

9532672

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

The Church of Jesus Christ of Latter-day Saints  
Attn: Real Estate Services Division  
50 East North Temple, 12<sup>th</sup> Floor  
Salt Lake City, Utah 84150

9532672  
10/25/2005 01:18 PM \$30.00  
Book - 9207 Pg - 5526-5536  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
CHURCH OF JESUS CHRIST  
ATTN: REAL ESTATE SERVICES  
50 EAST NORTH TEMPLE  
SALT LAKE CITY UTAH 84150  
BY: SBM, DEPUTY - WI 11 P.

THIS SPACE ABOVE FOR RECORDER'S USE

**EASEMENT AGREEMENT FOR PRIVATE DRIVE**

**Property No. 546-8043**

This EASEMENT AGREEMENT FOR PRIVATE DRIVE ("**Agreement**") is made this 18<sup>th</sup> day of August 2005, by and between, UTAH YOUTH VILLAGE, formerly known as UTAH GIRLS VILLAGE AND CHILDREN CENTER, organized and existing under the laws of the State of Utah ("**UYV**") and CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("**CPB**"). UYV and CPB are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

- A. CPB is the owner of certain real property (the "**CPB Property**") located in Salt Lake City, Salt Lake County, State of Utah, described on *Exhibit "A"* which is attached hereto and incorporated herein by reference.
- B. UYV is the owner of certain real property (the "**UYV Property**") situated in Lake City, Salt Lake County, State of Utah, described on *Exhibit "B"* which is attached hereto and incorporated herein by reference.
- C. UYV desires to obtain a non-exclusive easement on, over and across a portion of the CPB Property for vehicle travel for ingress and egress to the UYV Property, and CPB is willing to grant such non-exclusive easement subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Easement.** Subject to the terms and conditions set forth herein, CPB hereby grants and conveys to UYV a non-exclusive easement (the "Easement") over and across that portion of the CPB Property located in the County of Salt Lake, State of Utah, more particularly described in *Exhibit "C"*, attached hereto and incorporated herein (the "Easement Area") for ingress and egress to the UYV Property, and for no other use or purpose. The Easement is granted for the use of the UYV Property for a youth facility and for related purposes. Any change in use of the UYV Property without obtaining CPB's prior written consent shall constitute a default under this Agreement. No parking or any other use of any kind shall be permitted on the Easement Area or the CPB Property. CPB may, at any time hereafter, in CPB's sole discretion, relocate the Easement Area on another portion of the CPB Property without compensation to UYV as long as such relocated Easement Area affords UYV access to UYV's south parking lot in its present location.

2. **Condition of Easement Area/Title.** UYV 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. UYV 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.

3. **Reservation by CPB.** Other than the rights granted to UYV pertaining to the Easement Area, UYV, nor anyone claiming by, through, or under UYV, does not have any rights, title or interest in any other portion of the CPB Property. It is understood and agreed that the Easement granted hereby is non-exclusive and CPB, and its successors and assigns, reserve and retain the right to use the Easement Area in any manner whatsoever not inconsistent with the UYV's permitted use of the Easement Area.

4. **Indemnification and Release.** UYV hereby indemnifies, holds harmless, and agrees to defend CPB and any entity controlling, controlled by or under common control with CPB (an "Affiliate") and its and its Affiliates' representatives, officers, directors, shareholders, employees, agents, contractors, tenants, licensees, invitees, guests, successors, and assigns, harmless for, from and against any and all costs (including reasonable attorneys' and paralegal fees, investigative and discovery costs, witness fees and any and all legal related costs), demands, losses, liability, damages, expenses, causes of action, suits, claims and judgments (collectively "Claims") arising from, related to or on account of: (i) the acts or omissions of UYV and its officers, directors, shareholders, employees, agents, contractors, tenants, licensees, invitees, guests, successors, and assigns (collectively, the "UYV Parties"); (ii) the use of the Easement Area by UYV and/or the UYV Parties; (iii) the failure of UYV to comply with the terms and conditions of this Agreement; (iv) any injury to persons, loss of life, or damage to real or personal property (including the CPB Property) that occurs and is occasioned wholly or in part by use of, or any activities in, on, upon, over, through, across and along the Easement Area; excluding, however, any Claims solely caused by the negligence or willful misconduct of CPB.

