

E 2330233 B 4437 P 426-436  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
12/27/2007 10:43 AM  
FEE \$32.00 Pgs: 11  
DEP RT REC'D FOR PACIFICORP

When recorded, return to:  
PacifiCorp  
Real Estate Services  
Attn: Lisa Louder / blm  
1407 West North Temple, Suite 110  
Salt Lake City, Utah 84116

NW-27-5N-2W

14-001-0031,0032

**ACCESS AND PARKING EASEMENT AGREEMENT**

This Access and Parking Easement Agreement (the "Agreement") is entered into as of this 14<sup>th</sup> day of December 2007, by and between COUNTRY PINES PHASE II, LLC ("Grantee") and PACIFICORP, an Oregon corporation, d.b.a. Rocky Mountain Power ("Grantor").

**RECITALS**

A. Grantor owns that certain parcel of property used in connection with its electric utility operations, including the use and operation of a substation, transmission lines and other equipment and facilities in connection therewith, located in Davis County, Utah and more particularly described and/or depicted on **Exhibit "A,"** attached hereto and incorporated herein by reference ("**Grantor's Parcel**").

B. Grantee owns that certain parcel of real property used in connection with its assisted living center and retirement community and located adjacent to Grantor's Parcel, and more particularly described and/or depicted in **Exhibit "B,"** attached hereto and incorporated herein by reference ("**Grantee's Parcel**").

C. Grantee desires to obtain an easement from Grantor over and across a portion of Grantor's Parcel for access to and from Grantee's Parcel, and for parking in connection with Grantee's assisted living center and retirement community.

D. As additional consideration for Grantor's grant of the easement to Grantee herein, Grantee has agreed to maintain a portion of Grantor's Parcel outside the Easement Area (described below) (the "**Maintenance Property**"). The Maintenance Property is more particularly described and/or depicted in **Exhibit "C,"** attached hereto and incorporated herein by reference.

**TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of Grantee's payment of Ten Dollars (\$10.00) to Grantor, receipt of which is acknowledged by Grantor, the covenants and agreements herein

contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Grantor and Grantee hereby agree as follows:

1. Recitals. Recitals A through D are by this reference incorporated herein and made a part hereof.

2. Easement. Grantor hereby grants and conveys to Grantee a perpetual easement and right of way for the installation, construction, operation, maintenance and repair of a parking lot along with access for vehicular and foot traffic over and across that portion of Grantor's Parcel, more particularly described and/or depicted in **Exhibit "D,"** attached hereto and incorporated herein by reference (the "**Easement Area**").

3. Grantee's Conduct. In exercising its rights under this Agreement, Grantee agrees to the following:

a. Prior to making any improvements on the Easement Area, Grantee shall submit detailed plans and specifications to Grantor at least sixty (60) days in advance. Grantor reserves the right to deny or require modifications to such plans to ensure the improvements will not impair Grantor's facilities or uses of its property. Grantee shall not alter or change the approved alignment of the easement or the grade elevation without written approval from Grantor. Any improvements made to the Easement Area shall be first approved by Grantor and shall comply with the National Electric Safety Code, Grantor's minimum electrical clearance standards and any other condition deemed necessary by Grantor.

b. Grantee shall not make or allow any use of the Easement Area that is inconsistent with or that may interfere with Grantor's operation, maintenance, repair, or upgrade of its existing power line facilities and installations or any additional power line facilities or installations that may be constructed hereafter. Grantee will not excavate within fifty (50) feet of Grantor's power line structures without Grantor's written consent.

c. If curb and gutter is constructed within the Easement Area, said curb and gutter will be high-back type and will contain at least a twenty (20) foot curb cut on both sides of the road located at places designated by Grantor, which curb cuts shall be sufficient to allow the passage of Grantor's equipment and vehicles used for the repair, maintenance, and reconstruction of its facilities and installations. Road construction will be sufficient to support Grantor's vehicles and equipment in excess of 50 tons.

d. Grantee shall not use or permit to be used upon the Easement Area any construction cranes or other equipment having a boom or similar attachment which may come in contact with Grantor's overhead transmission or distribution power lines.

e. Grantee will not use or permit to be used with the Easement Area, construction cranes or other equipment that violate the National Electric Safety Code, OSHA or Utah High Voltage Act clearance standards. Grantee will not store materials within the Easement area. The storage of hazardous materials or refueling of vehicle/equipment is

prohibited within the Easement Area. At no time shall Grantee place within the Easement Area any equipment or materials of any kind that exceeds fifteen (15) feet in height, or that creates a material risk of endangering Grantor's facilities, or that pose a risk to human safety. Grantee's use of the Easement Area shall comply in all respects with National Electric Safety Code, OSHA and Utah High Voltage Act Safety clearance standards.

f. Grantee shall not place or allow to be placed any trees or other vegetation within the Easement Area exceeding twelve (12) feet in height. Grantee shall be responsible for removing any trees or vegetation that exceeds the 12 foot limitation.

g. Grantee shall not use, or allow the use of the Easement Area for overnight parking.

