

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** is made this 23<sup>rd</sup> day of April 2013, and entered into by and between the **UTAH DEPARTMENT OF TRANSPORTATION** as “Lessor” (Landlord) and the **UTAH VALLEY UNIVERSITY** as “Lessee” (Tenant).

1. **LEASED PREMISES (Premises):**

Landlord hereby leases to Tenant certain Premises located at approximately 699 W. 1200 S., Orem, and further identified on the attached Exhibit “A”.

2. **PURPOSE:**

Tenant may use the Premises solely for the purposes of landscaping and pedestrian crossing of University Parkway.

3. **TERM:**

The term of this Lease Agreement shall be 10 years commencing on May 1, 2013 and expiring on April 30, 2023.

**The rent payment for this term is: \$1,000.00**

**Rent is due on May 1, 2013**

Any renewals must be negotiated and approved by both parties, in writing, prior to the expiration date.

4. **CONSIDERATION:**

The Tenant will pay the above rent amount.

- a. Non-Payment of Rent: This Lease Agreement may be terminated and Tenant may be required to immediately vacate the Premises if rent due is delinquent by 30 days or more.
- b. Payments must be made on or before the due, whether or not you receive our courtesy invoice.
- c. A late fee of 10% of the rent amount will be assessed on late payments. Any dishonored check shall be treated at unpaid rent.

5. **CONDITION OF PREMISES:**

Tenant hereby accepts the Premises in the condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state, and federal laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease Agreement subject thereto and to all matters disclosed thereby. Tenant acknowledges that neither Landlord nor any agent of the Landlord has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of Tenant, nor

has Landlord agreed to undertake any modification, alteration or improvement to the Premises. Tenant agrees to accept the Premises in its presently existing conditions “as is,” and Landlord shall not be obligated to make any improvements or modifications thereto. Tenant represents and acknowledges that it has made a sufficient investigation of the conditions of the Premises existing immediately prior to the execution of this Lease Agreement and is satisfied that the Premises are fully fit physically and lawfully for Tenant’s desired use and permitted by this Lease Agreement and that Tenant accepts all risks associated therewith. This Lease Agreement in no way cancels or negates the rights of public or private utilities to enter upon said Premises to construct, repair, or inspect their facilities.

6. **COMPLIANCE WITH LAW:**

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance, or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. Tenant agrees to obtain any licenses, permits and other necessary authorizations from federal, state and local agencies. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall maintain the property in compliance with all applicable city and county ordinances.

7. **CONDUCT OF OPERATIONS:**

- a. Excavations, structural repairs, or other operations on the Premises shall be commenced in accordance with plans and specifications for Landlords development of the Premises and at the sole cost of the Tenant. Tenant acknowledges that upon Landlords re-occupancy of the Premises, Tenant is not eligible for relocation benefits as a displaced person or business.
- b. All grading, landscaping, etc. shall be accomplished in a manner to prevent rocks and dirt from coming in contact within 20 feet of all adjoining roads or highways and in a manner to protect the public. Landscaping shall be maintained in a clean and orderly manner free of overgrown, dead, diseased, or vegetation in accordance with all city and county ordinances.
- c. Tenant shall not allow any Hazardous Materials to enter the Premises. “Hazardous Materials” shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive and shall include but not be limited to those substances defined as “hazardous substances,” “hazardous materials,” “hazardous wastes,” or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act 49 U.S.C. § 1801 et seq., and any other federal, state or local governmental statutes, laws, codes, ordinances, rules, regulations and precautions, or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) petroleum products or byproducts, or petroleum, including crude oil or any fraction thereof,

or natural gas, natural gas liquids, liquefied natural gas, synthetic gas or mixtures of synthetic gas and natural gas, (iii) asbestos and (iv) polychlorinated biphenyls.

