

Karra J. Porter, 5223
Karra.Porter@chrisjen.com
Anna P. Christiansen, 17518
Anna.Christiansen@chrisjen.com
CHRISTENSEN & JENSEN, P.C.
257 East 200 South, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 323-5000
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>UTAH ANIMAL RIGHTS COALITION, a non-profit corporation; DIRECT ACTION EVERYWHERE SF BAY AREA, an unincorporated association; CURTIS A. VOLLMAR, an individual; ALEXANDER J. TAYLOR, an individual; and MAXWELL J. CORWIN, an individual;</p> <p>Plaintiff,</p> <p>v.</p> <p>BEAVER COUNTY, a political subdivision; CAMERON NOEL, an individual; WARREN G. WOOLSEY, an individual; and LONNIE LAWS, an individual;</p> <p>Defendants.</p>	<p>PLAINTIFFS' MOTION TO SUPPLEMENT RECORD WITH LEASE AGREEMENT</p> <p>Civil No. 2:22-cv-00497-JNP-DBP</p> <p>Judge Jill N. Parrish</p> <p>Magistrate Judge Dustin B. Pead</p>
--	---

Plaintiffs hereby move the Court for leave to supplement the record on Plaintiffs' Motion for Preliminary Injunction with the lease agreement governing Main Street Park that was referenced during the evidentiary hearing herein.

During the evidentiary hearing, defendants focused on events that allegedly took place in the Main Street Park in Beaver. Defendants argued that the Main Street Park is owned by The Church of Jesus Christ of Latter-day Saints (“LDS Church”) and therefore Plaintiffs had no right to attempt outreach there. Plaintiffs took the position (and still do) that alleged earlier events in the park are immaterial to their request for preliminary injunction, which is limited to public sidewalks. However, Plaintiffs have now received a document that was referenced by during the hearing, which clarifies (or modifies) some of the testimony therein.

At the preliminary injunction hearing, there was extensive testimony about a “lease” governing the Main Street Park. During their case-in-chief, defendants called a local LDS Church official, Lance Smith, to testify that the park is owned by the Church. During direct examination, Mr. Smith said he was familiar with ownership of the park because “I have a lease agreement that’s been since 2009.” The following exchanges subsequently occurred:

CROSS-EXAMINATION BY MS. PORTER

Q Okay. You made a reference to a lease agreement. What did you mean by that?

A That’s actually probably not in reference to this. That’s a lease agreement between the church and the city to take care of the property.

Q Okay. So the parties to that lease agreement are the city and the church. And who is taking care of the property under that lease, as you understand it?

A The city helps take care of the grounds of the property, but the church owns it and has ultimate right to handle that property.

Q So does the church pay the city something to help, as you said, take care of this property?

A No. I’m not aware of anything as part of that lease. They may have done something at the beginning of that. I’m not aware of that.

Q Okay. As part of this lease, does the church – is there any exchange of compensation as part of this lease?

A Not on a regular basis.

Q Okay. In what context is there some exchange of compensation?

A I don't think there is an exchange of compensation.

Q So if you were to try to summarize the main terms of this lease agreement - the main terms, what would those be?

A The church allows the city to use that property for baseball fields and other city activities, sports, soccer, baseball, those kind of things.

Q Is that why -- sorry. I apologize. Go ahead.

A Sorry. In return I would say that the city takes care of the property.¹

REDIRECT EXAMINATION BY MR. MYLAR:

Q On the lease that you were talking about with the city, is it also the case that if it's a religious use of the property, that the church has exclusive use of that land?

A Yes. That's a good point. The church has exclusive say and use as to what ultimately happens with that land, overriding the city in every aspect.

Q But would that be particularly true on a religious holiday, events like this was?

MS. PORTER: Objection as to leading.

THE COURT: Overruled. You can answer.

THE WITNESS: Especially that day more than any other day.

BY MR. MYLAR:

Q Especially that day that the church was in charge of the property?

A Correct.²

RECROSS-EXAMINATION BY MS. PORTER:

Q I think I just want a little more information about that lease agreement. What year did you say that was entered into?

A I believe 2009. I may have to find that lease if it's pertinent.

Q Oh, start looking.

A I do have it. I don't feel that it's pertinent.

Q You know what? We'll probably just end up arguing about it and then the Judge will make a ruling one way or the other. But I can tell you the request is coming.

A All right. I would suit yourself, yes.

Q Well, and it is a lease with a governmental entity, correct?

