

## **SECONDARY WATER EASEMENT**

For valuable consideration, receipt of which is hereby acknowledged, Bankhead Properties, LLC ("Bankhead"), hereby grants and conveys to Greyeye Enterprises Inc. ("Greyeye") and its successors and assigns, a limited and nonexclusive easement to install, repair and maintain an underground pipeline system providing secondary water to Greyeye on and subject to the terms and conditions set forth herein. Bankhead and Greyeye may be referred to herein collectively as the "Parties" or individually as a "Party."

### **RECITALS**

- A. Greyeye is an S Corporation registered in the State of Utah that owns the property comprising the Parker Estates Subdivision ("Benefited Property") as more fully described in Exhibit A attached hereto and incorporated herein by this reference.
- B. Bankhead is a Utah limited liability company and is the owner of certain land described in Exhibit B attached hereto and incorporated herein by this reference ("Burdened Property") that immediately adjoins the Parker Estates Subdivision land owned by Greyeye.
- C. A secondary water pipeline intended to service the lots within the Parker Estates Subdivision has been or will be constructed on the Burdened Property in the areas depicted on the map included as Exhibit C which is incorporated herein by this reference.
- D. Bankhead desires to grant Greyeye a temporary easement over the Burdened Property for the limited purpose of constructing and installing a secondary water pipeline.
- E. Bankhead further desires to grant Greyeye and its successors and assigns, a nonexclusive perpetual easement over the Burdened Property for the limited purposes provided herein.
- F. The Parties desire to further define the rights and obligations of each Party, and to establish an agreement for the maintenance and upkeep of the improvements located within the Burdened Property.

### **EASEMENT AGREEMENT**

In consideration of the foregoing, and the mutual covenants of the Parties contained in this Secondary Water Easement, Bankhead and Greyeye agree as follows:

1. **Grant of Temporary Construction Easement.** Subject to the rights and

restrictions set forth herein, Bankhead hereby grants and conveys to Greyeye a temporary and nonexclusive easement over, upon, and across a limited portion of the Burdened Property (the "Temporary Construction Easement"). The centerline of the Temporary Construction Easement is described in Exhibit D attached hereto and incorporated herein by this reference (the "Centerline"). The Temporary Construction Easement shall be limited in scope, and shall only allow Greyeye access and rights, to a portion of the Burdened Property that is located 5' to the East of the Centerline and 10' to the West of the Centerline (the "Temporary Construction Easement Area"). The scope of the Temporary Construction Easement is further limited to access across, over, and upon the Temporary Construction Easement Area for construction and installation of the Easement Improvements (defined below). The Temporary Construction Easement shall commence on November 14, 2017 and automatically terminate at 7:00 p.m. mountain standard time on December 31, 2017.

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2. **Grant of Permanent Maintenance and Repair Easement.** Subject to the rights and restrictions set forth herein, Bankhead hereby grants and conveys to Greyeye a limited, permanent and nonexclusive easement over, upon, and across a limited portion of the Burdened Property (the "Permanent Easement"). The Permanent Easement shall be limited in scope, and shall only allow Greyeye access and rights, to a portion of the Burdened Property that is located within 5' on either side of the Centerline (the "Permanent Easement Area") for the purposes, and subject to the limitations, set forth herein. The scope of the Permanent Easement is further limited to access across, over, and upon the Permanent Easement Area for:

- a. the maintenance, repair, and replacement of the Easement Improvements in the Permanent Easement Area and consistent with the terms set forth in this agreement;
- b. the closure and termination of the Easement Improvements in Permanent Easement Area if ever necessary;
- c. the reclamation, remediation, or repair of any improvements, landscaping, or disturbances to the land within the Permanent Easement Area made during the maintenance, repair, or replacement of the Easement Improvements by Greyeye and/or its successors and assigns; and
- d. the Permanent Easement shall only apply to necessary repairs or emergency access, and only after reasonable notice has been given to Bankhead. Bankhead shall retain the right, but not the obligation, to maintain, repair, and replace the Easement Improvements located within the boundaries of the Permanent Easement Area. The granting of this

Easement shall not be construed to permit Greyeye or its successors or assigns any type of right-of-way, or general use rights in and to the Burdened Property.

The Easement is granted by Bankhead as a right and benefit of Greyeye as the owner of the Benefitted Property along with its successors and assigns, and any subsequent purchaser of a Parker Estates Subdivision lot and their successors, heirs, assigns and beneficiaries, subject to the provisions, limitations and obligations set forth in herein.

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3. **Maintenance, Repair, and Replacement.** Greyeye and its successors and assigns shall have the nonexclusive right and sole obligation to maintain, repair, and replace the 8 inch secondary water pipeline that is or shall be installed by Greyeye 3 feet below the existing grade of the Temporary Construction Easement Area ("Easement Improvements"). Bankhead and its successors and assigns shall have the right, but not the obligation, to maintain, repair, and replace the Easement Improvements. At Greyeye and its successors and assigns sole cost and expense, the Easement Improvements shall be kept in good condition and repair and in accordance with all applicable laws, ordinances, rules, regulations, and governmental requirements.

