

When Recorded, Mail To:

Real Estate Services Division  
50 E. North Temple St., 12<sup>th</sup> Floor  
Salt Lake City, Utah 84150  
Attn: Manager, Property Management Section

E 2217820 B 4157 P 425-432  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
11/09/2006 10:59 AM  
FEE \$36.00 Pgs: 8  
DEP RT REC'D FOR KIRTON & MCCONKIE

With A Copy To:

Board of Education of Davis County School District  
45 East State Street  
PO Box 588  
Farmington, UT 84025  
Attn: Superintendent

With A Copy To:

Sunset City, Utah  
200 West 1300 North  
Sunset City, Utah 84015  
Attn: Director of Recreation

13-080-0007, 0009, 0011, 0013, 0049  
0054, 0024 thru 0027, 0030  
E<sub>2</sub>-26-5N-2W

(Space above for Recorder's use only)

**USE AND ACCESS EASEMENT**

[Project: Sunset City Softball]

000 #503-8871

THIS USE AND ACCESS EASEMENT (this "Agreement") is entered into this 20<sup>th</sup> day of NOVEMBER 2006, by and among CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("CPB"), SUNSET CITY, UTAH, a municipal corporation ("Sunset"), and the BOARD OF EDUCATION OF DAVIS COUNTY SCHOOL DISTRICT, a body corporate and politic of the State of Utah (the "District").

**R E C I T A L S**

A. In approximately 1948, pursuant to the terms of an agreement between Sunset and CPB (the "Previous Agreement"), CPB conveyed to Sunset a parcel of real property (the "Conveyed Property") for substantially less than the then current market value with the understanding that CPB would have the right to play softball on softball diamonds that were constructed, or would be constructed, using the Conveyed Property along with other property.

B. Sunset has constructed a city park and softball diamonds on property that includes the Conveyed Property. The real property that comprises the Sunset City park and the softball diamonds, which includes the Conveyed Property, is more particularly described on Exhibit A, attached hereto and incorporated by this reference (the "Softball Property").

C. As part of the consideration for the conveyance from CPB to Sunset, Sunset agreed to permit CPB to use the Softball Property once a week during the softball season and for an extended period for CPB's tournament play.

D. The District has since acquired a portion of the Softball Property and as owner of a portion of the Softball Property is a party to this Agreement.

E. The Previous Agreement has been lost. CPB, the District, and Sunset now desire to memorialize their understandings, rights, and obligations regarding the Softball Property, and to replace the terms and conditions set forth in the Previous Agreement with the terms and conditions set forth herein.

## T E R M S   A N D   C O N D I T I O N S

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and covenants set forth herein, the parties agree as follows:

1. The Previous Agreement. The Previous Agreement is hereby terminated and replaced by the terms and conditions of this Agreement.

2. The Softball Property.

2.1 The Softball Diamond Easement. Sunset and the District hereby grant and convey to CPB, an access and use easement (which easement shall be exclusive on the days CPB has a right to use the Softball Property, as set forth herein), on, over and across the Softball Property for the purpose of watching and playing softball on the softball diamonds located on the Softball Property. CPB's right to use the Softball Property shall be limited to Thursdays during the months of May, June, July, and August. Sunset and the District agree to not schedule any conflicting activities on the Softball Property during the times that CPB shall have a right to use the Softball Property. Said Thursday use and CPB Tournament play, as defined below, and all other benefits associated with Thursday use and CPB Tournament play shall be free of charge.

2.2 CPB Tournaments. Sunset and the District acknowledge that CPB may need the Softball Property to conduct tournaments ("CPB Tournaments"). CPB Tournaments will occur on days including but not limited to Thursdays, and Sunset and the District hereby agree to work in good faith with CPB to mutually agree upon two three-day blocks, each block consisting of Thursday, Friday, and Saturday, in the later weeks of the month of July or the month of August in each given year to accommodate CPB's Tournaments schedule.

2.3 Softball Property' Restrooms. Sunset agrees to keep the restrooms located on the Softball Property open and available for use during the times that CPB has a right to use the Softball Property. Sunset further agrees to clean and maintain the restrooms to a habitable standard during the times CPB has a right to use the Softball Property.

