

When Recorded, Mail To:

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



ENT 23035:2023 PG 1 of 13
ANDREA ALLEN
UTAH COUNTY RECORDER
2023 Apr 13 10:14 am FEE 0.00 BY KR
RECORDED FOR SARATOGA SPRINGS CITY

Tax Parcel No.: 580350141

(Space Above for Recorder's Use Only)

UTILITY EASEMENT AGREEMENT

This UTILITY EASEMENT AGREEMENT (this "Agreement") is made and entered into effective as of the 22 day of March, 2023 (the "Effective Date"), by and between SUBURBAN LAND RESERVE, INC., a Utah corporation ("Grantor"), CLAYTON PROPERTIES GROUP II, INC., a Utah corporation ("Developer"), and the CITY OF SARATOGA SPRINGS, a Utah municipal corporation (the "City") (Developer and City are sometimes referred to together as the "Grantee Parties"). Grantor, Developer, and City are at times referred to herein individually as "Party" and collectively as "Parties".

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. 580350141 (the "Grantor Property").

B. The Grantee Parties desire to obtain and Grantor is willing to convey a utility easement over the Grantor Property subject to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

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

1. **Grant of Utility Easement.** Grantor does hereby convey, without warranty, unto the Grantee Parties for the benefit of the Grantee Parties, a non-exclusive easement (the "Easement") under and across that portion of the Grantor Property more particularly described and depicted on Exhibit A (the "Easement Area"), for the construction, replacement, relocation, removal, operation, use, maintenance and repair of utility facilities, lines, conduits, pipes, channels, ponds, ditches, valves, structures, boxes, and other similar transmission and distribution structures and facilities, and all related appurtenances owned and operated by City for the provision of services such as water, secondary water, irrigation water, drinking water, culinary water, storm drainage, storm sewer, sanitary sewer and sewer (collectively, the "Utility Improvements"). The Grantee Parties hereby agree that the Utility Improvements shall be constructed and placed underground and shall not be visible from the surface of the Grantor Property. All costs of the Utility Improvements and all construction, replacement, relocation, removal, operation, use, maintenance and/or repair thereof, shall be the sole responsibility of the Grantee Parties.

1.1. **Purpose of Easement.** The Easement is being granted to allow Developer to meet the City's development standards required for the subdivision and development, and to allow the City to maintain, repair, and replace the Utility Improvements after the City's acceptance of the same. Developer,

therefore, shall be solely responsible for the proper and timely construction and installation of the Utility Improvements per the City's standards.

1.2. The City's Acceptance and Maintenance of Utility Improvements. Upon completion of the Utility Improvements by Developer, and acceptance in writing by the City, the City shall, at its sole cost and expense, maintain the Utility Improvements in good order and condition, except for repairs required during the one (1) year warranty period per the City's development standards for which Developer shall be responsible. Upon expiration of the City's one (1) year warranty period, the City shall maintain and repair the Utility Improvements at its sole cost and expense.

2. Access. The Grantee Parties and their 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. The Grantee Parties shall enter upon the Easement Area from existing roads at its sole risk and hazard, and the Grantee Parties 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 the Grantee Parties and Grantee's Agents. In the event the Grantee Parties need to access the Easement Area to perform any maintenance, repair, or restoration work on the Easement Area, the Grantee Parties shall (i) use reasonable efforts to minimize any interference or disruption to Grantor's use and occupancy of the 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).

3. Replacement of Utility Easement with Subdivision Plat Recordation. Upon the recordation of a subdivision plat with the Utah County Recorder's Office per the City's development standards, which shall provide for the equivalent replacement of the easements in this Agreement in the favor of the City, the Easement shall automatically be deemed superseded and replaced, but only with respect to such portion of the Grantor Property over which a subdivision plat is recorded. Upon such subdivision plat recordation, the rights and obligations in this Agreement shall be of no force or effect so long as the equivalent rights of the City are granted in such recorded subdivision plat. For the remainder of Grantor Property that is not subdivided pursuant to a recorded subdivision plat, this Agreement shall continue in full force and effect.

4. Reservation by Grantor. Notwithstanding anything to the contrary stated herein, Grantor hereby reserves the right to use the Easement Area for any use not inconsistent with the Grantee Parties' permitted use of the Easement Area. Without limiting the above, Grantor reserves the right to grant additional rights, easements or encumbrances to other third parties to use or occupy the Easement Area (or the surface of the Grantor Property above same). The Grantee Parties hereby understand and agree that this Easement 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 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 Easement Area. Each of the Grantee Parties accept the 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 Easement Area. Each of the Grantee Parties hereby waive 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 the Grantee Parties 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. The Grantee Parties 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.

6. **Maintenance and Restoration.** During the initial one (1) year period which follows completion of construction and installation of the Utility Improvements by Developer (the “**Warranty Period**”), the Utility Improvements shall be maintained in good order and condition by the City, with any repairs of the Utility Improvements during the Warranty Period being performed by Developer at its sole cost and expense. Following the expiration of the Warranty Period, the City, at its sole cost and expense, shall maintain and repair the Utility Improvements and any and all related improvements installed by Developer, in good order and condition. During the course of its performance of the work permitted by this Agreement, the Grantee Parties 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 the Grantee Parties 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 the Grantee Parties and Grantee’s Agents. The Grantee Parties’ restoration responsibilities shall also include, but not be limited to: (i) removal of all improvements, equipment or materials other than the Utility 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 the Grantee Parties 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 The Grantee Parties’ 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; and (vi) 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 the Grantee Parties’ activities.

