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DOC # 20200044648

Easements Page 1 of 11
Russell Shirts, Washington County Recorder
08/21/2020 03:08:04 PM Fee \$ 40.00
By FIRST AMERICAN TITLE CO - SG



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-5-3-31-433-^{SLC}STC

EASEMENT NO. 2329

Fund: School

THIS EASEMENT NO. 2329 (the "Agreement") is entered into effective this 21 day of July 2020 (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"), St. George City, 175 East 200 North, St. George UT 84770 (the "GRANTEE"), and Desert Color St. George, LLC, a Utah limited liability company ("DEVELOPER").

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's development partners, DEVELOPER, installed certain storm drain facilities and 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.

D. In accordance with Article 10.1 and Article 10.5 of the development agreement dated September 11, 2017 between Trust Lands Administration and Desert Color St. George, LLC ("Developer"), utility easements are granted without compensation.

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 ingress and egress, and to use,

Basement No. 2329
South Block Utility Easement

Page 2 of 11

install, operate, maintain, repair, remove, relocated, or a sewer line and other public utilities (together, the "Improvements").

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

3. Construction of Improvements; Costs and Expenses. DEVELOPER'S engineering, construction, maintenance and repair 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. DEVELOPER shall pay or cause to be paid all costs and expenses in connection with the construction and warranty of the Improvements, and hold Trust Lands Administration and City harmless from any and all liability (including expenses for attorney's fees) which may arise from the construction of said Improvements. Once Improvements are accepted by City, and after the warranty period, City shall pay or cause to be paid all costs and expenses in connection with the use, installation, operation, maintenance, repair, removal, relocation, or replacement of the Improvements, and hold Trust Lands Administration harmless from any and all liability (including expenses for attorney's fees) which may arise from the operation and maintenance of said Improvements.

4. 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.

5. Negligent Acts. GRANTOR, GRANTEE and DEVELOPER 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.

6. Insurance. DEVELOPER (when constructing the Improvements), and GRANTEE (when operating the Improvements) shall carry liability insurance covering bodily injury, loss of life or property damage arising out of or in any way related to its activities on the Easement Lands,

Easement No. 2329
South Block Utility Easement

Page 3 of 11

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. DEVELOPER's and GRANTEE's liability or the coverage limits required by this easement shall not be reduced by any insurance held by the other parties, or any of the lessees, permittees or assigns thereof.

7. **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.

8. **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.

9. **Compliance with Law.** When constructing the Improvements, DEVELOPER shall comply with the provisions of all valid federal, state, county, and municipal laws, ordinances, and regulations which are applicable to the Easement Lands. Neither DEVELOPER (when constructing the Improvements) nor GRANTEE (when operating and maintaining the Improvements) shall commit nor knowingly permit any waste on the Easement Lands. DEVELOPER AND GRANTEE, as applicable, 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.

10. **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. GRANTOR AND DEVELOPER cannot act in a manner inconsistent with GRANTEE'S permitted use, and may not materially prevent or impair the use or exercise of the rights and easement granted herein. DEVELOPER, not GRANTEE, is responsible for any damage or liability to any third party who has a right to use the easement area.

11. **Covenants Against Liens; Indemnity.** DEVELOPER (when constructing the Improvements) and GRANTEE (when operating the Improvements) 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 use of the Easement Lands; and (ii) any claim, loss or liability for damage

Easement No. 2329
South Block Utility Easement

Page 4 of 11

(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 DEVELOPER or GRANTEE on the Easement Lands. DEVELOPER or 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 DEVELOPER or GRANTEE shall in good faith contest the validity of any such lien, claim, or demand, then DEVELOPER or 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 DEVELOPER or 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
City Attorney's Office
175 East 200 North
St. George, UT 84470

If to DEVELOPER: Desert Color St. George, LLC
General Manager
205 East Tabernacle Street No. 2
St. George, Utah 84770

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

Easement No. 2329
South Block Utility Easement

Page 5 of 11

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 of 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. DEVELOPER AND GRANTEE agree 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.

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.

Easement No. 2329
South Block Utility Easement

Page 6 of 11

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 and DEVELOPER.

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 the parties 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. 2329
South Block Utility Easement

IN WITNESS WHEREOF, the parties have caused these presents to be executed this 21
day of July 2020.

