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Gary Christensen Washington County
Recorder06/24/2021 11:51:15 AM Fee \$0.00 By STATE
OF UTAH SCHOOL AND INSTITUTIONAL TRUST
LANDS ADMINISTRATION

AFTER RECORDING PLEASE RETURN TO:
SFFLA
1593 Grapevine Crossing
WASHINGTON, UT 84780

Tax ID: SG-5-3-17-1101

EASEMENTESMT. No. 2438
Fund: School

THIS EASEMENT AGREEMENT ("**Agreement**") is made and entered into effective June 21, 2020 ("**Effective Date**"), by and between the State of Utah, through the School and Institutional Trust Lands Administration, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 ("**Grantor**"), and Kangaroo Storage LLC, 741 Desert Bloom Ct., Washington UT 84780 ("**Grantee**"). (Grantor and Grantee may be referred to herein as "**Party**" or collectively as the "**Parties**").

RECITALS

A. Grantor is the owner of certain property within the City of St. George in Washington County, Utah (the "**Subject Property**").

B. Grantee desires to secure a 17-foot-wide drainage easement over those lands generally depicted in **Exhibit A** and more particularly described in **Exhibit B**.

NOW, THEREFORE, for \$1,214.40, including an application fee of \$750, and for other good and valuable consideration, the Parties agree as follows:

Grant of Easement. Grantor hereby grants to Grantee an easement over those lands generally depicted in **Exhibit A** and more particularly described in **Exhibit B** (the "**Easement Lands**"). Grantee may use these lands solely for the construction, operation, maintenance, repair, and/or replacement of a drainage system (the "**Improvements**"). All engineering and construction of the Improvements shall be in a first-class workmanlike manner, and in accordance with the requirements of any and all laws, ordinances and regulations applicable thereto. Grantee shall receive all required permits and approvals from appropriate governmental entities prior to constructing the Improvements on the Easement Lands. This Agreement and the Easement Lands are subject to valid existing rights, whether or not of record.

2. **Improvements and Cost.** Grantee shall pay, or otherwise arrange for others to pay, all costs associated with the installation, operation, maintenance, repair and replacement of the Improvements described in this Agreement. Grantor is not responsible for any costs associated

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with the Improvements described herein. Grantee shall take all reasonable precautions to protect the Improvements and prevent misuse, abuse, and vandalism.

3. **Term.** This Easement is issued for a perpetual term from the Effective Date, 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.

4. **Relocation.** Grantor reserves the right to relocate or modify the location of the Improvements, in whole or in part, as may be necessary to accommodate future planning and/or development of Grantor's property.

5. **No Warranty of Title.** Grantor disclaims all warranties of title to the Easement Lands. Grantee assumes the risk of all title defects, and hereby releases Grantor from any claim for damages or refund caused by deficiency or failure of Grantor's title, or by interference by any third-party.

6. **Liability; Indemnity.** Grantee assumes liability for and agrees to indemnify, defend and hold harmless Grantor, its officers, directors, employees, board of trustees, and beneficiaries from and against any and all claims, losses and liabilities, including attorney's fees, of any nature, imposed upon, incurred by, or asserted against the Easement Lands, Grantor, its officers, directors, employees, board of trustees and/or beneficiaries which in any way relates to or arises out of this Agreement, the Improvements, and/or the activity, or presence upon the Easement Lands of Grantee, or any of its servants, employees, contractors, agents, sublessees, assignees, or invitees.

7. **Insurance.** Grantee shall carry liability insurance covering bodily injury, loss of life and property damage arising out of or in any way related to this Agreement, the Improvements, and/or the activity or presence upon the Easement Lands of Grantee, or any of its servants, employees, contractors, agents, sublessees, assignees, or invitees. The limits of the policy shall be no less than \$1,000,000.00 for each claim of an individual and \$2,500,000.00 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. Any and all policies must name Grantor as an additional insured and waive all rights of subrogation against Grantor. Grantee's liability or the coverage limits required by this Agreement shall not be reduced by any insurance held by Grantor or any of the lessees, permittees or assigns thereof.

8. **Governing Law; Venue.** This Easement is governed by the laws of the State of Utah, without regard to its choice or conflicts of law principles. Grantee consents to the exclusive jurisdiction of the courts in the Third Judicial District Court for Salt Lake County, Utah, in any dispute arising under the terms of this Agreement or as a result of operations carried on under this Agreement, subject, however, to any legal requirement for prior exhaustion of administrative remedies.

9. **Assignment.** Grantee may not assign or sublease all or part of this Agreement without Grantor's prior written consent. Any assignment or sublease made without Grantor's written consent will be void as from the date of the purported assignment or sublease. An assignment or sublease does not relieve Grantee of its liabilities and obligations under this Agreement.

