

3866999

STATE OF UTAH, }  
City and County of Salt Lake, } ss.

I, Kathryn Marshall, City Recorder of Salt Lake City, Utah, do hereby certify that the attached document is a full, true and correct copy of . . . Agreement between Salt Lake City Corporation and William J. Lowenberg, Fern E. Lowenberg, David W. Lowenberg and Susan E. Lowenberg. Grantee desires to acquire from City permission to continue to occupy and use the Wycoff Warehouse as it encroaches upon the east side of the City's right-of-way on 400 West Street in Salt Lake City, Utah, in front of and adjacent to said Building.

passed by <sup>Mayor</sup> ~~City Council~~ Executive Action of Salt Lake City, Utah, . . . January 8, 1980 . . . 19 . . . as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City, this 26th . . . day of . . . October . . . 1983

*Kathryn Marshall*  
City Recorder  
By *Linda Furse*  
Linda Furse, Deputy City Recorder  
Published . . . 19 . . .



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Presented to the Board of Commissioners  
AND APPROVED

JAN 8 1980

*Mildred V. Higham*  
CITY RECORDER

AGREEMENT

APPROVED AS TO FORM  
BY *S. L. [Signature]*

DATE *11/3/80*  
*subject to insurance cost*

THIS AGREEMENT, made and entered into this 20<sup>th</sup> day  
of December, 1979, by and between SALT LAKE CITY  
CORPORATION, a municipal corporation of the State of Utah (here-  
inafter designated "City"), and WILLIAM J. LOWENBERG, FERN E.  
LOWENBERG, DAVID W. LOWENBERG and SUSAN E. LOWENBERG, residents  
of San Francisco, California (hereinafter collectively designated  
"Grantee").

W I T N E S S E T H :

WHEREAS, Grantee is now the owner in fee simple title  
of a warehouse building, formerly known as the Wycoff Warehouse,  
located at approximately 560 South 400 West Street in Salt Lake  
City, Utah (hereinafter referred to as "Building"); and

WHEREAS, in the process of construction of said Building  
by the Grantee's predecessors-in-interest, a portion of the  
Building was built upon approximately 204 feet of frontage on  
400 West Street encroaching upon and occupying between five (5)  
to ten (10) feet of the City's public street right-of-way; and

WHEREAS, Grantee desires to acquire from City permission  
to continue to occupy and use the Building as it encroaches upon  
the east side of the City's right-of-way on 400 West Street in  
Salt Lake City, Utah, in front of and adjacent to said Building;  
and

WHEREAS, the said parcel of the City's public street  
right-of-way in front of and adjacent to said Building on 400  
West Street, and upon which the Building encroaches (hereinafter  
referred to as "Property"), is more particularly described as  
follows:

SECURITY TITLE CO  
MAP No. 223235

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1400  
*[Signature]*  
REQ. OF  
SECURITY TITLE COMPANY  
JAN 8 12 22 PM '80  
SALT LAKE CITY, UT

Beginning at a point on the North line of an existing building, said point being South 132.5 feet from the Northwest corner of Lot 5, Block 30, Plat "A", Salt Lake City Survey and running thence West 5.1 feet to the Northwest corner of said existing building; thence South along the West line of said existing building 194.2 feet; thence Southeasterly along the Southwesterly line of said existing building 10 feet, more or less, to the West line of said Block 30; thence North 204 feet, more or less, to the point of beginning.

and

WHEREAS, the City finds that the continued use of the Building and its encroachment upon the Property does not immediately threaten or adversely impact the public's interest in the street and that the present removal of the Building may be impractical, and the City is willing to grant its permission for the use of the Property pursuant to the terms of this Agreement, which shall include requirements of insurance and payment of valuable consideration for the use of the Property.

NOW, THEREFORE, in consideration of the foregoing and of the granting unto Grantee by the Board of Commissioners of Salt Lake City the permission hereinabove specifically described, it is agreed as follows:

1. Permission to Use Property. Subject to the conditions herein, City hereby irrevocably grants Grantee permission and license to occupy and use the aforesaid described Property until the demolition or destruction of the Building. The Building shall be deemed destroyed under this Agreement if it is allowed to deteriorate or has been damaged by fire, explosion, act of God, or public enemy to the extent of more than sixty percent (60%) of its assessed value. Notwithstanding the foregoing, said permission and terms of this Agreement are subject to termination by City pursuant to provisions of Paragraph 3, below.

