This NEBO SCHOOL DISTRICT FACILITY USE AGREEMENT (hereinafter "Agreement") is made and entered into effective the 29th day of August, 2011, by and between NEBO SCHOOL DISTRICT, a political subdivision of the State of Utah, with its principal place of business located at 350 South Main, Spanish Fork, Utah, 84660 (hereinafter the “School District”), and UTAH VALLEY UNIVERSITY, a political subdivision of the State of Utah, with its principal place of business located at 800 West University Parkway, Orem, Utah, 84058 (hereinafter “UVU”).

NOW, THEREFORE, in consideration of the rents, covenants, and agreements herein contained, the School District hereby leases to UVU the "Facilities" described herein as the rental and upon the terms and conditions stated herein.

1. **Facilities.** As used herein, the term "Facilities" shall refer to and mean the school facilities described in Exhibit “A” attached hereto and incorporated herein by reference.

2. **Term of Agreement.** The School District hereby leases the Facilities to UVU commencing on the effective date hereof and ending on July 31, 2012.

3. **Renewal.** Subject to any revisions or amendments to this Agreement as provided herein, this Agreement shall automatically renew for additional one (1) year terms (up to a total of four (4) additional one (1) year terms), upon the same terms and conditions, commencing on August 1st and ending on July 31st, unless a written notice of termination is executed.

4. **Annual Review.** Representatives from the School District and UVU shall meet annually to review this Agreement. The objective of this annual review is to assess the actual and future needs of UVU’s Extension Program and their usage of the Facilities. As a result of these annual reviews, the parties may agree to revise or amend the rental payments or other terms of this Agreement in order to achieve an acceptable level of fundamental fairness between the parties.

4. **Termination.** Either party may terminate this Agreement at the end of any term by giving to the other party at least thirty (30) days written notice prior to the end of the current term. In addition, if the Facilities are required by the School District in the event of an emergency or other special and unforeseen circumstances, UVU hereby acknowledges, understands, and agrees that the School District has the right to modify or rescind this Agreement on short notice without recourse against the School District.

5. **Rental Payments.**

   A. UVU shall pay to the School District as annual rent for the Facilities the amount of **Fourteen Thousand and 00/100 Dollars ($14,000.00)**, which is due and payable in full on or before September 1, 2011 for the initial term of this Agreement, and thereafter on or before August 1st for any renewal term. Any rental payment not paid within ten (10) days when the same becomes due and payable shall be assessed a late fee of five percent (5%) of the unpaid amount.

   B. All costs and expenses which UVU assumes or agrees to pay pursuant to this Lease shall, at the School District’s election, be treated as additional rent, and in the event of non-payment, the School District shall have all the
rights and remedies herein provided for in the case of non-payment of rent or of a breach of contract. If UVU shall default in making any payment required to be made by UVU or shall default in performing any term, covenant, or condition of this Lease on the part of the UVU to be performed which shall involve the expenditure of money by UVU, the School District, at the School District’s option may, but shall not be obligated to, make such payment or, on behalf of UVU, expend such sum as may be necessary to perform and fulfill such term, covenant, or condition, and any and all sums paid or expended by the School District, with interest thereon at the rate of one and one-half percent (1½%) per month from the date of such expenditure, shall be deemed to be additional rent, in addition to all rents otherwise reserved hereunder, and shall be repaid by UVU to the School District on demand. Provided, however, that no such payment or expenditure by the School District shall be deemed a waiver of the School District's rights by reason of such default.

C. Any and all unpaid rental and other additional rental payments shall bear interest at the rate of one and one-half percent (1½%) per month from the date due until paid.

