

H

WHEN RECORDED MAIL TO:

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

13574921  
02/23/2021 08:19 AM \$0.00  
Book - 11123 Pg - 2645-2658  
RASHELLE HOBBS  
RECORDER, SALT LAKE COUNTY, UTAH  
JORDAN VALLEY WATER  
CONSERVANCY DISTRICT  
8215 S 1300 W  
WEST JORDAN UT 84088  
BY: CBP, DEPUTY - MA 14 P.

[PARCEL ID #26-24-354-001]

ENCROACHMENT AGREEMENT

This Encroachment Agreement is made as of February 12, <sup>2021</sup>~~2020~~, between the Jordan Valley Water Conservancy District, a local district organized under the laws of the State of Utah ("District"), and VP Daybreak Operations LLC, a Delaware limited liability company and South Jordan City, a municipality organized under the laws of the State of Utah (collectively, the "Applicant").

RECITALS:

A. The District holds an easement and right-of-way (collectively referred to as the "Easement/Right-of-Way," and described on attached Exhibit A) under authority of a written agreement, and it utilizes, or will utilize, them for constructing, installing, operating, maintaining, inspecting, repairing and/or replacing a water pipeline and related facilities;

B. The Applicant has requested permission to encroach upon the Easement/Right-of-Way of the District in a manner more particularly specified in this Agreement; and,

C. The District is willing to agree to the encroachment, upon the terms and conditions set forth in this Agreement.

TERMS:

The parties agree:

1. (a) The District hereby agrees to encroachment upon the Easement/Right-of-Way by the Applicant, but only to this extent and for this purpose: The Applicant may install, operate, and maintain one (1) eight inch (8") C-900 PVC culinary waterline (referred to as the "Encroachment Improvements"), as shown on attached Exhibit B.

(b) By entering into this Agreement, the District is giving its consent for the Applicant to encroach upon the Easement/Right-of-Way held by the District. However, the District does not hold fee title to the real property within the Easement/Right-of-Way. Accordingly, the District does not warrant title to the underlying property, nor does the District represent or warrant that the Applicant's encroachment on or across the District's Easement/Right-of-Way: (i) is suitable for the Applicant's purposes; (ii) is allowed by the terms or conditions of the District's Easement/Right-of-Way agreement with those who hold fee title to the underlying real property; and, (iii) does not require the consent of others to encroach upon the District's Easement/Right-of-Way, which consent may be withheld for any or no reason.

(c) This consent for encroachment is granted by the District only to the extent of, and with no actual or implied diminishment of, the District's rights and interests in the Easement/Right-of-Way and without any express or implied warranty of any kind.

2. The Applicant shall comply with the District's Guidelines for Encroachment upon the Easement/Right-of-Way as set forth in attached Exhibit C.

3. The Applicant and its contractor(s) and agent(s) shall perform all work within the Easement/Right-of-Way in accordance with the plans, drawings, guidelines, and/or maps set forth in Exhibit B, and in a manner satisfactory to the District.

4. If the installation, construction, operation, maintenance, repair, replacement or inspection of any structures, equipment, facilities or pipeline(s) of the District located, or to be located, in the Easement/Right-of-Way should be made more expensive by reason of the Encroachment Improvements or the activities of the Applicant, the Applicant shall pay to the District the full amount of such additional expense upon receipt of an itemized statement. The District has the right to remove any/all of the Encroachment Improvements without any liability to the Applicant for removal, damages, or any cost or expense, and the Applicant, at its sole expense and labor, may replace and/or re-install them within the Easement/Right-of-Way consistent with the terms of this Agreement.

5. The Applicant shall construct, install, use, maintain, repair and replace its Encroachment Improvements in such a manner as not to (i) damage or obstruct the District's structures, equipment, facilities and/or pipelines; or, (ii) interfere with the installation, construction, operation, maintenance, inspection, repair or replacement of the District's structures, equipment, facilities and pipelines.

6. In consideration of the District agreeing to encroachment upon the Easement/Right-of-Way, the Applicant shall:

(a) Indemnify, defend and hold harmless the District, its agents, employees, officers, trustees, assigns and successors from and against all claims, demands, causes of action, liability or judgment of any kind, including attorney's fees and costs, which directly or indirectly arise from the negligence of the Applicant [or its agent(s) or contractor(s)], or from the existence, construction, installation, operation, maintenance, repair, replacement, condition, use or presence of the Encroachment Improvements within the Easement/Right-of-Way;

(b) Release the District and its agents, employees, officers, trustees, assigns and successors, from liability for all loss or damage of every description or kind whatsoever which may result to the Applicant from the construction, installation, operation, maintenance, inspection, repair and replacement of District structures, equipment, pipelines and facilities within the Easement/Right-of-Way, provided the loss or damage was not due solely to the negligence of the District; and,

(c) Hereby acknowledge that it accesses and uses the Easement/Right-of-Way at the Applicant's risk and hazard and, without limiting the generality of the foregoing, the Applicant agrees that the District shall not be responsible for any harm, damage or injury that may be suffered or incurred by the Applicant, its agents, employees, contractors, licensees, guests or invitees associated with the use or condition of the Easement/Right-of-Way, except to the extent the harm, damage or injury was caused by the reckless or intentional misconduct of the District.

