

Recording requested by and  
when recorded return to:



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

ENT 127626:2006 PG 1 of 10  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2006 Sep 27 10:17 am FEE 0.00 BY HI  
RECORDED FOR OREM CITY CORPORATION

Property No. 586-7190

*Space above for Recorder's Use Only*

**STORM DRAINAGE AGREEMENT**

PN: 586-7190

This STORM DRAINAGE AGREEMENT (this "Agreement") is executed as of Oct 12, 2005, by and between CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("CPB") and OREM CITY (the "City"). CPB and the City are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

- A. CPB is the owner of approximately 6.76 acres of land ~~known as Lot 14 of Fort Herriman Estates~~ located in Orem City, Utah County, State of Utah, more particularly described in Exhibit "A," attached hereto and incorporated herein (the "CPB Property").
- B. The City has placed a storm drainage pipeline through and across the CPB Property. The City now desires that CPB grant an easement to the City for the storm drainage pipeline.
- C. CPB anticipates improving the CPB with a church meetinghouse and other improvements.
- D. CPB is willing to grant the City an easement for the storm drainage line over the portion of the CPB Property where the storm drainage line is presently located, subject to the terms and conditions of this Agreement.

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

1. **Grant of Easement.** CPB hereby grants the City a non-exclusive easement under, through and across that certain real property located in Utah County, State of Utah more particularly described in Exhibit "B," attached hereto and incorporated herein, and depicted on the site plan (the "Site Plan") attached hereto and incorporated herein as Exhibit "C" (the "Easement Area"), for an underground storm water drainage pipeline (the "Pipeline"), and thereafter maintain, operate, clean, inspect, alter, remove, replace, and protect the same, and for no other use or purpose.

CPB makes no representations or warranties regarding the CPB Property. The City accepts the Easement Area and all aspects thereof in its "AS-IS" condition, without warranties, either express or implied, "WITH ALL FAULTS." The City 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. Without limiting the generality of the foregoing, the rights granted herein are made without warrant whatsoever and subject to: (i) any state of facts which an accurate ALTA survey (with all Table A items) and/or physical inspection of the Easement Area might show, (ii) all land use and zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (iii) reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity.

**2. Reservation by CPB.** Other than the rights granted to the City herein, neither the City nor anyone claiming by, through, or under the City has any rights, title or interest in the CPB Property. It is understood and agreed that CPB, and its successors and assigns, reserve and retain the right to use the Easement Area in any manner whatsoever not inconsistent with the City's use, including, but not limited to, the right to place site improvements, curb, sidewalks, asphalt surfacing, landscaping, trees, shrubs, utilities and other improvements on the Easement Area.

The City acknowledges and agrees that the CPB Property and the Easement Area may be developed. If CPB incurs any additional cost or expense associated with the development of the CPB Property as a result of the location and existence of the Pipeline, the City shall reimburse CPB for such additional costs or expenses. The City acknowledges that such additional costs may include design and engineering costs and the costs to add additional structural support to protect the Pipeline, and/or elevation of the CPB Property. As part of the development of the CPB Property, construction trucks and other equipment will need to transverse the Easement Area and the Pipeline. In addition, the City acknowledges and agrees that the Easement Area likely will be improved with site improvements and asphalt surfacing and that motor vehicles will cross the Pipeline. In the event the Pipeline is damaged in any way and from any cause whatsoever or if the Easement Area or any portion of the CPB Property or any improvements thereon are damaged due to a failure of the Pipeline (such as through subsidence or collapse), the City, at its sole cost and expense, shall immediately repair such damage and restore the Pipeline, the CPB Property and the improvements located thereon, and the City forever releases, acquits, and discharges CPB from any claim of loss, damage or harm to the Pipeline from any cause whatsoever.

