



ENT 67434:2020 PG 1 of 11
JEFFERY SMITH
UTAH COUNTY RECORDER
2020 May 19 10:14 am FEE 0.00 BY MA
RECORDED FOR SARATOGA SPRINGS CITY

When Recorded, Mail To:

City of Saratoga Springs
Attn: City Recorder
1307 N. Commerce Drive, Suite 200
Saratoga Springs, UT 84045

(Space Above for Recorder's Use Only)

**PERPETUAL CULINARY WATER AND SECONDARY WATER FACILITIES
EASEMENT AND AGREEMENT**

THIS PERPETUAL CULINARY WATER AND SECONDARY WATER FACILITIES EASEMENT AND AGREEMENT (this "Agreement") is made and entered into effective as of the 18 day of May, 2020 (the "Effective Date"), by and between SUBURBAN LAND RESERVE, INC., a Utah corporation ("Grantor"), and the CITY OF SARATOGA SPRINGS, a Utah municipal corporation ("Grantee").

RECITALS

A. Grantor is the owner of that certain real property located in the City of Saratoga Springs, Utah County, Utah, commonly known as Tax Parcel No. 58:041:0232 and 58:041:0233 (the "Grantor Property").

B. Grantee desires to obtain and Grantor is willing to convey to Grantee a perpetual easement on, over, under, across and through the Grantor Property for culinary and secondary water improvements and facilities, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. **Grant of Easement.** Grantor does hereby grant, without warranty, unto Grantee for the benefit of Grantee a non-exclusive easement (the "Easement"), thirty (30) feet in width, on, over, under, across and through that portion of the Grantor Property more particularly described on Exhibit A and depicted on Exhibit B (the "Easement Area"), for the construction, use, operation, maintenance, repair, replacement, relocation and removal of culinary and secondary water improvements, facilities and related appurtenances located within the Easement Area from time to time (collectively, the "Improvements"). Grantor has caused or will cause the Improvements to be constructed pursuant to certain Infrastructure Development and Reimbursement Agreements between Grantor and Grantee, and such Improvements have been or will be conveyed to Grantee as provided in such Agreements.

2. **Access.** Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, “**Grantee’s Agents**”) shall have the right to enter upon the Easement Area solely for the purposes permitted by this Agreement. Grantee shall enter upon the Easement Area from existing roads at its sole risk and hazard, and Grantee and its successors and assigns hereby release Grantor from any and all claims relating to the condition of the Easement Area and the entry upon the Easement Area by Grantee and Grantee’s Agents. In the event Grantee needs to access the Easement Area to perform any permitted work within the Easement Area, Grantee shall (i) use reasonable efforts to minimize any interference or disruption to Grantor’s use and occupancy of the Easement Area or other portion of the Grantor Property, and (ii) except in the case of an emergency, perform such work on days other than Sunday (and in the event of any emergency on Sunday, work will only be performed to the minimum extent necessary to cure or remediate such emergency).

3. **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 as set forth above in Section 1, provided that such use shall not interfere with Grantee’s operation of the Improvements. Without limiting the generality of the foregoing, it is expressly agreed that roads, trails, bike paths or other access improvements and related landscaping are deemed to be consistent with Grantee’s permitted uses of the Easement Area. In addition, Grantee may allow Grantor to grant to other third parties the right to use all or any portion of the Easement Area in ways that may be contrary to Section 1 above so long as such use does not: (i) impede Grantee’s permitted use of the Easement Area, (ii) damage or negatively impact the Improvements in the Easement Area, (iii) Grantor uses its commercially reasonable efforts to first grant easements in areas other than the Easement Area, and (iv) Grantee’s permission in writing is obtained (which shall not be unreasonable withheld, conditioned or delayed so long as items (i), (ii) and (iii) above are satisfied). In all cases, Grantor shall comply with all Grantee’s development standards and ordinances in granting such third party rights. Without limiting the foregoing, Grantor reserves the right to require the relocation of the Easement Area or the Improvements at any time (or from time to time) at Grantor’s cost and expense provided Grantee shall agree in writing and all Grantee development standards and ordinances are met. If the Easement Area is 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.

4. **Condition of Easement Area.** Grantee accepts the Easement Area, including the Improvements, and all aspects thereof in their “AS IS,” “WHERE IS” condition, without warranties, either express or implied, “WITH ALL FAULTS,” including but not limited to both latent and patent defects, the existence of hazardous materials, if any, and any other easements, rights, or other encumbrances affecting the Easement Area and the Improvements. Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the Easement Area and Improvements, 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) valid reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and

