

When Recorded, Mail To:

Corporation of the Presiding Bishop of
The Church of Jesus Christ of Latter-day Saints
c/o Property Reserve, Inc..
Attn.: Brian Bayless
79 S. Main St., Ste. 700
Salt Lake City, Utah 84111

With a Copy To:

Wright Development Group, Inc.
Attn: Spencer Wright
1572 North Woodland Park Dr., Ste. 505
Layton, UT 84041
Tax Parcel No. 12-033-0057

Esc. 713520-AJ

(space above for Recorder's use only)

SEWER EASEMENT AGREEMENT

This SEWER EASEMENT AGREEMENT (this "**Agreement**") is made this 31st day of July, 2015, (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 WEST POINT 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 in Davis 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 and depicted on Exhibit B, attached hereto and incorporated herein by this reference (the "**Sewer Easement Area**"), for the purposes set forth in this Agreement.

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

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

TERMS AND CONDITIONS

1. **Grant of 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 operating, repairing, altering, protecting, restoring, and maintaining an underground sewer line and related facilities (collectively, the "**Improvements**"). The Improvements shall be constructed pursuant to a separate agreement between Grantor and Grantee, whereupon Grantor shall convey to Grantee the right to access the Grantor's Property and construct the Improvements. Notwithstanding anything to the contrary herein, Grantee shall construct the Improvements: (i) at a size capable of accommodating Grantor's future development of Grantor's Property, and (ii) at a depth of at least

three (3) feet from the surface to prevent interference with other improvements that may be placed on the Grantor's Property.

2. **Consideration.** Grantee has agreed to pay Grantor a payment, in an amount previously mutually agreed upon between the Parties for the easement granted herein.

3. **Access.** Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, "**Grantee's Agents**") shall have the right to enter upon the Sewer Easement Area solely for the purposes permitted by this Agreement. Grantee shall enter upon the Sewer 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 Sewer Easement Area and the entry upon the Sewer Easement Area by Grantee and Grantee's Agents. In the event Grantee needs to access the Sewer Easement Area to perform any maintenance, repair, or restoration work on the Sewer Easement Area, Grantee shall (i) use reasonable efforts to minimize any interference or disruption to Grantor's use and occupancy of the Sewer Easement Area 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).

4. **Reservation by Grantor.** Notwithstanding anything to the contrary herein, Grantor hereby reserves the right to use the Sewer Easement Area for any use not inconsistent with Grantee's permitted use of the Sewer Easement Area. Without limiting the above, Grantor reserves the right (i) to relocate, or require the relocation of the Improvements and the Sewer Easement Area at any time at Grantor's cost and expense, provided that such relocation provides Grantee with comparable easement rights and functionality and such relocation terminates the use of the easement in its prior location, and (ii) to grant additional rights, easements or encumbrances to other third parties to use or occupy the Sewer Easement Area (or the surface of the Grantor Property above same). Grantee hereby understands and agrees that the Sewer Easement Area is granted on a non-exclusive basis and that other third parties have been, and/or may be in the future, granted the right by Grantor to use the Sewer Easement Area and/or surrounding areas in a way that does not materially prevent or impair the use or exercise of the easement rights granted hereby.

5. **Condition of the Sewer Easement Area.** Grantee accepts the Sewer Easement Area 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 Sewer Easement Area. Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the Sewer 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 Sewer 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 Sewer 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 Sewer Easement Area.

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.

6. **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. Upon completion of the Improvements, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion.

7. **Maintenance; Restoration; and Damage.**

7.1 **General Maintenance and Restoration.** Grantee, at its sole cost and expense, shall maintain and repair the Improvements and Sewer Easement Area in good order and condition. Grantee shall promptly repair any damage to the Grantor's Property, Grantor's improvements located thereon (including, without limitation, any and all crops, landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, signs, lighting, buildings, etc.), and Sewer Easement Area caused by Grantee and/or Grantee's Agents, and shall restore the Grantor's Property, Grantor's improvements located thereon, and the Sewer Easement Area to the same or better condition as they existed prior to any entry onto or work performed 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 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 same depth of the surrounding surface after the construction activities; (iii) the filling in and repairing of all other portions of the Grantor Property, Improvements, and Sewer Easement Area which are damaged, rutted or otherwise disturbed as a result of Grantee's operations with the same topsoil existing prior to said construction activities (or with similar quality topsoil) as necessary; (iv) grading the areas in which the soils were removed and relocated, (v) ensuring that the grading in the Sewer Easement Area remains at a consistent level thereafter; (vi) paying for costs incurred by Grantor in replacing replanted crops damaged due to the settling of the top soil within the Sewer Easement Area; (vii) maintaining adequate site protection on replanted areas until adequate regrowth is achieved; 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.

