

WHEN RECORDED MAIL TO:

Salt Lake City Corporation
City Recorder's Office
451 South State Street, Rm. 415
PO Box 145515
Salt Lake City, Utah 84114-5515

13009369
6/14/2019 11:45:00 AM \$40.00
Book - 10791 Pg - 9128-9137
RASHELLE HOBBS
Recorder, Salt Lake County, UT
INGEO SYSTEMS
BY: eCASH, DEPUTY - EF 10 P.

Parcel No. _____

RECORDED

JUN 12 2019

**STORM SEWER EASMENT AND CONNECTION AGREEMENT
CITY RECORDER**

THIS STORM SEWER EASEMENT AND CONNECTION AGREEMENT ("Agreement") dated the 13th day of June 2019, is made between SALT LAKE CITY CORPORATION, a Utah municipal corporation ("City" or "Grantor"), and DOWNTOWN SLC B, a New York limited liability company and DOWNTOWN SLC B RETAIL CONDO LLC, a New York limited liability company (collectively, the "Grantee").

RECITALS

A. City is the owner of certain real property commonly known as Blair Street, located approximately at 350 East 400 South, Salt Lake City, Utah, as more particularly described on Exhibit A, attached ("Grantor's Property").

B. Grantee is the owner of certain real property adjoining or abutting the Grantor's Property located at approximately 350 East 400 South, Salt Lake City, Utah ("Grantee's Property").

C. Grantee desires to construct and install an underground storm sewer and related facilities (the "Storm Drain Facilities") under Grantor's Property, a portion of which will connect and drain into the City's storm drain facilities servicing the City's Public Safety Building ("PSB Storm Drain Facilities").

D. The City is willing to grant an easement on the portion of Grantor's Property for the Storm Drain Facilities (the "Easement Area") as described and depicted on Exhibit B, and permission to connect to the PSB Storm Drain Facilities, subject to and in conformance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the Parties agree as follows:

AGREEMENT

1. Easement. The City hereby grants to Grantee, its agents, representatives and contractors, an easement to construct, install, and maintain the Storm Drain Facilities, which may

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connect to the PSB Storm Drain Facilities, and to thereafter own, operate, maintain, repair and replace the Storm Drain Facilities, within the Easement Area.

2. Enforcement. The parties shall have the authority to enforce this Agreement in any manner permitted by law.

3. Recording. This Agreement shall be recorded with the Salt Lake County Recorder's Office.

4. Construction and Use Requirements. The Storm Drain Facilities shall be constructed and used in conformance with the following requirements:

(a) The construction and installation of the Storm Drain Facilities shall be authorized only within the Easement Area and according to the applicable plans and profiles approved by the City, as preliminarily described and depicted in Exhibit C.

(b) After installation, repair, maintenance, or any disturbance of the Easement Area related to the Storm Drain Facilities, Grantee shall fully repair and rebuild the Easement Area and restore the Easement Area to the same condition that existed prior to such installation, repair, maintenance or disturbance of the Easement Area related to the Storm Drain Facilities.

(c) The Storm Drain Facilities shall be constructed by Grantee at its sole cost and expense, and thereafter be owned by Grantee, and shall be operated, maintained, inspected, protected, repaired, removed and replaced by Grantee at Grantee's sole cost and expense, and without any cost, expense or obligation on the part of the City. Grantee may request that the City perform maintenance, repairs, or replacement of the Storm Drain Facilities. The City may elect to perform such maintenance and bill any reasonably related maintenance or repair costs to Grantee. If Grantee fails to maintain the Storm Drain Facilities, the City may take any required action and bill Grantee for any reasonably related maintenance or repair costs. Any costs billed the City to Grantee shall be paid within 30 days.

(d) Grantee shall diligently construct the Storm Drain Facilities with due care, and in accordance with sound design, engineering and construction practices customary for such improvements, and shall at all times thereafter own, operate, maintain, inspect, protect, repair, remove and replace the Storm Drain Facilities in such a manner as will not unreasonably interrupt, interfere with or otherwise impair, in any way, the City's constant, continuous and uninterrupted use of the PSB Storm Drain Facilities. All engineering drawings and any modifications thereafter must be approved by the City prior to any installation or modification of the Storm Drain Facilities at any time.