A I can't say any more because I don't remember the details, honestly.³

¹ See ECF 55-1, Motion for preliminary Injunction Hearing Conducted via Zoom, 131:2–132:7.

² *Id.* at 136:3–18.

³ *Id.* at 136:24–137:14.

The lease itself is now available, and is better evidence that Mr. Smith's (understandable) inability to remember details.⁴ *Inter alia*: The lease is a 20-year "arms-length transaction" leasing the entire park to the City for "secular" purposes, not to "be construed as [City's] endorsement... or other advancement of any religious belief, faith, or non-secular institution."⁵ The city ("Tenant") pays the Church ("Landlord") \$1 per year plus utilities, governmental fees and taxes, etc., and provides insurance.⁶

Under the lease, the City is to use the space "for open landscaped space, including the placement, installation, and maintenance of grass, trees, landscaped areas, baseball field and related improvements, sidewalks, benches, and a playground to be used as a family/children environment by permitted employees, guests and invitees of the City[.]"⁷

The Church ("Landlord") has "the first right to reserve the right to use any or all portions of the Premises[.]"⁸ However, it is required to contact the Beaver City Recreation Director in order to do so.⁹ "During the period of Landlord's exclusive use [of] the Premises, Landlord reserves the right to use the Premises for assembly, erecting signs or displays, and for the use of loudspeakers or other devices to project music, sound or spoken messages, which activities do not need to be content neutral or viewpoint neutral."¹⁰ In response to a request in the infraction case for evidence that the Church had contacted the Beaver City Recreation

⁴ See Exh. A hereto.

⁵ *Id.*, p. 1, ¶¶ 1-2; p. 11 ¶¶ 30, 32.

⁶ *Id.*, p. 2 ¶ 3; p. 5 ¶ 9; p. 6 ¶ 10; p. 7 ¶ 14;

⁷ *Id.*, p. 2, 5(a).

⁸ *Id.*, p. 3 ¶ 5(c).

⁹ *Id.*, p. 3 ¶ 5(c).

¹⁰ *Id.*, p. 3 ¶ 5(c).

Director to reserve the park on July 23, 2022, no such evidence was produced.

CONCLUSION

For the reasons set forth above, Plaintiffs request that the Court include Exhibit A (the lease agreement) in the record.

DATED this 15th day of December, 2022.

CHRISTENSEN & JENSEN, P.C.

/s/ Anna P. Christiansen

Karra J. Porter

Anna P. Christiansen

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2022, a true and correct copy of the foregoing

PLAINTIFFS' MOTION TO SUPPLEMENT RECORD WITH LEASE AGREEMENT

was electronically transmitted and served upon the following:

Frank D. Mylar
Andrew R. Hopkins
MYLAR LAW, P.C.
2494 Bengal Blvd.
Salt Lake City, Utah 84121
office@mylarlaw.com

/s/ Natalie Jackson

Park Lease w/
2009 LDS Church

LEASE AGREEMENT
(Property No. 505-9747)

This Lease Agreement (the "**Lease**") is entered into as of 24th day of February, 2009, between CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("**Landlord**"), and BEAVER CITY CORPORATION, a municipal corporation of the State of Utah ("**Tenant**").

RECITALS:

A. Landlord is the owner of certain real property located near Center Street and 100 West in Block 21, Plat A of the Beaver City Survey, Beaver City, Beaver County, State of Utah, more particularly described on Exhibit A, attached hereto and incorporated herein, and depicted by cross-hatching on the site-plan attached hereto and incorporated herein as Exhibit B ("**Premises**"). The Premises are improved with a building known as the "Log Cabin," a baseball field, including backstop.

B. The Log Cabin has been previously leased to and is currently used by the Beaver County Travel Council, c/o Betty C. Miller, P.O. Box 272, Beaver, Utah 84713 (the "**Travel Council**").

C. Tenant acknowledges a need for additional recreation opportunities within Beaver City to accommodate the recreational needs of the citizens of Beaver City.

D. After an extensive evaluation of the various options to obtain additional property to provide recreational property, Tenant has determined that the use of the Premises is the most viable option to obtain the additional recreation property the Tenant desires

E. In order to obtain the right to use recreational property, Tenant desires to lease the Premises, including the Log Cabin, from Landlord and Landlord is willing to lease the Premises to Tenant on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Lease, Landlord and Tenant agree as follows:

1. **Premises.** Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord, subject to the terms and conditions contained herein.

