



When Recorded, Mail To:
City of Springville, Utah
Attn.: Troy Fitzgerald
110 South Main Street
Springville, Utah 84663

ENT 16772:2015 PG 1 of 13
JEFFERY SMITH
UTAH COUNTY RECORDER
2015 Mar 03 10:16 am FEE 0.00 BY SW
RECORDED FOR SPRINGVILLE CITY CORPORATIO

With A Copy To:
Suburban Land Reserve, Inc.
Attn.: Jace L. McQuivey
79 S. Main St., Ste. 500
Salt Lake City, Utah 84111

(space above for Recorder's use only)

**PERMANENT SEWER AND TEMPORARY CONSTRUCTION EASEMENT
AGREEMENT**

This PERMANENT SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "**Agreement**") is made this 11 day of February, 2015, (the "**Effective Date**") by and between **SUBURBAN LAND RESERVE, INC.**, a Utah corporation, ("**Grantor**"), and **SPRINGVILLE CITY**, a Utah municipal corporation ("**Grantee**"). Grantor and Grantee are sometimes referred to herein individually as a "**Party**," and collectively as the "**Parties**."

RECITALS

A. Grantor is the owner of certain real property located in Utah County, Utah ("**Grantor's Property**") more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.

B. Grantee desires a perpetual, non-exclusive sewer easement on, over, across, under and through certain portions of Grantor's Property more particularly described on Exhibit B, attached hereto and incorporated herein by this reference (the "**Sewer Easement Area**"), for the purposes set forth in this Agreement.

C. Grantee also desires a temporary, non-exclusive construction easement on, over, across, under and through certain portions of Grantor's Property more particularly described on Exhibit C, attached hereto and incorporated herein by this reference, (the "**Temporary Easement Area**," and, together with the Sewer Easement Area, the "**Easement Areas**"), for the purposes set forth in this Agreement.

D. Grantor is willing to grant such easements to Grantee, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations expressed herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto make the following grants, agreements, and covenants:

1. Grant of Easements.

1.1. Grant of Sewer Easement. Grantor hereby conveys to Grantee, without warranty, a perpetual, non-exclusive easement (the "**Sewer Easement**") on, over, across, under and through the Sewer Easement Area for the purposes of (i) constructing, operating, repairing, altering, protecting, restoring, and maintaining an underground sewer line and related facilities (the "**Improvements**").

1.2. Grant of Temporary Easement. Grantor hereby conveys to Grantee, without warranty, a temporary, non-exclusive construction easement (the "**Temporary Easement**," and, together with the Sewer Easement, the "**Easements**") on, over, across, under and through the Temporary Easement Area for the purposes of facilitating the design, installation, and construction of the Improvements. The Temporary Easement will automatically terminate upon the earlier of (i) the completion of the Improvements; or (ii) one (1) year after the Effective Date.

2. Condition of the Easement Areas. Grantee accepts the Easement Areas and all aspects thereof in "AS IS", "WHERE IS" condition, without warranties, either express or implied, "WITH ALL FAULTS", including but not limited to both latent and patent defects, and the existence of hazardous materials, if any, and shall enter upon the Easement Areas at its sole risk and hazard. Grantee and its successors and assigns, hereby release, waive and forever discharge Grantor from any claims, demands, damages, liabilities, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected, relating to the condition of the Easement Areas and the entry upon the Easement Areas by Grantee and Grantee's invitees, guests, agents, servants, employees, consultants, contractors, and subcontractors ("**Grantee's Agents**").

Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the Easement Areas, including, but not limited to, any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the easement granted herein is made without warrant whatsoever and subject to: (i) any state of facts which an accurate ALTA survey (with all Table A items) and/or physical inspection of the Easement Areas might show, (ii) all land use and zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (iii) reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity.

