

ENT 80563:2011 PG 1 of 13  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2011 Nov 08 3:37 pm FEE 34.00 BY SW  
RECORDED FOR CHARTER SCHOOL PROPERTIES V

WHEN RECORDED, RETURN TO:  
Charter School Properties V, LLC  
1955 W. Grove Parkway, Suite 200  
Pleasant Grove, Utah 84062

County Agreement 2011-656

## ACCESS EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("Agreement") is made this 11<sup>th</sup> day of October 2011, by and between MUNICIPAL BUILDING AUTHORITY OF UTAH COUNTY, UTAH, a Utah non-profit corporation, ("Grantor"), and CHARTER SCHOOL PROPERTIES V, LLC, a Utah limited liability company ("Grantee").

### RECITALS

A. Grantor is the owner of that certain parcel of real property located in Utah County, Utah commonly known as "Mountainland Applied Technical College" ("Grantor's Property") being more particularly described in the attached Exhibit "A".

B. Grantee owns certain real property adjacent to the Grantor's Property ("Grantee's Property"), as more particularly described in the attached Exhibit "B".

C. Grantee desires to obtain an easement over a portion of the Grantor's Property for ingress and egress between Grantee's Property and 1100 South Street, and Grantor desires to grant said easement to Grantee.

### AGREEMENT

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

1. Grant of Easement. Grantor hereby conveys to Grantee a perpetual, non-exclusive easement (the "**Easement**") on, over and across that portion of the Grantor's Property described on the attached Exhibit "C" (the "**Easement Property**"). A drawing showing the Easement Property is attached hereto as Exhibit "D." Such drawing is included for ease of reference and visualization only. In the event of any conflict between the depiction shown on Exhibit "D" and the legal description of the Easement Property set forth on Exhibit "C," the legal description in Exhibit "C" shall control.

2. Purpose of Easement. The Grantee and Grantee's tenants, subtenants, guests, employees, agents, customers, licensees, concessionaires and other invitees, all have the use of the Easement for ingress and egress for pedestrian, bicycle, automobile, and other motorized and non-motorized vehicle ingress and egress over the Easement Property. Notwithstanding the forgoing, Grantor at Grantee's sole cost and expense, hereby reserves the right to relocate said Easement on Grantor's Property as Grantor deems necessary.

3. Maintenance of Easement Property. Mountainland Applied Technical College ("MATC") shall maintain the Easement Property in good clean condition and repair, including, without limitation the following: (i) maintaining the asphalt surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respect be equal or superior in quality, use and durability; (ii) removing snow from all asphalt surfaces and all sidewalks; (iii) removing all papers, debris, filth, refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition; (iv) placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines; and (v) operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required. Grantee shall reimburse MATC for fifty percent (50%) of such maintenance costs within ten (10) days after receipt of an invoice from MATC.

4. Reservation of Rights over Easement Property. Grantor reserves the right to use the Easement Property for any use not inconsistent with the intended use of the Easement Property, including: (i) for pedestrian and vehicular ingress to and egress on and over the Easement Property; (ii) for the placement and maintenance of landscaping, trees, signs, light standards, sidewalks, curbs and gutters, ditches, irrigation pipes and related appurtenances, fences, asphalt roadways and parking lots, utilities, and driveways and other similar improvements that do not interfere with the Grantee's use of the Easement Property; and (iii) to convey or transfer any or all of its interests in the Easement Property to any party at any time, but subject to Grantee's rights and interests under this Agreement.

5. Liability Insurance. Grantee shall maintain in full force and effect a general public liability insurance and property damage insurance (naming the Grantor as an additional party insured) against claims for personal injury, death or property damage occurring upon the Easement Property in the following amounts: (i) personal injury liability or death to one person in the amount of \$700,000.00; (ii) personal injury liability for injury or death to any number of persons with respect to one occurrence in the amount of \$2,250,000.00; and (iii) property damage liability per occurrence in the amount of \$500,000.00. Grantor may require that such policy amount requirements be increased from time to time by delivering written notice to Grantee, if: (i) such increase is commercially reasonable; or (ii) necessary to cover the Grantor's liability limits as adjusted from time to time pursuant to U.C.A. Section 63G-7-604(3) and (4). The insurance policy maintained pursuant to this Section shall require thirty (30) days notice to Grantor before the policy can be cancelled. Concurrently with the execution of this Agreement, Grantee shall provide Grantor with a certificate of insurance evidencing that it has obtained the insurance requirements set forth herein.

6. Covenants to Run With the Land. Subject to the terms of this Agreement, the provisions of this Agreement shall constitute covenants running with the land, and shall burden the Grantor's Property as the servient estate, and benefit the Grantee's Property as the dominant estate, and shall be binding upon Grantor, its successors, assigns, and any person acquiring, leasing, or otherwise owning an interest in the Easement Property.