UYV acknowledges that it accesses and uses the Easement Area at UYV's sole risk and hazard and, without limiting the generality of the foregoing, UYV agrees that CPB shall not be responsible for any harm, damage or injury that may be suffered or incurred by UYV or the UYV Parties associated with the physical condition of the Easement Area. UYV, for itself and the UYV Parties hereby releases, remises, acquits, and forever discharges CPB from any and all Claims which may arise on account of injury to persons, loss of life, and damage to property associated with UYV's entry upon or use of the Easement Area, except to the extent caused by CPB's gross negligence or intentional misconduct.

The terms and conditions of this Section 4 shall remain effective, notwithstanding the expiration or earlier termination of the easement or this Agreement.

## 5. Insurance.

5.1 UYV's Insurance. UYV will obtain the following insurance and provide evidence thereof as described below prior to its use of the Easement Area:

5.1.1 Commercial General Liability Insurance - ISO Form CG 00 01 (10/93) or equivalent Occurrence Policy, with:

- a. Limits of not less than:
  - i) \$2,000,000 General Aggregate;
  - ii) \$2,000,000 Products - Comp/OPS Aggregate;
  - iii) \$1,000,000 Personal and Advertising Injury;
  - iv) \$1,000,000 Each Occurrence;
  - v) \$50,000 Fire Damage (any one fire); and
  - vi) \$5,000 Medical Expense (any one person).
- b. Endorsements attached thereto including the following or their equivalent:
  - i) ISO Form CG 20 10 (10/93), Additional Insured -- Owners, Lessees, Or Contractors (Form B), naming CPB as an additional insured.
  - ii) An endorsement with the following statement: "This policy constitutes Primary Coverage for all insureds in the event of any occurrence, claim, or suit."
  - iii) Contractual Liability, which shall insure the performance by UYV of the indemnity agreements contained herein

5.1.2 Automobile Liability Insurance, with:

- a. A minimum limit of \$1,000,000 Combined Single Limit per accident; and
- b. Coverage applying to "Any Auto."

5.2 Evidence of Insurance. Before its use of the Easement Area, UYV will provide evidence of insurance to CPB by delivering to CPB a Certificate of Insurance, on ACORD 25-S (1/95) Form, or equivalent:

- a. Listing CPB as a Certificate Holder and Additional Insured on general liability and any excess liability policies;
- b. Attaching the endorsements set forth above;
- c. Identifying the activities on and relative to the Easement Area;
- d. Containing a cancellation clause of the certificate amended to read: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days prior written notice to the certificate holder names to the left";
- e. Listing the insurance companies providing coverage (all companies listed must be rated "B+ Class V" or better, will be rated "B+ Class VIII" or better, in the A.M. Best Company Key Rating Guide-Property-Casualty, current edition); and
- f. Bearing the name, address and telephone number of the producer and an original signature of the authorized representative of the producer. Facsimile or mechanically reproduced signatures will not be accepted.

5.3 Insurance Requirements. The insurance that UYV is required to carry hereunder shall be with companies reasonably satisfactory to CPB. All policies to be maintained by UYV and/or its contractor(s) shall be primary policies and not contributing with or as excess coverage for any insurance carried by CPB.

6. Default and Remedies. If either party fails to perform any of the terms, covenants and agreements contained herein, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person or entity for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses.

7. Legal Fees. In the event of any legal proceedings between the parties, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of suit, including reasonable attorneys' fees, investigative and discovery costs, court costs and expert witness fees, as determined by a court of competent jurisdiction.