GRANTOR:

STATE OF UTAH
SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION

APPROVED AS TO FORM
SEAN D. REYES
ATTORNEY GENERAL

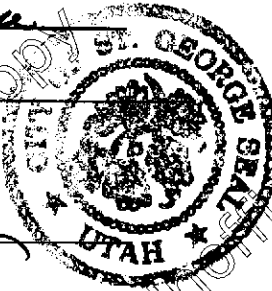
By: David Ure
Name: David Ure
Title: Director

By: Chris Shiraldi
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
Title: Mayor



ATTEST:
Christina Fernandez
Christina Fernandez, City Recorder

Approved as to form:
V. H. Hales 7/21/20
Victoria H. Hales, Assistant City Attorney

DEVELOPER:
DESERT COLOR ST. GEORGE, LLC

By: Aitcher Dansie
Name: AITCHER DANSIE
Title: MANAGER

Easement No. 2329
South Block Utility Easement

STATE OF UTAH)
)
)
COUNTY OF SALT LAKE)
)
)

On the 20th day of July 2020, 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:

5/16/22



Notary Public, residing at:

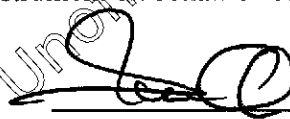


STATE OF UTAH)
)
)
COUNTY OF ~~WASHINGTON~~)
)
)

On this 21 day of July 2020, 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:

04/23/2024



Notary Public, residing at:

St. George, UT

STATE OF UTAH)
)
)
COUNTY OF WASHINGTON)
)
)

Easement No. 2329
South Block Utility Easement

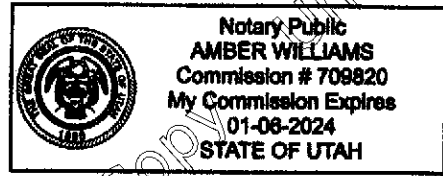
On the 21st day of July 2020, personally appeared before me Mitchell Dancie, who being duly sworn did say that he is the Manager of DEVELOPER, and is authorized to execute the above instrument.

My commission expires:

01-06-2024



Notary Public, residing at: Ivins UT



Easement No. 2329

South Block Utility Easement

Page 11 of 11

EXHIBIT B
Legal Description

A Municipal Utility Easement, located in the Southwest Quarter of Section 25, Township 43 South, Range 16 West, Salt Lake Base and Meridian, Washington County, Utah, more particularly described as:

Beginning at a point that lies North 88°50'55" West along the section line 842.31 feet and North 384.65 feet, from the South Quarter Corner said Section 25, and running thence North 03°49'24" East 177.02 feet; thence northerly along a 676.00 foot radius curve to the right, (long chord bears North 15°15'16" East a distance of 267.95 feet), center point lies South 86°10'36" East, through a central angle of 22°51'44" a distance of 269.74 feet; thence North 26°41'08" East 192.18 feet; thence northerly along a 1475.00 foot radius curve to the left, (long chord bears North 20°49'15" East a distance of 301.43 feet), center point lies North 63°18'52" West, through a central angle of 11°43'46" a distance of 301.96 feet; thence northerly along a 625.00 foot radius compound curve to the left, (long chord bears North 04°39'50" East a distance of 223.33 feet), center point lies North 75°02'38" West, through a central angle of 20°35'03" a distance of 224.54 feet; thence North 84°22'18" East 52.00 feet; thence southerly along a 677.00 foot radius non-tangent curve to the right, (long chord bears South 04°39'50" West a distance of 241.91 feet), center point lies South 84°22'18" West, through a central angle of 20°35'03" a distance of 243.22 feet; thence southerly along a 1527.00 foot radius compound curve to the right, (long chord bears South 20°49'15" West a distance of 312.06 feet), center point lies North 75°02'38" West, through a central angle of 11°43'46" a distance of 312.61 feet; thence South 26°41'08" West 192.18 feet; thence southerly along a 624.00 foot radius curve to the left, (long chord bears South 15°15'16" West a distance of 247.34 feet), center point lies South 63°18'52" East, through a central angle of 22°51'44" a distance of 248.99 feet; thence South 03°49'24" West 177.02 feet; thence North 86°10'36" West 52.00 feet to the point of beginning.

Easement encompasses 60,826 square feet or 1.40 acres.

A storm drain easement located in the Southwest Quarter of Section 25, Township 43 South, Range 16 West, Salt Lake Base and Meridian, Washington County, Utah, being more particularly described as follows:

Beginning at a point that lies North 88°50'55" West along the section line 35.67 feet and North 764.22, from the South Quarter Corner of Section 25, Township 43 South, Range 16 West, Salt Lake Base and Meridian and running thence North 32°04'58" West 43.62 feet; thence North 24°19'52" West 80.45 feet; thence North 65°12'18" East 25.00 feet; thence South 24°19'52" East 78.96 feet; thence South 32°04'58" East 46.02 feet; thence South 67°13'33" West 25.33 feet, to the point of beginning.