

DOC # 20150003648

Agreement Page 1 of 7
Russell Shirts Washington County Recorder
02/03/2015 10:05:48 AM Fee \$ 22.00
By SOUTHERN UTAH TITLE CO

When Recorded Return To:
City of St. George
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Tax ID No. SG-6-1-26-446

ESCAPES AT THE LEDGES PHASE 1 LANDSCAPE MAINTENANCE AGREEMENT BETWEEN THE LEDGES EAST MASTER OWNERS ASSOCIATION AND THE CITY OF ST. GEORGE

This Agreement is entered into this 28TH day of JANUARY, 2015 between the City of St. George, a municipal corporation of the State of Utah (hereinafter referred to as the "City"), and the Ledges East Master Owners Association, a Utah non-profit corporation located in St. George, Utah (hereinafter referred to as the "East MOA"). City and the East MOA are herein collectively referred to as the "Parties."

RECITALS

WHEREAS, The Ledges at Snow Canyon, LLC, a Utah limited liability company located in St. George, Utah (hereinafter referred to as "Developer"), is subdividing the property described on Exhibit A attached hereto and incorporated herein by this reference (the "Property") located on the east side of SR-18 at approximately the Ledges exit, into a subdivision called Escapes at the Ledges Phase 1 (the "Subdivision"), and

WHEREAS, Developer, pursuant to a separate agreement with the City, is installing landscaping in the public roadway right of way (the "Right of Way") along Ledges Parkway and in the roundabout and medians on Canyon Tree Drive (the "Landscape Areas") as part of the improvements for the Subdivision. Such Landscape Areas are more specifically described on Exhibit B attached hereto and incorporated herein, and

WHEREAS, the East MOA has agreed to maintain and repair the installed Landscape Areas as further set forth below, and the individual signing this Agreement on its behalf is authorized and empowered to bind it.

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein by reference.
2. **Representatives.** The representative for the City for purposes of this Agreement will be Wes Jenkins. The representative for the East MOA will be GILBERT JENNINGS.

3. Exhibits. All exhibits attached hereto are incorporated as part of this Agreement.

4. Project Approvals and Compliance with City Design and Construction Standards.

The East MOA expressly acknowledges and agrees that, except as specifically modified or waived herein, nothing in this Agreement shall be deemed to relieve it from the obligation to comply with City Ordinances and City of St. George Standard Specifications for Design and Construction, and all applicable requirements of the City necessary for maintenance and repair of the Landscape Areas, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.

5. Maintenance and Repair of Landscape Areas. The East MOA agrees to maintain and repair the Landscape Areas. The City hereby grants the East MOA the right to access and enter the Right of Way for the sole purpose of maintaining and repairing the Landscape Areas and associated landscape features (for instance, repairing pavement and hard surfaces, pruning, mowing, replacing materials, repairing systems, weed control, litter control, and other maintenance and repair measures). This includes accessing the landscape strips, roundabout, and medians with vehicles and machinery. Any individual performing such work within the Right of Way shall be required to wear orange clothing or outer wear. Youth under the age of 18 will not be permitted to work within the Right of Way. The East MOA will maintain and repair the described Landscape Areas now and in the future. City will not pay or reimburse the East MOA for any work performed to maintain or repair the Landscape Areas now or in the future.

6. Waiver, Release, and Indemnification. The East MOA hereby releases, discharges, indemnifies, defends, and holds harmless the City from any and all claims or liability arising from the performance of the East MOA's duties or activities under this Agreement. This includes any claims or liability asserted by the East MOA's officers, agents, employees, representatives, volunteers, or independent contractors with respect to bodily injury, personal injury, illness, death, or property damage that may result from any duties or activities related to maintenance or repair of the Landscape Areas. The East MOA understands that the City does not assume any responsibility or obligation to provide medical, health, disability, or liability insurance, or any other assistance, in the event of any type of injury related to maintenance or repair of the Landscape Areas within the Right of Way. The East MOA releases, discharges, indemnifies, defends, and holds harmless City, its elected officials, officers, employees, agents, and representatives against the claims of third parties, including any and all claims, suits, causes of action, judgments, appeals, demands, losses, costs, expenses, and damages (including but not limited to all fees and charges of attorneys and other professionals and all court, arbitration, or other dispute resolution costs) caused by, resulting from, or arising out of acts, errors, or omissions of the East MOA when performing any acts to access and enter the Right of Way for the purpose of maintaining or repairing the Landscape Areas. City shall give the East MOA prompt written notice of any such claim or suit filed against City. The East MOA agrees to defend against any such claims brought or action filed against City, whether such claims or

