

DOC # 20210063439

Easements Page 1 of 12
Gary Christensen Washington County Recorder
09/28/2021 09:24:44 AM Fee \$ 0.00
By ST GEORGE CITY



AFTER RECORDING PLEASE RETURN TO:

Aaron Langston
1593 Grapevine Crossing
Washington, UT 84780

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

Tax ID Nos: SG-5-3-31-433-STL

EASEMENT NO. 2456

Fund: School

THIS EASEMENT NO. 2456 (the "Agreement") is entered into effective this 25 day of August 2021 (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"), and City of St. George, 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 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 GRANTOR and 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 an underground 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/egress and the construction, operation, maintenance, repair, and or replacement of a sewer line and other underground public utilities (together, the "Improvements"). All engineering and construction of the Improvements shall be

performed in a first class workmanlike manner, and in accordance with the requirements of any and all engineering construction plans, laws, ordinances and regulations applicable thereto. DEVELOPER dedicates and GRANTEE accepts the grant and dedication of existing, installed and constructed Improvements, and any future dedicated and accepted improvements, including the previously constructed sewer line and other public utilities, during the term of this Agreement. GRANTEE shall operate and maintain the Improvements and Easement Lands in good condition, in a first-class workmanlike manner in accordance with the requirements of all construction plans, laws, ordinances and regulations applicable thereto.

2. **Improvement Costs.** 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. **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.

4. **Negligent Acts.** GRANTOR and GRANTEE 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.

5. **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 DEVELOPER'S and GRANTEE'S activities on the Easement Lands, 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. GRANTEE'S liability or the coverage limits required by this easement shall not be reduced by any insurance held by GRANTOR, or any of the lessees, permittees or assigns thereof.

Easement No. 2456
South Block Utility Easement

Page 3 of 12

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 unless and until 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 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.

10. **Existing Interests.** GRANTEE shall be responsible to notify holders of state issued interests on the Easement Lands, as such interests are set forth on **Exhibit C** attached hereto, of GRANTEE rights and plans hereunder.

11. **Covenants Against Liens; Indemnity.** GRANTEE 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 GRANTEE'S use of the Easement Lands; and (ii) any claim, loss or liability for damage (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 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.

Easement No. 2456
South Block Utility Easement

Page 4 of 12

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
A Utah municipal corporation
175 East 200 North
St. George, UT 84470

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 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 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 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

Easement No. 2456
South Block Utility Easement

Page 5 of 12

by GRANTOR are and shall remain property of the State of Utah. GRANTEE agrees 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.

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.

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 GRANTOR or GRANTEE 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.

Easement No. 2456
South Block Utility Easement

Page 6 of 12

[Remainder of Page Intentionally Left Blank.
Signature Page to Follow.]

Easement No. 2456
South Block Utility Easement

Page 7 of 12

IN WITNESS WHEREOF, the parties have caused these presents to be executed this ____
day of _____ 202__.

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: Sean D. Reyes
Special Assistant Attorney General

GRANTEE:

CITY OF ST. GEORGE
A Utah municipal corporation
175 East 200 North
St. George, UT 84770

By: Michele Randall
Name: Michele Randall
Its: Mayor

ATTEST:
Christina Fernandez
Christina Fernandez, City Recorder



Approved as to form:
Bryan Peck September 1, 2021
Bryan Peck, Assistant City Attorney

DEVELOPER:
DESERT COLOR ST. GEORGE, LLC

By: Mitchell Dansie
Name: MITCHELL DANSIE
Title: MANAGER

Easement No. 2456
South Block Utility Easement

Page 8 of 12

STATE OF UTAH)
)
)
COUNTY OF)

On the 19th day of August 2021, 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

[Signature]
Notary Public, residing at:

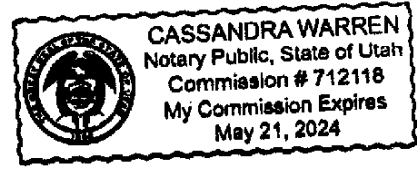


STATE OF UTAH)
)
)
COUNTY OF)

On this 2nd day of September 2021, personally appeared before me Michele Randall, 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:
5.21.2024

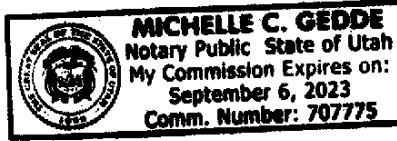
[Signature]
Notary Public, residing at:



Easement No. 2456
South Block Utility Easement

Page 9 of 12

STATE OF UTAH)
)
:§
COUNTY OF WASHINGTON)

