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Sandy City Copy

ORIGINAL DOCUMENT
PROPERTY OF SANDY CITY RECORDERS OFFICE

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03/01/2012 03:53 PM \$0.00
Book - 9996 Pg - 1810-1817
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SANDY CITY
10000 CENTENNIAL PARKWAY
SANDY UT 84070
BY: ZJM, DEPUTY - MA 8 P.

When recorded return to:
Sandy City
10000 Centennial Parkway, Suite 301,
Sandy, Utah 84070

Parcel No. 27-01-427-030

**GRANT OF NONEXCLUSIVE EASEMENT AND AGREEMENT
(LIMITED LIABILITY COMPANY)
Salt Lake County**

SANDY REDEVELOPMENT COMPANY, LLC, a Utah limited liability company whose address is 515 South 700 East, Suite 2R, Salt Lake City, Salt Lake County, State of Utah, GRANTOR, hereby GRANTS AND CONVEYS to the **SANDY CITY**, a body corporate and politic of the State of Utah, having a business address at 10000 Centennial Parkway, Suite 301, Sandy, Utah 84070, GRANTEE, for the sum of ---- TEN DOLLARS ---- and other good and valuable consideration a perpetual nonexclusive easement for the purpose of constructing, repairing, replacing, removing and maintaining thereon electrical service lines and reasonably needed related electrical facilities ("Facilities"). The boundaries of said nonexclusive easement ("**Easement**") are described as follows:

Beginning at a point on the westerly right-of-way line of State Street as established by the REAL SALT LAKE SUBDIVISION, according to the official plat thereof found as Entry No. 10214892 in Book 2007P of plats at Page 359 in the office of the Salt Lake County Recorder, said point being South 0°02'26" West 1380.49 feet and North 89°57'34" West 62.20 feet from a brass cap monument at the intersection of 9000 South Street and State Street, said point also being North 0°02'55" West 1358.47 feet and North 89°43'00" East 30.71 feet from the Southeast Corner of Section 1, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence North 89°43'00" West 15.00 feet; thence North 0°17'00" East 23.00 feet; thence South 89°43'00" East 7.50 feet; thence North 0°17'00' East 132.25 feet; thence North 7°07'30" East 70.16 feet; thence North 82°52'30" West 3.50 feet; thence North 7°07'30" East 17.00 feet to intersect the grantor's northerly property line; thence along said northerly property line, North 89°09'40" East 11.11 feet to the westerly right-of-way line of State Street; thence along said westerly right-of-way line the following two courses: (1) South 7°07'30" West 88.25 feet; (2) South 0°17'00" West 154.80 feet to the point of beginning. The above described easement contains approximately 2,056 square feet in area.

THE CONVENYANCE HEREBY ACCOMPLISHED IS SUBJECT TO the liens, encumbrances, rights-of-way, easements, restrictions, reservations and other matters of record or enforceable at law or equity and any matters which may be disclosed by an accurate survey of the Property, as well as the following terms and conditions constituting an agreement ("**Agreement**") between the Grantor and Grantee with respect to the Easement granted herein:

