

Easements Page 1 of 15
Russell Shirts Washington County Recorder
04/17/2018 02:05:27 PM Fee \$0.00 By STATE
OF UTAH SCHOOL AND INSTITUTIONAL TRUST
LANDS ADMINISTRATION

AFTER RECORDING PLEASE RETURN TO:

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

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

Tax ID Nos: SG-5-3-28-111; SG-5-3-28-220, SG-5-3-32-110,
SG-5-3-32-111, SG-6745-TR, SG-6745-1-3, and SG-6745-R-1

EASEMENT NO. 2166

Fund: School

THIS EASEMENT NO. 2166 (the "Agreement") is entered into effective this 17th day of April 2018 (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; DSG HOLDINGS, LLC, 120 East St. George Blvd., St. George, Utah 84770; DESERT CANYONS LAND, LLC, 1472 East 3950 South, St. George, Utah 84790; MESA CANYON, LLC, 1472 East 3950 South, St. George, Utah 84790; NEW DESERT HOLDINGS, LLC, 619 South Bluff Street, Tower 2, St. George, Utah 84770; FACTION, LLC, 619 South Bluff Street, Tower 2, St. George, Utah 84770; and SALISBURY DEVELOPERS, INC., 494 West 1300 North, Springville, Utah 84663 (together, the "GRANTORS"), and ST. GEORGE CITY, 175 East 200 North, St. George UT 84770 (the "GRANTEE"). The SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION is sometimes referred to as "SITLA". DESERT CANYONS LAND, LLC, MESA CANYON, LLC, NEW DESERT HOLDINGS, LLC, FACTION, LLC, AND SALISBURY DEVELOPERS, INC. are sometimes collectively referred to as "DEVELOPER".

A. GRANTORS each separately own certain parcels of land within the City of St. George, Utah ("GRANTORS' Property").

B. GRANTEE desires to provide and operate certain underground utilities to serve the South Block area of St. George City and other land near the South Block. A waterline was previously constructed on GRANTORS' Property (the "Waterline") to service development in the area. GRANTORS now desire to transfer the Waterline and the right to operate the Waterline to GRANTEE.

C. GRANTEE now desires to secure an easement for the Waterline and for other public utilities described herein.

NOW, THEREFORE, for good and valuable consideration, plus a \$750 application fee paid by DEVELOPER, the parties agree as follows:

1. **Grant of Easement.** GRANTORS hereby grant to GRANTEE a 60 foot wide easement, over those lands generally depicted in **Exhibit A** and more particularly described in **Exhibit B** (the "Easement Lands"), for operation, maintenance, repair or replacement of the

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Waterline and other public utilities (together, the "Improvements"). All engineering and construction of the Improvements shall be performed by DEVELOPER in a first class workmanlike manner, and in accordance with the requirements of any and all laws, ordinances and regulations applicable thereto. DEVELOPER shall receive all required permits and approvals from appropriate governmental entities prior to constructing the Improvements on the Easement Lands. GRANTEE shall own all public utility Improvements, including the previously constructed Waterline, during the term of this Agreement.

2. **Payment of Costs.** DEVELOPER shall pay all costs associated with the installation and construction of the Improvements. GRANTEE, after installation, construction, dedication and acceptance of the Improvements to GRANTEE, shall pay all costs associated with the operation, maintenance, repair, or replacement of the Improvements. GRANTEE hereby agrees to permit GRANTORS to connect to the Improvements to service land owned by GRANTORS in the vicinity of the Improvements at such time as is necessary for the development of the property, in accordance with GRANTEE'S ordinances and development approvals.

3. **Term.** The easement granted herein is perpetual, except as set forth herein. The easement will terminate and vacate upon dedication of the easement area to GRANTEE as roadway. The easement also will terminate when 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 one or more party defined as DEVELOPER will purchase the property currently owned by SITLA that is the subject to this easement, and thereafter the easement area will be dedicated to GRANTEE as public roadway. DEVELOPER will work in good faith with SITLA and GRANTEE to provide additional or replacement easements to GRANTEE for any portions of the easement area that are not dedicated as public roadway within a reasonable time, or if there are development delays as determined by GRANTEE.

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

5. **Insurance.** DEVELOPER shall carry liability insurance covering bodily injury, loss of life or property damage arising out of or in any way related to DEVELOPER'S activities on the Easement Lands. 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. DEVELOPER'S liability or the coverage limits required by this Agreement shall not be reduced by any insurance held by SITLA or GRANTEE

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or any of the lessees, permittees or assigns thereof. GRANTEE shall also 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 those same amounts as set forth for DEVELOPER.