10. **Compliance with Law; Waste.** Grantee, in exercising the privileges granted by this Easement, shall comply with the provisions of all Federal, State, County, and local laws, ordinances, and regulations which are applicable to the Easement Lands, whether now in existence or hereafter enacted, including without limitation any regulations enacted by Grantor or a

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successor agency. 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. Grantee may not permit and shall abate any hazardous condition on or associated with its use of the Easement Lands.

11. **Reclamation.** Grantee shall use reasonable efforts to reclaim disturbed areas not required for continuing operations by leveling, reseeding and other reasonably necessary steps to prevent soil erosion, promote the establishment of suitable vegetation, and control noxious weeds and pests. Upon termination of this Agreement, if requested by Grantor, Grantee shall remove any and all Improvements and restore the Easement Lands to their approximate original condition.

12. **Fill Materials and Waste.** Grantee shall not allow any deposit of ballast, refuse, garbage, waste matter, chemical, biological or other wastes or pollutants within or upon the Easement Lands by Grantee or its agents, employees or contractors. If the Grantee fails to remove all fill material, wastes or materials described above from the Easement Lands, Grantor may at its option remove such materials and charge the Grantee for the cost of removal and disposal.

13. **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 with Grantee's rights under this Easement or to dispose of Easement Lands by sale or exchange.

15. **Existing Interests.** Grantee accepts the Easement subject to all existing easements, rights of way, and other encumbrances. Grantee shall notify and coordinate all use of the Easement Lands with the holders of state issued interests on the Easement Lands that are set forth on **Exhibit C** attached hereto.

16. **Covenants Against Liens.** Grantee shall not suffer or permit to be enforced against the Easement Lands or any part thereof, and shall indemnify and hold harmless Grantor for, from, and against (i) any mechanics', materialman's, contractor's, or subcontractor's liens arising from; and (ii) any claim for damage growing out of the work of, any construction, maintenance, repair, restoration, replacement, or improvement 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.

17. **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 following addresses, 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

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675 East 500 South, Suite 500
Salt Lake City, UT 84102

If to Grantor: Kangaroo Self Storage, LLC
741 Desert Bloom Ct.
Washington, UT 84780

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.

18. **Default.** In the event of a default or breach of any of the terms of this Agreement by Grantee, Grantor will provide Grantee with written notice of the default and 30 days from the date of the notice for Grantee 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 time period set forth in the written notice, or such longer time as granted in Grantor's discretion, Grantor may terminate this Easement. 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 and all Improvements on the Easement Lands shall, at Grantor's discretion, be forfeited and become the property of Grantor. In addition, Grantor may exercise any other right or remedy it may have at law or equity.

19. **Cultural, Archaeological, Paleontological, and Antiquities Resources.**

a. Prior to commencing any surface disturbing operations or any operations that have the potential to affect Historic Properties, whether a new surface disturbing activity or outside existing disturbed areas, Grantee shall complete a Cultural Resource Survey prepared in accordance with applicable laws and regulations, or otherwise provide evidence of compliance with Utah Administrative Code R850-60-800.

b. Grantee must contract for and pay the costs of the Cultural Resource Survey.

c. Grantee shall provide cultural resource compliance materials to Grantor prior to commencing operations. Grantor will review all cultural resource compliance materials provided by Grantee, and may approve, condition, or deny its consent to the activity based on impacts to Cultural Resources. Grantor may require Grantee to complete appropriate cultural resources mitigation measures as a condition of conducting surface disturbing operations.

d. Pursuant to all applicable laws regarding cultural, archaeological, paleontological, and antiquities resources, and pursuant to Utah Administrative Code R850-60-900, upon discovery of a Site, Historic Property, Remains, Antiquities, or Critical Paleontological Resources, Grantee shall immediately cease all activities until such time as the discovery has been evaluated and treated to Grantor's satisfaction.

e. All Specimens are and will remain the property of the State of Utah.

f. Definitions in this clause:

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- i. "Antiquities" is defined in Utah Code § 76-6-901(1).
- ii. "Critical Paleontological Resources" is defined in Utah Code § 79-3-102(4).
- iii. "Cultural Resources" is defined in Utah Administrative Code R850-1-200(8).
- iv. "Cultural Resource Survey" is defined in Utah Administrative Code R850-1-200(9).
- v. "Historic Properties" is defined in Utah Code § 9-8-302(5).
- vi. "Remains" is defined in Utah Code § 9-9-402(11).
- vii. "Site", for purposes of archaeology, is defined in Utah Code § 9-8-302(17) and Utah Administrative Code R850-1-200(31), and for paleontological, is defined in Utah Code § 79-3-102(14) and Utah Administrative Code R850-1-200(20).
- viii. "Specimen", for purposes of archaeology, is defined in Utah Code § 9-8-302(18) and Utah Administrative Code R850-1-200(33), and for paleontological, is defined in Utah Code § 79-3-102(15).