- d. Premises will be used only for the purposes identified in section 2 of this Lease Agreement. No buildings are to be constructed, signs erected or other improvements built without prior written approval from the Landlord. No large trees, tall mounds or plantings of any kind shall be allowed at any time that may obstruct the view of traffic on the adjoining roads.
- e. Tenant grants Landlord the right to enter the Premises at all times for the maintenance, construction, reconstruction, or inspection of the Premises or any adjoining roads. Landlord will exercise reasonable care as not to interfere or negatively impact Tenant's operations.
- f. Landlord reserves the right to re-occupy the Premises at no cost if the area is required for transportation purposes as defined in Utah State Code 72-5-102, or to dispose of the Premises. Landlord shall give a 30-day written notice of its intent to re-occupy and this Lease Agreement shall terminate. Tenant will be required relocate at the sole cost of the Tenant's expense.
- g. Tenant is responsible for all costs, fees and utility charges in connection with the use of the Premises. Tenant agrees to keep the Premises in a clean and orderly condition during occupancy and, upon expiration or termination of this Lease Agreement, return the Premises to a clean and presentable condition in compliance with all applicable city and county ordinances.
- h. No ingress or egress other than presently existing or approved will be allowed on the Premises, unless it is approved in writing by Landlord.
- i. This Lease Agreement is subject to any and all easements and rights of way and restrictions appearing of record or enforceable in law and equity and does not include any provision for the collection by the Tenant of any equity or income resulting from the existence of any easement, right of way or other restriction.

8. **INDEMNITY:**

Both Tenant and Landlord are governmental entities as defined in the Utah Governmental Immunity Act (the "Act"), Utah Code Ann. §63G-7-101 et. seq., or as amended. Nothing in this Lease Agreement shall be deemed as a waiver by either or both parties of the defenses or protections provided by the Act. Nor shall this Lease Agreement be construed with respect to third parties as a waiver of any governmental immunity to which a party to this Lease Agreement is otherwise entitled. Tenant agrees to indemnify, save harmless, and release Landlord from and against any and all loss, damages injury, liability, suits, claims and proceedings arising out of the performance of this Lease Agreement, or which damages, injury liability, suits, claims and proceedings are caused in whole or in part by the Tenants acts, omissions, failure to act, or negligence of the Tenants officers, agents, volunteers, or employees, except where the claims arises out of the sole negligence of Landlord.

9. **ASSIGNMENT:**

This Lease Agreement may not be assigned, nor transferred, by Tenant without the express written consent of the Landlord.

10. **NOTICES:**

Any notices or changes must be in writing and delivered to the

*Landlord at the following address:*

*Tenant at the following address:*

Utah Department of Transportation  
4501 South 2700 West  
Po Box 148420  
Salt Lake City, Utah 84114-8420  
801.965.4209 / Fax 801.965.3822

Utah Valley University  
800 W. University Parkway  
Orem, Utah 84058

11. **TERMINATION:**

If, upon inspection, the Premises are not found to be properly maintained, Tenant will be given a notice of the findings and a deadline to correct the problem. Non-compliance with such notice shall constitute a breach and possible termination of this Lease Agreement.

12. Tenant shall be liable to Landlord for any and all costs incurred as a result of any breach by Tenant.

13. Landlord is not abandoning any rights or interests in the Premises for transportation purposes as defined in Utah State Code 72-5-102 or the right to dispose of the Premises according to Utah State Code 72-5-111. The Tenant, a voluntary party to this Lease Agreement, is not entitled to compensation for any costs, including but not limited to relocation benefits or moving expenses, which may be accrued by Tenant as a result of the expiration or early termination of this Lease agreement.

