



WHEN RECORDED, RETURN TO:
CW DESERT COLOR, LLC
Attn: Legal Department
1222 W. Legacy Crossing Blvd., Ste. 6
Centerville, UT 84014

Affecting Parcel No.(s): A Portion of SG-DCR-5-514

ACCESS AND UTILITY EASEMENT AGREEMENT

THIS ACCESS AND UTILITY EASEMENT AGREEMENT (this "*Agreement*") is made effective for all purposes as of the 19th day of September, 2022, by and between CW DESERT COLOR, LLC, a Utah corporation sole ("*Grantor*"), and Dixie Escalante Rural Electric Association, Inc. d/b/a DIXIE POWER, its successors and assigns ("*Grantee*").

RECITALS

- A. Grantor holds fee simple title to that certain parcel of real property located in Washington County, Utah, which real property is more particularly described on the attached Exhibit A (the "*Grantor Property*").
- B. Grantor desires to grant Grantee a non-exclusive access and utility easement in perpetuity across the Grantor Property so that various power infrastructure may be constructed and maintained for the benefit of Grantor's property.
- C. Subject to the terms and conditions of this Agreement, Grantor is willing to grant to Grantee a non-exclusive access and utility easement over, upon, across, under, through, and beneath the Easement Area, in the locations described and depicted on the attached Exhibit B (the "*Easement Area*") for the purposes set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties covenant and agree for themselves and their heirs, successors and assigns as follows:

- 1. Grant of Easement. Grantor hereby grants and conveys a non-exclusive access and utility easement (the "*Easement*") upon, over, and across the Easement Area for the uses described herein.
- 2. Shared, Non-Exclusive Easement. Exclusive use of the Easement Area is not hereby granted by the Grantor. Instead, Grantor expressly reserved to itself, and any and all subsequent owners, users, licensees, invitees, guests, and other related parties, the full and unrestricted right to use the Easement Area, subject to the permitted use granted to Grantee.
- 3. Permitted Use. The Grantee shall construct and connect the required power infrastructure in accordance with the approved power plan for the Desert Color Subdivision (the "*Utility Improvements*"). The Easement shall give and convey to the Grantee, or Grantee's successors, heirs, and assigns, herein the right of ingress and egress upon the Grantor Property for the purpose of the location, construction, maintenance, use, installation, removal, and repair of the Utility Improvements at Grantee's sole cost and expense.
- 4. Amendment and Termination. This Agreement may not be amended or modified except with the written consent of the Parties duly recorded in the office of the Washington County Recorder.
- 5. Grantor Property; Maintenance and Repairs. Grantee, its successors, heirs, and assigns, shall restore the Grantor Property to substantially the same or better condition as existed on Grantor Property prior to installation of the Utility Improvements. Upon completion and connection of the power infrastructure in the Easement Area, Grantee shall be obliged to perform all maintenance and repair activities at their own cost and

otherwise confirm that said infrastructure remain in good condition and in compliance with applicable City, County, and other related regulations until such time that the applicable district, including but not limited to the applicable water district, dedicates the Utility Improvements and accepts such maintenance and repair obligations.

6. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. This Agreement shall be recorded in the records of the Washington County Recorder.

7. No Third-Party Beneficiaries. Nothing in this Agreement is intended to create an enforceable right, claim, or cause of any by any third-party against any Party to this Agreement.

8. Authority of Signatory. Each person executing this Agreement certifies that he or she is duly authorized to execute this Agreement on behalf of the Party for which he or she is signing, and that the person has the authority to bind said Party to the terms of this Agreement.

9. Independent Provisions. If any provision herein is held invalid or unenforceable, such a finding shall not affect the validity of the remained of the Agreement, the Parties hereto hereby stipulate that all provisions contained herein are severable and independent.

