

## UTILITY EASEMENT

**RECORDING REQUESTED BY:**

Direct Communications Cedar Valley, LLC

**WHEN RECORDED MAIL TO:**

Box 270

Rockland, ID 83271



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JEFFERY SMITH  
UTAH COUNTY RECORDER  
2011 May 23 4:29 PM FEE 26.00 BY SS  
RECORDED FOR IRVINE, DAVE

This Utility Easement Agreement is made by and between Aaron D. Evans and Mary Ellen Evans, as their interests may appear, and Aaron D. Evans, Trustee and Mary Ellen Evans, Trustee, of the Aaron D. Evans Revocable Trust and the Mary Ellen Evans Revocable Trust, as their interests as trustees may appear, Grantors, and Direct Communications Cedar Valley, LLC, Grantee, in consideration of the sum of ten dollars (\$10.00), and other good and valuable consideration, including the promises and covenants set forth below.

### RECITALS

*SARATOGA SPRINGS*

Grantors own certain real property, located at 11898 West Fairfield Road, Lehi, Utah 84045, as more particularly described in Exhibit A, which is attached hereto and is incorporated herein by reference.

Grantee is a certificated public utility, operating and providing telecommunications services within the State of Utah.

The easement granted herein is for the purpose of allowing Grantee, its successors and assigns, contractors and subcontractors, to access and install, use, replace, repair, and maintain underground telecommunications lines, equipment, and facilities, as Grantee may from time-to-time determine necessary or useful, through and across Grantors' real property, within the utility easement conveyed herein and on the terms and conditions set forth in this Agreement.

### ARTICLE I DEFINITIONS

1.1 Definitions. Unless the context otherwise requires, defined terms shall have the meanings set forth below.

1.1.1 Easement. The term "Easement" shall mean the easement set forth in Section 2.1 hereof.

1.1.2 Agreement. The term "Agreement" shall mean this Easement Agreement, as it may from time to time be amended.

1.1.3 City. The term "City" shall mean the City of Saratoga Springs, Utah

and/or the City of Lehi, Utah.

1.1.4 Effective Date. The term "Effective Date" shall mean the date this Agreement is recorded in the Official Records of Utah County, State of Utah.

1.1.5 Permittee(s). The term "Permittee(s)" shall refer to each party's tenants, subtenants, employees, contractors, concessionaires, licensees, and invitees.

1.1.6 Person or Persons. The term "Person" or "Persons" shall mean and include individuals, partnerships, firms, associations, joint ventures, corporations, trusts, or any other form of business entity.

1.1.7 Grantors. The term "Grantors" shall mean and include Aaron and Mary Ellen Evans, their heirs, successors, and assigns.

1.1.8 Grantee. The term "Grantee" shall mean and include Direct Communications Cedar Valley, LLC, its successors, and assigns.

1.1.9 Property. The term "Property" shall mean and include Grantors' real property situated at 11898 West Fairfield Road, ~~Lehi~~, Utah 84045, and as described more fully in Exhibit "A" to this Agreement, which is attached hereto and made a part hereof by reference.

## ARTICLE II EASEMENT AND ACCESS

2.1 Grant of Easement. Grantors hereby grant and conveys to Grantee for the benefit of Grantee and each Permittee of Grantee, an exclusive, perpetual, underground easement in, to, and across the portion of the Grantors' Property, as depicted on Exhibit "A," which is attached hereto and incorporated herein by this reference ("Easement Area") for the purpose of accessing, utilizing, installing, maintaining, repairing, and replacing underground telecommunications lines, cables, fiber optic lines, equipment, and facilities, and any technical evolutions thereof.

2.2 Character of Easement. The Easement shall exist in perpetuity, is appurtenant to the Grantors' Property described on Exhibit "A" and all future subdivisions thereof, shall inure to the benefit of Grantee, and shall burden the Property. The rights granted herein are exclusive, with Grantors' reserving the right to also utilize the Easement Area for pedestrian activities and landscaping provided that (i) no improvements (other than asphalt or concrete paving) shall be constructed or completed over the Easement Area and (ii) no construction, improvement, work, repairs or maintenance on the Property shall cause or result in the interruption or termination of telecommunications services provided by Grantee, its, successors, assigns, or licensees over the lines, equipment, and facilities installed within the Easement Area.

