

Aaron Langston
2303 N. Coral Canyon Blvd, Suite 100-A
Washington, UT 84780

St. George City
175 East 200 North
St. George, Utah 84770

DOC # 20190012836

Easements Page 1 of 11
Russell Shirts Washington County Recorder
04/08/2019 03:28:05 PM Fee \$ 0.00
By ST GEORGE CITY



Tax ID Nos: SG-5-3-31-433-STL

EASEMENT NO. 2221

Fund: School

THIS EASEMENT NO. 2221 (the "Agreement") is entered into effective this 28 day of March 2019 (the "Effective Date"), by and between the STATE OF UTAH, acting by and through the SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 (the "GRANTOR"), and St. George City, 175 East 200 North, St. George UT 84770 (the "GRANTEE").

A. GRANTOR is an independent state agency responsible for the management of state trust lands, including the lands that are the subject of this Agreement.

B. GRANTOR installed certain underground utilities to provide services to GRANTOR'S lands in the South Block. GRANTEE desires to assume and perform the continued maintenance and operation of these underground utilities to continue serving the South Block area of St. George City.

C. GRANTEE now desires to secure an easement for these public underground utilities described herein.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Grant of Easement.** GRANTOR hereby grants to GRANTEE a twenty five foot (25') wide utility easement over the portion of those lands generally depicted in **Exhibit A** and more particularly described in **Exhibit B** (the "Easement Lands"), for the construction, operation, maintenance, repair, and or replacement of a sewer line and other public utilities (together, the "Improvements"). All engineering and construction of the Improvements shall be performed in a first class workmanlike manner, and in accordance with the requirements of any and all engineering construction plans, laws, ordinances and regulations applicable thereto. GRANTEE shall own all existing Improvements, and any future dedicated and accepted Improvements, including the previously constructed sewer line and other public utilities, during the term of this Agreement.

2. **Improvement Costs.** GRANTEE accepts the grant and dedication of existing, installed and constructed Improvements. GRANTOR will not be responsible to participate in any future costs for the Improvements, including the construction, operation, repair, replacement, and maintenance of such. GRANTEE shall pay all costs associated with operation, maintenance, repair, or replacement of the Improvements. With respect to any future Improvements constructed on the Easement Lands, upon dedication to and acceptance of the same by GRANTEE in accordance with GRANTEE'S ordinances, specifications, and development approvals,

Easement No. 2221
South Block Utility Easement

Page 2 of 11

GRANTEE shall pay all costs associated with the operation, maintenance, repair, or replacement of such future Improvements.

3. **Term.** The easement shall commence upon the Effective Date and shall terminate when the Easement Lands are dedicated via a roadway dedication plat, or until the Improvements are no longer necessary or in service or rendered useless due to lack of proper maintenance. This easement is granted only for the purposes described herein as far as it is consistent with the principles and obligations in the Enabling Act of Utah (Act of July 16, 1894, Ch. 138, 28 Stat. 107) and the Constitution of the State of Utah. It is anticipated that all or a portion of the Easement Lands will be dedicated in the future to GRANTEE. Any portion not dedicated to GRANTEE continues as part of the Easement Lands.

4. **Negligent Acts.** GRANTOR and GRANTEE shall each be responsible for their own negligent acts which they commit or which are committed by their agents, contractors, officials or employees. Nothing in this Agreement limits, restricts or waives any of the Governmental Immunity Act provisions as they may apply to the GRANTOR or GRANTEE.

5. **Insurance.** GRANTEE shall carry liability insurance covering bodily injury, loss of life or property damage arising out of or in any way related to GRANTEE's activities on the Easement Lands, in amounts no less than \$1,000,000.00 for each claim of an individual and \$3,000,000.00 for each occurrence. The insurance may be in the form of blanket liability coverage so long as such blanket policy does not act to reduce the limits or diminish the coverage required hereunder. GRANTEE's liability or the coverage limits required by this easement shall not be reduced by any insurance held by GRANTOR, or any of the lessees, permittees or assigns thereof.

6. **Consent to Suit.** The parties consent to suit in the courts of the State of Utah in any dispute arising under the terms of this Agreement or as a result of operations carried on under this Agreement.

7. **Assignment.** The acquisition or assumption by another party under an agreement with GRANTEE of any right or obligation of GRANTEE under this Agreement shall be ineffective as to the GRANTOR unless and until GRANTOR shall have been notified of such agreement and shall have recognized and approved the same in writing.

