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DOC # 20130046539

Easements Page 1 of 9  
Russell Shirts Washington County Recorder  
12/19/2013 02:00:04 PM Fee \$ 28.00  
By SOUTHERN UTAH TITLE CO

When Recorded, Return To:  
NovaSource Sunwest, LLC  
2180 South 1300 East, Suite 410  
Salt Lake City, UT 84106



**EASEMENT AND EXCLUSIVE USE AGREEMENT**

THIS EASEMENT AND EXCLUSIVE USE AGREEMENT ("Agreement") is made and entered into this 18<sup>th</sup> day of December, 2013, by and between NovaSource Sunwest, LLC, a Utah limited liability company, ("NovaSource") and Shefco, LLC ("Shefco").

**RECITALS**

WHEREAS, Shefco is the fee simple owner of that certain parcel of real property situated in the City of St. George, County of Washington, State of Utah, more particularly described on Exhibit "A," attached hereto and by this reference made a part hereof (the "Shefco Parcel"); and

WHEREAS, NovaSource is the fee simple owner of that certain parcel of real property situated in the City of St. George, County of Washington, State of Utah, more particularly described on Exhibit "B," attached hereto and by this reference made a part hereof (the "NovaSource Parcel"); and

WHEREAS, Shefco desires to grant a non-exclusive access easement over and across a portion of the Shefco Parcel as shown on the description attached hereto as Exhibit "C" (the "Easement Area") for the benefit of the NovaSource Parcel for purposes of ingress and egress.

WHEREAS, Shefco desires to grant to NovaSource an exclusive use as described herein.

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

**AGREEMENT**

1. Shefco hereby grants to NovaSource a perpetual, non-exclusive easement over and across the Shefco Parcel as shown on Exhibit "C" as the Easement Area for the purposes of vehicular and pedestrian ingress and egress. The provisions of this Agreement shall run with the land and shall bind NovaSource and Shefco, and their successors in interest, heirs, and assigns.

2. NovaSource, at its sole cost and expense, shall caused to be constructed an access road within the Easement Area in accordance with all applicable Utah Department of Transportation and St. George City codes, ordinances, rules and regulations in effect at the time of such construction, which road may be temporary in design and material. Shefco hereby grants to NovaSource the temporary right to enter upon the Shefco Parcel for purposes of performing such work. Until the Shefco parcel is developed with commercial structures and improvements,

SOUTHERN UTAH TITLE COMPANY  
ACCOMMODATION RECORDING ONLY  
NOT EXAMINED

NovaSource shall continue to maintain and keep in good condition and repair the road improvements within the Easement Area.

3. At such time as the Shefco Parcel is developed, the Easement Area may be temporarily closed off for construction purposes, provided, however, that the construction activities shall be diligently pursued to their final completion and the improvements within the Easement Area shall either remain undisturbed or be replaced with equal or better hard surfaced material sufficient for vehicular travel in compliance with all State and City laws, codes and regulations. After the Shefco Parcel is developed, Shefco shall maintain and keep in good condition and repair, at its sole cost and expense, any improvements within the Easement Area.

4. Subject to any temporary closure of the Easement Area as described in Section 3 above, the Easement Area shall remain open and undisturbed and no improvements shall be placed in the Easement Area which would block or otherwise inhibit vehicular traffic. Shefco may at any time relocate the Easement Area without the prior consent of NovaSource, provided such relocation is conducted in compliance with this section and section 3 above, and provided that the substitute Easement Area is: (a) adequate to maintain the same vehicular and pedestrian ingress and egress enjoyed by NovaSource prior to the relocation, (b) provides the most direct access between the NovaSource parcel and 1450 South at approximately the same location at each end of the Easement Area; and (c) the substitute Easement Area is, following any temporary closure, constructed to at least the same standards as prior to the relocation. Any other relocation of the Easement Area shall be by mutual written consent by the owners of the Parcels as evidenced by an amendment to the Agreement which shall be recorded in the Washington County records.

