

When Recorded, Mail To:

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



ENT 32776:2015 PG 1 of 10
JEFFERY SMITH
UTAH COUNTY RECORDER
2015 Apr 20 3:15 PM FEE 0.00 BY SW
RECORDED FOR SARATOGA SPRINGS CITY

With a Copy To:

Suburban Land Reserve, Inc.
c/o Kirton McConkie
Attn: Kirk Grimshaw
50 East South Temple Street
Salt Lake City, Utah 84020

APN: 58:035:0038

(Space Above for Recorder's Use Only)

WATER LINE EASEMENT AND AGREEMENT

This WATER LINE EASEMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of the ___ day of _____, 2015 (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 (the "**Grantor Property**").

B. Grantee desires to obtain and Grantor is willing to convey a water line easement over the Grantor Property 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 convey, without warranty, unto Grantee for the benefit of Grantee a non-exclusive easement (the "**Water Line Easement**") under and across that portion of the Grantor Property more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "**Water Line Easement Area**"), for construction, replacement, relocation, removal, operation, use, maintenance and repair of water line improvements located therein from time to time (the "**Water Line Improvements**"). During the term of this Agreement, no permanent above- or below-ground improvement of any kind shall be constructed or maintained on the Water Line Easement Area which shall materially prevent or impair the use or exercise of the easement rights granted hereby. Grantee hereby agrees that Water Line Improvements shall be constructed and placed underground and shall not be visible from the surface of the Grantor Property. All costs of the Water Line Improvements and all construction, replacement, relocation, removal, operation, use, maintenance and/or repair thereof, shall be the sole responsibility of Grantee.

2. **Access.** Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, "**Grantee's Agents**") shall have the right to enter upon the Water Line Easement Area solely for the purposes permitted by this Agreement. Grantee shall enter upon the Water Line 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 Water Line Easement Area and the entry upon the Water Line Easement Area by Grantee and Grantee's Agents. In the event Grantee needs to access the Water Line Easement Area to perform any maintenance, repair, or restoration work on the Water Line Easement Area, Grantee shall (i) use reasonable efforts to minimize any interference or disruption to Grantor's use and occupancy of the Water Line 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. **Reservation by Grantor.** Notwithstanding anything to the contrary stated herein, Grantor hereby reserves the right to use the Water Line Easement Area for any use not inconsistent with Grantee's permitted use of the Water Line Easement Area. Without limiting the above, Grantor reserves the right (i) to relocate, or require the relocation of the Water Line Improvements and the Water Line 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 Water Line Easement Area (or the surface of the Grantor Property above same). Grantee hereby understands and agrees that this Water Line 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 Water Line 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.

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

5. **Maintenance and Restoration.** Grantee, at its sole cost and expense, shall maintain and repair the Water Line Improvements and any and all related improvements installed by Grantee, in good order and condition. 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 Water Line 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; 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 Grantee's activities.

6. Damage Fees. Grantee will reimburse Grantor for any losses (including lost profits) and expenses due to 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. 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 Water Line Improvements, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion.

8. 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.

9. Insurance. Prior to entering onto the Water Line Easement Area, Grantee shall maintain, or shall cause to be maintained, policies which, at a minimum, provide Grantor the protections set forth below. 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 Water Line Easement Area by Grantee, Grantor shall have the right to approve Grantee's insurance and Grantee shall provide certificates to Grantor evidencing such insurance (and Grantor's rights as an additional insured) in a form acceptable to Grantor.

9.1. 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 Water Line Easement Area and the ways immediately adjoining the Water Line 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 Water Line 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 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 Water Line Easement Area by Grantee and/or Grantee's Agents; (ii) any entry onto the Water Line Easement Area and/or the Grantor Property by Grantee and/or Grantee's Agents; and (iii) any work performed on the Water Line Easement Area by Grantee 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 Grantee 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, 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.

12. Liens. Grantee shall keep the Water Line 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 that may be placed on the Water Line 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.

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: President
Fax: (801) 320-7535

With a copy to: Kirton McConkie
50 East South Temple Street, Suite 400
Salt Lake City, Utah 84111
Attn: Kirk Grimshaw
Fax: (801) 212-2057

If to Grantee: City of Saratoga Springs
1307 N. Commerce Drive, Suite 200
Saratoga Springs, UT 84045
Attn: City Manager
Fax: 801-766-9794

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. 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.

15.5. 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.

15.6. 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).

15.7. 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.

15.8. 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.

15.9. 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.

15.10. 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 and for any reason or no reason at all.

[signatures and acknowledgements to follow]

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

GRANTOR:

SUBURBAN LAND RESERVE, INC.,
a Utah corporation

By: *R. Steven Romney*
Name: R. STEVEN ROMNEY
Title: PRESIDENT

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

Before me, JANET P. CHRISTENSEN, of the state and county aforesaid personally appeared R. STEVEN ROMNEY, 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.

My Commission Expires: 05/01/2016

Janet P. Christensen
Notary Public for Utah

[signature and acknowledgment to follow]



GRANTEE:

City of Saratoga Springs, a Utah municipal corporation



By: [Signature]
Name: Mark Christensen
Title: City Manager

ATTEST:

[Signature]
City Recorder

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On this 30th day of April, 2015, personally appeared before me Lori Heates, who indicated to me that he/she is a City Recorder 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: 12-19-16

[Signature]
Notary Public for Utah



EXHIBIT A

SEE ATTACHED

Default Title
Page 5 of 5

20' wide water line easement

Beginning at a point which South 00°20'04" West, along the section line 2616.86 feet and South 89°39'56" East, 2694.01 feet from the Southwest Corner of Section 23, Township 5 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing is North 00°03'00" East, between the Northwest and Southwest Corners of said Section 23); and running thence South 89°56'47" East, 1367.57 feet; thence South 00°05'32" West, 20.00 feet; thence North 89°56'47" West, 1367.73 feet; thence North 00°34'23" East a distance of 20.00 feet to the point of beginning.

Ck by JJB 4 Feb. 2015

