



ENT 76495:2014 PG 1 of 10
JEFFERY SMITH
UTAH COUNTY RECORDER
2014 Oct 24 1:27 PM FEE 0.00 BY ED
RECORDED FOR SPANISH FORK CITY CORPORATI

When Recorded, Mail To:

MORRIS JAY THOMAS,
Trustee of the ELSIE S. THOMAS
TRUST AGREEMENT 1-14-1994

*PO BOX 636
Spanish Fork UT 84660*

Affecting Tax Parcel Nos. 25:018:0045 and 25:018:0032 and 25:015:0033 _____

(space above for recorder's use)

SEWER AND TRAIL EASEMENT AGREEMENT

[Spanish Fork, Utah]

THIS SEWER AND TRAIL EASEMENT AGREEMENT (this "Agreement") is entered into this 21st day of October, 2014, by and between MORRIS JAY THOMAS, Trustee of the ELSIE S. THOMAS TRUST AGREEMENT 1-14-1994 ("Grantors"), MORRIS JAY THOMAS and SHARLA N. THOMAS, Trustees the JAY AND SHARLA THOMAS TRUST dated 6-29-2001; and SPANISH FORK CITY, a Utah municipal corporation (the "Grantee").

R E C I T A L S

A. Grantors own certain real property located in the County of Utah, State of Utah (the "Grantors' Property"), as more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.

B. Grantee desires to obtain: (i) a perpetual, non-exclusive easement in gross for the construction, use, and maintenance of a sewer on, over, under and across portions of the Grantors' Property, and (ii) a perpetual, non-exclusive easement in gross for the use and maintenance of a trail for the purposes described herein for the benefit of Grantee and the public (collectively, the "Easements") to Grantee for such purposes, subject to the terms and conditions set forth herein.

C. Grantor, JAY AND SHARLA THOMAS TRUST (hereinafter, "JAY AND SHARLA TRUST"), desires to be allowed a connection to the Spanish Fork City sewage system for the single family residence on parcel number 25:018:0045 at Grantee's sole cost and expense.

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 subject to the conditions set forth below, the parties agree as follows:

1. Grant of Easement.

1.1 Sewer Easement. Grantors hereby grants and conveys to Grantee, for the benefit of the public, a perpetual, non-exclusive easement in gross (the "Sewer Easement") under, on, over, through and across portions of the Grantor's Property, more specifically described on Exhibit B, attached hereto and incorporated herein by this reference (the "Sewer Easement Area"), for the purposes of: (i) designing, constructing, maintaining, enlarging, repairing, replacing, removing, protecting, and operating a sewer and other related appurtenances (the "Improvements"); and (ii) discharging solid and liquid waste through the Improvements.

1.2 Trail Easement. Grantors hereby grants and conveys unto Grantee, for the benefit of the public, a perpetual, non-exclusive easement in gross (the "Trail Easement") on, over, and across portions of the Grantors' Property, more specifically described on Exhibit C, attached hereto and incorporated herein by this reference (the "Trail Easement Area") for the purposes of using, establishing, constructing, repairing, and maintaining a trail (the "Trail"). Except for the motorized vehicles that Grantee will utilize to maintain the Trail, no other motorized vehicles, of any kind or function, will be operated or brought upon the Trail Easement Area by the public. Grantee's and the public's use of the Trail and the grant of this trail easement shall be limited to activities such as walking, hiking, running, biking, and other similar activities. Grantee agrees that this easement does not permit on the Grantor's Property any nuisance or disruptive activity which is an annoyance or a nuisance to a church or private dwelling located nearby.

1.3. **Fence for the Trail Easement**. Grantee agrees that if a trail is installed before the property is developed, that at the time that the trail is installed on the trail easement referenced herein, Grantee, at its sole cost and expense, will also install a fence between the trail and Grantor's Property for the entire length of the trail on Grantor's Property.

2. Access.

2.1 Sewer Easement. Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, "Grantee's Agents") shall have the right to enter upon the Sewer Easement Area for the purposes permitted by this Agreement. Grantee and its successors and assigns, hereby release Grantor from any and all claims relating to the condition of the Sewer Easement Area and the entry upon the Sewer Easement Area by Grantee and Grantee's Agents.

2.2 Trail Easement. The general public, Grantee, and Grantee's Agents shall have the right to enter upon the Trail Easement Area for the purposes permitted by this Agreement. Grantee and its successors and assigns, hereby release Grantor from any and all claims relating to the condition of the Trail Easement Area and the entry upon the Trail Easement Area by the public, Grantee, and Grantee's Agents (and their successors and assigns).