6. **Security/Cleaning Deposit.** Upon execution of this Agreement, UVU has deposited with the School District the amount of **One Thousand and 00/100 Dollars ($1,000.00)** as a security/cleaning deposit. Said security/cleaning deposit shall be held by the School District, without liability for interest or segregation in a special account, for security for the faithful performance by UVU of the terms, covenants, and conditions of this Agreement. The School District may apply the security/cleaning deposit to any of the following obligations of UVU: (a) rent or any other financial obligations owed under the terms of this Agreement; (b) property damage or loss to the Facilities caused by UVU or that of UVU's employees, agents, participants, visitors, or invitees; and (c) clean-up of the Facilities, unless adequately cleaned by UVU. After UVU’s use of the Facilities has concluded, the School District shall determine whether there are any obligations owed by UVU. In the event there are no such obligations, the security/cleaning deposit shall be returned to UVU. In the event there are obligations owed by UVU, the security/cleaning deposit shall utilized to cover the costs of such obligations. The balance of the security/cleaning deposit, if any, and a written itemization of any deductions from the security/cleaning deposit, shall be delivered or mailed to UVU.

7. **Use of Facilities.**

A. UVU shall be entitled to use the Facilities solely and exclusively for the authorized uses set forth in Exhibit “B” attached hereto and incorporated herein by reference. All other uses are prohibited.

B. UVU shall assure that all activities are compatible with the type of use typically associated with the Facilities being used.

C. UVU shall comply with any and all present and future laws, ordinances, and regulations of duly constituted public authorities (federal, state, county, municipal, or otherwise) now or hereafter in any manner affecting the Facilities during the term of this Agreement, including, but not limited to, the Americans with Disabilities Act (ADA), as amended. UVU shall also comply with all terms and conditions set forth in Nebo School District’s School Facility Use Policy #ECF. In addition, UVU shall comply with any and all policies, procedures, rules, and regulations of the School District regarding the use of the School District’s properties and facilities and the conduct of persons in or on the School District’s properties and facilities, whether now or hereafter adopted. The School District policies and Utah State laws include, but are not limited to, prohibitions against smoking, drinking of alcoholic beverages, and illegal drug use on or about school facilities.

D. UVU shall not commit or suffer to be committed any waste, vandalism, or damage to the Facilities, and shall maintain the Facilities in a clean and orderly condition, free of rubbish, debris, and unlawful obstructions.
E. UVU shall not commit or suffer to be committed any public or private nuisance or any other act or thing which may disturb the quiet enjoyment of occupants of nearby premises.

F. All participants and persons invited on the Facilities by UVU must comply with the provisions of this Agreement, and UVU shall be responsible when said persons fail to comply.

G. UVU hereby accepts the Facilities in its existing condition. No representation, guaranty, statement, or warranty, express or implied, has been made by or on behalf of the School District as to the condition or as to compatibility of the Facilities in relation to UVU’s proposed activities. In no event shall the School District be liable for any defect in such Facilities or for any limitation on its use.

H. UVU shall not make any alterations, additions, or improvements on the Facilities. UVU shall not remove or displace furniture or equipment located in the Facilities.

8. **Personal Injury and Property Damage.** UVU shall be responsible, financially and otherwise, for any and all personal injuries, property damage, property loss, and destruction of the Facilities, or any part thereof, arising out of UVU’s activities and use of the Facilities.

9. **Insurance.** UVU warrants that it maintains all legally required insurance. UVU, at its own cost and expense, shall at all times during the term of this Agreement secure and maintain in full force such policies of commercial liability insurance, including coverage for personal injury, property damage, and property loss, underwritten by one or more duly licensed insurers in the State of Utah. Each insurance policy shall be written on an occurrence basis, which shall insure UVU and the School District against liability for injury to persons and property, and death of any person or persons, occurring in, on, or about the Facilities, or in any way arising out of, directly or indirectly, the UVU’s activities and use thereof. All general liability and property damage insurance policies shall contain a provision that the School District (named as an additional insured) shall be entitled to recover under the said insurance policies for any loss occasioned to it or to its employees and agents by reason of the negligence or wrongdoing of UVU or its employees and agents. Furthermore, the insurance policies shall provide that the coverage is primary over any other insurance coverage available to the School District or to its employees and agents. All policies of insurance must contain a provision that the company underwriting the policy shall give to the School District thirty (30) days advance written notice of any cancellation or lapse, or the effective date of any reduction in the amounts of insurance, and the right of the School District to reinstate said policy. The insurance described herein shall afford protection to the School District of not less than One Million Dollars ($1,000,000) per occurrence and not less than One Million Dollars ($1,000,000) in the aggregate. **Upon the execution of this Agreement, UVU shall deliver to the School District an original Certificate of Insurance together with any applicable endorsements from the insurer naming the School District as an additional insured and providing such protection and coverage to the School District in accordance with the terms and conditions set forth in this section.** Notwithstanding anything to the contrary in this Agreement, UVU’s obligation to carry the insurance provided for herein may be bought within the coverage of a so-called blanket or umbrella policy or policies of insurance maintained by UVU, provided, however, that the coverage afforded to the School District will not be reduced by reason of the use of such blanket or umbrella policy of insurance.

