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12/10/2008 3:44:00 PM \$22.00  
Book - 9664 Pg - 3141-3147  
Gary W. Ott  
Recorder, Salt Lake County, UT  
KIRTON & MCCONKIE  
BY: eCASH, DEPUTY - EF 7 P.

**When Recorded, Mail To:**

City Creek Reserve, Inc.  
Attn: Mr. Michael Marks  
15 East South Temple, Suite 800  
Salt Lake City, Utah 84150

**With A Copy To:**

Kirton & McConkie  
Attn: Mr. Robert Hyde  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84145-0120

Parcel No. 15-01-227-054

(Space above for Recorder's use only)

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (this "**Agreement**") is entered into this 1<sup>ST</sup> day of Dec., 2008 (the "**Effective Date**"), by and between CITY CREEK RESERVE, INC., a Utah nonprofit corporation ("**Grantor**"), and CITY CREEK RESERVE, INC., a Utah nonprofit corporation, whose mailing address is 15 East South Temple, Suite 800, Salt Lake City, Utah, 84150 ("**Grantee**").

**RECITALS**

A. Grantor owns certain real property ("**Grantor's Parcel**") located in Salt Lake County, Utah, and better known as Tax Parcel No. 15-01-227-054.

B. Grantee owns certain real property ("**Grantee's Parcel**") located in Salt Lake County, Utah, and better known as Tax Parcel No. 15-01-227-008.

B. Grantee desires to obtain a perpetual, non-exclusive easement through a portion of Grantor's Parcel (the "**Easement Area**") for the purposes more particularly described herein, and 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 attached hereto and incorporated herein by this reference.

**TERMS AND CONDITIONS**

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the parties agree as follows:

1. **Grant and Term of Easement.** Grantor hereby conveys to Grantee a perpetual, non-exclusive easement through a portion the Easement Area (as more fully set forth in Section 2 below) for the sole purpose of enabling Grantee, and Grantee's agents, servants, employees,

consultants, contractors, subcontractors, permittees and assigns (collectively, “**Grantee’s Agents**”) to maintain, repair, replace, and operate the utility lines, pipes, equipment, and facilities that are currently existing within the Easement Area and which benefit the building(s), structure(s) and other improvements currently existing upon Grantee’s Parcel (collectively, the “**Utility Facilities**”).

2. **Location of Easement.** Notwithstanding any language to the contrary herein, the location of the easement rights granted under this Agreement are expressly limited to the location of the currently existing and constructed Utility Facilities as same run through the airspace within the Easement Area. Except with respect to the reasonable access rights described in Section 3 below (allowing access through reasonable portions of the Easement Area in order to access the Utility Facilities), the easement and other rights granted herein do not extend to any other portions of the Easement Area or Grantor’s Parcel.

3. **Access.** Grantee and Grantee’s Agents shall have the right of reasonable of ingress and egress through the Easement Area in order to access the Utility Facilities in accordance with 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 and Grantee’s Agents.

4. **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. Without limiting the generality of the previous sentence, Grantor reserves the right: (a) for pedestrian and vehicular ingress and egress on and over the Easement Area; (b) for the placement and maintenance of landscaping, trees, signs, light standards, sidewalks, curbs and gutters, ditches, irrigation pipes and related appurtenances, fences, asphalt roadways and parking lots, utilities of any type or nature, and driveways and other similar improvements; (c) to relocate, or require the relocation of the Utility Facilities at any time at Grantor’s cost and expense, provided that such relocation provides Grantee with comparable easement rights and such relocation terminates the use of the easement in its prior location; (d) to grant other non-exclusive easements, licenses and rights within or on the Easement Area to other parties (including, without limitation, other utility easements); and (e) to convey or transfer any or all of its interests in Grantor’s Parcel or the Easement Area to any party at any time.

5. **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: (i) any state of facts which an accurate ALTA/ASCM survey (with Table A items) or physical inspection of the Easement Area might show; (ii) 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 (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 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.

6. **Maintenance and Restoration**. Grantee shall, at its sole cost and expense, maintain and repair the Utility Facilities and any and all related improvements installed by Grantee, in good order and condition. Grantee shall promptly repair any damage to the Grantor's Parcel and Grantor's improvements located thereon (including, without limitation, any and all landscaping, trees, fences, pipes, curbs, gutters, asphalt surfaces, signs, lighting, etc.) caused by Grantee and/or Grantee's Agents, and shall restore the Grantor's Parcel and the improvements thereon to the same or better condition than that in which they existed prior to any entry onto or work performed on the Grantor's Parcel by Grantee and Grantee's Agents.

7. **Compliance with Laws**. Grantee will 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. **Liens**. Grantee shall keep the Grantor's Parcel free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee, and agrees to defend Grantor from any liens that may be placed on the Grantor's Parcel 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 Agents. Any such liens shall be released of record within thirty (30) days.

9. **Insurance**. Grantee will ensure that prior to entering onto the Easement Area, all of Grantee's Agents and other such parties who assist with the maintenance or use of the Easement Area are covered under the terms of Grantee's insurance policies as set forth below, or that each obtain similar policies which, at a minimum, provide Grantor the same protections.

9.1. **Liability Insurance Coverage and Limits**. Prior to taking possession of the Easement Area, Grantee's Agents will obtain and maintain a policy of general commercial liability insurance 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). Grantor will be endorsed as an additional insured on such policy on ISO Form CG 20 10 (10/93) or its equivalent.