8. **Compliance with Law.** GRANTEE, in exercising the privileges granted by this Agreement, shall comply with the provisions of all valid Federal, State, County, and Municipal laws, ordinances, and regulations which are applicable to the Easement Lands and covered by this Agreement. GRANTEE shall neither commit nor permit any waste on the Easement Lands. GRANTEE shall take reasonable precautions to prevent pollution or deterioration of lands or waters which may result from the exercise of the privileges granted pursuant to this Agreement.

Easement No. 2221
South Block Utility Easement

Page 3 of 11

9. **Easement Non-Exclusive.** It is expressly understood and agreed that the right herein granted is non-exclusive, and GRANTOR hereby reserves the right to issue other non-exclusive easements, leases, or permits on or across the Easement Lands where such uses are appropriate and compatible (including, without limitation, for the exploration, development and production of oil, gas and all other minerals) or to dispose of the property by sale or exchange.

10. **Existing Interests.** GRANTEE shall be responsible to notify holders of state issued interests on the Easement Lands, as such interests are set forth on **Exhibit C** attached hereto, of GRANTEE rights and plans hereunder.

11. **Covenants Against Liens; Indemnity.** GRANTEE shall not suffer or permit to be enforced against the Easement Lands or any part thereof, and shall indemnify and hold GRANTOR, its directors, officers and employees or any of the lessees and assigns thereof harmless for, from, and against (i) any mechanics', materialman's, contractor's, or subcontractor's liens arising from GRANTEE'S use of the Easement Lands; and (ii) any claim, loss or liability for damage (including personal injury, death or damage to property) growing out of, the work of, any construction, repair, restoration, replacement, improvement or other operations done by or on behalf of GRANTEE on the Easement Lands. GRANTEE shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Easement Lands. If GRANTEE shall in good faith contest the validity of any such lien, claim, or demand, then GRANTEE shall, at its expense, defend itself and GRANTOR and any of the lessees and assigns thereof against the same and shall pay and satisfy any adverse judgment that may be rendered thereon prior to execution thereof and in the event of any such contest GRANTEE shall at the request of GRANTOR provide such security and take such steps as may be required by law to release the Easement Lands from the effect of such lien.

12. **Notices.** Notices shall be in writing and shall be given by (a) personal delivery, (b) deposit in the United States mail, certified mail, return receipt requested (which receipt shall be preserved as evidence of delivery), postage prepaid, or (c) overnight express delivery service, addressed or transmitted to GRANTOR and GRANTEE at the addresses first set forth herein, or to such other addresses as either party may designate to the other in a writing delivered in accordance with the provisions of this Paragraph:

If to GRANTOR: School and Institutional Trust Lands Administration
Attn: Assistant Director – Planning and Development
675 East 500 South, Suite 500
Salt Lake City, UT 84102

If to GRANTEE: City of St. George
A Utah municipal corporation
175 East 200 North
St. George, UT 84470

Easement No. 2221
South Block Utility Easement

Page 4 of 11

All notices shall be deemed to have been delivered and shall be effective upon the date on which the notice is actually received, if notice is given by personal delivery or by overnight express delivery service, or on the third day after mailing if notice is sent through the United States mail.

13. **Default.** In the event of a default or breach of any of the terms of this Agreement by one party, the non-defaulting party shall provide the defaulting party with written notice of the default and shall provide the non-defaulting party with thirty (30) days from the date of the notice to remedy the default or such time as is reasonably required to remedy the default. In the event GRANTEE does not remedy the default in the 30-day or other time period set forth in the written notice, or such longer time as granted in GRANTOR's sole discretion. GRANTOR may terminate this Agreement for their respective portion of the Easement Lands. Such termination shall be effective upon GRANTOR's giving written notice. Upon receipt of such notice, GRANTEE shall immediately surrender possession of the Easement Lands to GRANTOR as applicable, and all Improvements on the applicable portion of the Easement Lands shall, at GRANTOR's discretion, be forfeited and become the property of GRANTOR, as applicable. In addition, the parties may exercise any other right or remedy they may have at law or equity.

14. **Fire Suppression.** GRANTEE shall at all times observe reasonable precautions to prevent fire on the Easement Lands owned by GRANTOR and shall comply with all applicable laws and regulations of any governmental agency having jurisdiction. In the event of a fire on the Easement Lands owned by GRANTOR proximately caused by GRANTEE, which necessitates suppression action that incurs cost, GRANTEE shall pay for such costs caused by it.