Grantee shall not disturb or interfere with any existing utility service or the rights of the beneficiaries of any existing easements and shall comply with any applicable terms and

conditions in any such easements or of any such utility service providers. If Grantor interferes with any irrigation system serving Grantor's Property, Grantee shall cause Grantor's Property to be properly irrigated until such time as the irrigation system is properly restored.

3. Use of Easement Areas.

3.1. Use of Easement Areas. Grantee may use the Easement Areas solely for the purposes stated in Section 1. Grantee will use diligent and good faith efforts to complete the Improvements on the Sewer Easement Area as soon as possible after initiation of work thereon.

3.2. Conditions and Restrictions on Use; Access. Grantee shall take all necessary actions and precautions to prevent any loss, damage, harm, or injury to any person or property on the Easement Areas. Grantee may not change the grade of the Easement Areas, except to the extent necessary to install the Improvements so long as the grade of the Easement Areas is restored to its original grade. Grantee shall design and construct the Improvements in a professional manner by licensed professional engineers and contractors, using good workmanship, and in accordance with all applicable laws and industry standards. Grantee shall use reasonable efforts to prevent and minimize the discharge of dust, dirt and debris from the Easement Areas. If any dirt, dust or mud is discharged onto any adjacent streets, roads or highways, Grantee shall cause such dirt, dust or mud to be promptly removed.

Grantee shall not perform any construction, maintenance or other work on the Easement Areas on Sundays, except in the case of an emergency. Notwithstanding the above, Grantee will address any complaints by neighboring property owners and promptly respond to any such complaints directly to the property owner. Grantee shall not use, generate, store, place or maintain any fuel, petroleum, or any hazardous materials on the Easement Areas. If any irrigation system is disturbed by Grantee, Grantee shall immediately repair such irrigation system.

3.3. Non-Permitted Uses. The Parties hereby acknowledge and agree that the easement granted to Grantee to use the Easement Areas is solely limited to the purposes of the terms of Section 3.1 above, and thus, does not include any of the following rights or activities, and the Parties hereby agree that the following uses and activities are prohibited on the Easement Areas: (i) any waste or damage to the Easement Areas; (ii) any public or private nuisance, including, but not limited to, any use that creates objectionable noises, odors, dust, smoke, gases, light, vibration or disturbances or increases the risk of fire, explosion or radioactive hazards on the Easement Areas; (iii) any action that defaces, damages or harms the Easement Areas, except to the extent such action is expressly authorized herein; and (iv) connecting any lights, apparatus, trailers, machinery or other equipment servicing the Easement Areas and the structures thereon to any utility service provided to the Easement Areas or Grantor's adjacent property.

3.4. Reservation by Grantor. Other than the rights granted to Grantee pertaining to the Easement Areas, neither Grantee nor anyone claiming by, through, or under Grantee has any rights, title or interest in any other portion of Grantor's Property. It is understood and agreed that the Easements granted hereby are non-exclusive and Grantor, and its successors and assigns, reserve and retain the right to use the Easement Areas in any manner whatsoever not inconsistent with Grantee's permitted use, including, but not limited to, the right

(i) for pedestrian and vehicular ingress and egress between Grantor's Property and the Easement Areas; (ii) for the placement and maintenance of landscaping, trees, shrubs, signs, light standards, sidewalks, curbs and gutters, ditches, utility lines, pipes, and related appurtenances, fences, asphalt roadways, parking lots and driveways, and other site improvements; (iii) to grant other non-exclusive easements, licenses and rights within or on the Easement Areas to third parties; and (iv) to require the relocation of the Improvements at any time (or from time to time) at Grantor's cost and expense. If any of the Improvements are relocated as provided for in the previous sentence, then this Agreement shall be amended in order to terminate the Easement in its previous location and to grant the easement in the new location. Notwithstanding the foregoing, if the roots of any trees, shrubs or landscaping interferes with any utility line, Grantee may remove such trees, shrubs or landscaping.