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 that owns the applicable portion of the Easement Lands unless and until the applicable 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.

9. **Easement Non-Exclusive.** It is expressly understood and agreed that the right herein granted by SITLA to GRANTEE, is non-exclusive and SITLA hereby reserves the right to issue other non-exclusive easements, leases, or permits on or across the Easement Lands (with GRANTEE'S notice and approval, which approval shall not be unreasonably withheld) and where such uses are appropriate and compatible, or to dispose of the property by sale or exchange (GRANTEE's notice and approval shall not be necessary for the sale or exchange of the Easement Lands).

10. **Existing Interests.** DEVELOPER shall be responsible to notify holders of state issued interests on the portion of the Easement Lands owned by the State of Utah, School and Institutional Trust Lands Administration, as such interests are set forth on **Exhibit C** attached hereto, of DEVELOPER'S rights and plans hereunder. GRANTEE accepts this Agreement subject to all such existing interests, and DEVELOPER accepts responsibility for coordination of its activities with such other interested parties.

11. **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 GRANTORS 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; and (ii) any claim for damage growing out of the work of, any construction, repair, restoration, replacement, or improvement

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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 GRANTORS 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 GRANTORS 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 GRANTORS 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. 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 the parties, including but not limited to DEVELOPER'S failure to construct the Improvements as described herein, 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 DEVELOPER does not remedy the default in the 30-day time period set forth in the written notice, or such longer time as granted in the non-defaulting party's sole discretion, the party on which the default occurs may terminate the easement granted herein only for the portion of the Easement Lands owned by that party. Such termination shall be effective upon the terminating party's written notice to the other parties to this Agreement. If GRANTEE is in default, and does not remedy the default in the 30-day time period set forth in the written notice, SITLA may terminate the easement granted herein only for the portion of the Easement Lands owned by SITLA. Such termination shall be effective upon SITLA'S written notice to GRANTEE, and the other parties to this Agreement. Upon receipt of such notice and failure to remedy, GRANTEE shall immediately surrender possession only of the Easement Lands owned by SITLA, and all improvements thereon shall be forfeited and become property of SITLA, in its discretion. 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 owed by SITLA and shall comply with all applicable laws and regulations of any governmental agency having jurisdiction. In the event of a fire on the

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Easement Lands owned by SITLA proximately caused by GRANTEE which necessitates suppression action that incurs cost, GRANTEE shall pay for such costs.

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 SITLA are and shall remain the property of the State of Utah. GRANTEE agrees to cease all activity on the Easement Lands and immediately notify the State of Utah, through the School and Institutional Trust Lands Administration 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 the State of Utah.

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

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

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 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 GRANTORS of any default of GRANTEE or failure of GRANTORS 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 GRANTORS from exercising any legal or equitable remedy they may otherwise have.

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IN WITNESS WHEREOF, the parties have caused these presents to be executed this 17th
day of April 2018.

GRANTORS:

STATE OF UTAH, SCHOOL AND
INSTITUTIONAL TRUST LANDS ADMINISTRATION

By: David Ure
DAVID URE, DIRECTOR

APPROVED AS TO FORM
SEAN D. REYES
ATTORNEY GENERAL

By: Michelle E. McCuller
Special Assistant Attorney General

DSG HOLDINGS, LLC

By: [Signature]
Its: MANAGER

DESERT CANYONS LAND, LLC

By: Ed Burgess
Its: Manager

MESA CANYON, LLC

By: Ed Burgess
Its: Manager

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NEW DESERT HOLDINGS, LLC

By: [Signature]
Its: Troy Ence

FACTION, LLC

By: [Signature]
Its: Troy Ence

SALISBURY DEVELOPERS, INC.

By: [Signature]
Its: Rick Salisbury

GRANTEE:

City of St. George

By: [Signature]
Its: Mayor
Attest: Christine Journeay
City Recorder



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

By: [Signature]
Its: Desert Color Manager, LLC

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STATE OF UTAH)
)
)
COUNTY OF SALT LAKE)

On the 14th day of April 2018, personally appeared before me
DAVID URE, who being duly sworn did say that he is the Director of the STATE OF UTAH,
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, and authorized to
execute the above instrument.