15. **Cultural Resources.** It is hereby understood and agreed that all treasure-trove, all articles of antiquity, and critical paleontological resources in or upon the Easement Lands owned by GRANTOR are and shall remain property of the State of Utah. GRANTEE agrees to cease all activity on the Easement Lands and immediately notify GRANTOR if any discovery of human remains or a "site" or "specimen," as defined in Section 9-8-302 or 63-73-1 Utah Code Annotated (1953), as amended, is made on the Easement Lands owned by SITLA, and continue to cease all construction or maintenance therein until such time as the human remains, "site" or "specimen" in question has been treated to the satisfaction of GRANTOR.

16. **No Warranty of Title.** GRANTOR claims title in fee simple to the Easement Lands, but does not warrant to GRANTEE the validity of title to the Easement Lands. GRANTEE shall have no claim for damages or refund against GRANTOR for any claimed failure or deficiency of GRANTOR'S title to said lands or for interference by any third party.

17. **Inspection.** GRANTOR reserves the right to inspect the portions of the Easement Lands owned by GRANTOR at any time, and recall GRANTEE for correction of any violations of stipulations contained herein.

Easement No. 2221
South Block Utility Easement

Page 5 of 11

18. **Granted Pursuant to Law.** This Agreement is granted pursuant to the provisions of all applicable laws and subject to the rules of the departments and agencies of the State of Utah presently in effect and to such laws and rules as may be hereafter promulgated by the State.

19. **Covenants Run with the Land.** The grant and other provisions of this Agreement shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns, all of which persons may enforce any obligation created by this Agreement.

20. **Interpretation.** This Agreement shall be interpreted and governed by the laws of the State of Utah, without regard to its choice or conflict of laws principles that may refer the interpretation hereof to the laws of another state, and the provisions hereof shall inure to and be binding upon the successors and assigns of GRANTEE.

21. **No Waiver.** No waiver of conditions by GRANTOR of any default of GRANTEE, or failure of GRANTOR to timely enforce any provisions of this Agreement, shall constitute a waiver of or constitute a bar to subsequent enforcement of the same or other provisions of this easement. No provision in this Agreement shall be construed to prevent GRANTOR or GRANTEE from exercising any legal or equitable remedy it may have.

22. **Entire Agreement.** This easement, attachments, and documents incorporated hereunder constitute the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

[Remainder of Page Intentionally Left Blank.
Signature Page to Follow.]

Easement No. 2221
South Block Utility Easement

Page 6 of 11

IN WITNESS WHEREOF, the parties have caused these presents to be executed this 28
day of MARCH 2019.

GRANTOR:

STATE OF UTAH
SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION

APPROVED AS TO FORM
SEAN D. REYES
ATTORNEY GENERAL

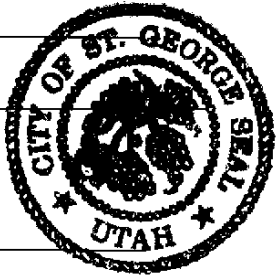
By: David Ure
Name: David Ure
Title: Director

By: Sean D. Reyes
Special Assistant Attorney General

GRANTEE:

CITY OF ST. GEORGE
A Utah municipal corporation
175 East 200 North
St. George, UT 84770

By: Jonathan T. Pike
Name: Jonathan T. Pike
Its: Mayor



ATTEST:
Christina Fernandez
Christina Fernandez, City Recorder

Approved as to form:
Victoria H. Hales 3/22/19
Victoria H. Hales, Assistant City Attorney

Consented to by Lessee of land owned by State of Utah:
DESERT COLOR ST. GEORGE, LLC