7. The Applicant and its contractor(s) and agent(s) shall comply with all applicable laws, ordinances, rules, and regulations enacted or promulgated by any federal, state, or local governmental body having jurisdiction over the Encroachment Improvements and/or the Easement/Right-of-Way.

8. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties; provided, however, that no such successor or assign of the Applicant shall have the right to use, alter, or modify the Encroachment Improvements in a manner which will increase the expense or burden to the District of the Applicant's encroachment on the Easement/Right-of-Way.

9. (a) This Agreement, and the encroachment granted to the Applicant by this Agreement, shall terminate without further notice or condition if (i) the Applicant does not continuously use the Encroachment Improvements as intended by this Agreement for any twelve (12) month period; or, (ii) the Applicant breaches this Agreement.

(b) In the event of termination, the Applicant, at its expense, shall immediately remove the Encroachment Improvements from the Easement/Right-of-Way and restore the surface of the Easement/Right-of-Way to its pre-encroachment condition.

10. (a) The Applicant may assign this Agreement with the prior written consent of the District, which consent shall not be unreasonably withheld.

(b) The District may assign this Agreement.

11. This Agreement may be amended only by written instrument executed by all parties.

12. All of the grants, covenants, terms, provisions and conditions in this Agreement shall run with the land and shall be binding upon and inure to the benefit of the successors, assigns, heirs, executors and administrators of the parties.

13. This Agreement, including exhibits, constitutes the entire agreement of the parties and supersedes all prior understandings, representations or agreements of the parties regarding its subject matter.

14. Each individual executing this Agreement does hereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities identified.

15. The parties shall perform those acts and/or sign all documents required by this Agreement and which may be reasonably necessary to effectuate the terms of this Agreement.

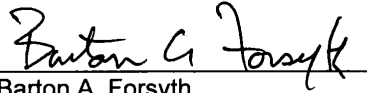
16. Any party may record this Agreement.

[SIGNATURE PAGE FOLLOWS]

"District":

Jordan Valley Water Conservancy District

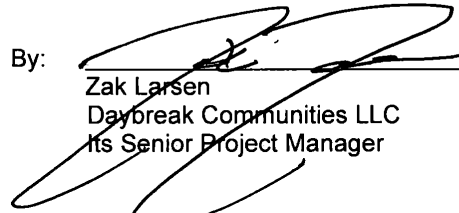
Dated: 2-12-2021

By:   
Barton A. Forsyth  
Its General Manager/CEO

"The Applicant":

VP Daybreak Operations LLC

Dated: 1/1/2021

By:   
Zak Larsen  
Daybreak Communities LLC  
Its Senior Project Manager

South Jordan City

Dated: 1/28/2021

By:   
Chris Clinger  
Its Senior Engineer

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

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of February, ~~2020~~<sub>2021</sub>, by Barton A. Forsyth as General Manager/CEO of the Jordan Valley Water Conservancy District.

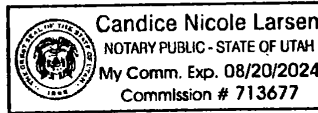
Beverly M Parry  
Notary Public



STATE OF UTAH )  
:ss.  
COUNTY OF salt lake )

The foregoing instrument was acknowledged before me this 1 day of January, ~~2020~~<sub>2021</sub>, by Zak Larsen as Senior Project Manager of Daybreak Communities LLC.

Candice Nicole Larsen  
Notary Public



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

The foregoing instrument was acknowledged before me this 28 day of January, ~~2020~~<sub>2021</sub> em, by Chris Clinger as Senior Engineer of South Jordan City.