encumbrances affecting the Easement area and enforceable at law or in equity, whether or not of record. 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 and Restoration.** Grantee, at its sole cost and expense, shall use, operate, maintain, repair and replace the Improvements and any and all related improvements and appurtenances, in good order and condition. To the extent possible considering the nature of the Improvements, Grantee shall promptly repair any damage to the Grantor 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, buildings, etc.) caused by Grantee and/or Grantee's Agents, and shall restore the Grantor Property and the improvements thereon to the same or better condition as they existed prior to any entry onto or work performed on the Grantor Property by Grantee and Grantee's Agents. Grantee's restoration responsibilities shall also include, but not be limited to: (i) removal of all improvements, equipment or materials other than the Improvements which it has caused to be placed upon the Grantor Property; (ii) mounding of the same topsoil which was originally removed in the excavation process, in all areas excavated by Grantee such that the mounded areas shall settle to the approximate depth of the surrounding surface after the construction activities; (iii) the filling in and repairing of all other portions of the Grantor Property which are damaged, rutted or otherwise disturbed as a result of Grantee's operations with the same topsoil existing prior to said construction activities as necessary such that all disturbed areas are ready for re-vegetation; (iv) compacting the soil after it is backfilled to a density acceptable to Grantor; (v) grading the areas in which the soils were removed and relocated; (vi) resodding or replanting any damaged grass, trees or other vegetation, (vii) reconstructing any damaged improvements, and (viii) leaving the Grantor Property in a condition which is clean, free of debris and hazards which may be caused by Grantee's activities, and subject to neither environmental hazards nor liens caused by Grantee's activities.

6. **Work on the Improvements.** Grantee will conduct all construction-related activities in a good and workmanlike manner in compliance with all laws, rules, and ordinances, both present and future. Upon completion of any work on the Improvements, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion.

7. **Compliance with Laws.** Grantee shall comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, 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.

8. **Insurance.** Prior to entering onto the Easement Area, Grantee shall maintain, or shall cause to be maintained, policies which, at a minimum, provide Grantor the protections set forth below. Additionally, Grantee will ensure that prior to entering onto the Easement Area or the Grantor Property, all of Grantee's Agents and other such parties who assist with the Improvements or use of the Easement Area are either covered under the terms of Grantee's insurance policies, or

that each obtain similar policies and which, at a minimum, provide Grantor the same protections. Such insurance may be carried under a “blanket” policy or “blanket” policies covering other properties of Grantee, and may be subject to such self-insured retentions as Grantee may desire. Prior to any entry onto, or construction within, the Easement Area by Grantee, Grantor shall have the right to approve Grantee’s insurance and Grantee shall (i) provide certificates to Grantor evidencing such insurance in a form acceptable to Grantor, and (ii) cause its consultants, contractors, and subcontractors to add Grantor as an additional insured.

8.1. Liability Insurance Coverage and Limits. 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). The coverage set forth above shall be primary coverage and shall apply specifically to the Easement Area, activities on the Grantor Property, and adjacent areas;

8.2. Workers’ Compensation Insurance. All Workers’ Compensation and Employers’ Liability Insurance required under applicable Workers’ Compensation Acts and/or applicable law; and

8.3. Automobile Insurance. Automobile Liability Insurance with a minimum limit of not less than One Million Dollars (\$1,000,000) Combined Single Limit per accident, and coverage applying to “Any Auto.”

9. Indemnification by Grantee. Grantee hereby agrees to indemnify, save, defend (with counsel reasonably acceptable to Grantor) and hold harmless Grantor, and any entity controlling, controlled by, or under control with Grantor, and its and their Affiliates’ officers, directors, employees, managers, members, agents and servants (“**Affiliates**”) from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by Grantor or its Affiliates as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the Easement Area by Grantee and/or Grantee’s Agents; (ii) any entry onto the Easement Area and/or the Grantor Property by Grantee and/or Grantee’s Agents; and (iii) any work performed on the Easement Area by Grantee and/or Grantee’s Agents, except to the extent caused directly by Grantor and/or its Affiliates.

10. Waiver of Governmental Immunity. The Parties acknowledge that Grantee is a political subdivision of the State of Utah, and/or other similar governmental entity, and as such is subject to and bound by the provisions of the Utah Governmental Immunity Act, Utah Code Section 63-30-1 et seq., and/or other similar laws (collectively, the “**Act**”). Notwithstanding the foregoing, Grantee hereby waives such provisions of the Act, and any other immunity related laws or statutes, that may invalidate in any way (i) the obligations, duties and/or responsibilities of Grantee to Grantor under this Agreement (including without limitation, Grantee’s indemnity obligations hereunder), or (ii) any express rights or remedies of Grantor hereunder.

11. Liens. Grantee shall keep the Easement Area and the Grantor 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 or encumbrances that may be placed on the Easement Area and/or the Grantor Property pertaining to any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee or any of Grantee's Agents. Any such liens shall be released of record within thirty (30) days.

12. Remedies.

12.1 Self Help and Other Remedies. If any party defaults in the performance of its obligations hereunder and the default is not cured within ten (10) days following delivery of written notice to such defaulting party then the non-defaulting party shall have the right to (i) perform such obligation on behalf of the defaulting party, in which event such defaulting party shall reimburse such non-defaulting party for all amounts expended by the non-defaulting party on behalf of the defaulting party, together with interest thereon at the lesser of twelve percent (12%) per annum or the maximum amount permitted by law from the date the amounts are expended until the date repaid; and/or (ii) exercise any other rights or remedies available to the non-defaulting party either at law or in equity.