By: [Signature]
Its: _____

Easement No. 2221
South Block Utility Easement

Page 9 of 11

EXHIBIT B
Legal Description

ATKINVILLE-UTILITY EASMENT

Beginning at a point which is South 01°09'22" West 748.22 feet along the East Section line and North 90°00'00" West 55.28 feet from the Northwest Corner of Section 25, Township 43 South, Range 16 West Salt Lake Base and Meridian; running thence South 43°07'59" East 23.55 feet; thence South 28°37'18" East 259.38 feet; thence South 46°14'23" East 261.51 feet; thence South 66°02'09" East 159.14 feet; thence North 56°57'19" East 55.31 feet; thence North 06°51'39" West 322.55 feet; thence North 06°48'49" West 169.32 feet; thence North 83°11'11" East 25.00 feet; thence South 06°48'49" East 169.31 feet; thence South 06°51'39" East 338.10 feet; thence South 56°57'19" West 53.25 feet; thence South 68°49'44" East 45.88 feet; thence South 67°25'30" East 130.38 feet; thence South 50°30'17" East 274.71 feet; thence South 32°18'39" East 397.58 feet; thence South 44°20'31" East 184.99 feet; thence South 60°20'12" East 222.36 feet; thence South 63°34'09" East 397.36 feet; thence South 51°33'58" East 401.30 feet; thence South 32°28'48" East 335.30 feet; thence South 23°38'03" East 305.47 feet; thence South 13°20'44" East 398.98 feet; thence South 12°19'40" East 400.85 feet; thence South 19°52'13" East 400.57 feet; thence South 18°58'24" East 138.33 feet; thence South 29°28'49" East 312.44 feet; thence South 34°09'51" East 400.85 feet; thence South 26°11'51" East 314.27 feet; thence South 46°11'00" East 218.83 feet; thence South 76°37'48" East 246.86 feet; thence North 83°56'21" East 291.13 feet; thence South 88°47'42" East 401.70 feet to the Southern Parkway NA Right-of-Way line; thence along said NA Right-of-Way line South 34°24'27" East 30.75 feet; thence North 88°47'42" West 418.02 feet; thence South 83°56'21" West 293.82 feet; thence North 76°37'48" West 236.15 feet; thence South 08°13'54" East 272.06 feet; thence South 81°46'06" West 25.00 feet; thence North 08°13'54" West 286.16 feet; thence North 46°11'00" West 222.34 feet; thence North 26°11'51" West 316.94 feet; thence North 34°09'51" West 400.13 feet; thence North 29°28'49" West 315.76 feet; thence North 18°58'24" West 140.43 feet; thence North 19°52'13" West 402.02 feet; thence North 12°19'40" West 402.28 feet; thence North 13°20'44" West 396.51 feet; thence North 23°38'03" West 301.29 feet; thence North 32°28'48" West 329.16 feet; thence North 51°33'58" West 394.47 feet; thence North 63°34'09" West 395.44 feet; thence North 60°20'12" West 226.58 feet; thence North 44°20'31" West 191.13 feet; thence North 32°18'39" West 396.21 feet; thence North 50°30'17" West 266.99 feet; thence North 67°25'30" West 105.10 feet; thence South 06°51'40" East 391.82 feet; thence South 83°08'20" West 25.00 feet; thence North 06°51'40" West 405.72 feet; thence North 68°49'44" West 62.94 feet; thence North 66°02'09" West 170.59 feet; thence North 46°14'23" West 269.75 feet; thence North 28°37'18" West 254.85 feet; thence North 02°50'37" East 36.58 feet to the point of beginning.

Contains: 4.70 Acres

TOGETHER WITH
LIZARD-UTILITY EASMENT

Easement No. 2221
South Block Utility Easement

Page 10 of 11

Beginning at a point which is North $88^{\circ}42'49''$ West 919.36 feet along the North Section line and South $00^{\circ}00'00''$ West 497.45 feet from the Northeast Corner of Section 26, Township 43 South, Range 16 West Salt Lake Base and Meridian; said point being on the Southerly boundary of the Welcome Center parcel, running thence South $11^{\circ}34'09''$ East 340.20 feet; thence South $11^{\circ}19'56''$ East 323.12 feet; thence South $27^{\circ}29'29''$ West 365.75 feet; thence South $01^{\circ}46'50''$ East 369.31 feet; thence South $88^{\circ}13'10''$ West 25.00 feet; thence North $01^{\circ}46'50''$ West 375.84 feet; thence North $27^{\circ}29'29''$ East 363.47 feet; thence North $11^{\circ}19'56''$ West 314.26 feet; thence North $11^{\circ}34'09''$ West 349.17 feet to the said Southerly boundary of the Welcome Center Parcel; said point being a point of curvature of a 950.0 foot radius curve concave to the left, thence along the said Southerly boundary Southeasterly 26.58 feet along the arc of said curve through a central angle of $1^{\circ}36'11''$ the chord of said curve bears South $81^{\circ}43'47''$ East a distance of 26.58 feet to the point of beginning.

Contains: 0.80 Acres

Easement No. 2221
South Block Utility Easement

Page 11 of 11

EXHIBIT C
Existing Encumbrances

DEVL 1100

Desert Color St. George, LLC
730 North 1500 West
Orem, UT 84057