20. **Inspection.** Grantor reserves the right to inspect the Easement Lands at any time and recall Grantee for correction of any violations of stipulations contained herein.

21. **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.

22. **Covenants Run with the Land; Successors and Assigns.** 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.

23. **Interpretation.** This Agreement shall be interpreted and governed by the laws of the State of Utah without regard to its choice or conflicts of law provisions that may refer the interpretation hereof to the laws of another state.

24. **No Waiver.** No waiver of conditions by Grantor or any default of Grantee, or failure of Grantor to timely enforce any provisions of this Agreement shall constitute a waiver 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 from exercising any legal or equitable remedy it may otherwise have.

25. **Fire Suppression.** Grantee shall at all times observe reasonable precautions to prevent fire on the Easement Lands 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 or surrounding property proximately caused by Grantee which necessitates suppression action that incurs cost, Grantee shall pay for such costs.

26. **No Waiver of Sovereign Immunity.** This Easement does not constitute a waiver of sovereign immunity of Grantor.

27. **Entire Agreement.** This Agreement sets forth all the promises, inducements, agreements, conditions, and understandings between the Parties relative to the easement granted herein, and there are no promises, agreements, conditions, or understandings, either oral or written, express or

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implied, between them other as set forth in this Agreement. The Parties may only amend this Agreement in a writing signed by both Parties.

28. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement invalid, such determination will not affect the validity of any other provision of this Agreement.

29. **Counterparts and Electronic Signatures.** The Parties may execute this Agreement in counterparts, each of which when taken together will be deemed one and the same document. The Parties may execute this Agreement by exchange of electronic signatures and such electronic signatures are enforceable against the signing party. The Parties agree that an electronic version of this Agreement has the same legal effect and/or enforceability as a paper version as per Utah Code § 46-4-201.

[Signature Pages to Follow]

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IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the Effective Date.

**STATE OF UTAH, SCHOOL AND
INSTITUTIONAL TRUST LANDS
ADMINISTRATION**

Kangaroo Storage, LLC

David Ure

David Ure
Director

Date: 4/21/21, 2021

By: 

Name: Mark Francis
Title: Managing Member

Date: 6/11, 2021

APPROVED AS TO FORM
SEAN D. REYES
ATTORNEY GENERAL

By: *Chris Shiraldi*
Special Assistant Attorney General

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ACKNOWLEDGMENTS

STATE OF UTAH)
)
COUNTY OF SALT LAKE) §

On the 22nd day of June, 2021, personally appeared before me DAVID VRE, who being duly sworn did say that he is the DIRECTOR of State of Utah, School and Institutional Trust Lands Administration, and authorized to execute the above instrument.

DS 718
My commission expires: 5-16-22

Notary Public, residing at: Salt Lake

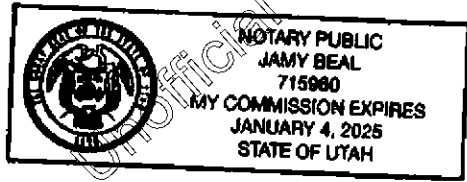


STATE OF UTAH)
)
COUNTY OF Washington) §

On the 14th day of June, 2021, personally appeared before me Mark Francis, who being duly sworn did say that s/he is the Mayor of St. George City, and authorized to execute the above instrument.

Jamy Beal
My commission expires: 1-4-25

Notary Public, residing at: Washington County UT



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Exhibit B

DESCRIPTION OF A 17.0 FOOT WIDE DRAINAGE EASEMENT LOCATED IN THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN

BEGINNING AT A POINT BEING SOUTH 01°10'51" WEST 606.64 FEET ALONG THE SECTION LINE AND NORTH 88°49'09" WEST 1353.11 FEET FROM THE NORTHEAST CORNER OF SECTION 19, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, BEING MONUMENTED BY A 1988 WASHINGTON COUNTY ALUMINUM CAP AND RUNNING;
THENCE NORTH 45°07'03" WEST 275.51 FEET;
THENCE SOUTH 43°57'59" WEST 653.25 FEET;
THENCE SOUTH 55°38'13" WEST 45.06 FEET;
THENCE NORTH 50°51'53" WEST 17.73 FEET;
THENCE NORTH 55°38'13" EAST 48.36 FEET;
THENCE NORTH 43°57'59" EAST 668.79 FEET;
THENCE SOUTH 45°07'03" EAST 291.07 FEET;
THENCE SOUTH 39°08'07" WEST 17.09 FEET;
TO THE POINT OF BEGINNING
HAVING AN AREA OF 16847.3 SQUARE FEET, 0.387 ACRES

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Exhibit C
Existing Encumbrances

DEVL 21

Ft. Pierce Business Park LC
50 North 600 East
St. George, UT 84771