10. **Supervision; Medical and Emergency Care; Indemnification.** UVU warrants to the School District that it will provide all supervision necessary for the safe use of the Facilities. UVU understands and agrees to take full responsibility to provide medical and emergency care to all participants and spectators involved in the event. UVU warrants to the School District that all medical and emergency care will be appropriate and sufficient. UVU shall indemnify, protect, and save and hold harmless the School District, its board members, officials, officers, employees,
agents, and volunteers from and against all losses, damages, injuries, claims, demands, and expenses, including attorneys' fees and court costs of whatsoever nature, arising out of: (a) the use, condition (including, but not limited to, latent and other defects, whether or not discoverable by the School District), or operation of the Facilities by UVU during the term of this Agreement; and (b) the failure of UVU to perform or comply with any of the provisions of this Agreement. The indemnities, assumptions of liabilities, and obligations herein provided for shall continue in full force and effect notwithstanding termination of this Agreement, whether by expiration of time, by operation of law, or otherwise. UVU is an independent contractor, and nothing contained in this Agreement shall authorize UVU or any other person to use or operate the Facilities so as to incur or impose any liability or obligation for or on behalf of the School District.

11. **Environmental Compliance and Indemnification.** During the term of this Agreement, UVU shall comply with any and all applicable federal, state, and local laws, rules, regulations, and orders with respect to the handling, storage, transportation, treatment, or disposal of hazardous or toxic substances. UVU hereby agrees unconditionally, absolutely, and irrevocably, to indemnify, defend, and hold harmless the School District, its employees and agents, against and in respect of any loss, liability, injury, damage, or expense (including court costs and attorneys’ fees) of whatsoever nature arising directly or indirectly out of the foregoing environmental matters.

12. **Default and Remedies.** Failure of UVU to observe or perform any of UVU’s covenants, agreements, or obligations hereunder shall constitute a default and a breach of this Agreement. In the event of any default hereunder, the School District shall have all the rights and remedies available in law and in equity in the State of Utah. The rights and remedies of the School District shall not be mutually exclusive, but shall be cumulative in all effects.

13. **Assignment; Subletting; and Hold-Over.**

   A. **UVU may not sublet or assign the Leased Premises without the prior written consent of School District.**

   A consent to one sublease or assignment shall not be deemed to be a consent to any subsequent sublease or assignment. Any attempted sublease or assignment without the prior written consent of School District shall be void and constitute a default of the Lease by the UVU. In such case, School District, at its option, may terminate this Lease, and in any case this Lease shall not be treated as an asset of the UVU. "Assignment" as used herein, includes both voluntary and involuntary assignments by operation of law.

   B. **Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding and shall inure to the benefit of the parties and their respective heirs, successors, executors, administrators, assigns, and personal representatives.**

   C. **UVU’s obligation for performance and payments required to be made under the provisions of this Lease shall survive any assignment and/or sublease of the Leased Premises unless School District shall specifically otherwise agree in writing.**

14. **Equipment and Supplies.** UVU shall provide all instructional materials, equipment, and supplies necessary for its educational programs, including computers, printers, copy machines, paper supplies, file cabinets, media carts, etc. Spanish Fork High School will provide a workstation area for UVU in which to locate and store such instructional materials, equipment, and supplies.