2. **Term.** The term of this Lease will commence as of the date of this Lease and expire on the date twenty (20) years after the date hereof (the "**Term**"). Landlord and Tenant may extend the term of this Lease upon mutual written agreement of the parties. Notwithstanding the above, Landlord shall have the right at any time during the Term for any reason whatsoever or for no reason to terminate this Lease upon thirty (30) days' prior written notice to Tenant. Upon the termination of the Lease, Tenant shall peacefully surrender possession of the Premises to Landlord in the condition required by this Lease.

3. **Rent.** Tenant agrees to pay to Landlord rent in the amount of One Dollar (\$1.00) per year. The parties acknowledge that the rent provided for in this Section is less than the fair market rental value of the Premises for the term hereof, that Landlord could demand more rent, but that Landlord has intentionally elected not to demand more rent. The parties further acknowledge that Landlord is granting this lease as a gift to Tenant, subject to all of the terms and conditions of this Lease. As such, it is not the parties' intent that Tenant profit from this Lease, or that Landlord be subject to any costs, expenses, restrictions, governmental rules and regulations, liability, duties, or obligations whatsoever. If Landlord is subject to any costs, expenses, restrictions, governmental rules and regulations, liability, duties or obligations as a result of this Lease or if any portion of this Lease is held invalid or unenforceable for whatever reason, this Lease may be immediately terminated at Landlord's sole and absolute election.

4. **Condition of the Premises.** Tenant represents to Landlord that Tenant has thoroughly inspected the Premises prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereunder. Tenant hereby acknowledges that a latent dangerous or latent defective condition does not exist on the Premises, and Tenant hereby waives any right to claim any defense or allegation to the contrary. TENANT ACCEPTS THE PREMISES 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. TENANT HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE TITLE, CONDITION AND USE OF THE PREMISES, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Tenant and any person or entity using the Premises under Tenant hereby assumes all risk of damage or injury to any person or property in, on or about the Premises from any cause whatsoever, and hereby releases, remises, acquits and discharges Landlord and Landlord Parties (defined in Section 13), from any such damage or injury on behalf of Tenant and Tenant's Parties (defined in Section 13). Without limiting the generality of the foregoing, the Premises are leased to Tenant subject to: (i) any state of facts which an accurate survey or physical inspection of the Premises might show, (ii) all 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, leases, and encumbrances and all other matters of record or enforceable at law or in equity. Without limiting the foregoing, the Premises/Log Cabin are leased subject to the use and occupancy of the Log Cabin by the Beaver County Travel Council, which use and occupancy Tenant may permit to continue or terminate in its discretion.

5. **Use.**

(a) Subject to the terms and conditions of this Lease, Tenant shall use the Premises for open landscaped space, including the placement, installation, and maintenance of grass, trees, landscaped areas, baseball field and related improvements, sidewalks, benches, and a playground to be used as a family/children friendly environment by permitted employees, guests and invitees of the City, and for no other use or purpose. Tenant shall use the Log Cabin solely as a visitor information center and for purposes incidental thereto.

(b) The Parties hereby acknowledge and agree that the rights granted to Tenant to use the Premises are solely limited to those expressly set forth in subsection 5(a) above, and thus, do not include any of the following rights or activities, and the Parties hereby agree that the following uses and activities are prohibited on the Premises: (i) any waste or damage to the Premises; (ii) any public or private nuisance, including, but not limited to, any use that creates objectionable noises, odors, dust, smoke, gases, vibration or disturbances or increases the risk of fire, explosion or radioactive hazards on the Premises, unless specifically authorized by this Lease or by the Parties in writing; (iii) any action that defaces, damages or harms the Premises, including the Log Cabin; (iv) connecting to the utility systems servicing or metered to the adjacent property owned by Landlord; (v) installing any apparatus, machinery or other equipment that is not adequately supported by the utility service provided to the Premises; (vi) the installation, maintenance, or use of an underground storage tank; (vii) the use, generation, storage of any Hazardous Materials not permitted by this Lease or by Landlord in writing; (viii) the making, storing, reading, showing, viewing, playing, listening, renting, selling, transmitting, receiving or distributing of any obscene material or "pornographic material," regardless of form or medium, the conducting of any obscene or "pornographic" performance, or any "lewd" behavior or conduct or any "disorderly conduct," as said terms are defined under Utah law or applicable federal law; (ix) the manufacture, storage, sale, distribution, or consumption of controlled substances, marijuana, tobacco products, or alcoholic beverages; (xiii) any gambling; and (xiv) acts involving moral turpitude or any conduct or condition which is illegal but not otherwise expressly mentioned above. Landlord and Tenant each reserve the separate right to establish, promulgate and post reasonable and content neutral and viewpoint neutral rules and regulations concerning the use of the Premises consistent with the terms and conditions of this Section 5.