7. Indemnity. Grantee assumes liability for and agrees to indemnify and hold Grantor harmless from and against any and all liability, including attorneys' fees, of any nature imposed upon, incurred by, or asserted against Grantor arising from or out of the activity or

presence upon the Easement Property of Grantee, its servants, employees, agents, sublessees, assignees, or invitees. This Section shall survive any termination of this Agreement.

8. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or a dedication of the Easement Property or any portion thereof, to or for the general public or for any public purpose whatsoever, it being the intent of the parties that this Agreement be strictly limited to and for the purposes expressed herein, and that the Easement Property at all times maintain its ownership and character as a private thoroughfare.

9. Notices. All notices or deliveries required by this Agreement must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party no later than the applicable date referenced in this Agreement. Notices may be (i) hand-delivered; (ii) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (iii) sent by certified mail, return receipt requested; or (iv) sent by facsimile transmission or electronic mail with an original copy thereof transmitted to the recipient by one of the means described in items (i) through (iii) above no later than three (3) business days thereafter. All notices so given shall be considered effective: if hand-delivered, when received; if delivered by facsimile transmittal or electronic mail, upon transmission; if sent by overnight delivery service, one (1) business day after timely deposit with the service, charges prepaid; or if sent by certified mail, three (3) calendar days after deposit. Unless a party provides notice of a different address in accordance with the requirements of this Section, all notices shall be addressed as follows:

To Grantor: Municipal Building Authority of Utah County.  
100 East Center Street  
Provo, Utah, 84606  
Attn: President

To Grantee: Charter School Properties V, LLC  
775 West 1200 North, Suite 100  
Springville, UT 84663  
Attention: Jennifer Lind

10. Miscellaneous.

10.1 Modification. Except as set forth in Section 2 above, this Agreement and any provision, covenant, condition or restriction contained herein may only be terminated, extended, modified or amended by agreement of Grantor and Grantee. Except as set forth in Section 2 above, no termination, extension, modification or amendment of this Agreement will be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded by the parties in the Utah County Recorder's Office, State of Utah.

10.2 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

10.3 Incorporation of Exhibits and Recitals. The Recitals at the beginning of this Agreement and the Exhibits attached hereto are incorporated herein by this reference.

10.4 No Waiver. Failure of a party hereto to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this instrument shall be deemed to have been waived unless such waiver is in writing and signed by the party alleged to have waived its rights.

10.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives, and assigns.

10.6 Partial Invalidity. If any provision of this Agreement, or the application hereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

10.7 Attorneys' Fees. In the event of a breach or other dispute between the parties in the performance or interpretation of this Agreement, or otherwise arising out of or relating to this Agreement, the prevailing party in such dispute, whether pursued through litigation or otherwise, shall be entitled to recover from the other party all of its costs and expenses incurred in connection with such dispute, including reasonable attorneys' fees actually incurred. A "prevailing party" is a party who receives judgment as to the main issue subject to dispute.

10.8 Governing Law. The provisions of this Agreement shall be governed by the laws of the State of Utah without giving effect to its conflict of laws principles.

10.9 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

10.10 Further Acts. In addition to the agreements recited herein and contemplated to be performed, executed, and delivered hereunder, Grantor agrees to perform, execute, and deliver or cause to be performed, executed, and delivered any and all such further acts, deeds, and assurances as may be necessary to consummate the transactions contemplated hereby.

[Signatures on Following Page]

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

**GRANTOR**

MUNICIPAL BUILDING AUTHORITY  
OF UTAH COUNTY, UTAH

By: [Signature]  
Gary J. Anderson, President

Attest:

By: [Signature]  
Doug Witney, Secretary

**GRANTEE**

Charter School Properties V, LLC, a Utah limited  
liability company

By: [Signature]  
Name: Mike Mark - manager of Charter Properties LLC  
Its: Manager

**Acknowledged:**

Wells Fargo Bank, N.A.

By: [Signature]  
Name: David Hanks  
Its: Relationship Manager

**Acknowledged and Agreed:**

Mountainland Applied Technology College.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

**GRANTOR**

MUNICIPAL BUILDING AUTHORITY  
OF UTAH COUNTY, UTAH

By: \_\_\_\_\_  
Gary J. Anderson, President

Attest:

By: \_\_\_\_\_  
Doug Witney, Secretary

**GRANTEE**

Charter School Properties V, LLC, a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Acknowledged:**

Wells Fargo Bank, N.A.

By: David Hahn  
Name: David Hahn  
Its: Relationship Manager

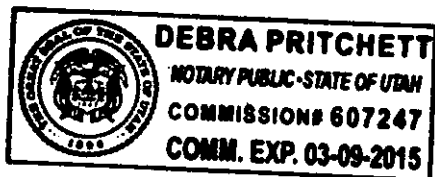
**Acknowledged and Agreed:**

Mountainland Applied Technology College.

