

WHEN RECORDED, MAIL TO:  
Utah Department of Transportation  
Right of Way, Fourth Floor  
Box 148420  
Salt Lake City, Utah 84114-8420



ENT 33688:2010 PG 1 of 10  
**RODNEY D. CAMPBELL**  
**UTAH COUNTY RECORDER**  
2010 Apr 26 3:08 pm FEE 0.00 BY CS  
RECORDED FOR UDOT-R/W INSTRUMENTS SECTIO

Tax ID No. 14:059:0035  
Parcel No. I15-6:1887:EC  
Project No. MP-I15-6(178)245

(space above for recorders use only)

## PERPETUAL EASEMENT AGREEMENT

THIS PERPETUAL EASEMENT AGREEMENT (this "Agreement") is made and executed this 29<sup>th</sup> day of March, 2010 (the "Effective Date"), by and between CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("Grantor"), and LINDON CITY, a municipal corporation of the State of Utah, c/o Utah Department of Transportation, of 4501 South 2700 West, Salt Lake City, Utah 84119 ("Grantee").

### RECITALS

A. Grantor owns certain real property ("Grantor's Property") located in the City of Lindon, County of Utah, State of Utah.

B. Grantee desires to obtain a perpetual, non-exclusive easement on, over, and across a portion of Grantor's Property (the "Easement Area") for the purposes more particularly described herein. Grantor is willing to grant the easement to Grantee for such purposes subject to the terms and conditions set forth herein. The Easement Area is more particularly described in the legal description on Exhibit A, and depicted on the drawing on Exhibit B, both attached hereto and incorporated by this reference. Should there be any discrepancy between the legal description and the drawing, the legal description will control.

### AGREEMENT

NOW, THEREFORE, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby conveys to Grantee a perpetual, non-exclusive slope and drainage easement on, over and across the Easement Area for the purpose of constructing thereon cut and/or fill slope, drainage features and appurtenant parts thereof, to facilitate the construction of a freeway known as Project No. MP-I15-6(178)245 (the "Improvements"). Grantee agrees that the cost of the Improvements will be borne solely by Grantee, with no contribution whatsoever from Grantor. The design, construction, preparation, and maintenance of the Improvements performed by Grantee shall comply with all governmental laws, ordinances, regulations, and permits governing such Improvements.

2. Reservation by Grantor. Grantor hereby reserves the right to use the Easement Area for any use not inconsistent with Grantee's permitted use of the Easement Area.

3. Access. Grantee and its employees, consultants and contractors (collectively, "Grantee's Contractor") shall have the right to enter upon the Easement Area for the purposes permitted by this Agreement. Grantee shall enter upon the Easement Area at its sole risk and hazard, and Grantee and its successors and assigns, hereby release Grantor from any claims relating to the condition of the Easement Area and the entry upon the Easement Area by Grantee, its agents, employees, servants, contractors and other such parties.

4. Condition of the Easement Area. Grantee accepts the Easement Area 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. Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the Easement Area, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the Easement Area is granted to Grantee subject to: (a) any state of facts which an accurate ALTA/ASCM survey (with Table A items) or physical inspection of the Easement Area might show, (b) all 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 (c) 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 must obtain any and all consents, approvals, permissions, and agreements to cross, encumber or encroach upon any other easements or rights of others related to its use and improvement of the Easement Area.

## 5. Maintenance, Restoration and Crop Damage.

5.1 Maintenance and Restoration. Grantee, at its sole cost and expense, will maintain and repair the Improvements and any and all related improvements installed by Grantee, in good order and condition, except for the Improvements owned by utility companies or entities. Grantee will promptly repair any damage to Grantor's Property and 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, etc.) caused by Grantee and/or Grantee's Contractor, and will restore Grantor's Property and the improvements thereon to a substantially similar condition as they existed prior to any entry onto or work performed on Grantor's Property by Grantee and Grantee's Contractor.

6. Building Restrictions on the Easement Area. Grantee agrees not to construct buildings on the Easement Area.

7. [Intentionally Deleted]

8. Compliance with Laws. Grantee will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any building, zoning and land use laws.

9. Liens. Grantee will keep the Easement Area free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee, and Grantee will indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the Easement Area and/or the property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of Grantee's Contractor. Any such liens must be released of record within thirty (30) days.

10. Insurance. Grantee is self insured. Grantee will ensure that prior to entering onto the Easement Area Grantee's Contractor or its employees are covered under the terms of insurance policies as set forth below, or that each obtain similar policies which, at a minimum, provide Grantor the same protections.