(e) Grantee agrees that all work performed or to be performed in the Easement Area in connection with any construction, service or activity performed by Grantee shall be substantially free of any leaks or other damage caused by or otherwise attributable to any such construction, service or other activity by Grantee. All work which does not reasonably conform to these standards may be considered by the City to be defective.

(f) If, at any time following completion of any construction, service or other activity associated with the Storm Drain Facilities, any of the work performed in the Easement Area is found by the City to be defective, Grantee shall, at its sole cost and expense, correct all

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such defective work promptly after receipt of written notice from the City to do so. If Grantee fails to correct such defective work within the reasonable timeframe prescribed by the City in said notice, the City may perform the work and Grantee shall reimburse the City, as billed, for all costs and expenses incurred by the City in performing such corrective work.

(g) Grantee shall give the City not less than 5 business days' prior written notice of any subsequent construction or service activities to be performed by Grantee and its permittees on the Storm Drain Facilities within the Easement Area; provided, however that in the event of an emergency, Grantee will give the City as much prior notice as is reasonably possible under the circumstances.

(h) No trash, waste, or other offensive material will be placed or left within the Easement Area by Grantee without the City's prior written consent.

(i) Upon completion of the initial construction, Grantee shall provide the City a complete set of "as built" drawings of the Storm Drain Facilities.

(j) Grantee shall not do any work within the Easement Area that will result in any changes in the general topography of the land situated within the Easement Area, including, but not limited to, changes resulting from excavation, dredging, movement or removal of soil, without the City's prior written consent.

(k) Except for the Storm Drain Facilities, no other man-made structure shall be authorized to be placed in or on the Easement Area without the City's prior written consent.

(l) No supervision or advisory control, if any, exercised by the City on its behalf hereunder, shall relieve Grantee of any duty or responsibility which it has to the City and the general public with regard to the initial construction of the Storm Drain Facilities by Grantee, nor relieve it of any duty or responsibility which it has to the City and the general public with regard to its subsequent ownership, operation, maintenance, inspection, protection, repair, removal and replacement of the Storm Drain Facilities.

(m) Grantee's use of the Easement Area shall not unreasonably interfere with Grantor's use of the Easement Area.

6. Reservation of Rights. Nothing herein shall be construed to change, qualify, restrict or limit, in any way, the City's title to or interest in its property or the City's right to own, operate, maintain, repair and replace anything within the Easement Area, for any and all purposes as the City, in its sole discretion, sees fit.

7. Governing Law. This Agreement shall be governed by and construed in accordance with and interpreted under the laws of the State of Utah.

8. Indemnification. Grantee shall indemnify, hold harmless and defend the City, its officers, directors, employees, agents and representatives, from and against any and all losses, expenses, costs, damages and liabilities imposed or claimed to be imposed upon the City, its officers, directors, employees, agents and representatives, for bodily injuries including death, or for damage to property, real or personal, sustained by any person, including, without limitation, employees of Grantee, employees of the City or third parties, or for environment liabilities

(excluding any environmental liability to the extent it was or is the responsibility of the City or any third parties irrespective of Grantee's action), and whether such bodily injuries, death or damage to property arise or are claimed to arise in whole or in part out of negligence or any other grounds for legal liability (including violation of any duty imposed by statute, ordinance or regulation), which result from, arise out of or are otherwise attributable to Grantee's construction, installation, ownership, operation, maintenance, repair and replacement of the Storm Drain Facilities or the very existence thereof within the Easement Area, including, without limitation, water leakage caused by, occurring as a result of or attributable to such activities, or the use of the land within the Easement Area for the construction, installation, ownership operation, maintenance, repair or replacement of the Storm Drain Facilities by Grantee, and the use of such adjacent portions of the City's property, if any, as Grantee may utilize from time to time for said purposes; provided, however, that this indemnification shall not extend to any losses, expenses, costs, claims, actions, demands, damages and liabilities to the extent that they are caused by, result from or are otherwise attributable to the negligence or willful misconduct of the City, its officers, directors, employees, agents and representatives, or any third parties.