In the event Grantee's Improvements require removal, realignment, or relocation of Grantor's improvements located on the Grantor Property, then Grantee, at its sole cost and expense, shall remove, relocate, or realign Grantor's improvements.

7.2 **Damage Fees.** Grantee will reimburse Grantor for any losses (including lost profits) and expenses due to crop damage, losses due to Grantor having to remove, replace and relocate Grantor's improvements located on the Grantor Property (including, but not limited to, utilities, irrigation infrastructure, drainage ditches or swales, guide wires, moving control boxes, etc.), loss of rental income or other loss or damage that results from Grantee's, or Grantee's Agents': (i) entry onto, presence upon, or work performed on the Grantor Property and/or (ii) failure to comply with any of the terms or conditions of this Agreement.

7.3 **Future Work Conducted.** Grantee will provide Grantor with at least thirty (30) day prior written notice before entering onto the Sewer Easement Area to perform any work as set forth in this Agreement and use reasonable efforts to minimize any interference or disruption to Grantor's use and occupancy of the Grantor Property.

8. **Termination.** The Sewer Easement will be automatically terminated upon the earlier to occur of the following: (i) Grantee no longer uses 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 twelve (12) months.

9. **Indemnification.** 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 use of the Sewer Easement Area and/or adjacent areas by Grantee or Grantee's Agents, (ii) any 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 Sewer Easement Area and/or adjacent areas, (iv) any violation or alleged violation by Grantee or Grantee's Agents of any law or regulation now or hereafter enacted, (v) the failure of Grantee to maintain the Sewer Easement Area and/or the Improvements 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 Sewer Easement Area and/or adjacent areas, (vii) any breach by Grantee of its obligations under this Agreement, and (viii) any enforcement by Grantor of any provision of this Agreement and any cost of removing Grantee or Grantee's Agents or its or their property or equipment from the Sewer Easement Area or restoring the same as provided herein; provided, however, that the foregoing indemnity shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been caused solely by gross negligence or willful misconduct of the Indemnitees. Grantee, as a material part of the consideration of this Agreement, waives all claims or demands against Grantor and the other Indemnitees for any such loss, damage, or injury of Grantee or Grantee's property. The indemnity provided by Grantee in favor of the Indemnitees in this Agreement shall not require payment as a condition precedent. The terms and conditions of this indemnification provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

10. **Insurance.** Grantee will maintain in force the insurance policies and coverage set forth below. Additionally, Grantee will ensure that prior to entering onto the Sewer Easement Area or the Grantor Property, all of Grantee's Agents and the Grantee Parties who assist with the construction, maintenance or use of the Sewer 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. Grantee agrees to obtain and maintain the following insurance coverage and policies.

10.1. **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 Sewer Easement Area and the ways immediately adjoining the Sewer 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). Grantor must be endorsed as an additional insured on such policy on ISO Form CG 20 10 (10/93) or its equivalent. The coverage set forth above shall be primary coverage and shall apply specifically to the Sewer Easement Area, the Grantor Property, and adjacent areas.

10.2. **Workers' Compensation Insurance.** All Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law. In

addition, Grantee shall maintain Employers' Liability Insurance with a minimum limit of not less than Five Hundred Thousand Dollars (\$500,000.00).

10.3. Automobile Insurance. Automobile Liability Insurance with a minimum limit of not less than Two Million Dollars (\$2,000,000.00) Combined Single Limit per accident, and coverage applying to "Any Auto."

10.4. Waiver. Grantee hereby waives and shall cause their respective insurance carriers to waive any and all rights of subrogation, recovery, claims, actions or causes of action against Grantor for any loss or damage with respect to Grantor's Property and the Improvements, including rights, claims, actions and causes of action based on negligence, which loss or damage is (or would have been, had the insurance required by this Agreement been carried) covered by insurance.

10.5. Additional Terms. Neither the amount nor the scope of any of the obligations of Grantee under this Agreement or otherwise, shall be limited to the amount of the insurance Grantee is required to maintain hereunder. Any policies or certificates of insurance required under the provisions of this Section must contain an endorsement or provision that not less than thirty (30) days' prior written notice is given to Grantor prior to cancellation or reduction of coverage or amount of such policy. A certificate issued by the insurance carrier of each policy of insurance required to be maintained by Grantee, stating the limits and other provisions required hereunder and in a form reasonably acceptable to Grantor, shall be delivered to Grantor within ten (10) days of the date set forth above, and thereafter not later than thirty (30) days prior to the expiration of the term of each such policy. Any policies required hereunder may be made a part of a blanket policy of insurance, so long as such blanket policy contains all of the provisions required herein and does not in any way reduce the coverage, impair the rights of Grantor hereunder or negate the requirements of this Agreement.