1. Upon completion of any activities of Grantee, its agents or contractors which disturb the surface of the property of the Grantor, including the servient estate ("**Property**"), Grantee shall at its sole cost and expense promptly restore the Property to a condition substantially similar to that existing immediately prior to such activities. Grantee shall give thirty (30) days prior written notice (except in an emergency, in which case Grantee shall give as much notice as is practicable under the circumstances) of its intent to construct, maintain, remove or replace any improvements if such activities would cause any material disturbance of the surface of the Property, and Grantee shall perform such activities expeditiously and shall take reasonable efforts to minimize any disruption of operations on the Property caused by such activities. Grantee shall be responsible for the maintenance, repair and replacement, at Grantee's sole cost and expense, of the Facilities.
2. Grantee shall at all times at its sole cost and expense keep the Property free from mechanics' liens or similar liens arising on account of or resulting from any act by or on behalf of Grantee. In the event any mechanics' lien or similar lien is recorded against the Property on account of any act by or on behalf of Grantee, Grantee shall, within thirty (30) days after notice from Grantor, cause such mechanics' lien to be removed from the Property. Grantee shall indemnify and hold Grantor harmless from any liability for the payment of such liens.
3. The acquisition or assumption by another party under an agreement with Grantee of any right or obligation of Grantee with respect to the Easement herein granted shall be ineffective unless and until: (i) Grantor shall have been notified in writing of such agreement, and in no case shall Grantee be relieved of the responsibilities or liabilities arising under this Agreement prior to any such acquisition or assignment; and (ii) Grantor shall have been given a copy of an instrument reasonably acceptable to Grantor whereby any such successor or assign of Grantee assumes in writing all of the obligations of Grantee under this Agreement arising after the date of such acquisition or assignment.
4. Grantor reserves all rights to use and enjoy the area of the Easement except for the purposes for which such Easement is granted; provided that, notwithstanding anything to the contrary in this Agreement Grantor shall not (i) materially interfere, disrupt, obstruct or otherwise impede, or allow any other person to materially interfere, disrupt, obstruct or otherwise impede the use of the Easement by Grantee, (ii) damage or materially interfere, or permit any other person to damage or interfere, with the Facilities, and (iii) construct or maintain, nor permit to be constructed or maintained, any building, structure or unreasonable obstruction, under, on or over the Easement, (iv) unreasonably change, or permit any other person to change, the grade or contour of the Property; and/or (v) otherwise disturb, or permit any other person or otherwise disturb, an area within twenty-four inches (24") of the Facilities. Grantee hereby agrees to bury the utility lines to a depth of not less than 36 inches below the surface of the soil, except in such places where ledges of rock or boulders are encountered; then, at Grantee's option, the utility lines may be buried at a depth of not less than 18 inches below the surface, provided however, that Grantee shall at all times comply with any legal requirement that is more stringent. The locations of the underground utilities and conduits shall be marked according to applicable laws and regulations. The markings shall be visible and shall include the place of identifiable post markers for an underground utility line in accordance with applicable laws and regulations.

5. Grantee, in exercising the privileges granted hereunder, shall comply with the provisions of all federal, State, county, and municipal laws, ordinances, and regulations which are applicable to Grantee in connection with the operations of Grantee on the Property. Grantee shall neither commit nor permit any nuisance or waste on the Property.

6. At all times while this Agreement is in effect, Grantee shall maintain a policy of commercial general liability insurance (in a form reasonably acceptable to Grantor) with respect to the Property and Grantee's activities thereon, written on an occurrence basis and including contractual liability coverage to cover Grantee's indemnity obligations hereunder. Such policy shall have a limit of liability of \$2,000,000.00 combined single limit per occurrence. Such policy shall name Grantor as an additional insured. Within ten (10) days after request by Grantor, Grantee shall provide to Grantor evidence acceptable to Grantor of insurance meeting the requirements of this Section. In the event Grantee fails to obtain and maintain insurance, or to provide evidence thereof, as required herein, Grantor shall have the right, but not the obligation, to purchase such insurance in its own name or in the name of Grantee, and Grantee shall reimburse Grantor for the cost of such insurance on demand. Grantee may meet its obligations in this section by maintaining self-insurance, and upon request, shall provide evidence thereof to Grantor. ✓