4. **Cost Allocation.** Greyeye and its successors and assigns shall be responsible to cover all maintenance, repair, and, replacement costs of the Easement Improvements and for the restoration of any damaged or altered improvements or landscaping caused by the construction, installation, maintenance, repair, or replacement of the Easement Improvements.

5. **Risk Allocation.** Greyeye and its successors and assigns shall defend, indemnify, and hold Bankhead and Bankhead's successors and assigns harmless from any and all claims, causes of action, injuries, costs, losses and/or damages arising out of or relating to the Easement Improvements and Greyeye and its successors and assign's exercise of their rights arising out of the Temporary Construction Easement and Permanent Easement. The parties acknowledge and agree that these obligations to defend, indemnify, and hold Bankhead harmless will transfer to each successor and assign of Greyeye and Bankhead and each successor and assign of Bankhead shall be the beneficiary of such obligations.

6. **Restriction on Use.** Except as agreed to by both Parties or as set forth in this paragraph 6, neither Greyeye, Bankhead, nor any of their respective successors or assigns shall erect or place any building, vertical improvement or other permanent obstruction over, to or upon the Easement Improvements whatsoever, except as is necessary in connection with the Parties' maintenance, repair, and replacement obligations; provided, however that landscaping, shrubs, flowers, grass, but not trees,

may be planted over and on top of the Easement Improvements.

7. **Right to Relocate Pipeline.** Bankhead and its successors and assigns hereby reserve the express right to modify or change the route of the Easement Improvements to other locations to accommodate future development or improvement of the Burdened Property. If the owner of the Burdened Property elects to reroute the Easement Improvements, then all costs and expenses associated with the relocation of the pipeline shall be borne by Burdened Property owner. Any relocation shall be performed in a manner designed to minimize the impact on those served by the Easement Improvements to the extent reasonably possible. The Parties agree that no modifications to the Easement Improvements shall be permitted that unreasonably limit or reduce the flow of water below the flow rate of the initial pipeline system. Prior to any relocation, Bankhead or its successors or assigns shall provide at least 30 days' written notice to Greyeye (or its successors or assigns) and the Wellsville City Manager allowing for a period of protest or objection.

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8. **Notice.** The parties shall give all notices and communications between the parties by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid (v) electronic mail to the party's known email address, or to the address that a party has notified to be that party's address for the purposes of this section. Additionally, Notice to the Parker Estates Subdivision owners may be completed by a physical posting in a conspicuous location on or around the subdivision. A notice given under this Agreement will be effective on the other party's receipt of it; if posted, at the time of posting; or if mailed, on the earlier of the other party's receipt of it and the third Business Day after mailing it.

9. **Condemnation.** In the event the Parties' respective property or any portion thereof is taken by power of eminent domain, or is conveyed under threat of condemnation, the obligations hereunder of the Party owning such property shall be abated to the extent of the taking. Proceeds from any taking of the respective properties shall belong exclusively to the respective Party over or owning such property.

10. **Non-Use.** No obligation arising from or out of this Easement or any right granted under this Easement, shall lapse because of non-use.

11. **Duration.** The rights and obligations set forth herein shall, except as expressly limited herein, perpetually run with the Benefited Property and Burdened Property, including any partition or division of such property. The rights, covenants, and obligations contained in herein shall bind, burden, and benefit the Parties and their respective successors, assigns, heirs, lessees, mortgagees, and beneficiaries under any deeds of trust.

12. **Conformance with Governmental Requirements.** The Parties shall cause all their respective uses of the Burdened Property to be in conformance with all applicable federal, state, county, and municipal laws, ordinances, regulations, and requirements.

13. **Recording.** This Easement shall be recorded in the official records of Cache County, Utah.

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14. **Waiver.** Failure of either Party at any time to require performance of any provision of this Easement shall not limit such Party's right to enforce such provision, nor shall any waiver of breach of any provision of this Easement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.

15. **Governing Law.** This Easement shall be governed by and construed in accordance with the laws of the State of Utah. If a Party hereto brings an action in any judicial or arbitral tribunal to enforce any provision of this Easement, the prevailing Party, as determined by the tribunal, shall be entitled to recover its attorney fees, costs, and expenses incurred in connection with such action.

16. **Amendment and Termination.** This Easement may be amended and/or terminated only by a written agreement signed by representatives of both Parties, or their successors or assigns. Said amendment and/or notice of termination shall be recorded in the official records of Cache County, Utah.

IN WITNESS WHEREOF, the Parties have executed this Secondary Water Easement agreement as of this 16<sup>th</sup> day of November, 2017.