3.5 Connectivity to stub-outs. Grantee hereby agrees to grant access and use rights to and for the benefit of the remaining portions of Grantor's Property and Grantor and its successors and assigns, for connectivity to utility stub-outs and other related improvements. The Parties agree to reasonably cooperate with each other in order to grant permits and approvals, and take all other commercially reasonable actions necessary to carry out the intent hereof. Grantor, in its sole and absolute discretion, reserves the right to determine the location of the stub outs and other connectivity improvements to the Improvements provided that the stub-outs meet city standards and specifications.

4. Construction of the Improvements. Grantee will conduct all construction activities in a good and workmanlike manner in compliance with all laws, rules, and ordinances, both present and future, and, without exception, Grantee hereby agrees to conduct any and all such work on days other than Sunday. Upon completion of the Improvements, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion.

5. Maintenance and Restoration. Grantee, at its sole cost and expense, shall maintain and repair the Improvements and Easement Areas in good order and condition. Grantee shall promptly repair any damage to Grantor's Property and any of Grantor's improvements located thereon (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, fences, signs, lighting, buildings, etc.) caused by Grantee and/or Grantee's Agents, and shall restore in a workmanlike manner Grantor's Property and the improvements to the same or better condition as they existed prior to any entry onto or work performed on Grantor's Property by Grantee and Grantee's Agents. Grantee's restoration responsibilities shall also include, but not be limited to, leaving the Grantor's Property in a condition which is clean, free of debris and hazards which may be caused by the Grantee's activities, and subject to neither environmental hazards nor liens caused by the Grantee's activities. In the event Grantee needs to perform any maintenance, repair, or restoration work on the Easement Areas, Grantee shall (i) use reasonable efforts to minimize any interference or disruption to Grantor's use and occupancy of the Easement Areas and (ii) except in the case of an emergency, perform such work on days other than Sunday.

6. Termination. This Agreement will be automatically terminated upon the earlier to occur of the following: (i) Grantee decides that it will no longer use the Sewer Easement Area and gives Grantor written notice thereof, or (ii) Grantee does not actually use the Sewer

Easement Area for a consecutive period of twenty-four (24) months. Upon the occurrence of an event set forth in the preceding sentence, Grantor may record an instrument terminating this Agreement, and Grantee appoints Grantor its attorney-in-fact, such power being coupled with an interest for such purposes.

7. **Indemnification and Release.** The parties hereby acknowledge and agree that Grantee is a governmental entity under the Utah Governmental Immunity Act, Utah Code Ann., §63G-7-101, et seq. ("UGIA"). Nothing in this Agreement, including without limitation any indemnity obligations, shall be construed as a waiver of any rights, immunities, or defenses otherwise applicable under the UGIA, including the provisions of Utah Code Ann., §63G-7-604 regarding limitation of judgments; provided, however, if any provision of the Governmental Immunity Act conflicts with any provision in this Agreement, the terms and conditions of this Agreement shall control. Notwithstanding, it is further acknowledged and agreed that the indemnity obligations imposed by this Agreement are limited to the current UGIA damage cap amounts as set forth in Utah Code Ann., §63G-7-604 and Utah Administrative Code, R37-4-1 to Seven Hundred Three Thousand Dollars and 00/100 (\$703,000.00) per person per occurrence, Two Million Four Hundred Seven Thousand Seven Hundred Dollars and 00/100 (\$2,407,700.00) general aggregate and Two Hundred Eighty-One Thousand Three Hundred Dollars and 00/100 (\$281,300.00) per occurrence for property damage. Grantee shall indemnify, release and defend, with counsel of Grantor's choice, and hold Grantor and its employees, officers, divisions, subsidiaries, partners, members and affiliated companies and entities and its and their employees, officers, shareholders, members, directors, agents, representatives, and professional consultants and its and their respective successors and assigns (collectively, the "**Indemnitees**") harmless from and against any loss, damage, injury, accident, fire, or other casualty, liability, claim, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, including the property of the Indemnitees (collectively the "**Claims**", or a "**Claim**") from or by any unaffiliated third party, Grantee, and/or Grantee's Agents, arising from or relating to (i) any negligent use of the Easement Area and/or adjacent areas by Grantee or Grantee's Agents, (ii) any negligent act or omission of Grantee or any of Grantee's Agents, (iii) any bodily injury, property damage, accident, fire or other casualty to or involving Grantee or Grantee's Agents and its or their property on the Easement Area and/or adjacent areas caused by any negligent act of Grantee or Grantee's Agents, (iv) any violation by Grantee of any law or regulation now or hereafter enacted, (v) any loss resulting from the negligent failure of Grantee to maintain the Easement Area in a safe condition, (vi) any loss or theft whatsoever of any property or anything placed or stored by Grantee or Grantee's Agents on or about the Easement Area and/or adjacent areas, (iv) any breach by Grantee of its obligations under this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent any such Claim is caused by the negligence or misconduct of the Indemnitees. The terms and conditions of this indemnification provision shall remain effective, notwithstanding the expiration or termination of this Agreement, as long as the acts or conduct from which the Claim arises occurs prior to the expiration or termination of this Agreement.