Rebecca Messer  
Notary Public





EXHIBIT A

DESCRIPTION OF DISTRICT'S EASEMENT/RIGHT-OF-WAY

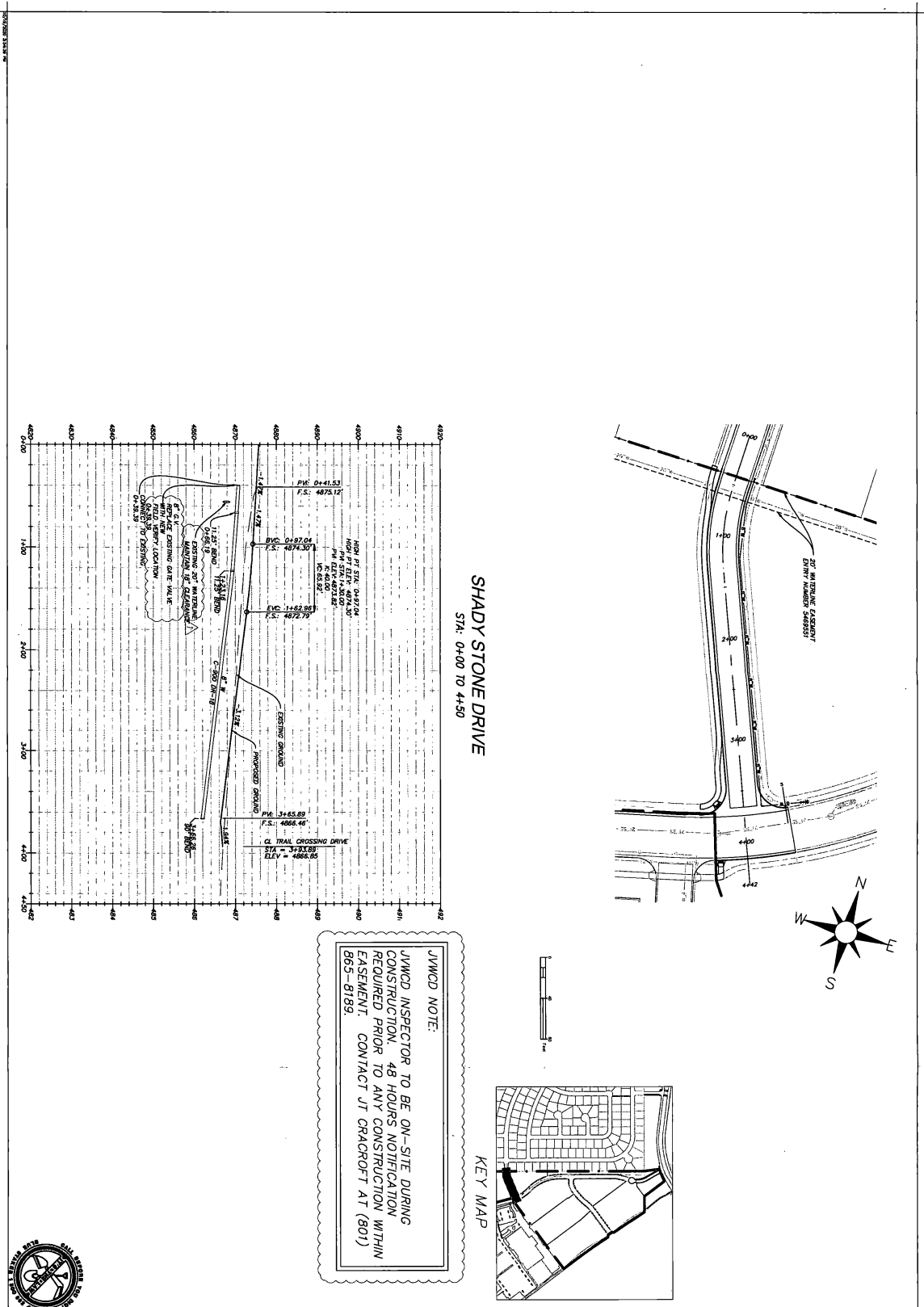
The District's easement and right-of-way includes the following one (1) parcel of real property 20 feet in width, lying 10 feet on each side of the hereinafter described center line:

A twenty (20.0') foot wide strip of land whose center line begins at a point easterly 10.0 feet from the West Quarter corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian; thence South 0°11'37" West 2642.13 feet more or less, parallel to the section line. The area contained within the described permanent easement is 52, 843 square feet (1.2131 acres).

EXHIBIT B  
ENCROACHMENT IMPROVEMENTS

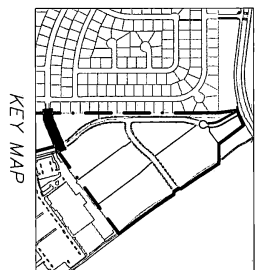
ENCROACHMENT\_VP DAYBREAK & SJ CITY\_K3348\_MLG.doc

BK 11123 PG 2654



**SHADY STONE DRIVE**  
STA: 0+00 TO 4+50

**JVMCD NOTE:**  
JVMCD INSPECTOR TO BE ON-SITE DURING CONSTRUCTION. 48 HOURS NOTIFICATION REQUIRED PRIOR TO ANY CONSTRUCTION WITHIN EASEMENT. CONTACT JT GRACROFT AT (801) 865-8189.