By: Clay Christensen  
Name: CLAY CHRISTENSEN  
Its: CAMPUS PRESIDENT

STATE OF UTAH )  
 )  
 COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 13 day of October, 2011, by Gary J. Anderson and Doug Witney, respectively the President and Secretary of the Municipal Building Authority of Utah County, Utah.

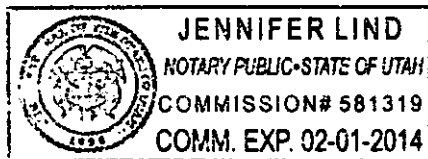


Debra Pritchett  
 NOTARY PUBLIC  
 Residing at: Provo, Utah

My Commission Expires: March 9, 2015

STATE OF Utah )  
 )  
 COUNTY OF Utah )

This instrument was acknowledged before me on October 26, 2011 by Mike Mackay, the manager of Charter of Charter School Properties V, LLC, a Utah limited liability company. Properties, LLC, manager

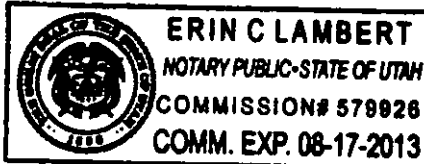


Jennifer Lind  
 NOTARY PUBLIC  
 Residing at: Springville, UT

My Commission Expires:

STATE OF UTAHCOUNTY OF UTAH

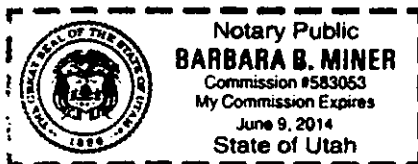
This instrument was acknowledged before me on Oct 31, 2011 by  
Dave Hanks, the Relationship Manager of Wells Fargo Bank, N.A.



Erin C Lambert  
 NOTARY PUBLIC  
 Residing at: Spanish Fork, UT

My Commission Expires: 8-17-13STATE OF UtahCOUNTY OF Utah

This instrument was acknowledged before me on Oct. 13, 2011 by  
Clay Christensen, the President of Mountainland Applied Technology  
 College.



Barbara B. Miner  
 NOTARY PUBLIC  
 Residing at: Lehi, Utah

My Commission Expires:



**EXHIBIT A**

**Description of Grantor's Property**

Lot 203, Plat "B" Academy Park Subdivision, according to the official plat thereof on file and of record in the Office of the Utah County Recorder.

**EXHIBIT B**

**Description of Grantee's Property**

Lot 202, Plat "B" Academy Park Subdivision, according to the official plat thereof on file and of record in the Office of the Utah County Recorder.

**EXHIBIT C****Description of Easement Property**

Beginning at a point located North 89°35'19" East along the Quarter Section Line 1,344.97 feet and North 718.44 feet from the West Quarter Corner of Section 25, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence North 67°50'33" West 98.39 feet; thence North 06°43'21" West 110.48 feet; thence along the arc of a 466.00 foot radius non-tangent curve (radius bears: North 06°43'33" West) 32.27 feet through a central angle of 03°58'04" (chord: North 81°17'35" East 32.26 feet); thence South 25°26'19" East 168.00 feet to the point of beginning.

**EXHIBIT D**

**Drawing of the Easement Property**



**SEMINARY BUILDING  
ACCESS EASEMENT**

Beginning at a point located N89°35'19"E along the Quarter Section Line 1,344.97 feet and North 718.44 feet from the West 1/4 Corner of Section 25, Township 8 South, Range 2 East, Salt Lake Base & Meridian; thence N67°50'33"W 98.39 feet; thence N6°43'21"W 110.48 feet; thence along the arc of a 466.00 foot radius non-tangent curve (radius bears: N6°43'33"W) 32.27 feet through a central angle of 3°58'04" (chord: N81°17'35"E 32.26 feet); thence S25°26'19"E 168.00 feet to the point of beginning.

R=466.000  
Δ=3°58'04"  
L=32.27  
CH=N81°17'35"E 32.26

**1100 SOUTH**

N6°43'21"W 110.48

S25°26'19"E 168.00

N67°50'33"W 98.39

SEMINARY  
BUILDING

SEMINARY BUILDING  
ACCESS EASEMENT

POINT OF BEGINNING LOCATED  
N89°35'19"E ALONG THE QUARTER  
SECTION LINE 1,344.97 FEET AND  
NORTH 718.44 FEET FROM THE  
WEST 1/4 CORNER OF SECTION 25,  
TOWNSHIP 8 SOUTH, RANGE 2 EAST,  
SALT LAKE BASE & MERIDIAN