(c) Notwithstanding anything herein contained to the contrary, Tenant shall not permit the Premises to be used on Sundays and Monday evenings for any scheduled or reserved use or any organized sporting events. Landlord shall have the first right to reserve the right to use any or all portions of the Premises, including the Log Cabin. As consideration for this Lease, Landlord's use of the Premises shall not be subject to any fee or charge. To reserve the use of the Premises, Landlord shall contact the Beaver City Recreation Director. During the period of Landlord's exclusive use the Premises, Landlord reserves the right to use the Premises for assembly, erecting signs or displays, and for the use of loudspeakers or other devices to project music, sound or spoken messages, which activities do not need to be content neutral or viewpoint neutral.

(d) The Property is and shall at all times remain the private property of Landlord, subject to the limited rights granted to Tenant. The Parties intend that this Lease be construed in a limited fashion to grant to Tenant only the rights expressed and specified herein, and none other. Nothing contained in this Lease will be deemed a gift or a dedication of any portion of the Premises to the general public or for a public purpose whatsoever, it being the intent of the parties that this Lease be strictly limited for the purposes expressed herein. The use of the Premises by Tenant is permissive and limited to the express purposes contained herein and during the limited times and Term set forth herein by Tenant and Tenant's authorized guests and invitees. Neither Tenant nor the public shall acquire nor be entitled to claim or assert any rights

to the Premises beyond the express terms and conditions of this Lease.

(d) In the event of a violation of the above restrictions, rules and/or regulations, Landlord reserves the right to place and post signs on the Premises specifying any of the restrictions, rules and/or regulations, subject to Tenant's review of such signs to ensure that they are consistent with the terms and conditions of this Lease. Landlord may use any and all lawful means available to owners of private property to enforce the terms of this Lease and any rules and regulations placed upon the Premises and to prevent any use of the Premises which are contrary thereto, including, without limitation, the right to pursue an action in trespass or seek and obtain injunctive relief.

(e) The terms and conditions of this Section 5 and all other terms and conditions of this Lease are material. Landlord represents and Tenant acknowledges and agrees that Landlord would not enter into this Lease if Landlord is unable for whatever reason, including the operation of law, to enforce the terms and conditions of this Section 5, including specifically the limitations of use on Tenant's rights and the enforcement of the rules and regulations of Landlord, and the other terms and conditions of this Lease. If for any reason whatsoever (legal or otherwise), Landlord is unable to enforce the terms and conditions of this Section 5 and the other terms and conditions of this Lease, Landlord shall have the right to immediately terminate this Lease upon written notice to Tenant. Upon the termination of the Lease, neither Party shall have any continuing obligation to the other Party arising after the termination date, except for Tenant's representations, warranties, indemnifications and covenants that expressly survive the termination.

The terms of this Section 5 shall survive the expiration or earlier termination of the Lease.

6. **Alterations.** Tenant agrees not to erect any permanent structures or make any changes, modifications or improvements to the Premises (collectively, "**Alterations**") without the prior written approval of Landlord, which approval may be granted or withheld in Landlord's sole and absolute discretion. In the event Tenant makes any Alterations, Tenant shall remove such Alterations on or before the expiration of the Term.

7. **Maintenance and Repair.** Tenant, at its sole cost and expense, shall maintain, repair, and replace the Premises, and each and every part thereof, in a safe, clean and orderly condition, including, but not limited to, the regular mowing of lawn; fertilizing and reseeding the lawn; filling holes or uneven portions of the lawn; maintaining and repairing the playground, sidewalks, fences (including backstop fences), baseball diamonds, infield and base paths, signage, lighting, water fountains, monuments, and other fixtures, improvements and portions of the Premises; the removal of snow, ice, and debris from the sidewalks and any parking areas located on the Premises; periodic sweeping, resurfacing and restriping of any parking areas located on the Premises; Log Cabin, pavilion, and other structures and all aspects and components thereof; and any articles of personal property owned by Tenant located on the Premises, such as playground equipment, benches, picnic tables, signs, flagpole, etc. Tenant shall not allow any defective, unsafe or dangerous condition to exist on the Premises and shall not commit or permit to be committed any waste on the Premises. Tenant may place trash