8. **Insurance.**

8.1. **Grantee's Insurance.** Grantee will cause its contractors to obtain the following insurance and provide evidence thereof as described below prior to commencement of

activities on or relative to the Easement Area: (i) Workers Compensation Insurance satisfying any statutory limits; and (ii) commercial general liability insurance providing coverage on an occurrence basis with limits of not less than One Million Dollars (\$1,000,000.00) each occurrence for bodily injury and property damage combined, and Two Million Dollars (\$2,000,000.00) annual general aggregate. Grantee's liability insurance policy or policies shall include broad form contractual liability coverage.

8.2. Evidence of Insurance. Before commencement of any work on the Easement Areas or entry upon Grantor's Property, Grantee will provide evidence of insurance to Grantor by delivering to Grantor a Certificate of Insurance, on ACORD 25-S (1/95) Form or equivalent listing Grantor as a Certificate Holder and containing a cancellation clause of the certificate amended to read: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days prior written notice to the certificate holder names to the left." Grantor will be endorsed as an additional insured on such policy on ISO Form CG 20 10 (10/93) or its equivalent.

9. Use of Easement Areas by Grantor. Grantor reserves the right to use the Easement Areas for an alternative use and to convey the Easement Areas to an entity controlling, controlled by or under common control with Grantor, Corporation of the Presiding Bishopric of The Church of Jesus Christ of Latter-day Saints, or Suburban Land Reserve, Inc. Grantor also reserves the right to sell, transfer or convey the Easement Areas and other portions of Grantor's Property to other entities.

10. Liens. Grantee shall keep Grantor's Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee, and shall indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on Grantor's Property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of Grantee's Agents.

11. Notices. Except as otherwise required by law, any notice, demand or request given in connection with this Agreement shall be in writing and shall be given by personal delivery, overnight courier service, electronic mail, or United States certified mail, return receipt requested, postage or other delivery charge prepaid, addressed to Grantor or Grantee at the following addresses (or at such other address as Grantor or Grantee or the person receiving copies may designate in writing given in accordance with this Section):

GRANTOR:	Suburban Land Reserve, Inc. Attn.: Jace L. McQuivey 79 S. Main St., Ste. 500 Salt Lake City, Utah 84111 Phone: (801) 321-8753 Email: mcquiveyj@slreserve.com
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WITH A
COPY TO:

Kirton McConkie
Attn.: Jessica Rancie
50 East South Temple Street, Suite 400
Salt Lake City, Utah 84111
Phone: (801) 323-5967
Email: jrancie@kmclaw.com

GRANTEE:

Springville City
Attn.: Troy Fitzgerald
110 South Main Street
Springville, Utah 84663
Phone: (801) 489-2700
Email: tfitzgerald@springville.org

12. **No Public Use/Dedication.** Grantor's Property is and shall at all times remain the private property of Grantor. The use of Grantor's Property is permissive and shall be limited to the express purposes contained herein by Grantee. Neither Grantee, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to Grantor's Property beyond the express terms and conditions of this Agreement.