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2. Nature of Right, Surrender Upon Termination. The granting of said irrevocable permit shall not in any respect or degree vest in Grantee any property right other than the leave and license of City to occupy said Property until the demolition or destruction of the Building as defined above. The purpose and effect of this Agreement is to allow Grantee legally to continue to occupy and use the Property with the Building thereon until said demolition or destruction of the Building, which is eventually expected to occur, or until such time as the Agreement is terminated pursuant to the provisions of Paragraph 3, below. Upon expiration of thirty (30) days after written demand of the City based upon Paragraph 3, below, Grantee will vacate the Property and surrender possession of the same to City at Grantee's expense. Grantee hereby waives perpetually any claim for restitution or compensation for expenditures made by Grantee to accommodate said Property for its uses and purposes, or any claim for the loss of Grantee's use of said Property.

3. Limitations on Use and Termination Events. Grantee hereby specifically agrees that the Property shall be used and occupied for office and warehouse purposes or for such other purposes as may be permissible pursuant to the laws and ordinances operative and effective in Salt Lake City at the time of such change in use. It is the intention of City to allow the Building to continue to encroach upon the Property, provided it complies with applicable City ordinances until the demolition or destruction of the Building or until such time as the Agreement is terminated as provided below.

Grantee shall be deemed in default hereunder if either of the following events occur:

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(a) Grantee fails or refuses to comply with applicable City ordinances regarding the Building's use, maintenance or operations; or

(b) Grantee fails or refuses to comply with any of the provisions of this Agreement.

Upon the occurrence of any of the aforesaid defaults, City shall give written notice to Grantee to cure such default. Grantee shall have thirty (30) days after receipt of such written notice within which to attempt to cure or correct such default. If the default is not cured or corrected within such thirty (30) day period, or other reasonable time acceptable to the City, City, by written notice of demand to Grantee, may, at its election, terminate this Agreement, and Grantee agrees to vacate the property within thirty (30) days of receipt of such written notice and demand by the City.

4. Right to Inspect. City reserves the right and Grantee, for the duration of this Agreement, hereby grants irrevocably unto City permission for City's authorized officers, employees, and servants, including representatives of the police, fire, and health departments, to enter into and upon said Property during all reasonable business hours for the purpose of determining Grantee's compliance with the terms of this Agreement, applicable ordinances and for fire, sanitary, and safety precautions.

5. Landscaping, Maintenance, Etc. Grantee agrees, at Grantee's sole expense, and to the extent possible, to landscape the Property and to install an appropriate sprinkling system for said landscaping, and to maintain the Building and any landscaping, and to eliminate insects or weeds upon the Property.

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6. Structural Improvements. Grantee agrees not to erect any building or structural improvement upon said Property without the prior written consent of the City; provided, however, Grantee may, without the prior written consent of the City, change or add to the facade of the Building, add doors or entrances, or in general beautify or improve the facade of the Building. Grantee will, when requested by City and at Grantee's expense, remove, replace or alter any improvement installed on the Property, without the City's written consent or otherwise permissible under this paragraph, if such is requested by the City.

7. Indemnification. Grantee hereby agrees to indemnify and save harmless and does hereby indemnify and save harmless City from all loss, cost, damage, and expense of every kind and nature arising out of or connected with the use by Grantee of said Property. Grantee will, upon demand of City, at its own cost and expense, assume the defense of City of any action instituted in the courts by any person, firm, or corporation against City because of the use of the Property by Grantee.

8. Waiver of Damages. Grantee does hereby forever waive and surrender unto City any and all claim or claims against City for damages of every kind and nature that may occur or accrue to that portion of the Building abutting and underneath said Property or to the contents of said Building by reason of water, waste, refuse, or sewerage from sewers, water pipes, or curb, resulting in whole or in part by reason of Grantee's use of said Property or the location of the Building, unless said damage be the result of the City's negligence.