reciprocals on the Premises, and shall cause any and all trash and debris on the Premises to be removed on a regular basis. Tenant hereby acknowledges and agrees that the maintenance and repair of the Premises is a contractual obligation of Tenant and is not a discretionary function. Tenant acknowledges and agrees that it has the ability to maintain and repair the Premises as provided herein and that any condition caused by deterioration, any deferred maintenance or the failure to properly maintain and repair the Premises shall not be deemed to be a natural condition of the Premises. Tenant shall be responsible to ensure that the lawn and landscaping is properly irrigated and maintained in a thriving condition. Tenant will ensure that the irrigation system for the Premises is separate from any irrigation system servicing other property. Tenant shall maintain and repair the irrigation system servicing the Premises, including, without limitation, sprinklers and sprinkler pipes. In the event any portion of the Premises is damaged, harmed, injured, or destroyed, Tenant shall immediately repair such damage and restore the Premises. Before Tenant performs any modifications, repairs or replacements to or on the Premises, Tenant shall notify Landlord and shall keep Landlord regularly informed of Tenant's maintenance program.

If Landlord believes that Tenant is not adequately maintaining the Premises, Landlord may send Tenant a notice outlining any deficiencies in Tenant's maintenance. Tenant agrees to use diligent and good faith efforts to address Landlord's concerns and any maintenance deficiencies. If Landlord believes that Tenant's efforts are inadequate or if Tenant does not address the deficiencies, Landlord shall have the right (but not the obligation or duty) to assume the maintenance obligations upon ten (10) days' prior written notice, except in the event of an emergency situation whereby Landlord may immediately assume such obligations. If Landlord maintains the Premises, Tenant shall reimburse Landlord the cost to maintain and repair the Premises within thirty (30) days after receipt of a statement of such costs.

8. Compliance with Laws. Tenant shall comply with all Laws concerning its use and actions on the Premises. The term "**Laws**" means any and all present or future laws, statutes, codes, acts, ordinances, 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, the Americans' with Disabilities Act, the Occupational Safety and Health Act and/or any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law or treaty now or hereafter in force regulating, relating to or imposing liability or standards ("**Environmental Laws**") concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources, including any petroleum products, and any radioactive, hazardous, toxic, or other substance or material, the presence of which, or the discharge or emission of which, is prohibited or controlled by federal, state or local governmental requirements or is subject to federal, state or local governmental requirements relating to collection, storage, treatment, or disposal ("**Hazardous Materials**"), which now or at any time hereafter may be applicable to any part of the Premises or the Property.

9. Taxes. Tenant shall pay to Landlord, as additional rent, an amount equal to the Taxes assessed against the Premises as reasonably determined by Landlord. The term "**Taxes**" means all general property taxes, assessments, special improvement taxes or assessments,

privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, taxes upon or measured by rent, assessments for public improvements or otherwise, levies, fees, water and sewer charges, and all other governmental impositions and charges of every kind and character, general and special, foreseen and unforeseen, ordinary and extraordinary, whether or not the same shall have been within the express contemplation of the Parties at the time of entering into this Lease, which are now or may hereafter be levied upon or assessed against the Premises, the Rent payable hereunder, or upon or against this Lease or the leasehold estate hereby created or which arise in respect to the occupancy or use thereof.

10. **Utilities.** Tenant agrees that any fixtures, equipment or other items used on the Premises by Tenant shall be connected to an independent electrical source and separately metered and not to the electrical system serving any property owned by Landlord. Tenant shall pay for all utilities used on the Premises during the term of this Lease.

11. **Liens.** Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Tenant. Tenant hereby indemnifies, holds harmless and agrees to defend Landlord and Landlord's Parties from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. Tenant shall require any contractor or other person performing work on the Premises to be licensed by the State of Utah. If Tenant shall be in default in paying any charge for which a bond or other lien claim has been filed and shall not have given Landlord security to protect the Premises, then Landlord may, but shall not be obligated to, pay the claim. Any costs and attorneys' fees incurred by Landlord in connection therewith, shall be immediately due and owing from Tenant to Landlord, as additional rent. Tenant may contest the validity and/or amount of any lien imposed on the Premises, provided Tenant has caused such lien to be released of record by means reasonably acceptable to Landlord.