2.4 Softball Property Grooming and Preparation for Play. Sunset agrees to continually maintain the Softball Property. Said maintenance shall include, if CPB provides a written schedule to Sunset at least four (4) weeks in advance, preparing the Softball Property prior to CPB's use of the field during normal Thursday play and CPB Tournaments. Said preparation shall include but is not limited to: (i) dragging the dirt infield and removing all large divots and rocks from the field to create a playing surface as like other softball diamonds in Davis County, (ii) placing all the bases and the mound in the appropriate places, (iii) chalking the field in both the infield and outfields, (iv) keeping the grass free from dry spots and divots, (v) keeping the Softball Property' lights on until 11:00 pm, unless mandated by current city ordinances to shut off the lights at an earlier time, and in such a case to keep the lights on until said city ordinance dictates, this obligation shall apply to both the current lights located on the Softball Property and any lights that are placed upon the Softball Property in the future, and (vi) any other maintenance the Softball Property may require. Sunset at its sole discretion and expense may open or close the concession stand during the times CPB has a right to use the Softball Property.

2.5 Notice Not to Use the Softball Property. If CPB notifies Sunset that CPB is not going to use the Softball Property during a given year, Sunset may schedule games on times that otherwise would have been reserved for CPB in that given year. Notwithstanding the above, even if CPB gives notice that it will not use the Softball Property during a given year, CPB shall still have the right to use the Softball Property in subsequent years. Sunset may send a notice request to CPB by March 15<sup>th</sup> of any given year asking if CPB intends to use the Softball Property for that year, in which case, CPB will have until April 15<sup>th</sup> to provide notice to Sunset of whether it intends to use the Softball Property. If CPB fails to provide timely notice, then Sunset may assume that CPB does not intend to use the Softball Property that year.

3. Condition of Softball Property. CPB accepts the Softball Property 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.

4. Assumption of Risk. CPB shall enter upon the Softball Property at its sole risk and hazard, and CPB and its successors and assigns, hereby release the other parties from any claims relating to the condition of the Softball Property, other than claims related to Sunset's responsibilities outlined Section 2, and/or the entry upon the Softball Property by such party, its agents, employees, patrons, customers, servants and contractors.

5. Improvements. The District and Sunset, at their sole risk, cost and expense, may modify, change, or improve their respective parcels located on the Softball Property, so long as said improvements do not interfere or prevent the other party from using its easement rights granted in this Agreement.

6. 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:

If to CPB:

Real Estate Services Division  
50 East North Temple  
Salt Lake City, Utah 84150  
Attn: Manager, Property Management Section

If to Sunset:

Sunset City, Utah  
200 West 1300 North  
Sunset City, Utah 84015  
Attn: Director of Recreation

If to the District:

Board of Education of Davis County School District  
45 East State Street  
PO Box 588  
Farmington, UT 84025  
Attn: Superintendent

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

7. Miscellaneous.

7.1 Interpretation. Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement.

7.2 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.

7.3 Successors. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

7.4 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

7.5 Litigation Expenses. If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

7.6 Authorization. Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the party for which he/she signs.

7.7 Rights and Remedies. The rights and remedies of any of the parties stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

*[signatures on following page]*

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CPB:

Sunset:

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

SUNSET CITY, UTAH,  
a Municipal Corporation

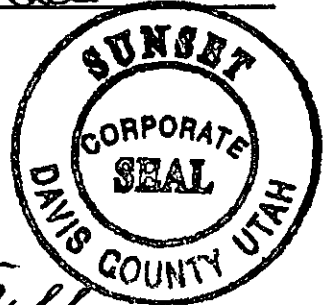
By: Terry F. Rudd  
Name (Print): TERRY F. RUDD  
Its: Authorized Agent

By: Timothy P. Ison  
Name (Print): Timothy P. Ison  
Its: Mayor

ATTEST: Dwain R. Hale  
Recorder

The District:

BOARD OF EDUCATION OF DAVIS COUNTY  
SCHOOL DISTRICT,  
a body corporate and politic of the State of Utah



By: Marian Storey  
Name (Print): Marian Storey  
Its: Board President

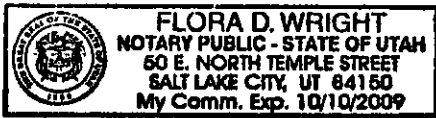
By: Bruce D. Williams  
Name: Bruce D. Williams  
Its: Asst. Supt. / Business Administrator

[acknowledgements on following page]



STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

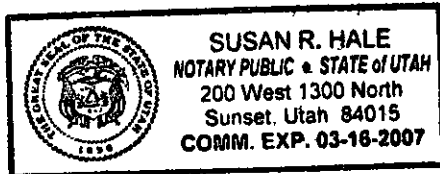
On this 20<sup>th</sup> day of OCTOBER, 2006, personally appeared before me TERRY F. RUSS, known or satisfactorily proved to me to be the <sup>AD</sup> Authorized Agent of Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, who acknowledged to me that he signed the foregoing instrument as the Authorized Agent for said corporation.



Flora D. Wright  
Notary Public for Utah

STATE OF UTAH )  
 :SS  
COUNTY OF Davis )

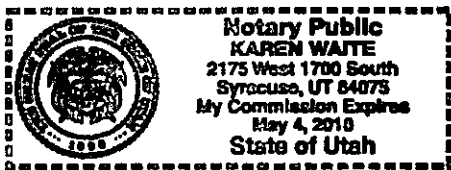
On this 30<sup>th</sup> day of OCTOBER, 2006, personally appeared before me Timothy P. Isom, known or satisfactorily proved to me to be the Mayor of Sunset City, Utah, a municipal corporation, who acknowledged to me that he/she signed the foregoing instrument as Authorized Agent for said corporation.



Susan R. Hale  
Notary Public for Utah

STATE OF UTAH )  
 :SS  
COUNTY OF Davis )

On this 6<sup>th</sup> day of June, 2006, personally appeared before me Marian Storey and Bruce D. Williams, known or satisfactorily proved to me to be the <sup>Board President and Asst. Supt./Bus. Admin.</sup> of the Board of Education of Davis County School District, a body corporate and politic of the State of Utah, who acknowledged to me that he/she signed the foregoing instrument as Authorized Agent for said body.



Karen Waite  
Notary Public for Utah

EXHIBIT A

## (Legal Description of the Softball Property)

SUNSET'S PARCELSParcel No. 13-080-0007 ✓

Beg 1045.5 ft W & 356.5 ft S of NE cor of SE ¼ of Sec 26: Th E 62.2 ft; Th S 191.7 ft; th E 85.51 Ft; th N 381.2 ft to a pt 130 ft S of S line of a st; Th W 147.41 ft parallel to the S Line of SD St; th S 189.5 ft to POB. Found in Sec 26; T5N R2W; SLM: Cont 1.03 acres.

Parcel No. 13-080-0009 ✓

Beginning at a point 361.10 feet North, 89°54'45" West and South 0°31'45" East 228.70 feet from the East quarter corner of Section 26, Township 5 North, Range 2 West, SLB & M. United States Survey, running thence South 89°54'45" East 98 feet; thence South 0°30'45" East 63.9 feet; thence North 89°54'45" West 98 feet; thence North 0°30'45" West 63.9 feet to the point of beginning.

Parcel No. 13-080-0011 ✓

A part of the Southeast Quarter of Section 26, Township 5 North, Range 2 West, Salt Lake Base and Meridian, United States Survey. Beginning at a point 361.10 feet North 89°54'45" West and South 0°30'45" East 292.60 ft. from the East Quarter Corner of said Section 26 running thence South 89°54'45" East 98 ft., thence South 0°30'45" East 63.9 ft., thence North 89°54'45" West 98 ft., thence North 0°30'45" West 63.9 ft. to the point of beginning.