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9. Covenants to Run with Land. Grantee hereby agrees that this Agreement and all terms and conditions thereof shall be and the same are hereby attached to and imposed upon the real estate described above and shall be and become covenants running with the land and a charge upon the Grantee's Building. This Agreement or its exact executed counterpart shall at the expense of Grantee be recorded in the office of the Recorder of Salt Lake County, State of Utah.

10. Costs of Enforcement. Grantee agrees in the event it becomes necessary to institute court action to enforce or protect the provisions of this Agreement, that Grantee will pay all costs and expenses of said proceedings, including reasonable attorney's fees.

11. Compensation. As fair market value consideration for the City's granting Grantee permission for the use of the Property pursuant to the terms of this Agreement, concurrent with the execution of this Agreement, Grantee has delivered the sum of \$5,077.00 for the use of the 1,015.41 square feet included within the Property.

12. Insurance. Grantee shall provide a comprehensive general liability insurance policy wherein the City is named as an additional insured and shall maintain said policy for as long as the encroachment remains upon City's Property. Said policy shall be in amounts no less than \$100,000 per individual or \$300,000 per accident for personal injuries and \$50,000 property damage. Further, City shall be notified at least thirty (30) days in advance by any carrier of the intent to terminate such insurance coverage for any reason whatsoever, including the expiration of terms thereof as

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well as renewal thereof. Said insurance may be provided through a master insurance policy obtained by Grantee. City reserves the right to require additional insurance coverage in the event Grantee or its successors change the use of the Building, or the statutory limits of City's liability under governmental immunity provisions are raised; provided, however, said insurance coverage shall increase only to the extent necessary to cover potential hazards created by the change in use or to cover the increase in the statutory limits of the City's liability under governmental immunity provisions, as the case may be.

13. Miscellaneous Provisions. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their heirs, legal representatives, successors and assigns. Assignment by Grantee of their rights under this Agreement shall release Grantee from the provisions of this Agreement, provided that the assignee agrees to be bound by the provisions of this Agreement. Likewise, an assignment by a successor in interest to Grantee shall release said assignor from the provisions of this Agreement, provided that the assignee agrees to be bound by the provisions of this Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the matters herein contained, and may not be altered or amended except by written agreement executed by all of the parties hereto. The paragraph headings used herein are for convenience only and shall not be deemed to modify, interpret or limit the provisions hereof. Wherever required by the context, the singular shall include the plural, the plural shall include the singular and each gender shall include both other genders.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SALT LAKE CITY CORPORATION

By *Ted L. Wilson*  
Ted L. Wilson, Mayor

Attest:

*Mildred V. Higham*  
Mildred V. Higham, City Recorder

GRANTEE:

*William J. Lowenberg*  
William J. Lowenberg

*Fern E. Lowenberg*  
Fern E. Lowenberg

*David W. Lowenberg*  
David W. Lowenberg

*Susan E. Lowenberg*  
Susan E. Lowenberg

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STATE OF UTAH )  
 ) : ss.  
COUNTY OF SALT LAKE )

On the 7<sup>th</sup> day of December, 1979, personally appeared before me TED L. WILSON and MILDRED V. HIGHAM, who being by me duly sworn, did say that they are the Mayor and City Recorder, respectively of Salt Lake City, and that the name of Salt Lake City was attached to the foregoing instrument by them by authority of a motion of the Board of Commissioners of Salt Lake City passed on the 7<sup>th</sup> day of December, 1979; and said persons acknowledged to me that said corporation executed the same.

Richard W. Lowenberg  
NOTARY PUBLIC  
Residing in Salt Lake City, Utah

My Commission Expires:  
1-7-80

STATE OF UTAH )  
 ) : ss.  
COUNTY OF SALT LAKE )

On the 20th day of December, 1979, personally appeared before me WILLIAM J. LOWNEBERG, FERN E. LOWENBERG, DAVID W. LOWENBERG, and SUSAN E. LOWENBERG, who being by me duly sworn, did say that they executed the foregoing Agreement.

William J. Lowenberg  
NOTARY PUBLIC  
Residing at Salt Lake City, Utah

My Commission Expires:  
July 17, 1983

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