SHEET NUMBER  
17  
OF 21 SHEETS  
DATE: 10/20/19  
PROJECT: P1702

**DAYBREAK VILLAGE 7A PLAT 03**  
PLAN AND PROFILE - SHADY STONE DRIVE

DESIGNED BY: DC	DATE: OCT 2019	REV
DRAWN BY: SRS	DATE: JTA	
PROJECT NO: 00723		
TITLE: DAYBREAK VILLAGE 7A PLAT 03		
DATE: 10/20/19		
BY: SRS		
CHECKED BY: JTA		
DATE: 10/20/19		

NO.	DESCRIPTION	DATE	NAME

**SOUTH JORDAN CITY**



**PERIGEE CONSULTING**  
CIVIL - STRUCTURAL - SURVEY

888 SOUTH 1300 WEST, SUITE 100  
SALT LAKE CITY, UT 84119  
WWW.PERIGEECONSULTING.COM

## EXHIBIT C

### GUIDELINES FOR ENCROACHMENT

A. Surface structures that may be constructed within the District's Easement/Right-of-Way, but only upon the prior written consent of the District, include asphalt roadway, with no utilities within roadway; non-reinforced parking lot, curb, gutter, sidewalk, walkway and driveway; and non-masonry fence with gated opening. However, where the District's facilities or pipeline(s) has specific maximum and minimum cover designations, the special requirements for structures crossing over the pipeline(s) shall be obtained from the District for the maximum allowable external loading or minimum cover. It is understood that all surface structures shall be analyzed and considered by the District on an individual basis.

B. Structures that may not be constructed in, on, over, across or along the District's Easement/Right-of-Way include, but are not limited to, permanent structures such as footings, foundations, masonry block walls, buildings, garages, decks, carports, trailers, swimming pools and athletic courts, as designated and characterized by the District.

C. No trees are allowed within the Easement/Right-of-Way.

D. All changes in ground surfaces or elevations within the Easement/Right-of-Way are considered encroaching structures. Earthfills and cuts on adjacent property shall not encroach onto the Easement/Right-of-Way without the prior written consent of the District.

E. Existing gravity drainage of the Easement/Right-of-Way shall be maintained. No new concentration of surface or subsurface drainage may be directed onto, under or

across the Easement/Right-of-Way without adequate provision for removal of drainage water or adequate protection of the Easement/Right-of-Way.

F. Prior to any construction within the Easement/Right-of-Way, an excavation must be made to determine the location of existing District facilities and pipeline(s). The excavation shall be made by or in the presence of the District, at the Applicant's expense.

G. All construction activities within the Easement/Right-of-Way shall be limited to construction of the Encroachment Improvements previously approved by the District, and the Encroachment Improvements shall be constructed strictly in accordance with the plans and specifications previously approved by the District.

H. The ground surfaces or elevations within the Easement/Right-of-Way shall be restored to the condition, elevation and contour which existed prior to construction or as shown on the plans, drawings, guidelines and/or maps set forth in Exhibit B.

I. The Applicant shall notify the District upon completion of construction and shall, at its expense, provide the District with one (1) copy of as-built drawings showing the actual location of the Encroachment Improvements within the Easement/Right-of-Way.

J. Following completion of construction of the Encroachment Improvements, and except in case of emergency repairs, the Applicant shall give the District at least ten (10) days written notice before entering upon the Easement/Right-of-Way for the purpose of accessing, maintaining, inspecting, repairing, or removing the Encroachment Improvements.

K. If unusual conditions are proposed for the Encroachment Improvements or unusual field conditions within the Easement/Right-of-Way are encountered, as designated and characterized by the District, the District may, at its discretion, impose conditions or

requirements which are different from or more stringent than those prescribed in these Guidelines.

L. All backfill material within the Easement/Right-of-Way shall be compacted to ninety percent (90%) of maximum density, unless otherwise allowed or required by the District. Mechanical compaction shall not be allowed within six inches (6") of any of the District's facilities and pipeline(s). Mechanical compaction using heavy equipment, as designated and characterized by the District, shall not be allowed over District facilities and pipeline(s) or within eighteen inches (18") horizontally.

M. Backfilling of any excavation or around any facilities or pipeline(s) within the Easement/Right-of-Way shall be compacted in layers not exceeding six inches (6") thick to the following requirements: (1) cohesive soils to 90 percent (90%) maximum density specified by ASTM Part 19, D-698, method A; (2) noncohesive soils to 70 percent (70%) relative density specified by ANSI/ASTM Part 19, d-2049, par. 7.1.2, wet method.

N. To enable the District to locate non-metallic Encroachment Improvements below ground level, the Applicant shall install a "locator wire" as required by District specifications.

O. The Applicant shall notify the District at least seventy-two (72) hours in advance of commencing initial construction of the Encroachment Improvements in order to permit inspection by the District.

P. No encroachment shall involve the use or storage of hazardous material(s), as designated and characterized by the District.