12.2 Injunctive Relief. In the event of a breach by any party hereto of any obligation of such party under this Agreement, the non-defaulting party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations created hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting party shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the defaulting party.

12.3 Non-Waiver. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of an event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms, provisions and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other term, condition or provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but instead all remedies shall be cumulative with all other remedies provided for in this Agreement and all other remedies at law or in equity which are available to the parties hereto.

13. Notices. All notices, demands, statements, and requests (collectively, the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified

mail, return receipt requested, and (iii) on the date the notice is delivered by a courier service (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The addresses of the signatories to this Agreement are set forth below:

If to Grantor:	Suburban Land Reserve, Inc. 51 S. Main Street, Suite 301 Salt Lake City, Utah 84111
With a copy to:	Kirton McConkie 50 East South Temple Street, Suite 400 Salt Lake City, Utah 84111 Attn: Eric B. Robinson
If to Grantee:	City of Saratoga Springs 1307 N. Commerce Drive, Suite 200 Saratoga Springs, UT 84045 Attn: City Manager Fax: 801-766-9794

14. Miscellaneous.

14.1. Binding Effect. Except as expressly stated herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as the successors and assigns of such persons.

14.2. Partial Invalidity. If any term, covenant or condition of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

14.3. Captions and Recitals. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein. The Recitals set forth above are incorporated into this Agreement by reference.

14.4. Relationship of the Parties. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

14.5. Amendment. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of the parties or their successor and assigns (as determined by the provisions herein).

14.6. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

14.7. Attorney Fees. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

14.8. Assignment. Grantee may not at any time during this Agreement assign its rights and obligations under this Agreement without the prior written consent of Grantor, which consent may be granted or withheld in Grantors sole and absolute discretion and for any reason or no reason at all.

14.9. No Public Use/Dedication. The Grantor Property is and shall at all times remain the private property of Grantor. The use of the Grantor 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 the Grantor Property beyond the express terms and conditions of this Agreement.

(signatures and acknowledgements to follow)

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date of recording of this Agreement.

Grantor: SUBURBAN LAND RESERVE, INC.,
a Utah corporation

By: *R. Steven Romney*
Name (Print): R. Steven Romney
Its: President

Grantee: CITY OF SARATOGA SPRINGS,
a Utah municipal corporation

By: *Mark Christensen*
Name (Print): MARK CHRISTENSEN
Its: CITY MANAGER



Witness and Countersign:
By: *Cindy Holm*
Its: CITY RECORDER

[acknowledgments on following page]

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

Before me, Marilyn F. Nielson, of the state and county aforesaid personally appeared R. Steven Bomney with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the President of Suburban Land Reserve, Inc., a Utah corporation, within named bargain or, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained by personally signing the name of the corporation.

WITNESS my hand and official seal.



Marilyn F. Nielson
Notary Public for Utah

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On this 18 day of MAY, 2020, personally appeared before me MARK CHRISTENSEN, who indicated to me that he/she is the CITY MANAGER of the CITY OF SARATOGA SPRINGS, a Utah municipal corporation, and that he/she duly acknowledged to me that he/she executed the foregoing instrument as a free and voluntary act for and on behalf of the said municipal corporation.

My Commission Expires:
04-12-2024

Lucinda Lopiccolo
Notary Public for Utah

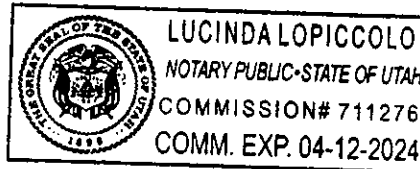


EXHIBIT A

(Legal Description of the Easement Area)

SUBURBAN LAND RESERVE INC. PARCEL NO. 58:041:0231, 58:041:0232, 58:041:0233**30' WIDE PERMANENT EASEMENT (PARCEL #1)**

Located in the Northwest Quarter of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian, described as follows:

Beginning at a point located N89°50'00"W along the Section Line 358.93 feet and South 1134.61 feet from the North Quarter Corner of Section 34, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 77.00 feet; thence West 558.00 feet to the east line of Foothill Boulevard; thence along said east line the following two (2) courses: South 1249.18 feet; thence along the arc of a 3000.00 foot radius curve to the left 200.98 feet through a central angle of 3°50'19" (chord: S1°55'09"E 200.95 feet) to the Quarter Section Line; thence N89°50'07"W along the Quarter Section Line 30.07 feet; thence northwesterly along the arc of a 3030.00 foot radius non-tangent curve to the right (radius bears: N86°12'04"E) 200.89 feet through a central angle of 3°47'56" (chord: N1°53'58"W 200.86 feet); thence North 1326.18 feet; thence East 588.00 feet to the point of beginning.

Contains: ±2.04 Acres
±88,780 Sq. Ft.

Together with a 10 foot wide temporary grading easement running parallel with the easterly edge of Foothill Boulevard as described above.

Cked by JJB 18 Nov. 2019

EXHIBIT B

(Depiction of the Easement Area)