4. Grantor's Conduct. Grantor, for itself, its successors and assigns, reserves the right to cross the Easement Area at any time with equipment and personnel, overhead power lines and other cables and conduits of any nature or kind, access roads, and any equipment or facilities Grantor deems necessary or convenient, provided that the same shall be done in a manner, to the extent possible, which will not unreasonably interfere with the Grantee's rights granted hereunder. Grantor shall have no obligation to maintain the Easement Area and to keep the same in passable condition for the benefit of Grantee, and any work performed on said roadway by Grantee shall be at Grantee's sole cost and expense.

5. Maintenance Property. In partial consideration of Grantor's grant of the easement herein, Grantee shall maintain the Maintenance Property at its sole cost and expense in a reasonably clean and neat manner, free from all litter, debris, and hazards. Grantee shall control the growth of any noxious weeds or other growth on the Maintenance Property in accordance with the requirements of any governmental agency having jurisdiction. **This Agreement does not grant any rights to Grantee for the use or possession of the Maintenance Property** and Grantee shall not place or construct any structures, vehicles, or debris within the Maintenance Property.

6. Compliance with Law, Preventing Waste. Grantee shall, at all times, comply with all laws, ordinances, and regulations affecting or pertaining to the use or occupation of the Easement Area and the Maintenance Property, including environmental laws and regulations. Grantee shall indemnify, defend, and hold harmless Grantor from loss, cost, or damage by reason of any actual or alleged violation by Grantee thereof, and from any liability, including fines, penalties and other costs, arising out of Grantee's failure to so comply. Grantee shall at all times keep the Easement Area and the Maintenance Property in a neat and orderly manner satisfactory to Grantor. Grantee shall not commit or suffer to be committed any waste upon the Easement Area or Maintenance Property, or any nuisance or other act or thing which may disturb adjoining land owners or which may violate the law.

7. Indemnification. Grantee shall use the Easement Area and Maintenance Property at its own risk and hereby releases and forever discharges any claims, demands or causes of action it may have against Grantor, its officers, directors, employees, subsidiaries and affiliates,

arising out of Grantee's use of or activities on or around the Easement Area and Maintenance Property, except in the case of Grantor's willful misconduct or breach of this Agreement. In addition, except in the case of Grantor's willful misconduct or breach of this Agreement, Grantee shall protect, indemnify and hold harmless Grantor, its officers, directors, employees, subsidiaries and affiliates (collectively, "Indemnities") from and against any losses, claims, liens, demands and causes of action of every kind, including the amount of any judgment, penalty, interest, court cost or legal fee incurred by the Indemnities or any of them in the defense of the same, arising in favor of any party, including governmental agencies or bodies, on account of taxes, claims, liens, debts, personal injuries, death or damages to property, violations of Environmental Laws and Regulations, and all other claims or demands of every character arising directly or indirectly as a result of Grantee's use of or Grantee's activities on Grantor's Land. For purposes of this Section 7, "Environmental Laws and Regulations" shall mean all present and future federal, state and local laws and all rules and regulations promulgated thereunder, relating to pollution or protection of the environment.

8. Perpetual Easements/Abandonment. The easement granted hereunder shall be benefits running with Grantee's Land, or any part thereof, and a burden upon Grantor's Land, in perpetuity, and shall be for the use and benefit of Grantee and its successors, heirs, and assigns, and their licensees, invitees, agents, representatives, and others Grantee desires to provide access to Grantee's Land. Provided, however, it is expressly made a condition of this grant that if Grantee, its successors or assigns, shall abandon its/their interest in Grantor's Land, all rights granted in this Agreement shall cease and terminate, and the title to Grantor's Land shall be freed from the burden of the easement rights granted in this Agreement. It is agreed that abandonment shall be deemed to have occurred if the Easement Area is not used for the purposes described above for a period of two (2) consecutive, uninterrupted years or more and Grantee does not resume such use within thirty (30) days after Grantee's written notice from Grantor of Grantor's intent to declare the Easement Area abandoned pursuant to this Section 8.

9. Covenants Run with Land. Each right and obligation in this Agreement (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold, or other interest in any portion of Grantee's Land to the extent such portion is affected or bound by the right-of-way, easement, covenant, or restriction in question, or to the extent that such right-of-way, easement, covenant, or restriction is to be performed on such portion; and (c) shall benefit and be binding upon any owner of Grantee's Land whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise. If Grantee transfers Grantee's Land, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of Grantee contained in this Agreement.

10. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of Grantor's Land for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Agreement be strictly limited to the purposes expressed in this Agreement.

11. Interpretation. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both other genders, and the term "person" shall include an individual, partnership (general or limited), corporation, limited liability company, trust, or other entity or association, or any combination thereof. The section headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. Time is of the essence. The provisions of this Agreement shall be construed both as covenants and conditions in the same manner as though the words importing such covenants and conditions were used in each separate provision hereof. Exhibits A through D attached hereto are by this reference incorporated herein and made a part hereof.

12. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties hereto relative to the subject matter hereof. Any prior negotiations, correspondence, or understandings relative to the subject matter hereof shall be deemed to be merged in this Agreement and shall be of no further force or effect. This Agreement may not be amended or modified except in writing executed by both of the parties hereto.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

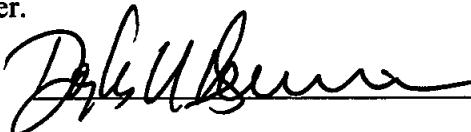
14. Attorneys' Fees. If any action is brought because of any breach of or to enforce or interpret any of the provisions of this Agreement, the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys' fees and court costs incurred in connection with such action, the amount of which shall be fixed by the court and made a part of any judgment rendered.

15. No Waiver. Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. No waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

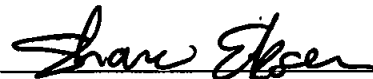
16. Invalidity of Provision. If any provisions of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permitted by applicable law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

IN WITNESS WHEREOF, Grantor and Grantee have each caused this Agreement to be duly executed as of the date first herein written.

PACIFICORP, an Oregon corporation, dba Utah Power.

By:   
Its: Managing Director

COUNTRY PINES PHASE II, LLC

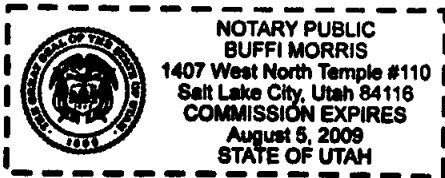
By:   
Its: Director

ACKNOWLEDGMENTS

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

I hereby certify that on this 10<sup>th</sup> day of December, 2007, before me, a Notary Public of the state and county of aforesaid, personally appeared Shane Ericksen, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he is the Director of COUNTRY PINES PHASE II, LLC, authorized to do business in the state of Utah, that he has been duly authorized to execute, and has executed the same in my presence, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

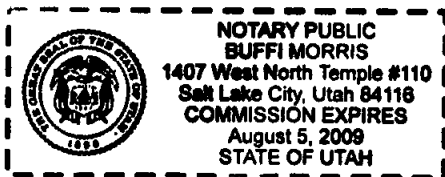


[Signature]  
Notary Public

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

I hereby certify that on this 14<sup>th</sup> day of December, 2007, before me, a Notary Public of the state and county of aforesaid, personally appeared Douglas N. Bannon, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he is the Managing Director of PACIFICORP, an Oregon corporation, d.b.a. Rocky Mountain Power, that he has been duly authorized to execute, and has executed the same in my presence, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



[Signature]  
Notary Public

**EXHIBIT "A"**  
**(Legal description of Grantor's Parcel)**

Parcel 1:

A tract of land situate in the SE ¼ of the NW ¼ of Section 27, Township 5 North, Range 2 West, Salt Lake Meridian, described as follows:

Beginning on the north boundary line of Grantor's land and the west line of the grantee's right of way at a point 1735.3 feet east along the quarter section line and 660 feet north from the west one quarter corner of Section 27, T. 5 N., R. 2 W., S.L.M. and running thence S. 0°08' W. 330 feet along said west right of way line to the south boundary line of said Grantor's land, thence West 160.0 feet along said south boundary line, thence N. 0° 08' E. 330 feet to said north boundary line of said Grantor's land, thence East 160.0 feet along said north boundary line to the point of beginning; containing 1.212 acres.

14-001-0031

Parcel 2:

Tracts of land situated in the SE ¼ of the NW ¼ of Section 27, Township 5 North, Range 2 West, Salt Lake Meridian, described as follows:

Beginning on the south boundary line of the Grantors' land at a point 1733.8 feet east along the quarter section line from the west one quarter corner of Section 27, T. 5 N., R. 2 W. S.L.M. and running thence N. 0° 08' E. 330 feet to the north boundary line of said Grantors' land, thence West 160 feet along said Grantor's north boundary line, thence S. 0°08' W. 330 feet to the south boundary line of said Grantors' land, thence East 160 feet along said south boundary line to the point of beginning; containing 1.212 acres less 0.121 of an acre for 1800 North Street, balance of area is 1.091 acres.