5. NovaSource shall indemnify Shefco and its owners, officers, managers, principals, directors, employees, and agents (the "Shefco Parties") and hold the Shefco Parties harmless against claims, damages, losses and the like which may arise as a result of the use of the Easement Area by NovaSource, its owners, members, managers, officers, principals, directors, employees, agents, tenants and successors, and their respective customers and invitees, provided that such claims, damages, losses and the like are not the result of any act or failure to act of the Shefco Parties acting within the scope of their duties to Shefco, and provided that Shefco is in compliance with this Agreement at the time that such claims, damages, or losses first accrued.

6. Exclusive Use: Furthermore, Shefco, including any affiliate or related entity, owner, member, officer or otherwise of Shefco, shall not develop, lease or sell any property owned or controlled by it within three (3) miles of the NovaSource Parcel to any quick lube operation, including, but not limited to Grease Monkey, Oil Can Henry and Xpress Lube.

7. The signature page of this Agreement may be executed and delivered in one or more counterparts, each of which in the aggregate shall constitute one and the same instrument.

8. The easements, rights, agreements and privileges created hereby shall continue permanently unless terminated, modified or amended by the parties through written instruments duly recorded in the office of the Washington County Recorder or by operation of law.

9. A delay in enforcing or a failure to enforce any breach or violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of any such restrictions, or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

10. If any one or more of the provisions of this Agreement or the applicability of any such provision to a specific situation shall be held invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of all the provisions of this Agreement and all other specifications of such provisions shall not be affected thereby.

11. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. This Agreement shall be recorded with the Washington County Recorder's office. In the event of a breach or default by any of the parties to this Agreement, the non-defaulting party shall be entitled to any and all remedies allowed at law or in equity, damages, and to the reimbursement of all costs, fees and expenses, including attorneys fees, incurred by the non-breaching or non-defaulting party in enforcing its rights hereunder.

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

NOVASOURCE SUNWEST, LLC

By: NovaSource Management, Inc.  
a Utah corporation, its Manager

By: [Signature]  
Its: President

SHEFCO, LLC


By: [Signature]  
Its: Manager

**NOTARY ACKNOWLEDGMENTS ON FOLLOWING PAGE**

STATE OF UTAH )  
 )  
 ) ss:  
 )  
COUNTY OF SALT LAKE )

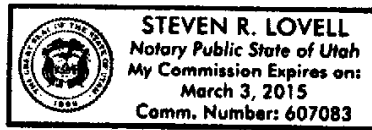
Before me, the undersigned, this 17 day of December, 2013, personally appeared SHANE D. SMOOT, known to me to be the PRESIDENT of NovaSource Management, Inc., Manager of NovaSource Sunwest, LLC, and that he as such officer, signer and sealer of the foregoing instrument, acknowledged the execution of the same to be his free act and deed individually and as such officer, and the free act and deed of the limited liability company.

In Witness Whereof, I hereunto set me hand.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

3-3-2015



STATE OF UTAH )  
 )  
 ) ss:  
 )  
COUNTY OF WASHINGTON )

Before me, the undersigned, this 18th day of December, 2013, personally appeared Travis J. Sheffield, known to me to be the Manager of Shefco, LLC, and that he as such officer, signer and sealer of the foregoing instrument, acknowledged the execution of the same to be his free act and deed individually and as such officer, and the free act and deed of the company.

In Witness Whereof, I hereunto set me hand.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

9/10/16

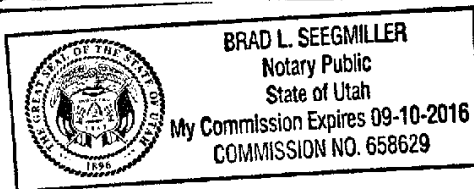
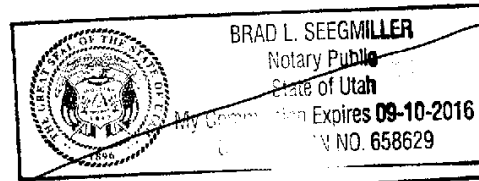


EXHIBIT "A"

Shefco Parcel Description

(see attached)