15. **General Provisions.**

   A. **Waiver or Forbearance.** No delay or omission in the exercise of any right or remedy of the School District in the enforcing of any of the provisions of this Agreement shall constitute a waiver or forbearance of any other provision hereof or a breach of this Agreement.
District on any default of UVU shall impair such right or remedy or be construed as a waiver. Any waiver of the School District of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No waiver by the School District of any breach by UVU of any obligations, agreements, or covenants hereunder shall be a waiver of any subsequent breach of any other obligation, agreement, or covenant. Nor shall any forbearance by the School District to seek any remedy for any breach by UVU be a waiver by the School District of its rights and remedies with respect to such or any subsequent breach.

B. **Authority.** The undersigned individual who signs this Agreement on behalf of the UVU personally represents that he or she is duly authorized to execute and deliver the same on behalf of the UVU for which his or her signing is made, whether a corporation, limited liability company, general or limited partnership, trust, or otherwise, and this Agreement is binding upon said UVU and upon the individual signor in accordance with its terms.

C. **Joint and Several Liability.** The undersigned individual who signs this Agreement on behalf of the UVU shall be jointly and severally liable with the UVU for all obligations contained in this Agreement.

D. **Costs and Expenses of Enforcement.** In the event of the failure of either party hereto to comply with any provisions of this Agreement, the defaulting party shall pay any and all costs and expenses, including reasonable attorneys' fees, arising out of or resulting from such default, or in pursuing any remedy hereunder, or by the laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, including any appeals.

E. **Severability.** In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement, and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

F. **Entire Agreement.** This Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the parties to this Agreement.

G. **Amendments.** This Agreement may be modified only by a writing signed by the parties in interest at the time of the modification.

H. **No Assignment or Subletting.** UVU may not assign or sublet the Facilities. Any attempted assignment or sublease shall be void and constitute a default of this Agreement by UVU.

I. **Covenants and Conditions.** Each provision of this Agreement performable by UVU shall be deemed to be both a covenant and a condition.

J. **Binding Effect.** Subject to any provisions hereof restricting assignment or subletting by UVU, this Agreement shall bind the parties, their personal representatives, successors, and assigns, and shall be governed by the laws of the State of Utah.

K. **Captions.** The captions to the various Sections and Paragraphs of this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.
L. **Notices.** All notices, statements, demands, requests, consents, or approvals hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party. Among other methods of services, any notice relating to this Agreement or rights or remedies hereunder may be served upon UVU by the School District by mailing such notice by registered or certified United States mail, postage prepaid, addressed to UVU, or upon the School District by mailing such notice in like manner, addressed to the School District or at such other place as the parties may from time to time designate. Notice given by mail shall be deemed delivered three (3) days following date of deposit for mailing.

M. **Time.** Time is of the essence of each term, provision, and covenant of this Agreement.

N. **Exhibits.** The Exhibits referenced and attached hereto are fully incorporated into this Agreement by this reference and made a part hereof. Said Exhibits shall be binding upon the parties hereto.

O. **Rules and Regulations.** The Rules and Regulations attached hereto as Exhibit “C” are fully incorporated into this Agreement by this reference and made a part hereof. Said Rules and Regulations shall be binding upon UVU.

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

Q. **Gender and Number.** The singular number include the plural whenever the context so indicates. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, limited liability company, or other legal entity when the context so requires. The word “person” means person or persons or other entity or entities or any combination of persons and entities.

R. **Governing Law, Jurisdiction, and Venue.** The laws of the State of Utah will govern the validity, performance, and the enforcement of this Agreement. Jurisdiction and venue for the enforcement of this Agreement shall be found in the courts of Utah County, State of Utah.

DATED effective the day and year above written.