12. **Surrender; Restoration.** At the expiration of the term of this Lease, Tenant shall surrender the Premises in a safe, clean, and orderly condition and in the same or better condition as received, subject to ordinary and anticipated wear and tear.

13. **Indemnification.** As a contractual condition and material consideration of this Lease, Tenant agrees to release, indemnify, defend and hold harmless Landlord and any entity controlling, controlled by or under common control of Landlord, and their shareholders, directors, officers, managers, employees, agents, servants, guests, licensees, successors and assigns (collectively "**Landlord Parties**") for, from and against all claims, causes of action, losses, damages, expenses (including, without limitation, monetary damages, attorneys' fees, investigative and discovery costs, fines, increased taxes, and all other sums), liabilities and judgments, arising from or relating to: (a) any breach or default by Tenant or Tenant's employees, agents, servants, consultants, sponsors, co-sponsors, subtenants, contractors, guests or invitees (collectively, "**Tenant's Parties**") of any of Tenant's obligations under this Lease; (b) the acts or omissions of Tenant and Tenant's Parties, including any resulting injury or damage to persons, personal property, or the Premises; (c) any use of the Premises by Tenant or Tenant's Parties; (d) any hazardous substances, hazardous wastes, pollutants, contaminants, toxins, gases,

and/or explosive or volatile substances deposited, released, stored or used in, or around the Premises during the Lease term; (e) any bodily injury, loss of life, damage to personal property, and/or damage to the Premises during the Lease term, unless caused by the gross negligence or intentional misconduct of Landlord or Landlord's Parties; (f) any mechanic's or other liens which arise against any part of the Premises as a result of or arising under any actions by Tenant or Tenant's Parties; (g) any injury or damage to Tenant's Parties or the personal property of Tenant or Tenant's Parties in or around the Premises, unless caused by the gross negligence or intentional misconduct of Landlord or Landlord's Parties; or (h) any litigation commenced by or against Tenant relating to this Lease, Tenant's use of the Premises, or the Premises to which Landlord and /or Landlord's Parties is made a party without fault on the part of Landlord or such Landlord Party. Tenant's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or earlier termination of this Lease, as to claims arising or accruing prior to the expiration or earlier termination of this Lease. The parties acknowledge and agree that Landlord shall not have any liability whatsoever related to the acts or omissions of Tenant or Tenant's Parties concerning the Premises.

Landlord will notify Tenant in writing of any claim of liability covered by the foregoing indemnity. Upon such notification, Tenant will defend Landlord in any negotiation, action, or other proceeding arising from such claim of liability at Tenant's sole expense. The foregoing notwithstanding, however, Tenant will retain counsel acceptable by Landlord for purposes of this indemnity and allow Landlord to oversee the management of such negotiation, action, or other proceeding.

14. Insurance. Tenant shall maintain a policy of Commercial General Liability Insurance insuring its interest against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Premises with a "Combined Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00) for total claims for one occurrence (primary coverage of \$1,000,000 and an umbrella coverage for the remainder). The coverages provided will be equivalent to those in ISO form CG 00 01 (10/93), and Landlord shall be added as an additional insured. All policies to be maintained by Tenant shall be primary policies and not contributing with or as excess coverage for any insurance carried by Landlord. Tenant shall have the right to satisfy its insurance obligations hereunder relating to any primary coverage (\$1,000,000 or less) by means of self-insurance to the extent of all or part of the required insurance, but only so long as Tenant has established a trust account under the management of an independent private trustee having authority with respect to claims of that character to expend both principal and earnings of the trust account solely to pay the costs of investigation, discovery, and other pretrial and litigation expenses including attorneys' fees, and to pay all sums for which Tenant may be adjudged liable or for which a compromise settlement may be agreed upon. Any deductible in excess of Ten Thousand Dollars (\$10,000.00) shall be deemed to be self-insurance. Prior to taking possession of the Premises, Tenant shall deliver to Landlord certificates of insurance evidencing the existence and amounts of such insurance.

15. Assignment and Subletting. Tenant may not voluntarily or involuntarily assign, transfer, mortgage, pledge, or encumber this Lease or any interest therein, and may not sublet the Premises or any part thereof. Any attempt to do so shall be void and, at Landlord's election,

shall constitute a default under this Lease. Notwithstanding the above, Tenant may sublet the Log Cabin to the Travel Council.