Parties to this Lease Agreement sign below:

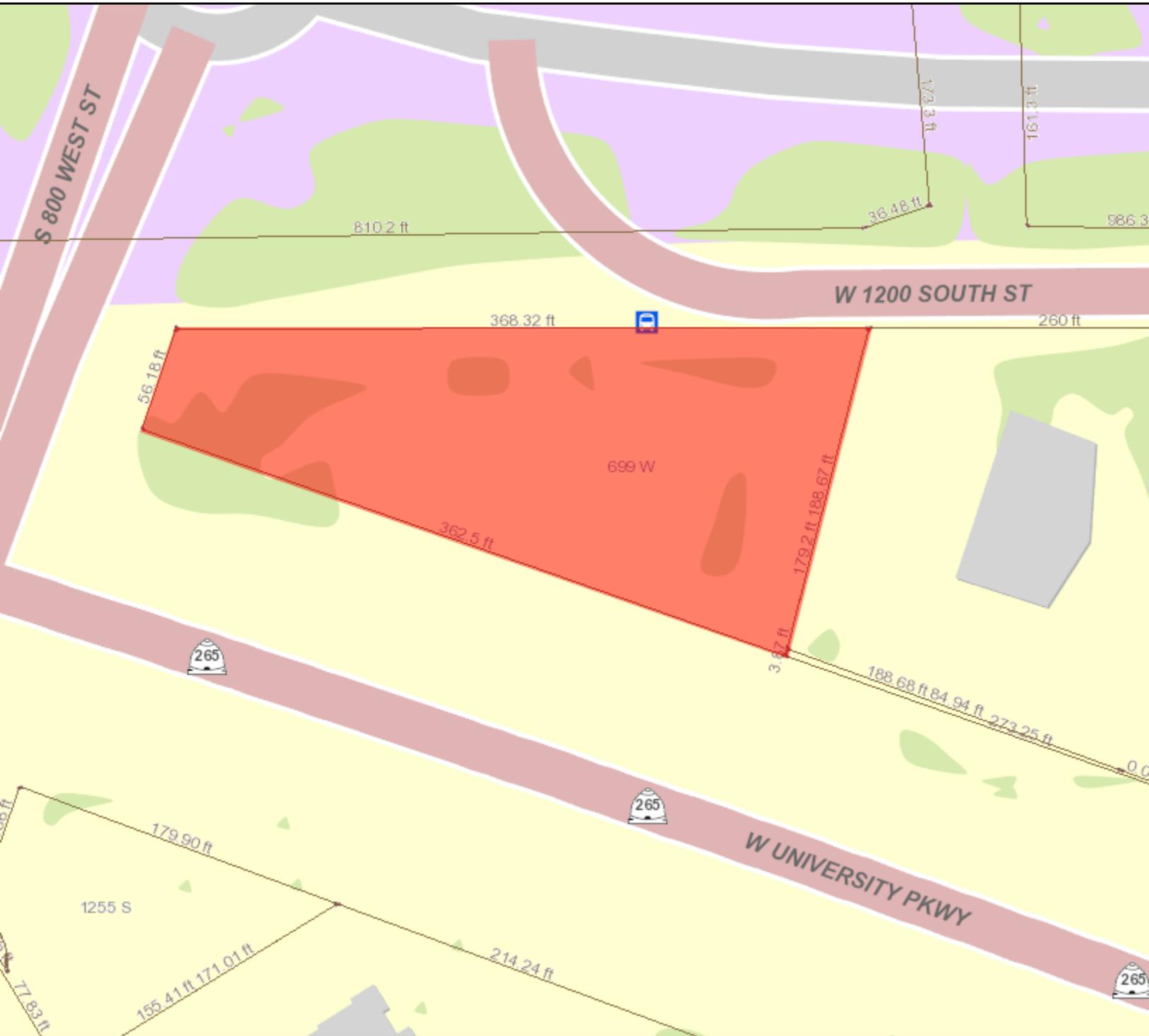
Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Tenant: Utah Valley University  
By: Val Peterson  
Its: Vice President of Finance & Administration

\_\_\_\_\_  
Landlord: Utah Dept. of Transportation  
By: Lyle McMillan  
Its: Director of Right-of-Way

Exhibit "A"



Utah County Tax ID 19:026:0022  
.97 acres