9. Amendment. This Agreement cannot be extended, terminated, modified or amended except by written agreement signed by each of the parties.

10. Integration. This Agreement including its exhibits constitutes the entire understanding and agreement between the parties hereto, and supersedes all prior agreements, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof.

11. Term; Termination. This Agreement shall continue until Grantee's removal of the Storm Drain Facilities and restoration of the Easement Area to its condition prior to removal of the Storm Drain Facilities and Grantee's connection to the PSB Storm Drain Facilities as is required under all applicable laws and regulations pertaining to Grantee's Property. In the event City removes, reconfigures, or modifies the PSB Storm Drain Facilities, the City agrees to continue its accommodation of Grantee's connection to the PSB Storm Drain Facilities in a manner such that at all times during the term of this Agreement Grantee's Property shall be serviced by the PSB Storm Drain Facilities. The City shall give Grantee reasonable notice to any such modification, provided that in the event of an emergency, the City will give Grantee as much prior notice as is reasonably possible under the circumstances. Any such accommodation for reconnection after a modification or reconfiguration of the PSB Storm Drain Facilities shall be solely at Grantee's expense. Grantee acknowledges it is responsible, at its sole cost and expense, to construct, reconstruct, or otherwise provide any and all necessary storm drain facilities required under all applicable laws and regulations in the event the City elects, in its sole discretion, to remove the PSB Storm Drain Facilities. The City shall give Grantee reasonable notice to Grantee of any such removal, provided that in the event of an emergency, City will give Grantee as much prior notice as is reasonably possible under the circumstances.

12. Agreement to Run with the Land; Successors and Assigns. This Agreement and the rights, conditions and provisions of this Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties and their respective successors and assigns unless otherwise terminated pursuant to the terms of this Agreement.

13. Severability. If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

14. Attorney Fees. In the event this Agreement or any provision hereof shall be enforced by an attorney, all costs incurred including court costs and reasonable attorney fees, and including all fees and costs incurred upon appeal or in bankruptcy court, shall be paid by the party who breaches or defaults hereunder.

15. Warranty of Authority. The individuals executing this Agreement on behalf of the parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective parties and that the respective parties have agreed to be and are bound hereby.

16. No Dedication. The provisions hereof are not intended to, and do not, constitute a dedication for public use and the rights and licenses herein created are private.

17. Recording. Grantee shall record this Agreement in the Office of the Salt Lake County Recorder promptly upon execution.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.

19. Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. Grantee represents it has not: (1) provided an illegal gift or payoff to a Salt Lake City officer or employee or former Salt Lake City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the Salt Lake City conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a Salt Lake City officer or employee or former Salt Lake City officer or employee to breach any of the ethical standards set forth in the Salt Lake City conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their respective officers on the date first above written.

GRANTOR:

SALT LAKE CITY CORPORATION, a Utah municipal corporation

Jacqueline Biskupski

Jacqueline Biskupski, Mayor

APPROVED AS TO FORM:
Salt Lake City Attorney's Office

Kimberly Kochanski
Senior City Attorney *Kimberly Kochanski*
Date 6-11-2019

ATTEST:
Salt Lake City Recorder's Office
Paula M. White
City Recorder

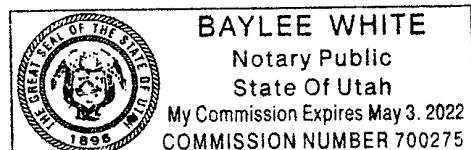
RECORDED
JUN 12 2019
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STATE OF UTAH)
COUNTY OF SALT LAKE) :ss

The foregoing instrument was acknowledged before me this 11 day of June, 2019, by Jacqueline Biskupski, Mayor of Salt Lake City Corporation, a Utah municipal corporation, who duly acknowledges to me that said instrument was executed by authority.

Baylee White
Notary Public



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GRANTEE:

DOWNTOWN SLC B, a New York limited
liability company

BY 

ITS Authorized Signatory

NAME Mother Schwartz

STATE OF LOUISIANA)
PARISH OF ORLEANS)
:ss

The foregoing instrument was acknowledged before me this 12th day of June, 2019, by
Mother Schwartz, Authorized Signatory of Downtown SLC B, LLC a
New York limited liability co. who duly acknowledges to me that said instrument was executed by
authority.