Beginning at the southeast corner of the Grantors' land at a point 1751.67 feet east along the quarter section line from the west quarter corner of Section 27, T. 5 N., R. 2 W., S.L.M. and running thence North 330 feet along the east boundary line of said Grantors' land to the north boundary line of said Grantors' land, thence West 17.10 feet along said Grantors' north boundary line, thence S. 0° 08' W. 330 feet to the south boundary line of said Grantors' land, thence East 17.87 feet along said south boundary line to the point of beginning; containing 0.132 of an acre, less 0.014 of an acre for 1800 North Street, balance is 0.118 of an acre.

14-001-0032

R



**EXHIBIT "B"**  
**(Legal description of Grantee's Parcel)**

COMMENCING AT A POINT LOCATED SOUTH 89°59'21" EAST ALONG THE QUARTER SECTION LINE 1320.45 FEET AND NORTH 203.18 FEET FROM THE WEST QUARTER CORNER OF SECTION 27, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 0°07'36" EAST ALONG THE EXTENSION OF AND ALONG THE EAST BOUNDARY OF CLINTON CITY PROPERTY 456.57 FEET; THENCE EAST ALONG THE SOUTH BOUNDARY OF BERNICE KENDALL PROPERTY 253.84 FEET; THENCE SOUTH 00°08'00" WEST ALONG THE WEST BOUNDARY OF UTAH POWER AND LIGHT PROPERTY 456.57 FEET; THENCE WEST 253.79 FEET TO THE POINT OF BEGINNING.

**EXHIBIT "C"**  
**(Legal description of Maintenance Property)**

BEGINNING AT A POINT ON THE NORTH LINE OF 1800 NORTH STREET, SAID POINT BEING THE SOUTHWEST CORNER OF THE UTAH POWER AND LIGHT COMPANY PARCEL, SAID POINT ALSO BEING NORTH 89°59'21" EAST ALONG THE QUARTER SECTION LINE 1573.79 FEET AND NORTH 00°00'39" WEST 42.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 27, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 00°08'00" EAST ALONG THE WEST LINE OF SAID UTAH POWER AND LIGHT COMPANY PARCEL 35.06 FEET; THENCE NORTH 45°15'17" EAST 29.62 FEET TO THE POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG THE ARC OF A 32.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 45°15'17" A DISTANCE OF 29.62 FEET (CHORD BEARS NORTH 22°40'41" EAST 24.57 FEET); THENCE NORTH 00°06'06" EAST 79.13 FEET; THENCE NORTH 18°56'54" EAST 62.04 FEET; THENCE NORTH 00°13'15" EAST 400.74 FEET TO THE NORTH LINE OF SAID UTAH POWER AND LIGHT COMPANY PARCEL: THENCE EAST ALONG SAID NORTH LINE 109.09 FEET TO THE NORTHEAST CORNER OF SAID UTAH POWER AND LIGHT COMPANY PARCEL; THENCE SOUTH 00°08'00" WEST ALONG THE EAST LINE OF UTAH POWER AND LIGHT COMPANY PARCEL 617.10 FEET TO SAID NORTH LINE OF 1800 NORTH STREET; THENCE SOUTH 89°59'21" WEST ALONG SAID NORTH LINE 160.08 FEET TO THE POINT OF BEGINNING.

CONTAINS 72,854 SQUARE FEET

**EXHIBIT "D"**  
**(Legal description of Easement Area)**

BEGINNING AT A POINT ON THE WEST LINE OF THE UTAH POWER AND LIGHT COMPANY PARCEL, SAID POINT BEING NORTH 89°59'21" EAST ALONG THE QUARTER SECTION LINE 1573.88 FEET AND NORTH 00°00'39" WEST 77.06 FEET FROM THE WEST QUARTER CORNER OF SECTION 27, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 00°08'00" EAST ALONG SAID WEST LINE 582.07 FEET; THENCE EAST 50.98 FEET; THENCE SOUTH 00°13'15" WEST 400.74 FEET; THENCE SOUTH 18°56'54" WEST 62.04 FEET; THENCE SOUTH 00°06'06" WEST 79.13 FEET TO THE POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF 32.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 45°09'11" A DISTANCE OF 25.22 FEET; THENCE SOUTH 45°15'17" WEST 29.62 FEET TO THE POINT OF BEGINNING.

CONTAINS: 25,915 SQ.FT. (0.595 ACRES)