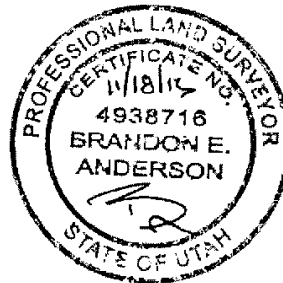
(Shefco's Northeast Description is less and excepting the NovaSource Parcel Description)

**Northeast Description**

Beginning at a point on the easterly line of River Road, said point being South 00°32'03" West 3,710.20 feet along and beyond the section line and West 1,803.91 feet from the Northwest Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian, and running;

thence South 55°28'12" East 32.62 feet;  
thence South 51°21'40" East 15.52 feet;  
thence easterly 90.84 feet along an arc of a 151.84 foot radius curve to the left (center bears North 38°38'20" East, long chord bears South 68°29'59" East 89.49 feet with a central angle of 34°16'38");  
thence easterly 77.59 feet along an arc of a 243.82 foot radius curve to the right (center bears South 04°21'42" West, long chord bears South 76°31'19" East 77.26 feet with a central angle of 18°13'59");  
thence southeasterly 77.37 feet along an arc of a 5,552.92 foot radius curve to the right (center bears South 22°35'41" West, long chord bears South 67°00'22" East 77.37 feet with a central angle of 00°47'54");  
thence southeasterly 98.88 feet along an arc of a 5,552.92 foot radius curve to the right (center bears South 23°23'35" West, long chord bears South 66°05'49" East 98.88 feet with a central angle of 01°01'13");  
thence southeasterly 129.59 feet along an arc of a 493.11 foot radius curve to the right (center bears South 24°24'48" West, long chord bears South 58°03'28" East 129.22 feet with a central angle of 15°03'28");  
thence southeasterly 69.93 feet along an arc of a 384.97 foot radius curve to the left (center bears North 39°28'16" East, long chord bears South 55°43'58" East 69.83 feet with a central angle of 10°24'28");  
thence easterly 83.88 feet along an arc of a 202.42 foot radius curve to the left (center bears North 29°03'48" East, long chord bears South 72°48'28" East 83.28 feet with a central angle of 23°44'31");  
thence easterly 69.49 feet along an arc of a 172.97 foot radius curve to the right (center bears South 05°19'17" West, long chord bears South 73°10'12" East 69.02 feet with a central angle of 23°01'02");  
thence easterly 78.79 feet along an arc of a 192.96 foot radius curve to the left (center bears North 28°20'19" East, long chord bears South 73°21'34" East 78.25 feet with a central angle of 23°23'45");  
thence South 85°03'26" East 82.47 feet;  
thence South 28°21'35" East 21.30 feet;  
thence South 70°55'02" East 55.83 feet;  
thence South 32°52'49" West 86.79 feet to the northerly line of 1450 South Street;  
thence westerly the following (2) courses along said northerly line of 1450 South Street;  
thence westerly 420.26 feet along an arc of a 2,794.00 foot radius curve to the left (center bears South 05°57'56" West, long chord bears North 88°20'37" West 419.86 feet with a central angle of 08°37'05");  
thence westerly 81.23 feet along an arc of a 2,781.04 foot radius curve to the left (center bears South 01°10'51" West, long chord bears North 89°39'22" West 81.23 feet with a central angle of 01°40'25");  
thence North 01°23'25" West 114.07 feet;  
thence North 20°45'12" West 140.74 feet;  
thence South 88°36'36" West 233.14 feet to the easterly line of said River Road;  
thence North 17°11'31" West 197.14 feet along said easterly line of River Road to the Point of Beginning.

Containing 120,958 square feet or 2.78 acres.