10.1 Liability Insurance Coverage and Limits. Prior to taking possession of the Easement Area, Grantee's Contractor agrees to obtain and maintain a commercial general liability insurance policy insuring Grantee's interests against claims for personal injury, bodily injury, death, property damage occurring on, in or about the Easement Area and the ways immediately adjoining the Easement Area, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability of not less than Two Million Dollars (\$2,000,000.00).

10.2 Workers' Compensation Insurance. Grantee's Contractor agrees to maintain and keep in force, during the term hereof, all applicable Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law.

10.3 Automobile Insurance. Grantee's Contractor agrees to maintain and keep in force, during the term hereof, Automobile Liability Insurance with a

minimum limit of not less than One Million Dollars (\$1,000,000.00) Combined Single Limit per accident, and coverage applying to "Any Auto."

**10.4 Policy Requirements.** Grantee shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the required insurance.

**11. Indemnification.** Grantee and its successors and assigns hereby agree to indemnify, defend and hold harmless Grantor, and any entity controlling, controlled by or under control with Grantor ("Affiliates"), and its and their Affiliates' officers, directors, employees, managers, members, agents, servants, successors, and assigns from and against any and all third party liens, encumbrances, costs, demands, claims, judgments, and/or damage caused by or arising out of (i) the acts and omissions of Grantee and its agents, servants, employees and contractors; (ii) the use of Grantor's Property and/or the Improvements by Grantee, its agents, servants, employees and contractors; and (iii) any work performed in on Grantor's Property by Grantee or its successors or assigns, and their agents, servants, employees, consultants and/or contractors. The terms and conditions of this provision shall remain effective after the expiration or termination of this Agreement, so long as the event for which the indemnification is needed occurred prior to such expiration or termination. Grantee shall have no obligation to indemnify Grantor or Affiliates pursuant to this section for claims or liabilities to the extent the same are caused by Grantor. Except as limited by this Agreement, Grantee does not waive any sovereign immunity granted to it under the Governmental Immunity Act, such immunity being specifically retained herein.

**12. Notices.** Any notice required or desired to be given under this Agreement will be considered given: (a) when delivered in person to the recipient named below, (b) when delivered by a reputable overnight delivery service, or (c) three (3) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the person and party intended. All notices shall be given at the following addresses:

|                |  |
|----------------|--|
| If to Grantor: | Corporation of the Presiding Bishop of The Church of<br>Jesus Christ of Latter-day Saints<br>c/o Property Reserve, Inc.<br>Attn: Danny Owen<br>5 Triad Center, Suite 650<br>Salt Lake City, UT 84180 |
|----------------|--|

If to Grantee: c/o Utah Department of Transportation  
Attn: Lyle D. McMillan Director of Right of Way,  
Fourth Floor  
4501 South 2700 West  
Box 148420  
Salt Lake City, UT 84114-8420

Either party may designate a different individual or address for notices, by giving written notice thereof in the manner described above.

### 13. Miscellaneous.

13.1 Interpretation. Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement. This Agreement has been arrived at through negotiation between Grantor and Grantee.

13.2 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.

13.3 Run with the Land/Successors. Subject to the terms and conditions of this Agreement, the easement granted herein shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

13.4 Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Agreement will affect or be deemed to interpret, change, or restrict the express provision hereof. Any amendment or modification to this Agreement must be in writing and signed by authorized agents or officers of the parties.

13.5 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement will constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

13.6 Rights and Remedies. The rights and remedies of any of the parties stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement does not preclude the exercise of any other provisions. The respective rights and obligations hereunder may be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or will limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement

of the parties that the respective rights and obligations of the parties hereunder will be enforceable in equity as well as at law or otherwise.

**13.7 Enforceability and Litigation Expenses.** If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys' fees, will be paid by the non-prevailing party.

**13.8 Authorization.** Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement is binding upon the party for which he/she signs.

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

**13.10 Termination.** This Agreement and all Easement rights set forth herein will terminate once Grantee does not use the Improvements for a period of twelve (12) consecutive months. Prior to termination, Grantor shall provide written notice to Grantee with a reasonable opportunity to contest the same. Upon the occurrence of an event set forth in the first sentence of this Section 13.10 and the termination is not contested, Grantor may record an instrument terminating this Agreement, as well as any and all other easements, rights-of-way or licenses Grantee may have (or may claim to have) to use Grantor's Property.