"SCHOOL DISTRICT"

NEBO SCHOOL DISTRICT
A political subdivision of the State of Utah

Signature:_______________________________________
Print Name:______________________________________
Title:_____________________________________________

"UVU"

UTAH VALLEY UNIVERSITY
A political subdivision of the State of Utah

Signature:_______________________________________
Print Name:______________________________________
Title:_____________________________________________
EXHIBIT “A”

SCHOOL FACILITIES

Spanish Fork High School
99 North 300 West
Spanish Fork, Utah 84660

11 Classrooms / 4 Days Per Week / 15 Weeks for Fall Semester.
9 Classrooms / 4 Days Per Week / 15 Weeks for Spring Semester.
6 Classrooms / 4 Days Per Week / 15 Weeks for Summer Semester.
The foregoing also includes related facilities (e.g., hallways, restrooms, and parking areas).
In addition, wireless Internet access will be provided for UVU Extension Programs, as appropriate.

Classrooms and related facilities shall be assigned and scheduled with specific dates, times, and locations by Spanish Fork High School Administration. The school administrator in charge of coordinating the use of the Facilities at Spanish Fork High School is:

   David McKee, Principal
   Spanish Fork High School
   99 North 300 West
   Spanish Fork, UT 84660
   Telephone No.: (801) 798-4060
   Email: dave.mckee@nebo.edu

The School District administrator in charge of matters concerning this Agreement is:

   John Webb
   Coordinator of Schools and Community Services
   350 South Main
   Spanish Fork, UT 84660
   Telephone No.: (801) 354-7400
   Email: john.webb@nebo.edu
EXHIBIT “B”

SCHOOL FACILITIES USES

Spanish Fork High School
99 North 300 West
Spanish Fork, Utah 84660

UVU South Campus -- Extension Program for Utah Valley University held at Spanish Fork High School.

Classes include, but are not limited to, visual arts, photography, drawing, astronomy, biology, health, writing, American civilization, U.S. history, algebra, business, nutrition, fitness, ethics, human development, parenting, and Spanish.

Classes are held in the evenings (Monday through Thursday) beginning as early as 4:30 p.m. and ending no later than 10:00 p.m.
EXHIBIT “C”

NEBO SCHOOL DISTRICT BOARD OF EDUCATION
SCHOOL FACILITY USE POLICY (FILE #EFC)
Rules and Regulations

Facility Use Agreement

A Facility Use Agreement, prepared by and containing such terms and conditions as deemed reasonable and appropriate by the School District, shall be signed between the sponsoring group or individual and the school administrator. A Facilities Use Agreement is required for all uses under Class III, Class IV, and Class V in accordance with the following:

- Fees will be charged in accordance with the Fee Schedule and this policy.
- Additional fees will be charged for use of special equipment, additional services, and personnel. These fees will be determined by the school administrator and incorporated into the Facilities Use Agreement.
- If the kitchen is to be used for food service or preparation, a District food service worker, possessing a current and valid health department food handler’s license or permit, must be present and the cost paid by the sponsoring group or individual at the employee’s hourly wage.
- Applications for use must be submitted at least two (2) weeks in advance of the activity. The Facilities Use Agreement, Certificate of Insurance, and full payment of rental and use fees must be received before the event is placed on the calendar.
- The facility shall be left clean and in the same condition as the sponsoring group or individual found them.
- For multiple room uses by a sponsoring group or individual, the school administrator (in accordance with the appropriate classification under the Class Definitions and the Fee Schedule) shall charge the sponsoring group or individual the rental and use fees necessary to meet the purposes and objectives of that particular classification.
- Depending upon the type of activity, the facility to be used, the number people involved, and other relevant factors, the school administrator has the discretion and right to require a security/cleaning deposit to cover any unexpected costs in the event of property damage, property loss, and/or clean-up. The amount of the security/cleaning deposit shall be determined by the school administrator and received by a check made payable to the school. The check will not be deposited but shall be held in safekeeping by the school administrator until after the activity is completed. The school administrator shall then assess if there is any property damage, property loss, and clean-up associated with the activity. If there is no property damage, property loss, or clean up, the check shall be returned to the sponsoring group or individual. If there is any property damage, property loss, and/or clean-up, the school administrator shall ascertain the costs of such and may deposit the check to cover such costs. A written itemized accounting of the property damage, property loss, and/or clean-up costs shall be provided by the school administrator to the sponsoring group or individual along with a check for the excess amount or a bill for payment for the deficient amount. The foregoing matters concerning a security/cleaning deposit shall be accomplished by the school administrator in a timely manner.