**Southeast Description**

Beginning at a point on the westerly line of 1490 East Circle, said point being South 00°32'03" West 4,506.00 feet along and beyond the section line and West 745.40 feet from the Northwest Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian, and running;

thence North 77°36'45" West 193.16 feet;  
thence South 64°37'04" West 414.40 feet;  
thence South 23°59'10" East 347.40 feet;  
thence South 66°17'40" West 182.93 feet to the easterly line of River Road;  
thence northerly the following (3) courses along said easterly line of River Road  
thence North 23°57'21" West 259.44 feet;  
thence northerly 332.44 feet along an arc of a 2,814.93 foot radius curve to the right (center bears North 66°02'39" East, long chord bears North 20°34'21" West 332.25 feet with a central angle of 06°46'00");  
thence North 17°11'21" West 228.75 feet to the southerly line of 1450 South Street;  
thence easterly the following (13) courses along said southerly line of 1450 South Street and the westerly line of 1490 East Circle;  
thence northeasterly 38.32 feet along an arc of a 34.07 foot radius curve to the right (center bears South 70°02'00" East, long chord bears North 52°11'21" East 36.33 feet with a central angle of 64°26'42");  
thence North 82°51'26" East 16.67 feet;  
thence easterly 68.96 feet along an arc of a 2,709.00 foot radius curve to the right (center bears South 07°09'02" East, long chord bears North 83°34'44" East 68.96 feet with a central angle of 01°27'31");  
thence easterly 179.27 feet along an arc of a 2,709.18 foot radius curve to the right (center bears South 01°51'18" East, long chord bears South 89°57'34" East 179.24 feet with a central angle of 03°47'29");  
thence easterly 143.08 feet along an arc of a 2,697.00 foot radius curve to the right (center bears South 01°54'01" East, long chord bears North 89°37'11" East 143.07 feet with a central angle of 03°02'23");  
thence southeasterly 29.86 feet along an arc of a 19.00 foot radius curve to the right (center bears South 01°08'22" West, long chord bears South 43°50'25" East 26.88 feet with a central angle of 90°02'26");  
thence South 88°49'13" East 55.00 feet;  
thence North 01°10'44" East 4.61 feet;  
thence northeasterly 62.00 feet along an arc of a 27.50 foot radius curve to the right (center bears South 88°49'16" East, long chord bears North 65°45'51" East 49.68 feet with a central angle of 129°10'13");  
thence easterly 30.55 feet along an arc of a 48.50 foot radius curve to the left (center bears North 40°20'57" East, long chord bears South 67°41'41" East 30.05 feet with a central angle of 36°05'16");  
thence easterly 321.94 feet along an arc of a 2,697.00 foot radius curve to the right (center bears South 04°15'41" West, long chord bears South 82°19'08" East 321.75 feet with a central angle of 06°50'22");  
thence southeasterly 39.83 feet along an arc of a 25.00 foot radius curve to the right (center bears South 11°06'03" West, long chord bears South 33°15'21" East 35.75 feet with a central angle of 91°17'11");  
thence South 12°23'15" West 197.18 feet to the Point of Beginning.

Containing 341,271 square feet or 7.84 acres.

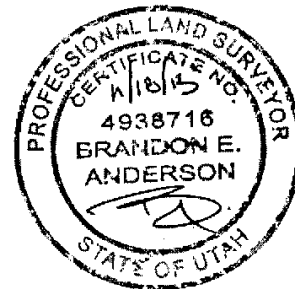


EXHIBIT "B"

NovaSource Parcel Description

Beginning at a point being South 1,206.35 feet and West 1,522.11 feet from the West Quarter Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian, and running;

thence South 88°36'36" West 233.15 feet to the easterly line of River Road;  
thence North 17°11'21" West 197.14 feet along said easterly line of River Road;  
thence South 55°28'12" East 32.62 feet;  
thence South 51°21'40" East 15.52 feet;  
thence South 59°55'50" East 45.25 feet;  
thence South 77°04'09" East 45.25 feet;  
thence South 81°04'48" East 38.75 feet;  
thence South 71°57'49" East 38.75 feet;  
thence South 66°29'46" East 71.34 feet;  
thence South 20°45'12" East 80.45 feet to the Point of Beginning.

TAX ID: SG - 5 - 2 - 32 - 251



EXHIBIT "C"

Easement Area  
(which impacts Shefco's Northeast Parcel as described above)