8. **Assignment.** Grantee shall not assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this easement without first obtaining Grantor's written approval which may be withheld in Grantor's sole discretion. Any such assignment or transfer without Grantor's written consent shall constitute an event of default under this Easement Agreement, shall be void *ab initio*, and shall be of no force or effect. CPB's rights and obligations of this Easement Agreement are assumable by CPB without obtaining UYV's consent and, without limiting the foregoing terms of this Section 7, the rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns.

9. **Notices.** All notices or other communication provided for under this Agreement shall be in writing, and shall be delivered personally, sent by reputable overnight mail equivalent carrier, or sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the person to receive such notice or communication at the following address and shall be effective upon receipt or refusal to accept delivery:

If to CPB: Church of Jesus Christ of Latter-day Saints  
DTA – Real Estate  
50 East North Temple, 4<sup>th</sup> Floor WW  
Salt Lake City, Utah 84150  
Attention: Lou Brown  
Telephone: (801) 240-1000  
Facsimile: (801) 240-2913

If to UYV: Utah Youth Village  
5800 S. Highland Drive  
Salt Lake City, Utah 84121  
Attention: Eric W. Bjorklund  
Telephone: (801) 272-9980  
Facsimile: (801) 272-9976

Notice of change of address shall be given by written notice in the manner set forth in this subsection.

10. **Entire Agreement.** This Agreement contains the entire agreement between CPB and UYV with respect to the subject matter of this Agreement and supersedes any prior agreements, understandings or negotiations (whether oral or written). No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing, signed by both CPB and UYV and recorded in the official records of the County of Salt Lake, State of Utah.

11. **Headings.** Headings at the beginning of each section and subsection are solely for convenience of reference and are not a part of this Agreement.

12. **No Third Party Beneficiaries.** In assuming and performing the obligations of this Agreement, CPB and UYV are each acting as independent parties and neither shall be considered

or represent itself as a joint venturer, partner, agent, or employee of the other. There is no intent by either party to create or establish third party beneficiary status or rights in any third party. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a party hereto, and the parties hereto expressly disclaim any such third-party benefit.

13. **No Public Rights.** Nothing contained in this Agreement will be deemed a gift of a dedication of any portion of the Easement Area to the general public or for a public purpose whatsoever, it being the intent of CPB and UYV that this Agreement be strictly limited for the purposes expressed herein. As such, this Agreement does not convey, gift, grant or transfer any rights, title or interest in the Easement Area to the public. CPB and UYV agree and acknowledge that they are not creating, nor intend to create, a public forum, designated public forum or any other forum whatsoever under the Constitution of the State of Utah or under the First Amendment of the Constitution of the United States of America.

14. **Applicable Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Utah.

15. **Remedies Not Exclusive; No Waiver.** The various rights and remedies herein contained and reserved to each of the parties, except as otherwise expressly provided herein, shall not be considered as exclusive of any other right or remedy of such party but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy by either party shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein. Any waiver of any breach of this Agreement, or the breach of any covenant, representation or warranty contained herein (a "**Breach**"), in any one instance, shall not operate as or be deemed to be a further or continuing waiver of such Breach or any other Breach, nor shall any failure at any time or times to enforce or require performance of any provision hereof operate as a waiver of or affect in any manner such party's right at a later time to enforce or require performance of any such provision. CPB shall not be deemed to have waived any term, covenant or condition unless CPB gives UYV written notice of such waiver.

16. **Interpretation.** The captions by which the Sections of this Agreement are identified are for convenience only and shall have no effect upon the interpretation of this Agreement. The parties acknowledge and agree that all of the terms and conditions of this Agreement are contractual in nature and shall be interpreted under any applicable law as contractual obligations, and each party waives any claims or defenses to the contrary. Whenever the context so requires, the singular shall include the plural, the plural shall refer to the singular, the neuter gender shall include the masculine and feminine genders.

17. **Authority.** The individuals who execute this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of CPB and UYV, as the case may be, that the parties named are all the necessary and proper parties, and that no other signature, act or authorization is necessary to bind such entity to the provisions of this Agreement.