Sponsoring Group / Individual Responsibilities

- Request for facility usage will not interfere with any school activity, event, function, or purpose and may be denied if the request is determined to be inappropriate.
- All activities must be compatible with the school facility being used. Activities that are not compatible with the type of use typically associated with the school facility are not permitted.
- It shall be the responsibility of the sponsoring group or individual to assure that only authorized portions of the school facilities are used and the premises are vacated as scheduled. All functions shall promptly close by 10:30 p.m., unless special permission is secured in advance from the school administrator.
- The District assumes no liability for personal injury or property loss or damage. Sponsoring groups or individuals are solely responsible for any and all claims, damages, liabilities, costs, and expenses (including attorney’s fees) arising out of or in any way associated with the activity. In addition, the sponsoring group or individual shall defend, hold harmless, and fully indemnify the School District of any and all such claims, damages, liabilities, costs, and expenses.
- Sponsoring groups or individuals shall provide sufficient, competent adult supervision (at least 21 years of age).
- Sponsoring groups or individuals shall not discriminate against individuals because of race, color, gender, age, religion, nation origin, disability, or any other legally protected classification.
- The sponsoring group or individual shall pay all damages to the building, equipment, or grounds which occurred during the activity.
- The sponsoring group or individual will insure that the school facilities remain a drug-free, smoke-free, and alcohol-free place.
- Profane language, quarreling, fighting, and gambling are prohibited activities on school property.
- It is the responsibility of the sponsoring group or individual to insure that the sale of food and/or drink has been approved.
- No food and/or drink will be allowed in the auditorium and in other designated portions of the school. Permission for the consumption of any food and/or drink in the school must be specifically authorized by the school principal.
- All activities shall comply with any and all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the Americans with Disabilities Act (ADA).

No Alteration of Premises

Sponsoring groups or individuals using school facilities, including a stage or stage equipment, shall not be permitted to remove or displace furniture, equipment, or apparatus, including lights, curtains, and ceiling valance; or change the counter weights system or the switch board, except when under the direct supervision of a designated school employee. Where the stage is to be used, full details of equipment and personnel requested must be furnished in advance with the application.
General Prohibitions

- Emergency or unforeseen circumstances that require the use of school facilities will take precedence over any prior scheduling by the sponsoring group or individual.
- School facilities shall not be available for dances excepting those sponsored by the school or Nebo School District Community Education and approved by the school principal.
- School marquees are not available for rent, nor will the school participate in advertising any commercial programs held within the school.
- School facilities will not be available on Sundays, except: (a) as provided only in an Interlocal Agreement with the city, county, state, or other governmental entity; or (b) as provided only in the event of a community emergency as approved by the Superintendent.
- Drapes, hangings, curtains, drops, and all decorative materials used within or upon school buildings shall be made of non-flammable material, and all materials used must be approved by the State Fire Marshall. No open fires, flames, or lighted candles shall be permitted.
- Classrooms shall not be disturbed or rearranged to accommodate the activity (i.e., chairs, desks, furniture, equipment, wall hangings, etc.).
- All drawers, cupboards, closets, and other such areas in the school are off-limits and shall not be opened.
- School facilities, including, but not limited to, offices, photography labs, computer labs, home economic rooms, science labs, weight rooms, indoor baseball/softball facilities, and shops are not available for rent.

Note: Any violation of these Rules and Regulations shall be sufficient for denying further use of school property and facilities to any individual or organization.