13. **Miscellaneous.** This 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 Agreement shall be binding unless in writing and executed by the Parties hereto. This 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 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 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 Agreement by reference. If any provision of this 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 Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect; provided, however, the invalid provision does not have a materially adverse effect on Grantor. This 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 Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared this Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may

require. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

[Signatures and notarizations to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

GRANTOR:

SUBURBAN LAND RESERVE, INC.,
a Utah corporation

By: R. Steven Romney

Name (Print): R. STEVEN ROMNEY

Its: ~~Authorized Agent~~ PRESIDENT

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 10th day of February, 2015, R. Steven Romney personally appeared before me Sarahi D. Soperanez, personally known to me to be an Authorized Agent of **SUBURBAN LAND RESERVE, INC.**, a Utah nonprofit corporation, who acknowledged before me that he signed the foregoing instrument as Authorized Agent for **SUBURBAN LAND RESERVE, INC.**, a Utah corporation, and that the seal impressed on the within instrument is the seal of said corporation; and that said instrument is the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said corporation and that said corporation executed the same.

WITNESS my hand and official seal.



[Signature]
Notary Public for the
State of Utah

[Signature and notarization to follow]

GRANTEE:

SPRINGVILLE CITY,
a Utah municipal corporation

By: W. Ford W. Clyde

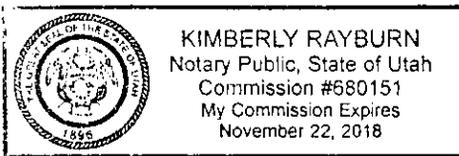
Name (Print): W. Ford W. Clyde

Its: Mayor

STATE OF UTAH)
)
 :ss
COUNTY OF UTAH)

On this 09 day of February, 2015, W. Ford W. Clyde personally appeared before me Kim Rayburn, personally known to me to be the Mayor of **SPRINGVILLE CITY**, a Utah municipal corporation, who acknowledged before me that he/she signed the foregoing instrument as Mayor for **SPRINGVILLE CITY**, a Utah municipal corporation, and that the seal impressed on the within instrument is the seal of said corporation; and that said instrument is the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument on behalf of said corporation and that said corporation executed the same.

WITNESS my hand and official seal.



Kim Rayburn
Notary Public for the
State of Utah

EXHIBIT A

[Legal Description of the Grantor's Property]

COM S 223.74 FT & W 335.92 FT FR NW COR. SEC. 5 T8S R3E SLB&M.; S 0 DEG 20' 0" W 348.42 FT; N 89 DEG 37' 31" E 1268.36 FT; N 0 DEG 0' 43" W 296.68 FT; N 88 DEG 45' 0" W 654.68 FT; N 0 DEG 20' 0" E 29.7 FT; W 611.82 FT TO BEG. AREA 9.478 AC.

EXHIBIT B

[Legal Description of the Sewer Easement Area]

Beginning at a point which is located South 88°34'56" West 1706.85 feet along the section line and South 562.14 feet from the North Quarter Corner of Section 5, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence South 00°43'00" East 20.00 feet; thence West 1225.33 feet; thence North 20.00 feet; thence East 1225.08 feet to the point of beginning.

Parcel contains 0.56 acres

Ck by JJB 3 Feb. 2015

EXHIBIT C

[Legal Description of the Temporary Easement Area]

Beginning at a point which is located South 88°34'56" West 1706.85 feet along the section line and South 562.14 feet from the North Quarter Corner of Section 5, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence West 1225.08 feet; thence North 40.00 feet; thence East 1224.58 feet; thence South 00°43'00" East 40.00 feet to the point of beginning.

Parcel contains 1.12 acres

Ck by JFB 1 Feb. 2015