18. **Condemnation.** In the event an entity with the power of eminent domain seeks to acquire the Easement Area through condemnation or a purchase in lieu thereof, the easement

granted herein shall not be considered in considering the value of the Easement Area and CPB reserves the right to terminate this Agreement. Any award or consideration for the Easement Area shall be payable solely to CPB and UYV releases and waives and right to any portion of the award.

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

GRANTOR:

GRANTEE:

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

UTAH YOUTH VILLAGE, formerly known as UTAH GIRLS VILLAGE AND CHILDREN CENTER, organized and existing under the laws of the State of Utah

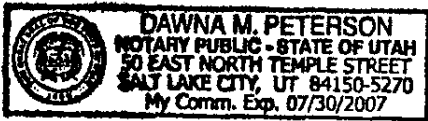
By: *[Signature]*  
Its: Authorized Agent

By: *[Signature]*  
Its: *President*



STATE OF UTAH )  
 : SS  
COUNTY OF SALT LAKE )

On this 10 day of <sup>October</sup>~~August~~, 2005, personally appeared before me Ronald G. Humphries, known to me to be an Authorized Agent of the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, who duly acknowledged that he signed the foregoing instrument as an Authorized Agent of the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, and the said acknowledged to me that said Corporation executed the same.



Dawna M. Peterson  
Notary Public

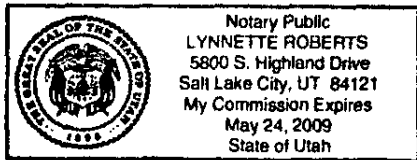
My Commission Expires: 7/30/07

STATE OF UTAH )  
 :SS  
COUNTY OF Salt Lake )

On this 18<sup>th</sup> day of <sup>August</sup>~~July~~, 2005, personally appeared before me Eric Bjorklund, as President of UTAH YOUTH VILLAGE, formerly known as UTAH GIRLS VILLAGE AND CHILDREN CENTER, organized and existing under the laws of the State of Utah, who duly acknowledged to me that he/she executed the foregoing instrument as his/her free and voluntary act.

Lynnette Roberts  
Notary Public

My commission expires:





**Exhibit "A"**  
**Legal Description of the CPB Property**

Real property located in Salt Lake County, Utah described as:

BEGINNING at a point on the West right of way line of 4800 West Street, said point being South 00°32'00" East along the section line 981.75 feet and North 89°57'41" West 33.00 feet from the East quarter corner of Section 13, Township 2 South, Range 2 West, Salt Lake Base and Meridian, and running thence North 89°57'41" West 1116.47 feet; thence North 00°01'16" East 338.25 feet; thence South 89°57'41" East 891.80 feet to a wood fence line; thence South 02°13'50" East along said fence line 288.46 feet; thence South 89°57'41" East 212.86 feet to the West right-of-way line of 4800 West Street; thence South 00°32'00" East along said West line, 50.00 feet to the point of beginning.

**Exhibit "B"**  
**Legal Description of the UYV Property**

Real property located in Salt Lake County, Utah described as:

BEGINNING SOUTH 0°32' EAST 643.5 FEET FROM EAST ¼ CORNER SECTION 13, TOWNSHIP 2 SOUTH, RANGE 2 WEST, SALT LAKE MERIDIAN; SOUTH 0°32' EAST 288.248 FEET; NORTH 89°57'41" WEST 245.86 FEET; NORTH 2°13'50" WEST 288.46 FEET; SOUTH 89°57'41" EAST 254.404 FEET TO BEGINNING; CONTAINING 1.44 ACRES MORE OR LESS.

**Exhibit "C"**  
**Description of the Easement Area**

The Easement Area consists of the twenty-five foot (25') wide strip of the CPB Property lying immediately adjacent and to the south of the UYV Property and running from 4800 West Street on the east to the southwest corner of the UYV Property on the west.