7. Grantee shall indemnify and hold Grantor and its successors and assigns, harmless from any and all claims, actions, causes of action, losses, expenses (including reasonable attorneys' fees), damages, and any and all other liabilities of any character whatsoever to the extent arising out of any negligent act and/or omission of Grantee or its agents, representatives or employees occurring, arising or resulting from Grantee's activity on the Property unless caused by the misconduct or negligence of Grantor. In cases of concurrent negligence or misconduct by Grantor and Grantee, each party shall be responsible for its respective proportionate share of liability and costs. Notwithstanding the first sentence of this Section 7, Grantee shall not be required to indemnify and hold Grantor and its successors and assigns harmless from claims, actions, causes of action, losses, expenses (including reasonable attorney's fee), damages, or any other liabilities arising out of any pre-existing conditions affecting the Property except to the extent caused by Grantee's failure to comply with the Remediation Plan (as defined below). This section includes, but is not limited to, any release or exacerbation by Grantee of any of the following (collectively, "**Hazardous Substances**") (i) hazardous materials, pollutants, contaminants, dangerous substances, constituents, toxic substances, hazardous or toxic chemicals, hazardous wastes and hazardous substances as those terms are defined in the following statutes and their implementing regulations: the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act 42 U.S.C. § 9601 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., and any other federal, state or local statute or regulations dealing with similar matters, (ii) petroleum, including crude oil and fractions thereof, (iii) natural gas, synthetic gas and any mixtures thereof, (iv) asbestos and/or asbestos-containing materials, (v) PCBs, or PCB-containing materials or fluids, and (vi) any other substance, including sewage sludge, with respect to which any federal, state or local agency or other governmental entity may require either an environmental investigation or an environmental remediation. The Parties acknowledge that the Property are located within the current boundaries of Operable Unit 2 of the Jacobs Smelter Superfund Site (EPA ID No. UT0002391472). Grantee agrees that any activities it conducts hereunder shall be governed by the Sampling and Remediation Plan prepared for the Stockton Bar and Jacobs Smelter Superfund Site ("**Remediation Plan**") that addresses soil exhibiting lead concentrations greater than 2200 mg/kg (the "**Lead Action Level**") and arsenic concentrations greater than 160 mg/kg (the "**Arsenic Action Level**"), as approved by both the United States Environmental Protection Agency (the "**EPA**") and the Utah Department of Environmental Quality (the "**DEQ**") for work Grantee will be conducting on the Property, with written confirmation (the "**Environmental Approval**") of such EPA and DEQ approval to be

provided to Grantor. Grantee agrees that if it becomes aware of soil that exceeds the Lead Action Level or the Arsenic Action Level during the excavation of any material on the Property, then Grantee will take appropriate action to remove and properly dispose of such contaminated soil (with Grantee assuming sole responsibility as the generator of any such soil), and refill the trench with clean soils as provided in the Remediation Plan. Notwithstanding anything to the contrary in this Agreement, in no event shall Grantee be liable to Grantor for any special, indirect, incidental, punitive or consequential damages.

8. If Grantee is unable to obtain the Environmental Approval as required by Section 7 after making commercially reasonable efforts to do so, Grantee shall have the right to terminate this Agreement. Such termination shall be effective upon the recordation of an agreement terminating this Agreement executed by Grantee in the in the official land records of Salt Lake County, Utah. The Parties agree that if this Agreement is terminated in accordance with this Section 8, this Agreement and the termination thereof shall not affect, in any manner, Grantee's right to exercise any right or remedy available at law or in equity to acquire rights to place the Facilities on, over and under the Property, including, without limitation, the right to acquire such rights pursuant to a condemnation proceeding. In the event this Agreement is terminated and Grantee subsequently acquires the right to place the Facilities on, over and under the Property, the amount of any consideration paid to Grantor by Grantee in connection with this Agreement shall be deducted in favor of Grantee from any condemnation award or other amounts otherwise payable to Grantor as a result of such subsequent acquisition.

9. It is expressly understood and agreed that the right herein granted is non-exclusive and Grantor hereby reserves the right, subject to the terms of this Agreement, to issue other non-exclusive easements, leases, or permits on or across the subject property where such uses are appropriate and compatible or to dispose of the Property or portion thereof by sale or exchange provided that any such easements, leases, or permits shall not unreasonably interfere with the Facilities and Grantee's rights under this Agreement.