**3. Maintenance of Pipeline.** The City, at its sole cost and expense, shall maintain the Pipeline in a good, clean and safe order and condition and in accordance with any and all Laws, and shall immediately repair any loss or damage to the Easement Area and/or the CPB Property caused by the use of the Pipeline, the Easement Area, or by the acts or omissions of the City and its contractors and subcontractors. The City shall coordinate any maintenance of the Pipeline with representatives of CPB. The City shall not perform any activity on the CPB Property on Sundays, except in the event of an emergency. Upon completion of any maintenance or repair to the Pipeline or the CPB Property, the City shall restore the Easement Area and the CPB Property to substantially the same condition that existed before the occurrence of such work by the City or

damage or loss associated with the Pipeline. The City shall not cause or permit any liens or other encumbrances to be filed against the CPB Property and shall immediately cause any such liens or encumbrances to be released

4. **Compliance with Laws.** The City will comply with all applicable Laws related to the construction and operation of the Pipeline. "Laws" means all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any and all building, zoning and land use laws and any laws related to the control and regulation of hazardous substances.

5. **Indemnification and Release.** The City 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, 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 the City and the City's consultants and contractors, and (ii) the use of the Pipeline and the Easement Area (including, without limitation, the any injuries, loss or damage resulting therefrom).

The City acknowledges and agrees that it uses the Pipeline and the Easement Area, at its election and at its sole risk and hazard. CPB shall not be responsible in any manner whatsoever for any harm, damage or injury that may be suffered or incurred by the City and/or anyone using the Pipeline, resulting from the use of the Pipeline or the Easement Area, including the failure of the Pipeline. CPB is hereby released and forever discharged from any and all claims that may arise on account of injury to persons, loss of life, and damage to property associated with the use or inability to use the Pipeline or the Easement Area.

6. **Modification to Pipeline.** As partial consideration for the easement granted herein, CPB shall have the right to connect to the Pipeline without any additional cost or expense, and the City waives any storm drain impact fee, connection fee or similar fee associated with the connection to the Pipeline. If CPB connects to the Pipeline, CPB shall not be obligated to contribute in any manner to the cost of the Pipeline or any down line sumps or retention/detention basins. Inasmuch as CPB shall have the right to connect to the Pipeline, CPB shall not be required to build or maintain any on-site storm water retention or detention basins, but may discharge storm water from the CPB Property directly into the Pipeline so long as such water is filtered through a oil/grease separator. If not already installed, the City, at its sole cost and expense, shall install a culvert and an additional manhole as part of the Pipeline so that storm water drainage from the CPB Property can be discharged into the Pipeline. The location of the culvert and manhole will be mutually agreed upon by the parties. *Notwithstanding any other provision to the contrary, CPB shall still be subject to the monthly storm sewer utility fee.*

7. **Condemnation.** In the event the City or an entity with the power of eminent domain seeks to acquire the Easement Area or any portion thereof 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 immediately terminate this Agreement. Any award or consideration for the Easement Area shall be payable solely to CPB and the City releases and waives and right to any portion of the award.

8. **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.

9. **Run with Land.** This Agreement shall run with the land.

10. **Entire Agreement.** This Agreement contains the entire agreement between CPB and the City 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 the City and recorded in the official records of the County of Utah, State of Utah.

11. **Headings.** Headings or captions 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 the City 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. **Applicable Law.** This Agreement is executed and delivered in the State of Utah and shall be construed and enforced in accordance with, and governed by, the laws of the State of Utah. Venue for any legal proceedings shall be in Utah County, Utah.

14. **Contractual Obligations.** The Parties expressly acknowledge and agree that all of the terms and conditions contained herein represent contractual obligations of the Parties, which have been negotiated at arms' length, and reviewed and approved by the appropriate legislative and governing body of the City. The presentment of any claim or action against the City pursuant to this Agreement (such as through the indemnification provision) shall be presentment and tender of a contractual obligation and shall not be subject to any limitations. The tender of any claim hereunder shall be made to the City's attorney. Under no condition shall CPB be limited or restricted (including any waiver due to the passage of time) in its ability to tender any claim or matter arising hereunder.

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 the City written notice of such waiver.

16. **No Presumption.** This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Party. Each Party represents and warrants to the other Party that it has been represented by, and has had the opportunity to consult with, legal counsel in connection with the review, negotiation and execution of this Agreement, and that this Agreement represents an arm's length transaction between two sophisticated parties.

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 the City, 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. The City and the individual signing this Agreement on behalf of the City further represent and warrant to CPB that any legislative act necessary to authorize the City to enter into this Agreement has been obtained and that this Agreement is entered into through the City's proprietary authority and signed by an authorized officer of the City.