**Bankhead Properties, LLC**

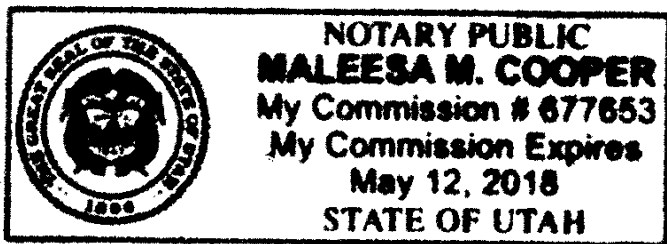
David Bankhead

By: BANKHEAD PROPERTIES LLC

Its: PRESIDENT

STATE OF UTAH )  
 ) ss.  
COUNTY OF Cache )

On the 16<sup>th</sup> day of November 2017, personally appeared before me David Bankhead, who by me being duly sworn, did say that he/she is a representative of Bankhead Properties, LLC and that he/she is authorized to execute this Agreement.



Maleesa M. Cooper  
Notary Public

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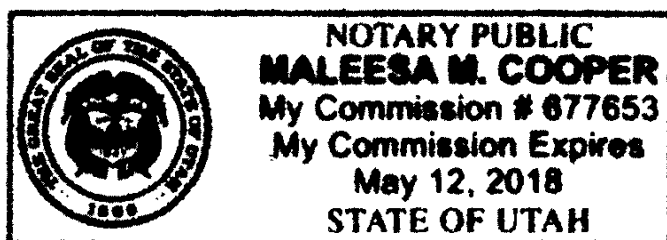
**Greyeye Enterprises Inc.**

[Signature]  
By: GREY EYE ENTERPRISES INC.

Its: PRESIDENT

STATE OF UTAH )  
 ) SS.  
COUNTY OF Cache )

On the 16<sup>th</sup> day of November 2017, personally appeared before me  
Craig M. Smith, who by me being duly sworn, did say that  
he/she is a representative of Greyeye Enterprises Inc. and that he/she is authorized to  
execute this Agreement.



Maleesa M. Cooper  
Notary Public

## **EXHIBIT A**

### **Legal Description of Benefited Property**

**Parcel No. 10-038-0040**

Lots 3,6,7 and 11 BLK 36 Plat "B" Wellsville City Survey Northeast Quarter of Section 10  
Township 10 North Range 1 West.

Containing Approximately 3.90 Acres.

**Parcel No. 10-028-0042**

All of Lot 8 BLK 36 Plat "B" Wellsville City Survey Northeast Quarter of Section 10 Township  
10 North Range 1 West.

Containing 1.25 acres.

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**Parcel No. 10-028-0039**

Lots 1,2 & FRACT'L LOTS 9&10 BLK 36 PLAT "B" WELLSVILLE CITY SURVEY SEC 10 T  
10N R 1 W E391

Containing Approximately 2.88 Acres

## **EXHIBIT B**

### **Legal Description of Burdened Property**

#### **Parcel No. 10-040-0001**

Beginning at the Northwest corner of the Southeast Quarter of Section 10, Township 10 North, Range 1 West of the Salt Lake Meridian, and running thence East 130 rods; thence South 80 rods; thence West 130 rods; thence North 80 rods to beginning, containing 65 acres, LESS right-of-way for USA Canal and to State Road, net 54.51 acres, LESS parcel 10-040-0017 described as follows: Beginning 22.88 feet West of a point by record 212 feet West and 952.69 feet South 32°30 1 West by record from the East Quarter corner of said Section 10, and running thence South 32°49 1 42 11 West 371.86 feet; thence North 82°51 1 57 11 West 63.08 feet; thence North 18°33 1 37 11 West 347.37 feet; thence South 86°48'10 11 East 377.56 feet to beginning, containing 1.63 acres. Also, beginning 2168 feet North and running thence North 260 feet to center line of canal; thence Southwesterly along highway to beginning, containing 0.48 acres.

Containing 50.50 acres more or less

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## EXHIBIT C

### Depiction of Approximate Secondary Water Pipeline Location

Benefited Property: Outlined in Light Blue:

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Approximate Location of Secondary Water Pipeline on Burdened Property: Located with Dotted Line



## EXHIBIT D

### Description of Easement Centerline

Commencing at the Northwest Corner of Section 10, Township 10 North, Range 1 West of the Salt Lake Baseline and Meridian monumented with a Cache County Cap; thence N 89°55'20" E 5302.66 feet along the north line of said Section 10 to the Northeast Corner of said Section 10; thence S 38°04'58" W 2342.42 feet to the Northeast Corner of Lot 8, Block 36, Plat B, Wellsville City Survey; thence S01°38'36" W 716.82 feet along the east line of said Block 36 to the Southeast Corner of Block 36, Plat "B" Wellsville City Survey; thence S08°30'39"E 100.18 feet to a point on the south right of way line of 900 South Street and the POINT OF BEGINNING and running

thence S 05°48'18" E 59.68 feet;

thence S08°47'31"E 52.75 feet;

thence S16°16'05"E 89.48 feet more or less to the Hyrum Mendon Canal right of way and the point of terminus.

Note: Said perpetual easement is 10 feet wide being westerly of and coincident with the west right of way fence of Highway 23.

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