10. Subject to the terms of this Agreement, Grantor expressly reserves the right to lease the Property (excluding the area covered by this Easement) for the exploration, development and production of sand, gravel, aggregates, oil, gas and all other minerals, together with the right of ingress and egress upon and across the Property, provided that any such use shall not unreasonably interfere with the Facilities and Grantee's rights under this Agreement. Grantee agrees that the removal of ordinary sand and gravel or similar materials from the Property is not permitted except to the extent incidental to the construction, repair, maintenance or operation of the Facilities.

11. It is hereby understood and agreed that all treasure-trove, all articles of antiquity, and critical paleontological resources in or upon the subject lands are and shall remain the property of Grantor. Grantee agrees that all costs associated with archeological and paleontological investigations on the Property that Grantor is required by law to conduct as a result of Grantee's use of the Property will be borne by Grantee. Grantee further agrees to immediately notify Grantor if any discovery of "ancient human remains" or "archaeological resources" or a "site" or "specimen," as defined in Section 9-8-302 and/or 79-3-102 Utah Code Annotated (1953), as amended (collectively, a "Specimen"), is made on the Property, and Grantee becomes aware that the discovery is a Specimen, and shall modify construction or maintenance therein until such time as the Specimen has been treated as required by law.

12. Grantee accepts the Property and all aspects thereof "AS IS", "WHERE IS", without warranties, except as to title of the Property with respect to claims arising by, through or under Grantor, either express or implied, "with all faults", including but not limited to both latent and patent defects, and the existence of Hazardous Substances, if any. Grantee hereby waives all warranties, express or implied, regarding the condition and use of the Property, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the Easement is granted to

Grantee subject to: (a) any state of facts which an accurate ALTA/ASCM survey or physical inspection of the Property might show, (b) 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 (c) all reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity. Grantee shall have no claim for damages or refund against Grantor for any claimed failure or deficiency of Grantor's title unless such claim arises by, through or under Grantor.

13. In the event that Grantee is in default of this Agreement, Grantor shall have the following rights in addition to other remedies provided herein:

(a) In the event that a dangerous or harmful hazard or condition exists on the Property as a result of Grantee's breach of its obligations under this Agreement which would put Grantor, Grantee or other users including their respective employees, contractors or agents in material risk of imminent harm, then on an emergency basis, Grantor may immediately provide written and/or oral notice to Grantee and Grantee shall promptly undertake any and all commercially reasonable actions under the circumstances to remedy such harmful hazard or condition in accordance with applicable law, or, if no applicable law governs such hazard to condition, to the reasonable satisfaction of Grantor. If Grantee fails to promptly undertake any and all actions necessary to remedy and correct such harmful hazard or condition in accordance with the foregoing sentence, Grantor may thereafter exercise any and all rights and remedies herein.

(b) In the event a breach by Grantee of its obligations under this Agreement materially interferes with the access, use or enjoyment of the Property by Grantor or its lessees, agents or contractors, Grantor may provide written notice to Grantee of such breach. If Grantee fails to cure such breach within ten (10) business days of receipt of such written notice, or if the breach cannot reasonably be cured within ten days, such longer time as is reasonably needed to do so, Grantee may thereafter exercise any and all rights and remedies herein.

(c) In the event of a breach of this Agreement (other than those circumstances identified in Sections 13(a) or 13(b) above), Grantor may provide written notice to Grantee describing such breach and Grantee shall promptly discontinue the activities resulting in the breach. If Grantee fails to discontinue the breach and cure any default condition within thirty (30) days of receipt of written notice from Grantor, then Grantor may exercise any and all rights and remedies herein; provided, however that if the nature of the breach or default condition is such that a cure of the default condition cannot be accomplished within the 30-day notice period, then Grantee shall have such additional time as may be reasonably required to cure such default condition so long as Grantee begins efforts to cure the default promptly after receiving notice and diligently continues to pursue efforts to complete the cure of the default.