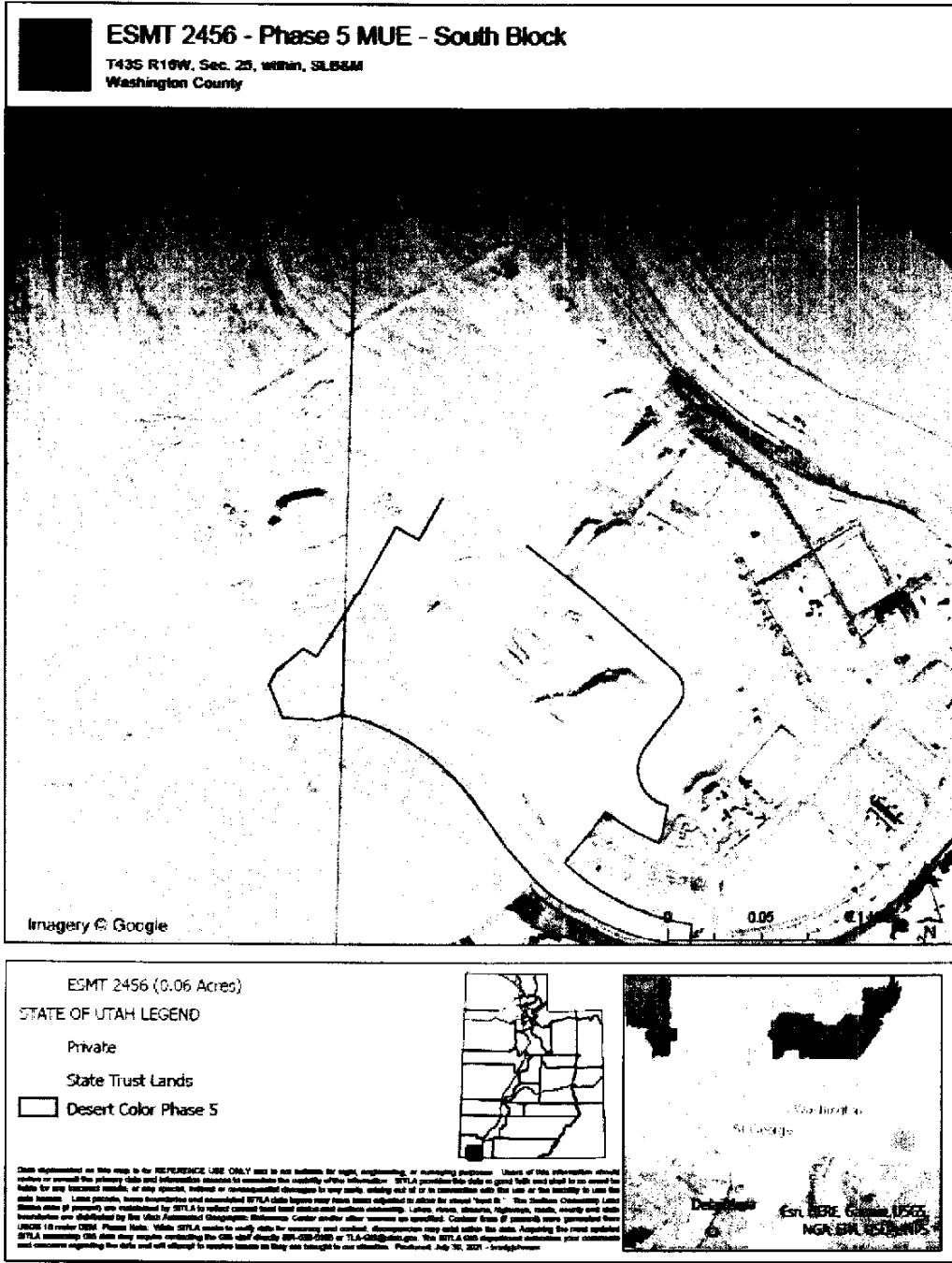


On the 25 day of August 2020, personally appeared before me Mitchell Danste, who being duly sworn did say that he is the Manager of Desert Color St. George, LLC, and is authorized to execute the above instrument.

My commission expires:
September 6, 2023

Michelle C. Gedde
Notary Public, residing at:
Washington County

EXHIBIT A
Easement Lands



Easement No. 2456
South Block Utility Easement

Page 11 of 12

EXHIBIT B
Legal Description

Desert Color Resort Phase 5 Municipal Utility Easement

Beginning at a point which is the most Northerly corner of Lot 557 of Desert Color Resort Phase 5 and running thence North 29°34'27" East 10.00 feet; thence South 60°25'33" East 220.75 feet; thence South 51°54'15" East 41.17 feet to Desert Color Resort Phase 1A Boundary; thence along said boundary South 41°24'48" West 10.01 feet to Desert Color Resort Phase 5 Boundary through the following two (2) courses; North 51°54'15" West 39.85 feet; thence North 60°25'33" West 220.00 feet to the point of beginning.

Contains 0.06 acres

Easement No. 2456
South Block Utility Easement

Page 12 of 12

EXHIBIT C
Existing Encumbrances

DEVL 1100

Desert Color St. George, LLC
730 North 1500 West
Orem, UT 84057