**TEMPORARY CONSTRUCTION LICENSE AGREEMENT**

THIS TEMPORARY CONSTRUCTION LICENSE AGREEMENT (this “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2023 (the “**Effective Date**”) by and between THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, formerly known as CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole (“**Licensor**”), and WEBER COUNTY SURVEYOR'S OFFICE (“**Licensee**”).

**RECITALS**

1. Licensor is the owner of certain real property located in Weber County, Utah, with a Parcel Identification Nos. 15-004-0056, 15-004-0113, and 15-007-0024 (“**Licensor’s Property**”).
2. Licensee desires a temporary, non-exclusive construction license on, over, across, under and through certain portions of Licensor’s Property, as depicted on Exhibit A, attached hereto and incorporated herein by this reference (the “**License Area**”), for the purposes set forth in this Agreement.
3. Licensor is willing to issue such license to Licensee, subject to the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, for 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. **Issuance of Temporary Construction License**. Licensor hereby issues to Licensee a temporary, revocable, non-exclusive construction license on, over, across, under and through the License Area (the “**License**”) for the sole purpose of re-constructing an 8-12” concrete column marking the position of the East Quarter Corner of Section 3, Township 6 North, Range 2 West, Salt Lake Base & Meridian (the “**Monument**”) by Licensee.
2. **Term**. The License shall commence on the Effective Date and automatically terminate upon the earlier to occur of (i) the construction of the Monument; or (ii) one (1) month after the Effective Date.
3. **Intentionally Deleted**.
4. **Access**. Licensee, and their respective agents, servants, employees, consultants, contractors and subcontractors shall have the right to enter upon the License Area solely for the purposes permitted by this Agreement, provided, however, at all times Licensee shall ensure Licensor and Licensor’s guests and invitees have access to the Licensor Property. Licensee shall enter upon the License Area from existing roads and at their sole risk and hazard, and Licensee and Licensee’s agents, contractors, subcontractors, successors and assigns, hereby release Licensor from any and all claims relating to the condition of the License Area and Licensor’s Property, and the entry upon the License Area or Licensor’s Property by the Licensee, and their respective agents. At all times, Licensee shall (i) use reasonable efforts to minimize any interference or disruption to Licensor’s (or its tenant’s) use and occupancy of the License Area or Licensor’s Property, and (ii) except in the case of an emergency, perform any 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).
5. **Reservation by Licensor**. Notwithstanding anything to the contrary herein, Licensor hereby reserves the right to use the License Area for any use not inconsistent with Licensee’s permitted use of the License Area. Without limiting the generality of the foregoing, Licensor expressly reserves the right to grant or issue additional rights, licenses or encumbrances to other third parties to use or occupy the License Area (or the surface of the Licensor Property above same). Licensee hereby understands and agrees that the License is issued on a non-exclusive basis and that other third parties have been, and/or may be in the future, issued the right by Licensor to use the License Area and/or surrounding areas in a way that does not materially prevent or impair the use or exercise of the License rights issued hereby.
6. **Condition of the License Area**. Licensee accepts the License 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 License Area. Licensee hereby waives all warranties, express or implied, regarding the title, condition and use of the License Area, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the License is issued to Licensee subject to: (a) any state of facts which an accurate ALTA/NSPS survey (with Table A items) or physical inspection of the License 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. Licensee 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 License Area.

 Licensee 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.

1. **Construction of the Monument**. The Licensee will conduct all construction activities in a good and workmanlike manner in compliance with all laws, rules, and ordinances, both present and future. Licensee agrees to only use hand tools in the construction of the Monument and agrees to not bring any heavy machinery or equipment onto the License Area or Licensor’s Property. Upon completion of the Improvements, the Licensor shall provide Licensor with evidence reasonably satisfactory to Licensor of such completion.
2. **Maintenance; Restoration; and Damage**.
	1. General Maintenance and Restoration. The Licensee, at its sole cost and expense, shall maintain and repair the Monument and License Area in good order and condition. The Licensee shall promptly repair any damage to Licensor’s Property, Licensor’s improvements located thereon (including, without limitation, any and all concrete pipes, crops, landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, signs, lighting, buildings, etc.), and License Area caused by the Licensee or Licensee’s agents, and shall restore Licensor’s Property, Licensor’s improvements and the License Area to the same or better condition as they existed prior to any entry onto or work performed by the Licensee or Licensee’s agents. The Licensee’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 Licensor’s Property; (ii) mounding of the same topsoil which was originally removed in the excavation process, in all areas excavated by the Licensee 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 Licensor’s Property, Licensor’s improvements, and the License Area which are damaged, rutted or otherwise disturbed as a result of the Licensee’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 License Area remains at a consistent level thereafter; and (vi) leaving the Licensor’s Property in a condition which is clean, free of debris and hazards which may be caused by the Licensee’s activities, and subject to neither environmental hazards nor liens caused by the Licensee’s activities.