actions are rightfully or wrongfully brought or filed. In case a claim is brought or action filed that is the subject of the indemnity herein, the East MOA agrees that City may employ attorneys of its own selection to appear and defend the claim or action at the expense of the East MOA. Attorneys' fees shall be reasonable. In the event that there is concurrent negligence or fault between the City and the East MOA, each Party shall be responsible to the extent of their respective negligence.

7. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of Utah. The Parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The Parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.

8. Attorney's Fees. Should any Party default on any of the covenants or agreements contained herein, the defaulting Party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. If either Party commences legal action to enforce or interpret any term of this Agreement, the prevailing Party shall be entitled to recover from the other Party all reasonable attorney's fees, court costs, and any other costs incurred in connection with such action, whether at trial or on appeal.

9. Construction. Each of the Parties has had the opportunity to review this Agreement with counsel of their choosing, and the rule of contracts requiring a contract against the Party drafting the same is hereby waived and shall not apply in interpreting this Agreement.

10. Notices. All notices required herein, and subsequent correspondence in connection with this Agreement shall be mailed to the following:

City of St. George
Attn: City Attorney
175 East 200 North
St. George, Utah 84770

Ledges East Master Owners Association
Attn: GILBERT JENNINGS
335 E. ST. GEORGE BLD. #301
ST. GEORGE, UTAH 84770

Such notices shall be deemed delivered following the mailing of such notices in the United States mail. Adequate notice shall be deemed given at the addresses set forth herein unless written notice is given by either Party of a change of address.

11. Assignment. Neither this Agreement nor any of the provisions, terms, or conditions hereof can be assigned to any other party, individual, or entity without prior written consent of City, which consent shall not be unreasonably withheld.

12. **No Joint Venture, Partnership or Third Party Rights.** This Agreement does not create any partnership, joint venture, undertaking, business arrangement or other arrangement between the East HOA and the City. No term or provision of this Agreement is intended to be, nor shall be, for the benefit or obligation of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

13. **Binding Effect.** Subject to the provisions of this document above, all of the provisions of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, heirs, representatives, officers, agents, employees, members, assigns, and receivers.

14. **Integration.** This Agreement contains all the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements or previous agreements between the Parties, whether oral or written, with respect to the subject matter.

15. **Severability.** If any part or provision of this Agreement is determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid, or unenforceable. If any condition, covenant or other provision of this Agreement is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

16. **Survival.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

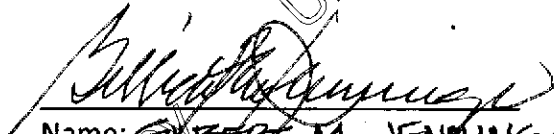
17. **Headings.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

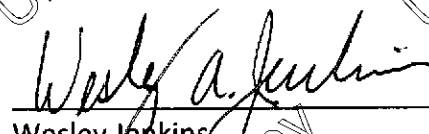
19. **Modification.** The terms and conditions of this Agreement may be amended or modified only by written agreement executed by each of the Parties.

20. **Authority of Parties.** The persons executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated.


East Ledges Master Owners Association


Name: GILBERT M. JENKINS
Title: PRESIDENT

City of St. George


Wesley Jenkins
Assistant Public Works Director

Approved as to form:

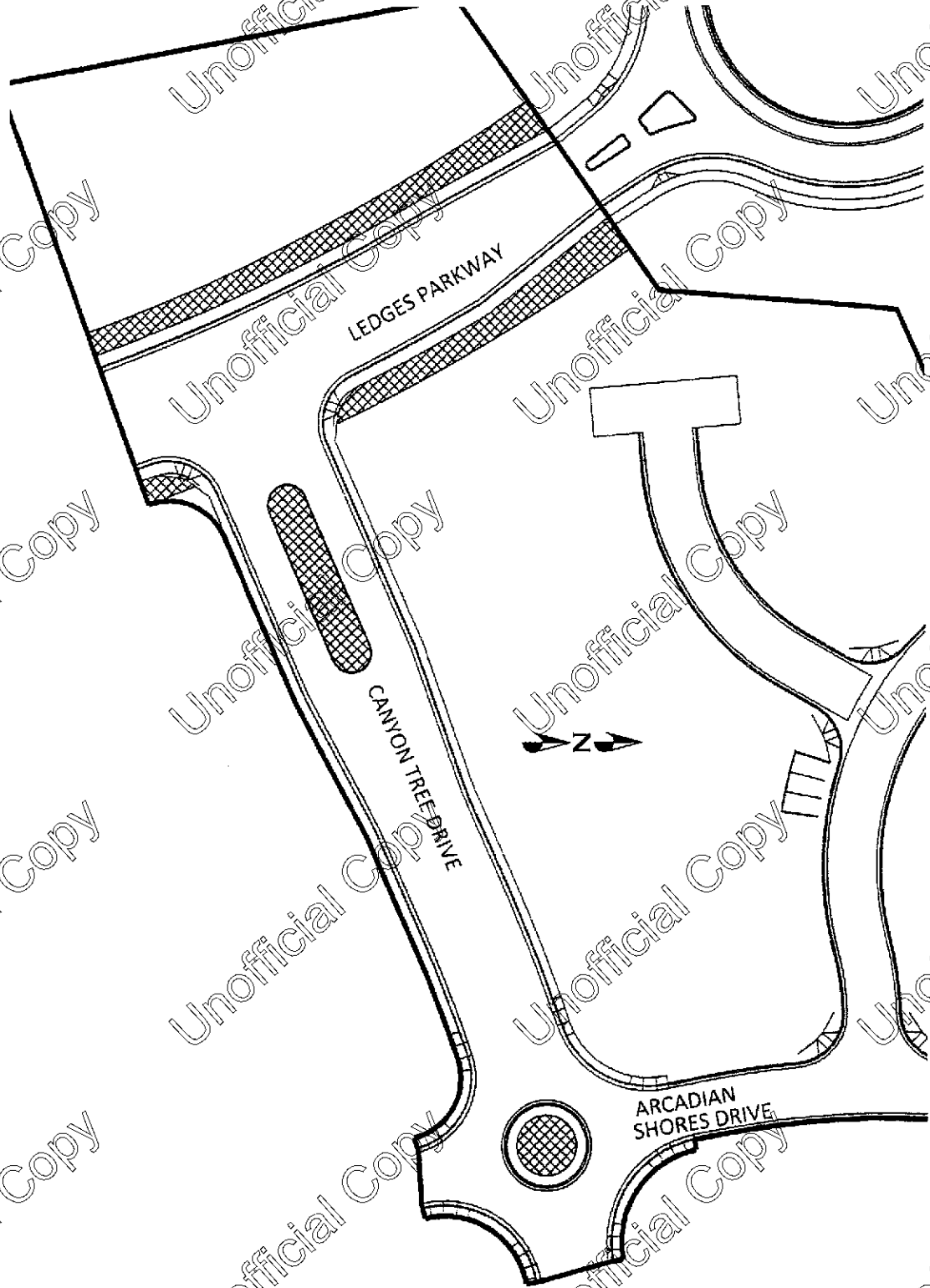

Victoria H. Hales
Assistant City Attorney

**EXHIBIT A
PROPERTY DESCRIPTION**

Real property located in the City of St. George, Washington County, State of Utah, and further identified by Tax ID No. SG-6-1-26-446, and further described as:

THE ESCAPES AT THE LEDGES PHASE 1 OF ST. GEORGE, WASHINGTON COUNTY, UTAH

CONTAINS: APPROXIMATELY 7.339 ACRES



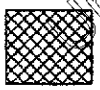
 LANDSCAPE AREA IN PUBLIC
RIGHT-OF-WAY TO BE MAINTAINED BY
LEDGES EAST MASTER OWNERS
ASSOCIATION.

EXHIBIT B