3. Condition of the Easement Area. Grantee accepts the Sewer Easement Area and the Trail 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. Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the

aforementioned easement areas, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Grantee shall 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 Sewer Easement Area and/or the Trail Easement Area.

4. Maintenance and Restoration. Grantee, at its sole cost and expense, shall maintain and repair all Improvements, any and all related improvements installed by Grantee, and the Trail in good order and condition. Grantee shall promptly repair any damage to the Grantors' Property and Grantors' 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 Grantors' Property and the improvements thereon as they existed prior to any entry onto or work performed on the Grantors' Property by Grantee and Grantee's Agents. Grantee may place appropriate bollards to keep motorized vehicles out of the Trail Easement Area. Such signage will further indicate the potential presence of emergency, maintenance or agricultural vehicles and the requirement that all Trail users yield to such vehicles. Grantee shall be responsible for trimming or otherwise removing tree and shrubbery growth from the Trail in order to allow for the approved vehicular access.

5. Insurance. Before entry on the Sewer Easement Area and Trail Easement Area, Grantee shall provide, and shall require all of Grantee's Agents to provide, commercial general liability insurance, automobile liability insurance covering owned, non-owned, and hired vehicles and such other insurance as may be reasonably applicable based on the activity, which provides for at least \$1,000,000 in liability limits, per occurrence, for personal injury or death, and at least \$1,000,000 for property damage, arising out of or resulting from any entry on the Grantors' Property by Grantee or Grantee's Agents. A certificate of insurance shall be provided to Grantors before entry by Grantee or Grantee's Agents, which certificate shall describe the coverage and shall be endorsed to name Grantors as an additional insureds. Grantee may obtain such insurance by means of self-insurance so long as Grantee maintains actuarially sound reserves.

6. Liens. Grantee will keep the Grantors' Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee. Any such liens must be released of record within thirty (30) days.

7. 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 Grantors: Morris Jay Thomas, Trustee of the
 Elsie S Thomas Trust Agreement 1-14-1994
 Attn: Jay Thomas
 748 West 6800 South

Spanish Fork, Utah 84111

If to Grantee: Spanish Fork City
 Attn: Chris Thompson - Public Works Director
40 south Main Street
Spanish Fork, UT 84660

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

8. Indemnification. Grantee and its successors and assigns hereby agree to indemnify, defend (with counsel acceptable to Grantors) and hold harmless Grantors, and any entity controlling, controlled by or under control with Grantors ("Grantors' Affiliates"), and its and their Affiliates' officers, directors, employees, managers, members, agents, servants, successors, and assigns from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage caused by or arising out of (i) the acts and omissions of Grantee and Grantee's Agents; (ii) the use of the Sewer Easement Area, Trail Easement Area, the Trail, and/or the Improvements by Grantee or Grantee's Agents; and (iii) any work performed on the Sewer Easement Area, Trail Easement Area, or the Grantor's Property by Grantee, Grantee's Agents, or its/their successors or assigns, and their agents, servants, employees, consultants and/or contractors. The terms and conditions of this provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

9. Miscellaneous.

9.1 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. This Agreement has been arrived at through negotiation between Grantors and Grantee. As a result, the normal rule of contract construction that any ambiguities are to be resolved against the drafting party shall not apply in the construction or interpretation of this Agreement.

9.2 Run with the Land. Subject to the terms and conditions of this Agreement, the provisions of this Agreement shall be considered a covenant that runs with the land herein described and as such the terms, conditions, and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the Grantors hereto.

9.3 Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Agreement shall affect or be deemed to interpret, change, or restrict the express provision hereof. Any amendment or modification to this Agreement shall be in writing and signed by authorized agents or officers of the parties.

9.4 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.

9.5 Enforceability and 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.

9.6 No Public Use/Dedication. The Grantors' Property is and shall at all times remain the private property of Grantors. The use of the Grantors' Property is limited to the express purposes contained herein by Grantee. Neither Grantee, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to the Grantors' Property beyond the express terms and conditions of this Agreement.

9.7 Counterparts. This Agreement may be signed in multiple counterparts, all of which taken together shall constitute one and the same agreement. Further, copied or electronically or facsimile transmitted signatures of an original signature shall be treated for all purposes as an original signature. After execution and delivery of this Agreement, a copy of the signed Agreement shall be considered for all purposes as an original of the Agreement to the maximum extent permitted by law, and no party to this Agreement shall have any obligation to retain a version of the Agreement that contains original signatures in order to enforce the Agreement, or for any other purpose, except as otherwise required by law.