Notary Public

Jeffery Phillips Good
Notary Public
LA Bar Number 38155
My Commission is for Life

EXHIBIT A

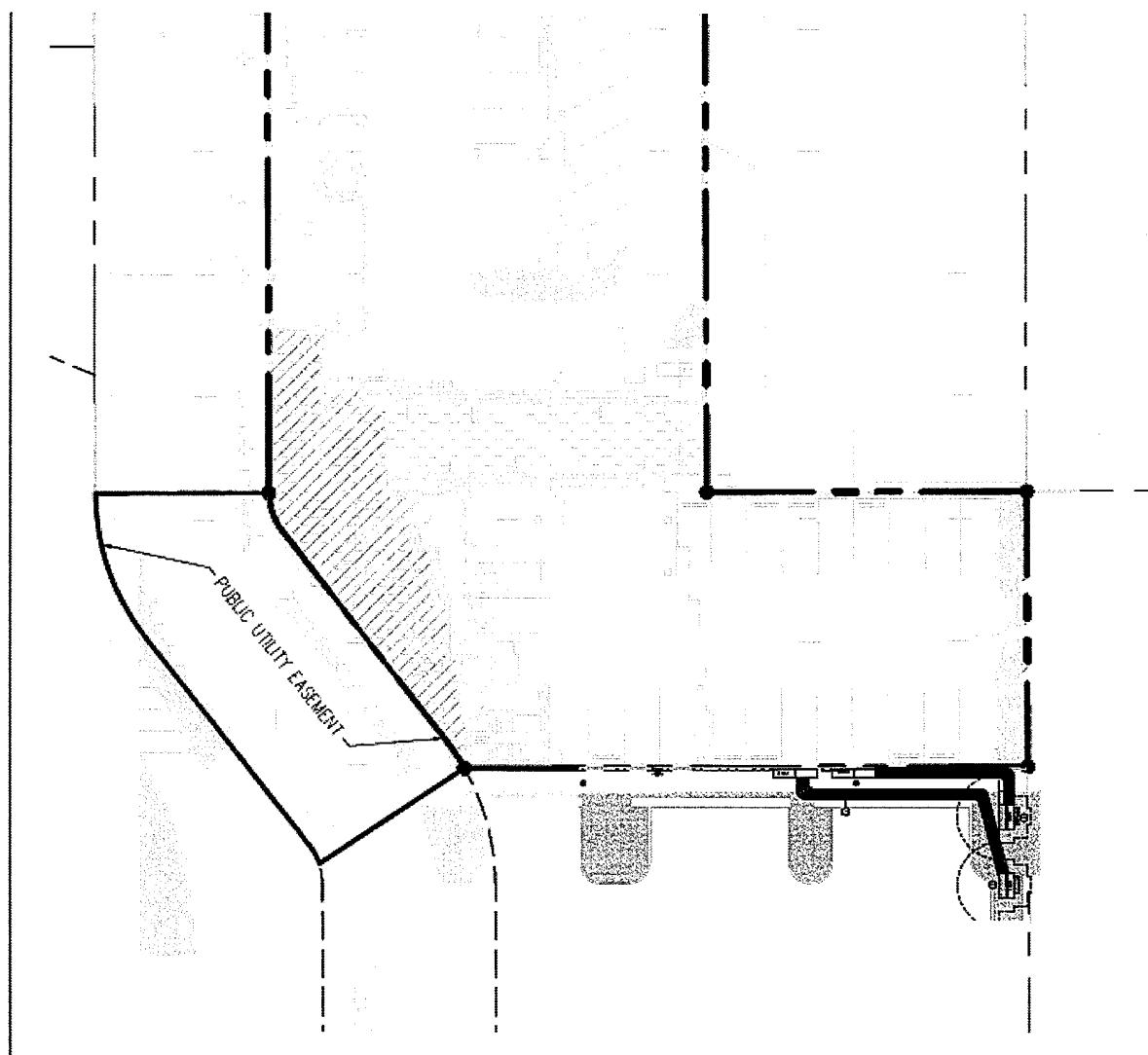
(Grantor's Property)