11. 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.

12. Notice. 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: Corporation of the Presiding Bishop of
The Church of Jesus Christ of Latter-day Saints
c/o Property Reserve, Inc..
Attn.: Brian Bayless
79 S. Main St., Ste. 700
Salt Lake City, Utah 84111

With a copy to: Kirton McConkie
Attn: Eric Robinson

50 East South Temple Street, Suite 400
Salt Lake City, Utah 84111

If to Grantee: Wright Development Group, Inc.
Attn: Spencer Wright
1572 North Woodland Park Dr., Ste. 505
Layton, UT 84041

13. 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.

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. 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.

14.4. Gender. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

14.5. 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.

14.6. 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).

14.7. 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.

14.8. 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.

14.9. Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Grantor Property to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement shall be strictly limited to and for the purposes herein expressed. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not specifically benefited by the terms and provisions hereof. Grantor shall have the right to perform any act, or do any thing, from time to time that Grantor may deem necessary or desirable to assure that no public gift dedication (or deemed gift dedication) occurs.

14.10. 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.

[Signatures and notarizations to follow]

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

GRANTOR:

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

By: *Mark B Gibbons*

Name (Print): _____

Its: Authorized Agent

STATE OF UTAH)
 :ss
COUNTY OF SALT LAKE)

On this 29 day of June, 2015, personally appeared before me Mark B Gibbons, 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.

Leigh-Elle Kent
Notary Public for the
State of Utah



[Signature and notarization to follow]

GRANTEE:

WEST POINT CITY,
a Utah municipal corporation

By: Kyle W. Laws

Name (Print): Kyle W. Laws

Its: City Manager

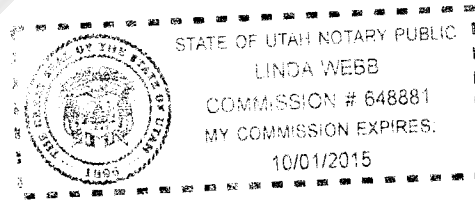
STATE OF UTAH)
 :SS
COUNTY OF DAVIS)

On this 29th day of July, 2015, personally appeared before me Kyle Laws, known or satisfactorily proved to me to be the manager of WEST POINT CITY, created, organized and existing under the laws of the State of Utah, who acknowledged to me that he/she signed the foregoing instrument as manager for said corporation.

WITNESS my hand and official seal.

Linda Webb

Notary Public for the
State of Utah



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EXHIBIT A

[Legal Description of the Grantor's Property]

Beginning at a point on the section line, also being the center line of 300 North Street, said point being North 89°56'51" West 1011.00 feet along the section line from the Northeast Corner of Section 4, Township 4 North, Range 2 West, Salt Lake Base and Meridian, and running;

Thence South 0°09'35" West 233.00 feet;

Thence North 89°56'51" West 647.59 feet;

Thence North 0°08'12" East 233.00 feet to the section line, also being the center line of 300 North Street;

Thence South 89°56'51" East 647.68 feet along the section line and center line of 300 North Street to the beginning.

Gross Area Contains 150,900 square feet, 3.464 acres.
(Includes to the center line of 300 North Street.)

Net Area Contains 129,526 square feet, 2.974 acres.
Excludes 300 North Street.

Ck by JJB 16 March 2015

EXHIBIT B

[Legal Description of the Sewer Easement Area]

**Smith's 272
West Point
Property Reserve, Inc Sewerline Easement**

March 20, 2015

A part of the Northeast Quarter of Section 4, Township 4 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in Davis County, Utah:

Beginning at a point on the South Line of 300 North Street located 1011.00 feet North 89°56'51" West along the Section Line, and 33.00 feet South 0°09'35" West from the Northeast Corner of said Section 4; and running thence South 0°09'35" West 20.00 feet; thence North 89°56'51" West 430.00 feet; thence North 0°09'35" East 20.00 feet to the South Line of 300 North Street; thence South 89°56'51" East 430.00 feet along said South Line to the point of beginning.

Ck by JJB 7 April 2015

Contains 8,600 sq. ft.