In the event the installation of the Monument requires removal, realignment, or relocation of Licensor’s improvements located on the Licensor Property, then the Licensee, at its sole cost and expense, shall remove, relocate, or realign Licensor’s improvements.

* 1. Future Work Conducted. Licensee will provide Licensor with at least twenty-four (24) hours prior written notice before entering onto the License Area to perform any work as set forth in this Agreement and use reasonable efforts to minimize any interference or disruption to Licensor’s use and occupancy of Licensor’s Property.

**Indemnification**.

* 1. Licensee is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the “Act”), Utah Code Ann. §§ 63G-7-101 to -904. The Parties agree that Licensee shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act. The parties shall be liable for their own negligent acts or omissions, or those of their authorized employees, officers, and agents while engaged in the performance of the obligations under this Agreement, and neither party shall have any liability whatsoever for any negligent act or omission of the other party, its employees, officers, or agents.
1. **Insurance.** Licensee will ensure that prior to entering onto the License Area or Licensor’s Property, all of Licensee’s contractors who assist with the construction of the Monument obtain and maintain the following insurance coverage and policies:
	1. Liability Insurance Coverage and Limits. Licensee, as a body corporate and politic of the State of Utah, is a participating member of the Utah Counties Indemnity Pool (“UCIP”), a Joint Reserve Fund authorized in accordance with the provisions of U.C.A. 63G-7-703. Licensee agrees to maintain coverage with UCIP during the term of this Agreement in an amount sufficient to cover its obligations hereunder and shall provide to Licensor a Certification of its membership in UCIP demonstrating the applicable limits of indemnification.
	2. Additional Terms. Any insurance required hereunder may be made a part of a blanket policy of insurance, so long as such blanket insurance contains all of the provisions required herein and does not in any way reduce the coverage, impair the rights of Licensor hereunder or negate the requirements of this Agreement.
2. **Liens**. Licensee shall keep Licensor’s Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Licensee, and shall indemnify, hold harmless and agrees to defend Licensor from any liens that may be placed on Licensor’s Property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Licensee or any of Licensee’s respective agents.
3. **Notices.** Except as otherwise required by law, any notice, demand or request given in connection with this Agreement shall be in writing and shall be given by personal delivery, overnight courier service, electronic mail, or United States certified mail, return receipt requested, postage or other delivery charge prepaid at the following addresses (or at such other address as Licensor, Licensee, or the person receiving copies may designate in writing given in accordance with this section):

IF TO LICENSOR: The Church of Jesus Christ of Latter-day Saints

 c/o: Property Reserve, Inc.

 Attn: Taylor Leavitt

 51 S. Main Street, Suite 301

 Salt Lake City, UT 84111

 Email: LeavittT@pripd.com

WITH A COPY TO: Kirton McConkie

 Attn: Jessica Rancie

 50 E. South Temple, Suite 400

 Salt Lake City, Utah 84111

 Email: jrancie@kmclaw.com

IF TO LICENSEE: Weber County Surveyor’s Office

 Attn: Steve Collier

 2380 Washington Blvd., Suite 370

 Ogden, Utah 84401

 Email: scollier@webercountyutah.gov

1. **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 another 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.
2. **No Recordation**. The parties hereby agree that neither this Agreement nor any memorandum thereof shall be recorded.
3. **Miscellaneous**.
	1. Binding Effect; Assignment. 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 parties. Licensee may not assign this Agreement without the prior written consent of Licensor.
	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.
	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.
	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.
	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 parties hereto.
	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 hereto or their successor and assigns (as determined by the provisions herein).
	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.
	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.
	9. Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of Licensor’s 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. Licensor shall have the right to perform any act, or do anything, from time to time that Licensor may deem necessary or desirable to assure that no public gift dedication (or deemed gift dedication) occurs.

 *[Signatures to follow]*

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

 **LICENSOR:**  THE CHURCH OF JESUS CHRIST OF

 LATTER-DAY SAINTS,

 a Utah corporation sole, formerly known as

CORPORATION OF THE PRESIDING BISHOP

OF THE CHURCH OF JESUS CHRIST OF

LATTER-DAY SAINTS, a Utah corporation sole

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Its: Authorized Agent

**LICENSEE**: WEBER COUNTY SURVEYOR’S OFFICE

 DEPARTMENTAL APPROVAL

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 WEBER COUNTY COMMISSION

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Weber County

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Weber County Clerk/Auditor

**EXHIBIT A**

Depiction of the License Area