2.3 Maintenance and Construction. Grantee shall have a right of ingress and egress, on, over, under and through the Property to the extent reasonably necessary to maintain,

repair or replace the lines, equipment, and facilities Grantee shall install or cause to be installed, provided that the use of such access rights shall not unreasonably interfere with the existing use, access and operation of the Property. Grantee shall indemnify Grantors from any damage to the Property and any improvements thereon by reason of entry onto the Property or the Easement Area by Grantee or its Permittees. Grantee shall restore Grantors' landscaping (including sprinkler lines) and driveways, with respect to work performed by Grantee and its Permittees within the Easement Area, to the condition of such landscaping and driveways prior to any such work being performed, except for displaced tree or shrubbery maturity.

**2.4 Covenants to Run With Land.** All restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of the Grantors and Grantee; shall create mutual, equitable servitudes and burdens upon the Property in favor of the Grantee; shall create rights and obligations as provided for herein between the Grantors and the Grantee, their heirs, successors and assigns; and shall, as to the Grantors and their heirs, successors and assigns, operate as covenants running with the land for the benefit of the Grantee.

### **ARTICLE III** **REMEDIES**

**3.1 Legal Action Generally.** If any party breaches any provision of this Agreement, then any other party may institute legal action against the breaching party for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law or in equity. Exercise of one remedy shall not be deemed to preclude exercise of other remedies for the same default, and all remedies available to a party may be exercised cumulatively.

**3.2 Injunctive and Declaratory Relief.** In the event of any violation or threatened violation by any party, of any of the terms, covenants, conditions, and restrictions herein contained, in addition to any other remedies provided for in this Agreement, any party shall have the right to enjoin such violation or threatened violation and to bring an action for declaratory relief in a court of competent jurisdiction.

### **ARTICLE IV** **INDEMNITY**

**4.1 Indemnification.** Each party shall indemnify, defend, and save the other party harmless from and against any and all demands, liabilities, damages, expenses, causes of action, suits, claims, and judgments, including reasonable attorneys' fees, arising from injury or death to person or damage to property arising out of or relating to work on the Property or within the Easement Area or any such party's failure to comply with the terms and provisions of this Agreement including, but not limited to, in connection with any entry by Grantee or its Permittees onto the Property pursuant to the easement granted hereunder. A party shall not be entitled to such indemnification for any damage caused to such party by reason of the negligence, recklessness or willful misconduct of such party or its Permittees.

ARTICLE V  
MISCELLANEOUS

**5.1 Notices.** Any notice, payment, demand, offer, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if sent by registered or certified mail (return receipt requested), postage and charges prepaid, or by Federal Express or other reputable overnight delivery service requiring a signature upon receipt, addressed as follows:

To Grantee:

Direct Communications Cedar Valley, LLC  
Attn: Mr. Kip Wilson  
Box 270  
Rockland, ID 83271

To Grantors:

Aaron and Mary Ellen Evans  
11898 West Fairfield Road  
Lehi, UT 84045  
*SARATOGA SPRINGS*

Any such notice shall be deemed to be given on the date on which it is received or receipt thereof is refused. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

**5.2 Binding Effect.** All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Property, and shall, except as otherwise set forth herein, benefit or be binding upon the successors and assigns of the Grantors and Grantee. This Agreement and all the terms, covenants and conditions herein contained shall be enforceable as mutual, equitable servitudes in favor of the Property and any portion thereof, shall create rights and obligations as provided herein between the respective parties and shall be covenants running with the land. Every person who now or in the future owns or acquires any right, title or interest in or to the Property or portion thereof shall be conclusively deemed to have consented to and agreed to every covenant, restriction, provision, condition and right contained in this Agreement, whether or not the instrument conveying such interest refers to this Agreement.

**5.3 Attorneys' Fees.** In the event of any action between the parties hereto for breach of or to enforce any provision or right hereunder, the non-prevailing party in such action shall pay to the prevailing party all costs and expenses expressly including, but not limited to, reasonable attorneys' fees incurred by the prevailing party in connection with such action.