*[Signatures pages and acknowledgements follow]*

IN WITNESS WHEREOF, said Grantor has hereto subscribed its name and affixed its corporate seal, by its authorized officer, this 29<sup>th</sup> day of March, A.D. 2010.

GRANTOR:

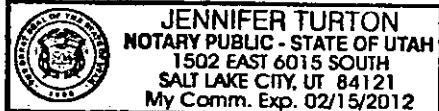
CORPORATION OF THE PRESIDING  
BISHOP OF THE CHURCH OF JESUS  
CHRIST OF LATTER-DAY SAINTS,  
a Utah corporation sole

By: C. B. Russell  
Name (Print): Charles B. Russell  
Its: Authorized Agent

STATE OF UTAH )  
:ss  
COUNTY OF SALT LAKE )

On this 29<sup>th</sup> day of March, 2010 personally appeared before me Charles B. Russell, personally known to me to be an Authorized Agent of **CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS**, a Utah corporation sole, who acknowledged before me that he signed the foregoing instrument as Authorized Agent for the **CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS**, a Utah corporation sole, 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.



JENNIFER TURTON  
Notary Public for the  
State of Utah

[Signatures and acknowledgements continue on following page]

GRANTEE:

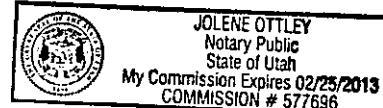
UTAH DEPARTMENT OF  
TRANSPORTATION

By: J D Mc  
 Name: Lyle D McMillan  
 Its: Director, Right of Way

STATE OF UTAH )  
 : ss  
 COUNTY OF SALT LAKE )

On this 14 day of APRIL, 2010, personally appeared before me  
Lyle D McMillan who acknowledged to me that s/he signed the foregoing  
 instrument as DIRECTOR of the Department of Transportation  
 of the State of Utah.

  
 Notary Public for the  
 State of Utah



**EXHIBIT A**

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(Legal Description)

Parcel 14:059:0035

A perpetual easement, upon part of an entire tract of property situate in the E $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 31, Township 5 South, Range 2 East, SLB&M, for the purpose of constructing cut and/or fill slopes and appurtenant parts thereof to facilitate the construction of a freeway known as Project No. MP-I15-6. The easement includes the right to maintain and continue the existence of said cut and/or fill slopes in the same grade and slope ratio as constructed by UDOT. The Easement shall run with the Real Property and shall be binding upon the Grantor and the Grantors successors, heirs and assigns, and includes and conveys all rights of grantor to change the vertical distance or grade of said cut and/or fill slopes. The boundaries of said part of an entire tract are described as follows:

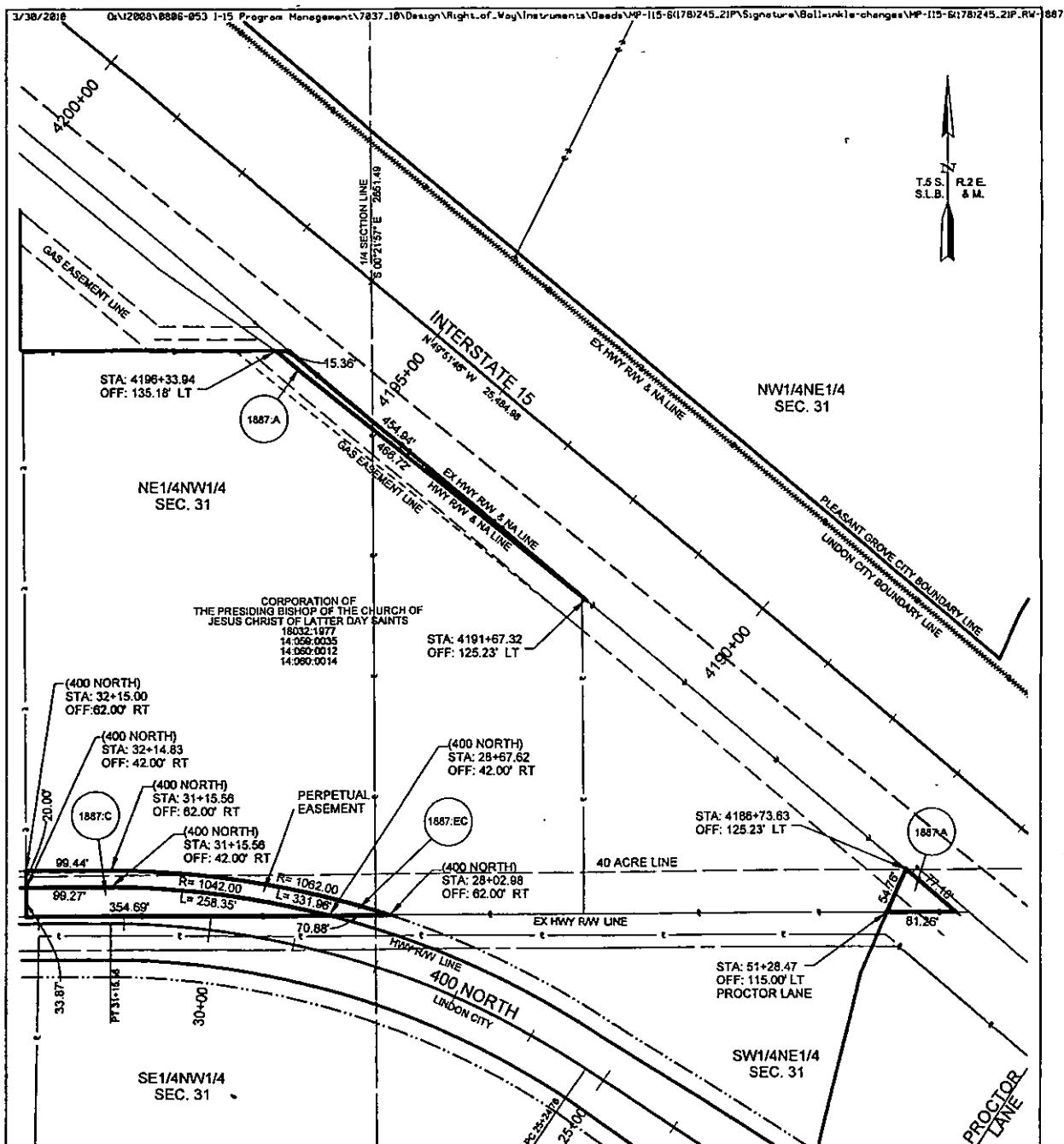
Beginning at the intersection of the northerly right of way line of Lindon City 400 North Street and the westerly boundary line of said entire tract, which point is 1373.75 feet, more or less, S.0°21'57"E (Record 1369.50 feet South) along the Quarter Section line and 409.20 feet S.89°48'23"W (Record 409.20 feet West) and 33.87 feet N.00°21'57"W. (Record North) from the North Quarter corner of said Section 31; and running thence N.00°21'57"W. 20.00 feet along said westerly boundary line; thence S.89°52'11"E. 99.44 feet to the point of tangency of a 1,062.00-foot radius curve to the right, thence Easterly 331.96 feet along the arc of said curve, (chord bears S.80°54'53"E. 330.61 feet) to the southerly boundary line of said entire tract; thence S.89°48'23"W. 70.88 feet; thence Westerly 258.35 feet along the arc of a 1,042.00-foot radius curve to the left, (chord bears N.82°46'01"W. 257.69 feet) to a point 42.00 feet perpendicularly distant northerly from the centerline of said 400 North Street of said project, opposite approximate Engineers Station 31+15.56; thence N.89°52'11"W. 99.27 feet to the point of beginning.

The above described part of an entire tract contains 7,915 square feet in area or 0.182 acres.

Ck by JJB 16 Mar 2010

## EXHIBIT B

(Depiction of the Easement Area)



| PARCEL NO.                                       | OWNER  | NET AC.                 | SO. FEET             | EXIST. RW AC. IN DEED       | OWNERSHIP AC.    | REMAINING AC. LEFT | RIGHT | TAX ID #                              |
|--|--|-------------------------|----------------------|-----------------------------|------------------|--------------------|-------|---------------------------------------|
| I15-6: 1887.A<br>I15-6: 1887.C<br>I15-6: 1887.EC | CORP. OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS | 0.099<br>0.206<br>0.182 | 4299<br>8963<br>7815 | NONE<br>10.801<br>PERPETUAL | 10.802<br>10.596 | NONE               |       | 14:059:0035, 14:060:0012, 14:060:0014 |
|  |  |                         |                      |                             |                  |                    |       | LATITUDE +40.345165931                |
|  |  |                         |                      |                             |                  |                    |       | LONGITUDE -111.762307927              |
|  |  |                         |                      |                             |                  |                    |       | DRAWN BY: HRRCKS MRL                  |
|  |  |                         |                      |                             |                  |                    |       | CHECKED BY: HRRCKS JDF                |
|  |  |                         |                      |                             |                  |                    |       | QC CHECKED BY: HRRCKS GCO             |