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



"CITY":

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

By: [Signature]  
Name: Terry F. Rudd OMR  
Its: Authorized Agent

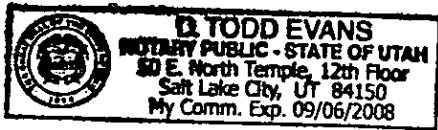
OREM CITY,  
a municipal corporation

By: [Signature]  
Name (Print): Jim Beams  
Its: CITY MANAGER

STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

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On this 7 day of AUGUST, 2005, personally appeared before me TERRY F. RUDD, personally known to me to be the Authorized Agent of the 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 Authorized Agent for said Corporation, that the seal impressed on the within instrument is the seal of said corporation, and the said TERRY F. RUDD acknowledged to me that the said Corporation executed the same.



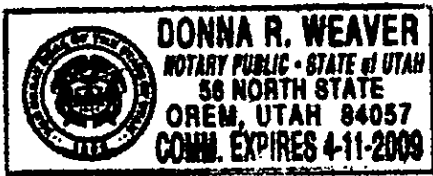
*[Handwritten Signature]*

Notary Public for Utah

STATE OF UTAH )  
 :SS  
COUNTY OF UTAH )

On this 12 day of October, 2005, personally appeared before me Jim Reams, personally known to me to be the <sup>City Manager</sup> Mayor of Orem City, who <sup>City Manager</sup> acknowledged to me that he/she signed the foregoing instrument as Mayor for said entity, and the said Jim Reams acknowledged to me that Orem City executed the same.

WITNESS my hand and official seal.



*[Handwritten Signature: Donna R. Weaver]*

Notary Signature

4/11/09  
My commission expires \_\_\_\_\_

(This area for official notary seal)

## EXHIBIT "A"

Description of CPB Property

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Commencing at a point located South 89°54'25" West along the Section line 502.76 feet and North 922.21 feet from the South quarter corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian: thence West 349.35 feet to a chain link fence line; thence North 00°13'56" East along an existing chain link fence 834.19 feet to the Northerly boundary line of Orem High School & Seminary Subdivision Plat "A"; thence along said boundary line North 89°54'34" East along 1430 North Street 351.47 feet; thence South 00°22'37" West along 400 East Street 834.75 feet to the point of beginning.