My commission expires:

11/10/2020

Michelle K Vest
Notary Public, residing at:



STATE OF UTAH)
)
)
COUNTY OF Washington)

On this 21 day of February 2018, personally appeared before me _____
Brett Burgess, the Manager of, DSG HOLDINGS, LLC who acknowledged that
(s)he, being duly authorized, did execute the foregoing instrument on behalf of DSG HOLDINGS,
LLC.

[Signature]



STATE OF UTAH)
)
)
COUNTY OF Washington)

On this 16 day of February 2018, personally appeared before me _____
Ed Burgess, the Manager of, DESERT CANYONS LAND, LLC who
acknowledged that (s)he, being duly authorized, did execute the foregoing instrument on behalf of
DESERT CANYONC LAND, LLC.

[Signature]



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STATE OF UTAH)
)
COUNTY OF Washington)

On this 16 day of February 2018, personally appeared before me _____
Ed Burgess, the Manager of, MESA CANYON, LLC who acknowledged that
(s)he, being duly authorized, did execute the foregoing instrument on behalf of MESA CANYON,
LLC.



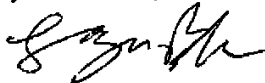
STATE OF UTAH)
)
COUNTY OF Washington)

On this 21 day of February 2018, personally appeared before me _____
Troy Ence, the Manager of, NEW DESERT HOLDINGS, LLC who
acknowledged that (s)he, being duly authorized, did execute the foregoing instrument on behalf of
NEW DESERT HOLDINGS, LLC.



STATE OF UTAH)
)
COUNTY OF Washington)

On this 21 day of February 2018, personally appeared before me _____
Troy Ence, the Manager of, FACTION, LLC who acknowledged that (s)he,
being duly authorized, did execute the foregoing instrument on behalf of FACTION, LLC.



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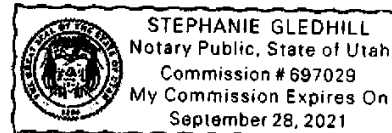
STATE OF UTAH)
)
COUNTY OF)

On this 22nd day of February 2018, personally appeared before me Rick Salisbury, the President of, SALISBURY DEVELOPERS, INC. who acknowledged that (s)he, being duly authorized, did execute the foregoing instrument on behalf of St. George City.

My Commission Expires:
Sept. 28, 2021

Stephanie Gledhill

STATE OF UTAH)
)
COUNTY OF)



On this 5 day of April 2018, personally appeared before me Jonathan T Pike, the Mayor of, St. George City who acknowledged that (s)he, being duly authorized, did execute the foregoing instrument on behalf of St. George City.

My Commission expires:

3/03/2021

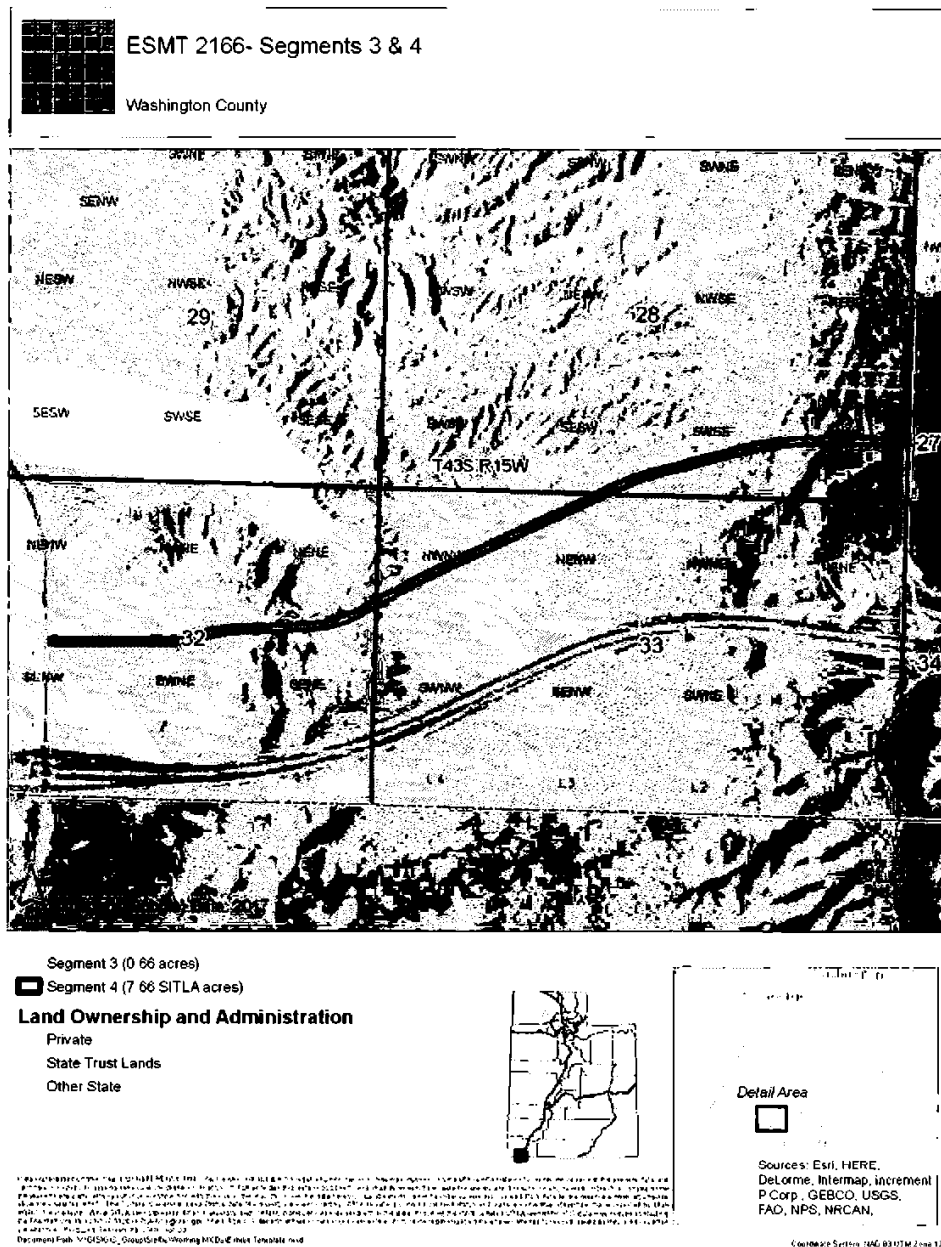
Diana M Hamblin
Notary Public, residing at:



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EXHIBIT A
Easement Lands



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EXHIBIT B
Legal Description

Water Transmission Line Access/Easement – Segment 3

Beginning at a point which is North 88°45'43" West 760.36 feet along the North Section line and South 00°00'00" East 1619.74 feet from the North 1/4 corner of Section 32, Township 43 South, Range 15 West, of the Salt Lake Base and Meridian; running thence North 89°59'50" East 25.56 feet to a point on the Westerly Right-of-Way of River Road Extension Amended, Recorded on June 29, 2010 as Document No. 20100026540 in the office of the Washington County Recorder, in said county, State of Utah; thence along said Right-of-Way South 00°00'31" East 1013.17 feet to a point on the Northerly boundary of Phase 2B Re-Use Water Line Easement, Recorded on January 12, 2009 as Document No. 20090000918 in the office of the Washington County Recorder, in said county, State of Utah; thence along said boundary North 88°14'00" West 88.44 feet, thence North 01°46'00" East 33.00 feet, thence South 88°14'00" East 60.00 feet, thence North 00°05'57" East 979.31 feet to the point of beginning.

Section 32, TS 43 S, R 15 W, SLB&M:

The total Area of the Water Transmission Line Access/Easement Segment 3, as described above, is 28,847 sq.ft. or 0.66 acres, more or less.

Water Transmission Line Easement – Segment 4

A Strip of land 60.00 feet in width, being 30 feet left and right of the described centerline, to be used as a Water Transmission Line Easement, located within Sections 32, 33 and 28, Township 43 South, Range 15 West, Salt Lake Base & Meridian, Washington County, State of Utah, the centerline being more particularly described as follows:

Beginning at a point which is North 88°45'43" West 634.77 feet along the North Section line and South 00°00'00" East 1627.02 feet from the North 1/4 corner of Section 32, Township 43 South, Range 15 West, of the Salt Lake Base and Meridian; said point being on the Easterly Right-of-Way of River Road Extension Amended, Recorded on June 29, 2010 as Document No. 20100026540 in the office of the Washington County Recorder, in said county, State of Utah; running thence North 89°59'50" East 1093.96 feet to a point on the arc of a 1288.00 foot radius curve concave to the left, thence Northeasterly 408.74 feet along the arc of said curve through a central angle of 18°10'57", the chord of which bears North 80°54'22" East for a distance of 407.03 feet to a point of reverse curvature on the arc of a 1312.00 foot radius curve concave to the right, thence Northeasterly 357.25 feet along the arc of said curve through a central angle of 15°36'04", the chord of which bears North 79°36'55" East for a distance of 356.14 feet; thence North 87°24'57" East 714.09 feet to a point on the arc of a 1188.00 foot radius curve concave to the left, thence Northeasterly 547.78 feet along the arc of said curve through a central angle of 26°25'08", the chord of which bears North 74°12'23" East for a distance of 542.94 feet; thence North 60°59'49"