7. **Construction of the Improvements.** The Grantee Parties will conduct all construction, maintenance, repair, and/or restoration activities in a good and workmanlike manner in compliance with all laws, rules, and ordinances, both present and future. Upon completion of the Utility Improvements, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion.

8. **Compliance with Laws.** The Grantee Parties 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.

9. **Insurance.** Prior to entering onto the Easement Area, the Grantee Parties shall maintain, or shall cause to be maintained, policies which, at a minimum, provide Grantor the protections set forth below. Additionally, the Grantee Parties 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 Utility Improvements or use of the Easement Area are either covered under the terms of the Grantee Parties' 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 the Grantee Parties, Grantor shall have the right to approve the Grantee Parties' respective insurance and the Grantee Parties 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 (it being understood that Developer shall list Grantor as additional insured in the construction and installation of the Utility Improvements).

9.1. **Liability Insurance Coverage and Limits.** A commercial general liability insurance policy insuring the Grantee Parties' 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). 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;

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

9.3. **Automobile Insurance.** 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. **Indemnification by the Grantee Parties.** The Grantee Parties 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 the Grantee Parties and/or Grantee's Agents; (ii) any entry onto the Easement Area and/or the Grantor Property by the Grantee Parties and/or Grantee's Agents; and (iii) any work performed on the Easement Area by the Grantee Parties and/or Grantee's Agents, except to the extent caused directly by Grantor and/or its Affiliates.

11. **Waiver of Governmental Immunity.** The Parties acknowledge that the City is an entity 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, the City 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 the City to Grantor under this Agreement (including without limitation, Grantee's indemnity obligations hereunder), or (ii) any express rights or remedies of Grantor hereunder.

12. **Liens.** The Grantee Parties 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 the Grantee Parties, and shall indemnify, hold harmless and agree to defend Grantor from any

liens 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 the Grantee Parties or any of Grantee's Agents. Any such liens shall be released of record within thirty (30) days.

13. Remedies.

13.1. **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.

13.2. **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.

13.3. **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.

14. 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
Attn: Ryan Bull

If to Developer: Clayton Properties Group II, Inc.
206 E. Winchester St.,

Murray, Utah 84107
Attn: Malcolm Thacker

If to the City: City of Saratoga Springs
1307 N. Commerce Drive, Suite 200
Saratoga Springs, UT 84045
Attn: Jeremy Lapin

15. Miscellaneous.

15.1. **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.

15.2. **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.

15.3. **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.

15.4. **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.

15.5. **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).

15.6. **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.

15.7. **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.

15.8. **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.

15.9. **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.

[Signatures and Acknowledgements to Follow]

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

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On this 30 day of MARCH, 2023, personally appeared before me ~~MARK J. CHRISTENSEN~~, who indicated to me that he/~~she~~ is a CITY MANAGER of 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

WITNESS my hand and official seal.

Lucinda Lopiccolo
Notary Public for the State of Utah

My Commission Ends: 04-12-2024

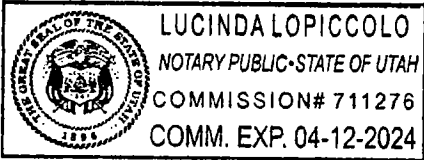


EXHIBIT A

(Legal Description of the Easement Area)

Legal description and depiction of the Utility Easement Area

(Easement 1)

A utility easement, located in the Southeast Quarter of Section 23, Township 5 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, said easement more particularly described as follows:

Beginning at a point that lies North 89°57'40" West 1749.727 feet along the Section Line and North 4953.407 feet from the East Quarter Corner of Section 26, Township 5 South, Range 1 West, Salt Lake Base and Meridian and running thence South 290.674 feet; thence West 59.000 feet; thence North 290.674 feet; thence East 59.000 feet to the point of beginning.

Property contains 0.394 acres, 17150 square feet.

(Easement 2)

A utility easement, located in the Southeast Quarter of Section 23, Township 5 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, said easement more particularly described as follows:

Beginning at a point that lies North 89°57'40" West 1960.731 feet along the Section Line and North 4487.584 feet from the East Quarter Corner of Section 26, Township 5 South, Range 1 West, Salt Lake Base and Meridian and running thence North 89°59'46" West 144.373 feet; thence North 00°00'14" East 59.000 feet; thence South 89°59'46" East 144.373 feet; thence South 00°00'14" West 59.000 feet to the point of beginning.

Property contains 0.196 acres, 8518 square feet.

(Easement 3)

A utility easement, located in the Southeast Quarter of Section 23, Township 5 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, said easement more particularly described as follows:

Beginning at a point that lies North 89°57'40" West 1450.727 feet along the Section Line and North 4662.936 feet from the East Quarter Corner of Section 26, Township 5 South, Range 1 West, Salt Lake Base and Meridian and running thence West 59.000 feet; thence North 44.999 feet; thence East 59.000 feet; thence South 44.999 feet to the point of beginning.

Property contains 0.061 acres, 2655 square feet.

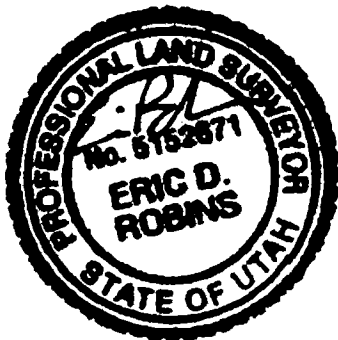


EXHIBIT B

(Depiction of the Easement Area)