9.2. **Workers' Compensation Insurance**. Grantee's Agents must agree 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.

9.3. **Automobile Insurance**. Grantee 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."

9.4. **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, but only so long as Grantee maintains actuarially sound reserves.

Notwithstanding any language or obligations set forth in this Section 9, Grantor shall have the right to waive Grantee's obligations to obtain and maintain the insurance policies and/or coverages described above at any time and from time to time; provided, however, (i) such waiver may be revoked at any time and, thereafter, Grantee shall immediately obtain and maintain the applicable policies and/or coverage, (ii) any such waiver shall not be deemed a waiver of any other provisions or terms of this Agreement.

10. **Indemnification.** Grantee shall indemnify and hold Grantor and its employees, officers, divisions, subsidiaries, partners, members and affiliated companies and its and their employees, officers, 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**") arising from or relating to: (a) any use of the Easement Area, Grantor's Property, and/or adjacent areas by Grantee or Grantee's Agents, (b) any act or omission of Grantee or any of Grantee's Agents, (c) 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, the Grantor's Property and/or adjacent areas, (d) any violation or alleged violation by Grantee or Grantee's Agents of any law or regulation now or hereafter enacted which causes loss or damage to Grantor, (e) the failure of Grantee to maintain the Easement Area in a safe condition, which causes loss or damage to Grantor, (f) 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, the Grantor's Property, and/or adjacent areas, (g) any breach by Grantee of its obligations under this Agreement, which causes loss to Grantor, (h) the Utility Facilities and any utilities or utility products related thereto, and (i) any enforcement of Grantor of any provision of this Agreement and any cost of removing Grantee from the 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 the negligent 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 provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

11. **Notices.** Any notice required or desired to be given under this Agreement shall be considered given either: (i) when delivered in person to the recipient named below or (ii) 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:

1104490

BK 9664 PG 3144

If to Grantor:

City Creek Reserve, Inc.  
Attn: Mr. Michael Marks  
15 East South Temple, Suite 800  
Salt Lake City, Utah 84150  
Fax No.: (801) 240-5881

If to Grantee:

City Creek Reserve, Inc.  
Attn: Mr. Michael Marks  
15 East South Temple, Suite 800  
Salt Lake City, Utah 84150  
Fax No.: (801) 240-5881

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

12. **Termination.** This Agreement and all easement rights set forth herein will be automatically terminated upon the earlier to occur of the following: (a) Grantee decides that it will no longer use the easement granted herein and gives Grantor written notice thereof, (b) Grantee does not actually use the easement rights granted herein for a consecutive period of one (1) year, or (c) Grantee is provided an alternative easement for the Utility Facilities. Upon the occurrence of an event set forth in the preceding sentence, Grantor may unilaterally record an instrument terminating this Agreement.

13. **Miscellaneous.** This Agreement may not be assigned, whether voluntarily or by operation of law, and Grantee shall not permit the use of the Easement Area, or any part hereof, except in strict compliance with the provisions hereof, and any attempt to do so shall be null and void. This Agreement 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. 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. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Utah.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the Effective Date.

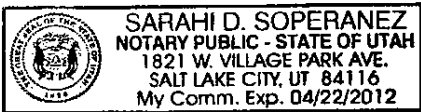
GRANTOR: CITY CREEK RESERVE, INC.,  
a Utah non-profit corporation

By: *Mark B. Gibbons*  
Mark B. Gibbons, President

STATE OF UTAH )  
:SS  
COUNTY OF SALT LAKE )

On this 1st day of December, 2008, personally appeared before me Mark B. Gibbons, known or satisfactorily proved to me to be the President of City Creek Reserve, Inc., a Utah nonprofit corporation, who acknowledged to me that he signed the foregoing instrument as President for said corporation.

*Sarahi D. Soperanez*  
Notary Public



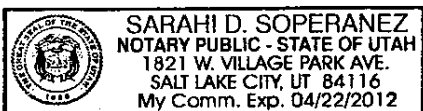
GRANTOR: CITY CREEK RESERVE, INC.,  
a Utah non-profit corporation

By: *Mark B. Gibbons*  
Mark B. Gibbons, President

STATE OF UTAH )  
:SS  
COUNTY OF SALT LAKE )

On this 1st day of December, 2008, personally appeared before me Mark B. Gibbons, known or satisfactorily proved to me to be the President of City Creek Reserve, Inc., a Utah nonprofit corporation, who acknowledged to me that he signed the foregoing instrument as President for said corporation.

*Sarahi D. Soperanez*  
Notary Public



**EXHIBIT A**

**(Legal Description of Easement Area)**

The Easement Area is situated in Salt Lake County, Utah, and is described as follows:

Beginning at a point that is N89°59'41"E 231.89 feet from the northwest corner of Block 76, Plat "A", Big Field Survey, Section 6, Township 1 South, Range 1 West, Salt Lake and Meridian and running thence N89°59'41"E 2.50 feet; thence S00°08'40"W 100.08 feet; thence S89°59'16"W 2.50 feet; thence N00°08'40"E along the easterly line of an existing building 100.08 feet to the point of beginning.

Contains 250.19 sq. ft. or 0.01 acres.