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East 190.43 feet to a point on the East line of said Section 32, thence North 60°59'49" East 408.19 feet to a point on the arc of a 2978.00 foot radius curve concave to right; thence Northeasterly 212.98 feet along the arc of said curve through a central angle of 04°05'51", the chord of which bears North 63°02'45" East for a distance of 212.93 feet; thence North 65°05'41" East 593.49 feet, thence North 64°37'55" East 1308.82 feet to a point on the North line of said Section 33, thence North 64°37'55" East 135.05 feet to a point on the arc of a 2512.00 foot radius curve concave to the right, thence Northeasterly 447.67 feet along the arc of said curve through a central angle of 10°12'39", the chord of which bears North 69°44'14" East for a distance of 447.07 feet; thence North 74°50'34" East 726.83 feet to a point on the arc of a 4012.00 foot radius curve concave to the right, thence Northeasterly 1142.78 feet along the arc of said curve through a central angle of 16°19'13", the chord of which bears North 83°00'10" East for a distance of 1138.92 feet; thence South 88°50'14" East 673.95 feet to a point on the East line of said Section 28, said point also being the point of terminus. The side lines of said 20 foot Water Transmission Line Easement to be extended or shortened to meet at angle points and to terminate at boundary.

The total Length of the Water Transmission Line Easement Segment 4, as described above, is 8,962 feet or 1.70 miles more or less.

The total Area of the Water Transmission Line Easement Segment 4, as described above, is 537,720 sq.ft. or 12.34 acres more or less.

Section 28, TS 43 S, R 15 W, SLB&M (SITLA):

1,397 feet or 0.26 miles, and 83,460 sq. ft. or 1.94 acres.

Section 28, TS 43 S, R 15 W, SLB&M (Private):

1,729 feet or 0.33 miles, and 104,104 sq. ft. or 2.39 acres.

Section 32, TS 43 S, R 15 W, SLB&M (SITLA):

2,140 feet or 0.41 miles, and 128,401 sq. ft. or 2.95 acres.

Section 32, TS 43 S, R 15 W, SLB&M (Private):

1,172 feet or 0.22 miles, and 70,328 sq. ft. or 1.61 acres.

Section 33, TS 43 S, R 15 W, SLB&M (SITLA):

2,008 feet or 0.38 miles, and 120,515 sq. ft. or 2.77 acres.

Section 33, TS 43 S, R 15 W, SLB&M (Private):

515 feet or 0.10 miles, and 30,909 sq. ft. or 0.71 acres.

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EXHIBIT C
Existing Encumbrances

ESMTs 1335, 1362, 1543	City of St. George 175 East 200 North St. George, UT 84770
ESMTs 1864, 932	Dixie Power 145 West Brigham Road St. George, UT 84790
ESMT 886	Quality Excavation 113 East 200 North, Suite #2 St. George, UT 84770
PRED 710	Utah Department of Transportation 825 North 900 West Orem, UT 84057-3058
DEVL 1097	Desert Canyons Development 1472 East 3950 South, St. George, UT 84790
DEVL 1100	Desert Color St. George, LLC 730 North 1500 West Orem, UT 84057

St. George

THE BRIGHTER SIDE

April 10, 2018

Michelle E. McConkie
Senior Legal Counsel
State of Utah, School and Institutional
Trust Lands Administration
675 East 500 South, Suite 500
Salt Lake City, UT 84102

Re: Easement No. 2166

Dear Ms. McConkie:

Please have the enclosed Easement executed and recorded. Also, when fully executed, could you see that a scan of this document is emailed to Victoria Hales at victoria.hales@sgcity.org.

Thank you for your assistance.

Sincerely,



Diana Hamblin
Paralegal

enc.

cc: Victoria Hales, Assistant City Attorney

CITY OF ST. GEORGE