**5.4 Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect in any manner any of the rights or remedies which the party may have by reason of any breach of this Agreement. Waiver by either party of any breach by the other party of any term or condition hereof shall not be deemed a waiver of any subsequent breach of the same or any other term or condition hereof.

5.5 Modification. A modification, waiver, amendment, discharge, or change of this Agreement shall be valid only if in writing and executed by Grantors and Grantee.

5.6 Mechanics Liens. Neither party shall permit nor suffer any lien to attach to the other party's property, and neither party shall have any authority or power, express or implied, to create or cause any lien, charge, or encumbrance of any kind against the other party's property. If any lien shall at any time be filed against the Property of Grantors by reason of work, labor, services, or materials alleged to have been performed or furnished by, for, or to Grantee or anyone acting through or under Grantee, then Grantee shall deliver to Grantors a guaranty in a form and executed by an entity acceptable to Grantors wherein the guarantor shall agree to pay the lien in full and cause the release of the lien prior to the commencement of any foreclosure proceedings or to bond over such lien prior to the commencement of any foreclosure proceedings, and if Grantee shall fail to do so, in addition to any other right or remedy of Grantors, the Grantors may discharge the same by paying the amount claimed to be due, and the amount so paid by Grantors and all costs and expenses, including reasonable attorneys' fees incurred by Grantors in procuring the discharge of such lien together with interest at the rate of twelve percent (12%) per annum, shall be due and payable by the Grantee. If any lien shall at any time be filed against the property of Grantee by reason of work, labor, services, or materials alleged to have been performed or furnished by, for, or to Grantors or anyone acting through or under Grantors, then Grantors shall deliver to Grantee a guaranty in a form and executed by an entity acceptable to Grantee wherein the guarantor shall agree to pay the lien in full and cause the release of the lien prior to the commencement of any foreclosure proceedings or to bond over such lien prior to the commencement of any foreclosure proceedings, and if Grantors shall fail to do so, in addition to any other right or remedy of Grantee, the Grantee may discharge the same by paying the amount claimed to be due, and the amount so paid by Grantee and all costs and expenses, including reasonable attorneys' fees incurred by Grantee in procuring the discharge of such lien together with interest at the rate of twelve percent (12%) per annum, shall be due and payable by the Grantors.

5.7 Severability. In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision, or agreement contained herein.

5.8 Governing Law. This Agreement and the obligations of the parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Utah.

5.9 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and vice versa.

5.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.

5.11 Captions. Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provisions hereof.

5.12 Entire Agreement. This Agreement contains all the representations and the entire agreement between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party.

IN WITNESS WHEREOF, this Agreement has been made and executed this 20<sup>th</sup> day of May, 2011.

Grantee:  
Direct Communications Cedar Valley, LLC

By: Kip Wilson  
General Manager

**Grantors:**

Aaron Evans, for himself and as  
Trustee

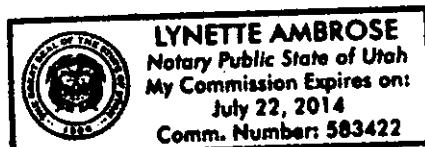
Mary Ellen Evans, for herself and  
as Trustee

STATE OF UTAH )  
COUNTY OF UTAH )ss:  
 )

On the 20th day of May, 2011, before me, a Notary Public, personally appeared Aaron and Mary Ellen Evans, who being duly sworn, affirmed under oath to be the persons whose names are subscribed to within the above instrument, conveying a utility easement, and they, by their signatures on the instrument, executed the same in my presence.

WITNESS my hand and official seal.

Lynne D. Aske  
Notary Public 6



Syndi Atch  
Notary Public

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List of Exhibits

Exhibit "A" Legal Description of Easement Area

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EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

Beginning at a point located N 1°8'45" W 727.89 feet from the southwest corner of Section 22, Township 5 South, Range 1 West, Salt Lake Base & Meridian; thence N 81°35'52" E 10.11 feet, thence N 1°18'43" E 17.55 feet, thence West 21.78 feet, thence S 30°53'2" E 22.17 feet to the Point of Beginning.