14. If Grantee fails to cure a default within the applicable cure period, Grantor may: (a) bring an appropriate action against Grantee for specific performance; (b) bring an appropriate action against Grantee for damages; or (c) exercise any right or remedy available at law or in equity. If Grantee fails to perform any of its obligations under this Agreement, and such failure continues beyond the applicable cure period, Grantor shall have the right, but not the obligation, to perform any such obligation of Grantee at the sole cost and expense of Grantee, and Grantee shall reimburse Grantor for all reasonable costs incurred by Grantor in performing such obligation, together with interest thereon at a rate equal to twelve percent (12%) per annum, within thirty (30) days after demand therefor, which demand shall be accompanied by reasonable documentation evidencing such costs. Nothing in this Section shall be construed as a limitation of Grantor's remedies in the event of a default under this Agreement by Grantee, and Grantor expressly reserves all legal and equitable remedies in the event of such default.

15. Grantor reserves the right to inspect the Property at any time and require Grantee to promptly correct any violations of Grantee's obligations hereunder.

16. All notices required to be given under this Agreement shall be in writing and shall be transmitted either by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and seventy-two (72) hours after dispatch, if mailed in accordance with the above. Notices to the respective Parties shall be sent to the following addresses, or to such other address as designated in writing by a party to the other party:

If to Grantor:
Sandy Redevelopment Company, LLC
9256 South State Street
Sandy Utah 84070
Attention: President

If to Grantee:
City Engineer
8775 South 700 West
Sandy, Utah 84070

Each party shall notify the other of any changes in its mailing address and daytime telephone number within ninety (90) days of change.

17. 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 Agreement. No provision in this Agreement shall be construed to prevent Grantor from exercising any legal or equitable remedy it may otherwise have.

18. Each party, from time to time, shall execute, acknowledge, subscribe and deliver to or at the request of the other party such documents and further assurances as may reasonably require for the purpose of evidencing, preserving or confirming the agreements contained herein.

19. The Parties shall not, by virtue of this Agreement nor by the act of any party, be deemed principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

20. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their heirs, personal representatives, successors and assigns. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the respective assigns and successors of the Parties.

21. Nothing in this Agreement, expressed or implied, is intended to confer any rights upon any person or entity other than the Parties and their successors and assigns.

22. No modification of this Agreement shall be made or effective unless and until such modification is executed by Grantee and Grantor, or their successors or assigns.

23. This Agreement constitutes the sole agreement between the Parties and supersedes any and all other agreements, whether oral or written, with respect to the obligations identified herein. The Parties acknowledge that no representations, inducements, promises, or agreements, whether oral or otherwise, have been made by any party or anyone acting on behalf of any party which is not embodied herein; and that no other agreement, statement, or promise not contained in this Agreement regarding the provisions of this Agreement shall be valid or binding.

24. In the event either Grantor or Grantee commences litigation to enforce any of the terms and conditions of the Agreement, the unsuccessful party to such litigation shall pay, within ten (10) days of the date when any judgment of any court of competent jurisdiction shall have become final and all rights of appeal therefrom have expired, all costs and expenses, including attorneys' fees incurred therein by the successful party (which costs and expenses shall be included in the amount of the judgment).

25. Each party consents 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 related to the Right-of-Way and Easement. Service of process in any such action is hereby agreed to be sufficient if sent by registered mail to a party in accordance with this Agreement. Each party agrees for itself and for its successors and assigns that any suit brought by it or its successors or assigns may be maintained only in the Utah State District Court of Salt Lake County.

26. Each individual executing this Agreement represents and warrants: (i) that he or she is authorized to do so on behalf of the respective party to this Agreement; (ii) that he or she has full legal power and authority to bind the respective party in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority; and (iii) that the execution, delivery, and performance by the respective party of this Agreement will not constitute a default under any agreement to which such party is a party.

[Signature Page Follows}

SANDY CITY APPROVALS

Department _____
Risk Mgt. CHP _____
Budget PK _____
Legal Form ED _____
Purchasing, Maintenance N/A _____

