page 110, on file in the office of the Salt Lake County Recorder, State of Utah

The following is for informational purposes only:  
Tax ID No. 26-24-411-001 & 26-24-411-003

**Exhibit B**

**Description of the Daybreak Property**

Lots M-101 and M-102, DAYBREAK SOUTH STATION PLAT 2 AMENDING LOT T4 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED AND ALSO AMENDING LOT O-103 OF THE KENNECOTT DAYBREAK PLAT 4 SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder's Office.

Exhibit C