10. Counterparts. This Agreement and any originals of exhibits referred to herein may be executed in two (2) or more counterparts, each of which (when the original signatures are affixed together with the applicable acknowledgement) shall be an original but all of which shall constitute one and the same instrument.

11. Limit of Benefit. Nothing contained in the Agreement shall be deemed a gift or dedication of any portion of the Grantor Property to the general public or for the public or for any public purpose.

12. Miscellaneous.

12.1 Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, 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 suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

12.2 In the event of a default by a party hereunder, the non-defaulting party shall have the right to prosecute any proceedings at law or in equity against the defaulting party hereto, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

12.3 No waiver by any party of any default under this Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Agreement.

12.4 It is expressly agreed that no breach of or event of default under this Agreement shall: (i) entitle any party to cancel, rescind, or otherwise terminate this Agreement; or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Grantor Property. This limitation shall not affect in any manner any other rights or remedies that a party may have hereunder by reason of any such breach or default.

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

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

12.7 This Agreement shall apply to, inure to the benefit of and bind all parties hereto, their assigns, heirs, personal representatives and other successors.

12.8 No amendment hereto shall be effective unless such amendment has been executed and notarized by the parties or their respective successors and further provided that any such amendment is recorded in the office of the Washington County Recorder.

12.9 This Agreement contains the entire agreement of the parties with respect to the subject matter hereof.

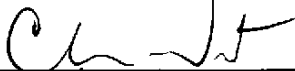
12.10 This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one complete document.

[Remainder of page intentionally left blank. Signature pages follow immediately.]

IN WITNESS WHEREOF, the parties have executed this Access and Utility Easement Agreement the day and year first above written.

GRANTOR:


CW Desert Color, LLC,
a Utah limited liability company

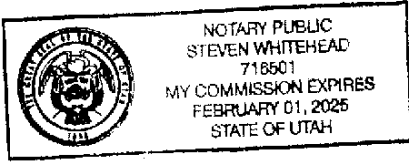
By: 
Name: Chris Winter
Title: Authorized Agent

STATE OF UTAH)
COUNTY OF WASHINGTON) §

On this 19th day of September, 2022, before me personally appeared Chris Winter whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being duly sworn (or affirmed), did say he is the Authorized Agent of CW Desert Color, LLC, a Utah limited liability company, and that the foregoing document was signed by him on behalf of said corporation in his capacity as Authorized Agent.

Witness my hand and official seal.


(Notary Public)



(Seal)

[ADDITIONAL PAGES FOLLOW]

EXHIBIT A

LEGAL DESCRIPTION OF THE GRANTOR PROPERTY

The following described real property located in Washington County, Utah:

ALL OF LOT 514 AS SHOWN ON THE FINAL PLAT FOR DESERT COLOR RESORT PHASE 5 RECORDED
IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER ON 10/22/2021 AS DOCUMENT #
20210068545.

A Portion of Parcel No. SG-DCR-5-514 (for reference purposes only).

EXHIBIT B

LEGAL DESCRIPTION OF THE EASEMENT AREA

A 15 foot wide municipal utility easement being the northeasterly 15 feet of Lot 514, Desert Color Resort Phase 5, Document No. 20210068545, Official Records, Washington County, Utah, more particularly described as follows:

Beginning at the east corner of said Lot 514, point lies South 01°14'25" West along the section line 260.59 feet, and due East 261.34 feet, from the West Quarter Corner of Section 25, Township 43 South, Range 16 West, Salt Lake Base and Meridian, and running thence South 30°18'06" West along the easterly line of said Lot 514, 15.00 feet; thence North 56°32'09" West 15.00 feet; thence North 30°18'06" East 15.00 feet to a point on the northerly line of said Lot 514; thence along said line southeasterly along a 472.50 foot radius non-tangent curve to the right, (long chord bears South 56°32'21" East a distance of 15.00 feet), center point lies South 32°33'04" West through a central angle of 01°49'08", a distance of 15.00 feet, to the point of beginning.