16. Default by Tenant. The occurrence of any one or more of the following events shall be deemed an “Event of Default:”

(a) Tenant fails to pay rent and any other amount due hereunder within ten (10) days after such amount is due and owing; or

(b) Tenant fails to observe or perform any other covenant or agreement of this Lease and such failure continues for thirty (30) days after receipt of written notice from Landlord (or, if such default (except a default in the payment of Rent) cannot reasonably be cured with such period, does not commence to immediately cure such default and thereafter diligently pursue such cure to completion); provided that Tenant shall be required to immediately remedy any action that interferes, disturbs or prevents the use and enjoyment of the Premises by Landlord or Landlord Parties; or

(c) Tenant assigns this Lease or sublets the Premises in violation of Section 15; or

(d) Tenant uses the Premises for any restricted or prohibited use or any use not permitted under this Lease, and Tenant fails to immediately correct such improper use after receipt of a notice from Landlord.

If an Event of Default occurs, Landlord shall be entitled to (i) seek any remedy available at law or in equity, (ii) terminate this Lease by giving Tenant not less than ten (10) days’ written notice of Landlord’s election to do so, in which event this Lease shall terminate, and all right, title and interest of Tenant hereunder shall expire on the date stated in such notice, and/or (iii) cure such Default on behalf of Tenant, in which event Tenant shall reimburse Landlord for any and all costs and expenses incurred by Landlord associated with such action. Any such notice given to Tenant hereunder shall be in lieu of, and not in addition to, any statutory unlawful detainer notice.

Notwithstanding any other provision contained in this Lease relating to notice: (i) if Tenant is required to comply with any Laws within a period less than that to which Tenant would otherwise be entitled to notice hereunder, Tenant shall not be entitled to notice from Landlord beyond the period within which such compliance may be required by such Laws; or (ii) if the Premises require emergency repairs which Tenant would otherwise be obligated to make under this Lease, but which Tenant is then unable or unwilling to make, Landlord may, without notice, elect to make such repairs for the account and at the expense of Tenant. Any amount so paid shall be immediately due and owing from Tenant to Landlord as additional rent.

17. Condemnation. If any portion of the Premises is taken or threatened to be taken under the power of eminent domain, or purchased in lieu thereof, this Lease shall terminate as of the date possession of any portion of the Premises is granted to such condemning authority. Under no condition shall this Lease decrease the value of the Premises or any portion thereof. In

the event of any taking, Landlord shall be entitled to the entire award or compensation in such proceeding.

18. **Holding Over.** In the event Tenant fails to cease its use of the Premises upon the termination of this Lease, Tenant shall be a tenant at sufferance subject to the terms and conditions of this Lease.

19. **Brokerage.** Each party represents and warrants that it has incurred no obligation to pay any finder's fee, brokerage commission or other compensation in connection with this Lease. If any person shall assert a claim for any such compensation, the party through whom the finder or broker is claiming shall indemnify and hold harmless the other party from and against any such claim.

20. **Notices.** All notices or demands under this Lease shall be sent by certified mail, return receipt requested, or shall be delivered by established overnight delivery service, to a party at the address set forth below or to such other address as such party may have specified by notice given in accordance with this section and actually received by the other party:

If to Landlord: Corporation of the Presiding Bishop of
The Church of Jesus Christ of Latter-day Saints
Attn: Lease Management
50 East North Temple Street, 12th Floor
Salt Lake City, UT 84150
Ref: 505-9747

If to Tenant: Beaver City Corporation
60 West Center Street
Beaver, Utah 84713
Attention: Mayor
Tel. (435) 438-2451

Communications may also be given by facsimile, provided the communication is concurrently given by one of the other methods set forth above. Notices shall be deemed given when received, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

21. **Complete Agreement; Modification.** This Lease, including exhibits hereto, constitute the complete and final expression of the agreement of the parties with respect to the subject matter hereof and supersede all previous contracts, agreements, and understandings of the parties, either oral or written. This Lease cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Lease) executed by the party against whom enforcement of the modification or waiver is sought.

22. **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. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

23. **Headings; Construction.** The headings that have been used throughout this Lease have been inserted for convenience of reference only and shall not affect the interpretation of this Lease. The parties acknowledge and agree that all of the terms and conditions of this Agreement are contractual in nature and shall be interpreted under any applicable law as contractual obligations, and each party waives any claims or defenses to the contrary. This Lease shall be construed as if it had been jointly drafted by the parties, and no presumptions with respect to construction or burdens of proof shall arise from authorship of any provisions hereof.