[signatures begin on the following page]

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

Grantors:

Morris Jay Thomas Attorney in fact
MORRIS JAY THOMAS, TRUSTEE OF THE ELSIE S THOMAS TRUST AGREEMENT 1-14-1994

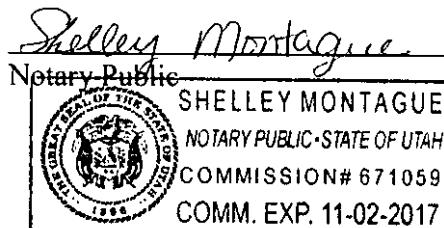
Morris Jay Thomas
MORRIS JAY THOMAS, CO-TRUSTEE OF THE JAY AND SHARLA THOMAS TRUST dated 6-29-2001

Sharla N. Thomas
SHARLA N. THOMAS, CO-TRUSTEE OF THE JAY AND SHARLA THOMAS TRUST dated 6-29-2001

STATE OF UTAH (UT)
:ss
COUNTY OF UTAH (UT)

On this 14 day of October, 2014, personally appeared before me MORRIS JAY THOMAS, TRUSTEE OF THE ELSIE S THOMAS TRUST AGREEMENT 1-14-1994, and CO-TRUSTEE OF THE JAY AND SHARLA THOMAS TRUST dated 6-29-2001 and SHARLA N. THOMAS, CO-TRUSTEE OF THE JAY AND SHARLA THOMAS TRUST dated 6-29-2001 who acknowledged to me that he/she signed the foregoing instrument in the capacity indicated.

WITNESS my hand and official seal.



Grantee:

SPANISH FORK CITY, a Utah municipal corporation

By: Steve Leifson
 Name (Print): Steve Leifson
 Its: Mayor 10-21-2014

ATTEST:

By: Kent R. Clark
 Name: KENT R. Clark
 Its: City Recorder

APPROVED AS TO FORM:

By: S. Junior Baker
 Name: S. Junior Baker
 Its: Attorney



STATE OF UTAH)
 :ss
 COUNTY OF UTAH)

On this 1st day of October, 2014, personally appeared before me Steve Leifson, known or satisfactorily proved to me to be the Mayor of **SPANISH FORK CITY, a body politic of the State of Utah**, who acknowledged to me that he/she signed the foregoing instrument as Mayor for said entity.

WITNESS my hand and official seal.

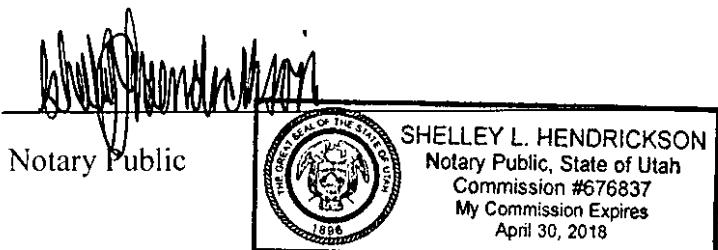


Exhibit A

(Utah County Parcel #'s of the Grantor's Property)

Parcel# 25:018:0032

Parcel# 25:018:0045

Parcel# 25:015:0033

Exhibit B

(Description of the Sewer Easement Area)

Sewer Easement:

Commencing at point located North 01°09'19" East along the section line 666.51 feet and West 204.33 feet from the West Quarter Corner of Section 24, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence West 63.93 feet; thence North 48.53 feet; thence along an arc of a 567.65 foot radius curve to the right 365.10 feet (chord bears North 72°09'00" East 358.84 feet); thence South 89°25'30" East 945.11 feet; thence South 00°34'30" West 30.00 feet; thence North 89°25'30" West 945.11 feet; thence along an arc of a 537.65 foot radius curve to the left 79.96 feet (chord bears South 86°18'50" West 79.89 feet); thence South 69°32'46" West 210.91 feet; thence South 49.70 feet to the point of beginning.

Area = 43,447.4326 Square Feet / 1.00 acres

Exhibit C

(Description of the Trail Easement Area)

Trail Easement:

Commencing at point located North 01°09'19" East along the section line 190.98 feet and West 298.64 feet from the West Quarter Corner of Section 24, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°51'09" West 11.00 feet; thence North 00°06'00" East 482.53 feet; thence along arc of a 567.65 foot radius curve to the right 430.16 feet (chord bears North 68°52'00" East 419.94 feet); thence South 89°25'30" East 945.11 feet; thence South 00°34'30" West 15.00 feet; thence North 89°25'30" West 945.11 feet; thence along an arc of a 552.65 feet to the left 417.73 feet (chord bears South 68°55'20" West 407.85 feet); thence South 00°06'00" West 472.28 feet to the point of beginning.

Area = 25,787.17 Square Feet / 0.59 acres