Parcel No. 13-080-0013 ✓

Beginning at a point 361.10 feet North, 89°54'45" West and South 0°30'45" East 356.50 feet from the East quarter corner of Section 26, Township 5 North, Range 2 West, SLB & M. United States Survey., running thence South 89°54'45" East 98 feet; thence South 0°30'45" East 63.9 feet; thence North 89°54'45" West 98 feet; thence North 0°30'45" West 63.9 feet to the point of beginning.

Parcel No. 13-080-0049 ✓

Commencing at a point 37 feet South and 361.1 feet West of the Northeast corner of the Southeast quarter of Section 26, Township 5 North, Range 2 West, Salt Lake Meridian, and running thence West 622.2 feet, thence South 511.2 feet, thence East 621.0 feet, thence North 511.2 feet to place of beginning, containing 8 acres of land.

EXCEPTING THEREFROM the parcel conveyed by Warranty Deed to Besty C. Hansen dated December 11, 2002, recorded on December 17, 2002 in the Office of said County Recorder in Book 3188 of Official Records at Page 2137, entry No. 1814473.

ALSO EXCEPTING THEREFROM portions of a parcel conveyed by Special Warranty Deed to Sunset City, a municipal corporation dated March 12, 1993, recorded on April 1, 1993 in the Office of said County Recorder in Book 1597 of Official Records at Page 354, entry No. 1026275.

Parcel No. 13-080-0054

Beginning at a point which is South 33.00 feet and West 263.10 feet from the Northeast corner of the Southeast Quarter of Section 26, Township 5 North, Range 2 West, Salt Lake Meridian, in the City of Sunset, and running thence South 195.70 feet, thence West 99.33 feet, thence Northerly 195.70 feet to the South line of a Highway, thence East 98.00 feet along said South line to the point of beginning.

**DISTRICT'S PARCELS**

Parcel No. 13-080-0024 ✓

Beginning 548.2 feet South and 435.60 feet West of the Northeast corner of the Southeast Quarter of Section 26, Township 5 North, Range 2 West, Salt Lake Base and Meridian, in the Town of Sunset, and running thence South 197.8 feet, more or less along the West line of a street to a point 1904.06 feet North and 435.6 feet West of the Southeast corner of said Section 26; thence West 260.7 feet; thence North 70 feet; thence West 285.2 feet; thence North 127.8 feet to a point 548.2 feet South of the North line of said Southeast Quarter; thence East 545.9 feet to the point of beginning.

Parcel No. 13-080-0025 ✓

Beginning 1479.06 feet North and 696.3 feet West of the Southeast corner of Section 26, Township 5 North, Range 2 West, Salt Lake Meridian, in the Town of Sunset, and running thence North 495 feet to a point 676 feet South of the North line of the Southeast Quarter of said Section 26; thence West 595.4 feet, more or less, to the East line of a street; thence South 495 feet along the east line of said street to a point due West of the point of beginning; thence East 595.4 feet, more or less, to the point of beginning.

Parcel No. 13-080-0026 ✓

Beginning on the West line of a street 1904.06 feet north and 435.6 feet west of the southeast corner of Section 26, Township 5 North, Range 2 West, Salt Lake Meridian, in the City of Sunset, and running thence west 260.7 feet; thence south 60 feet; thence east 260.7 feet; thence north 60 feet to point of beginning. Containing approximately 0.359 acres.

Parcel No. 13-080-0027 ✓

Beginning at a point 1844.06 feet North and 535.6 feet west from the Southeast corner of Section 26, Township 5 North, Range 2 West, Salt Lake Meridian, thence west 160.7 feet, thence South 86 feet, thence east 160.7 feet, thence North 86 feet to the point of beginning.

Parcel No. 13-080-0030 ✓

Beginning on the West line of a street 1479.06 feet North and 435.6 feet West of the Southeast corner of Section 26, Township 5 North, Range 2 West, Salt Lake Meridian, in the Town of Sunset, and running thence West 260.7 feet; thence North 278.94 feet; thence East 160.7 feet; thence South 60 feet; thence East 100 feet to the West line of said street; thence South 218.94 feet along the West line of said street to the point of beginning.