24. **Authority.** Each individual executing this Lease on behalf of Tenant hereby personally warrants and represents that he/she is duly authorized to execute this Lease on behalf of Tenant and that all necessary approvals, including approval by the City Counsel or governing legislative body of Tenant, have been obtained and satisfied to bind Tenant to each and every provision of this Lease.

25. **Time of Essence.** Time is of the essence in the performance of each and every term, covenant and condition of this Lease.

26. **Attorneys' Fees.** If any action is brought by either party in respect to its rights under this Lease, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

27. **Entry.** Landlord reserves and shall at any and all reasonable times have the right to enter upon and use the Premises.

28. **Binding Effect.** This Lease shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

29. **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 governing body of Tenant. The presentment of any claim or action against Tenant pursuant to this Agreement (such as through the indemnification provision) shall be presentment and tender of a contractual obligation. The tender of any claim hereunder shall be made to Tenant at Tenant's Notice Address set forth herein. Under no condition shall Landlord be limited or restricted (including any waiver due to the passage of time) in its ability to tender any claim or matter to Tenant in accordance with the terms of this Agreement.

30. **Relationship.** The parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly

affirm that they have entered into this Agreement as part of an “arms-length” transaction. No party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of any other party hereto, nor shall they make any representation to any third party inconsistent with this provision. Each party to this Lease is a separate and independent entity. No party will have the right to act as agent for another party.

31. **No Third Party Beneficiaries.** There is no intent by any Party to create or establish third party beneficiary status or rights in any third party, and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.

32. **Relationship.** The parties acknowledge and agree that Landlord is cooperating with Tenant in order to support and accommodate recreational activities in the community. Landlord shall not be considered a contractor in any way whatsoever, and, as a result of this Lease, shall not be subject to nor obligated to comply with any additional (i.e. beyond those otherwise applicable without this Lease) costs, expenses, restrictions, governmental rules and regulations, ordinances, laws, liability, duties, or obligations (except the express obligations of this Lease) whatsoever as a result of this Agreement. Any reference to the Premises in any information disseminated by the Tenant shall be subject to Landlord’s prior review and approval. Any signage placed on the Premises shall be subject to Landlord’s prior review and approval. Nothing in this Lease shall be construed as Tenant’s endorsement, grant to, support for, privilege bestowed upon, or other advancement of any religious faith, belief, or non-secular institution. Neither party shall engage in any promotion, advertisement or publicity concerning Tenant’s use of the Premises that is contrary to the secular purpose of this Lease.

33. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

34. **Exhibits.** The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit “A” - Legal Description of the Property
- b. Exhibit “B” - Site Plan Depicting Premises

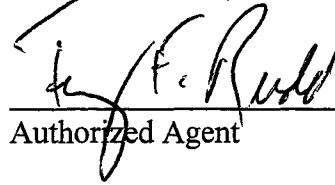
NOW WHEREOF, the parties have executed this Lease as of the date and year first above written.

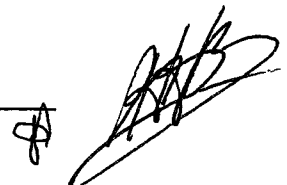
Landlord:

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

By:

Its: Authorized Agent





Tenant:

**BEAVER CITY CORPORATION,
a municipal corporation of the State of Utah**

By:

Its: Mayor

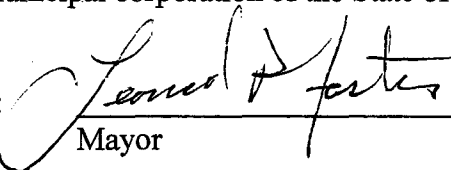


Exhibit "A"
(Legal Description of Property)

The East Half (E1/2) of Lot One (1), Block Twenty-seven (27) Plat "A", Beaver City Survey:

Also, Commencing at a point Sixty-five (65) rods West and Twenty-six (26) rods South of the Northeast corner of the Southeast quarter of Section Twenty-one (21), Township Twenty-eight (28) South, Range Seven (7) West, Salt Lake Meridian, running thence West Fourteen (14) rods; thence South Twelve (12) rods; thence East Fourteen (14) rods; thence North Twelve (12) rods to place of beginning, containing One Hundred Sixty-eight (168) square rods of ground.

Also Lots, 1, 2, 3, and 4 in Block 21, Plat "A", Beaver City Survey being 24 rods North and South and 24 rods East and West.

871140/03

Exhibit B