Area: 292,399 sq. ft. 6.71 acres

## EXHIBIT "B"

Description of Easement Area

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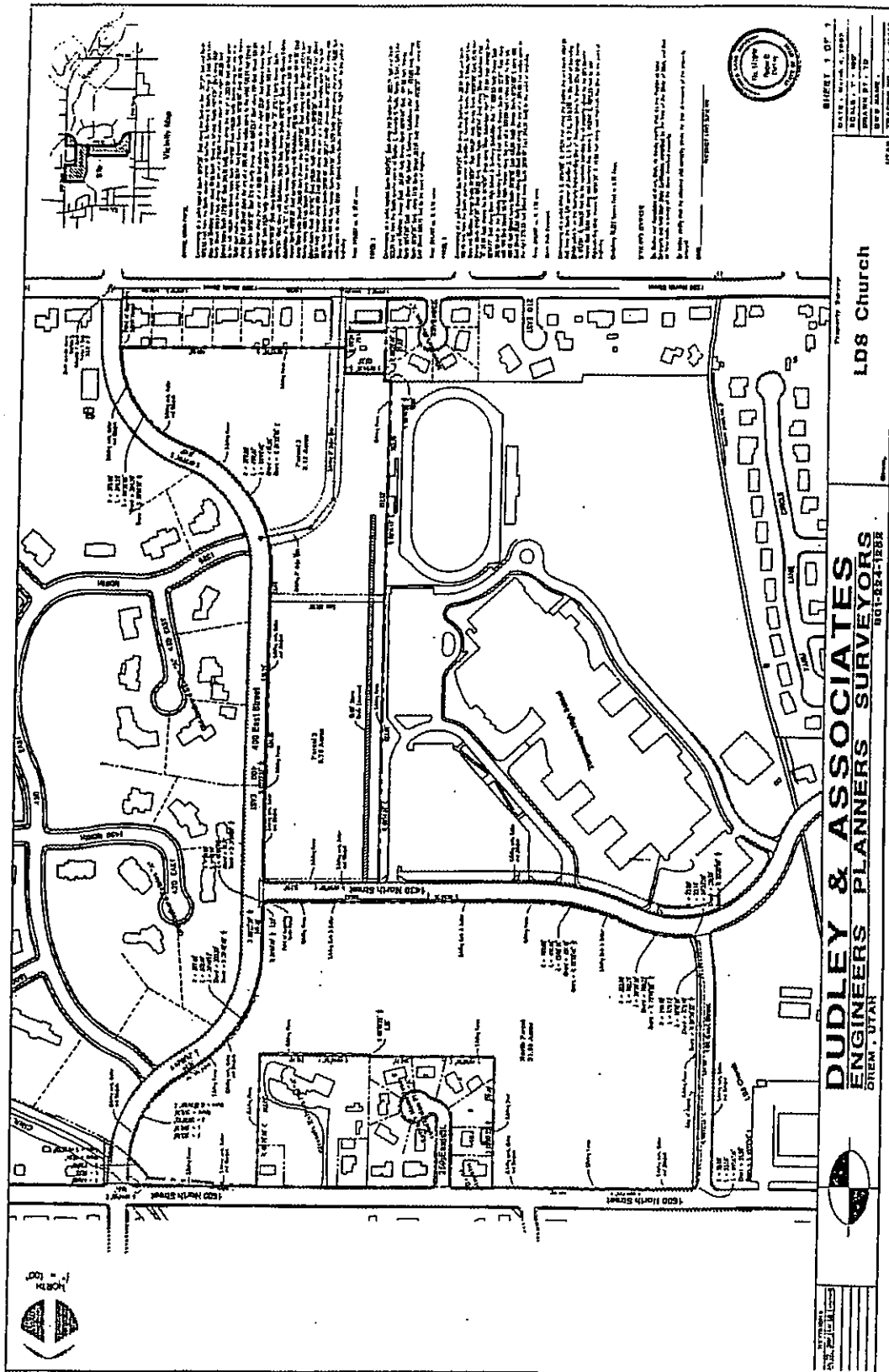
Commencing at a point which is South 89°54'02" West 817.51 feet along the Section line and North 1756.95 feet from the South 1/4 corner of Section 2, Township 6 South, Range 2 East Salt Lake Base and Meridian, to the point of beginning, (which point is on the Southerly Right-of-Way Line of Timpanogos Drive in Orem City, Utah); thence South 0°13'04" West 834.23 feet to the southerly boundary line of property owned by the LDS Church; thence East 15.04 feet along said boundary line; thence North 0°13'04" East 834.26 feet to said Right-of-Way Line; thence South 89°54'33" West 15.19 feet along said Right-of-Way Line to the point of beginning.

Containing 12,605± Square Feet or 0.29± Acres.



EXHIBIT "C"

Depiction of Easement Area



THE CHURCH OF  
**JESUS CHRIST**  
OF LATTER-DAY SAINTS

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REAL ESTATE SERVICES DIVISION  
PHYSICAL FACILITIES DEPARTMENT  
50 E. North Temple St. Rm. 1205  
Salt Lake City, Utah 84150-6320  
Phone: 801-240-3840  
Facsimile: 801-240-2913  
Writer's Direct Line: (801) 240-7950  
E-mail: [wrightfd@ldschurch.org](mailto:wrightfd@ldschurch.org)

In Reference To:  
Orem UT Windsor STK FS  
Property No. 586-7190

September 6, 2005

Orem City  
Attn: Ed Gifford, City Engineer  
56 N. State Street  
Orem, UT 84057


Dear Mr. Gifford:

RE: Apprx. 1430 N. 400 E., Orem,  
UT

Enclosed please find a **Storm Drainage Agreement** on the above property, which has been signed by an Authorized Agent of the Church before a Notary Public.

**After this Storm Drainage Agreement has been recorded, please return a copy, showing the recording information, to my attention in the enclosed self-addressed, postage paid envelope.**

Sincerely,

  
Cindy Reaveley  
Acting Easement Coordinator

Enclosure(s)

cc: Craig Larson, Real Estate Project Manager (via e-mail, w/o enclosures)  
Work Order No. E0858  
Dean Schick, UT American Fork Project Manager (via e-mail, w/o enclosures)

Please refer to the above property number in all correspondence and phone calls.