**Lot 1A, Salt Lake City Public Safety Building Subdivision Amended and Extended, as
recorded in Bk 2019P Page 80, entry # 12944879**

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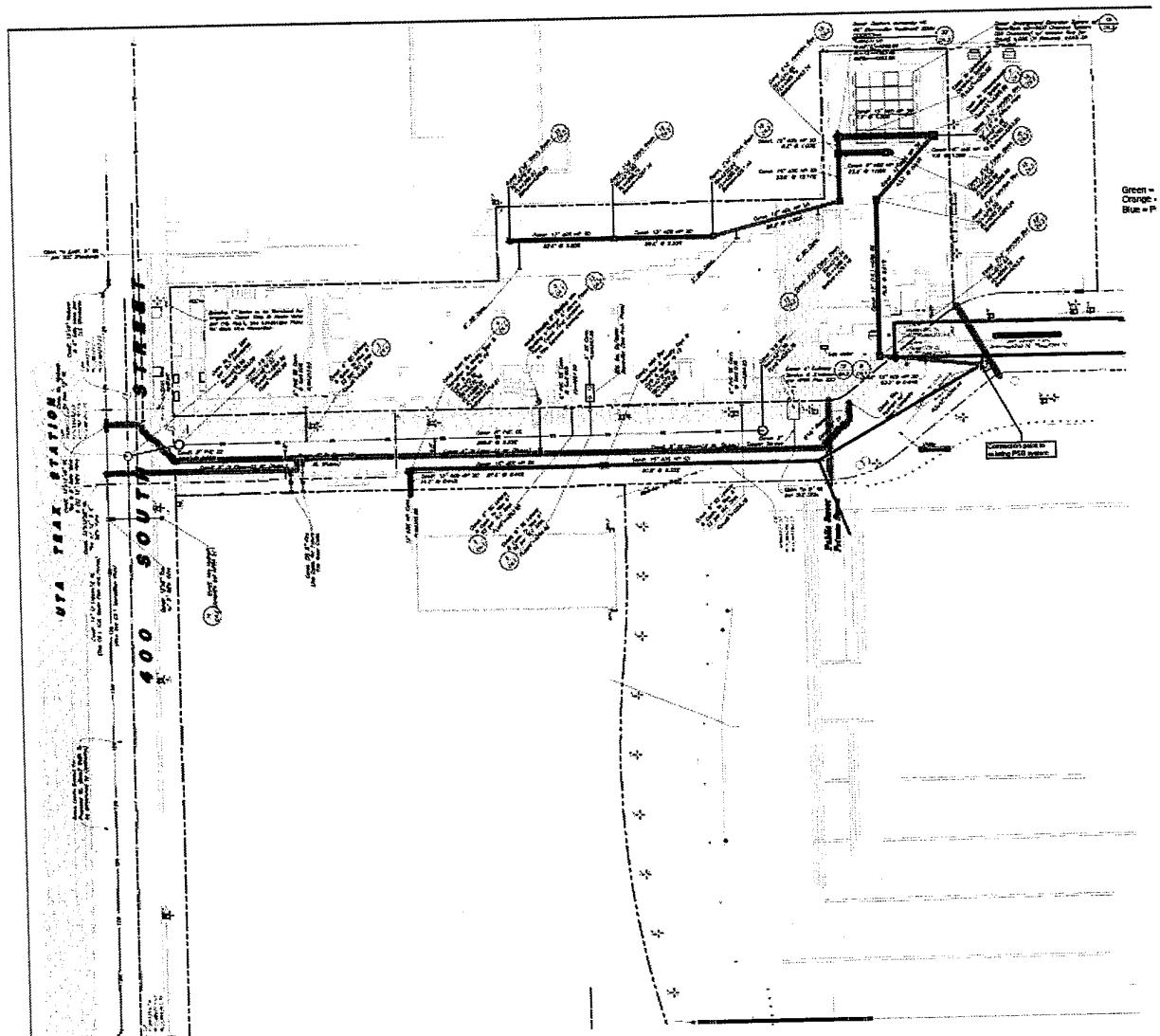
EXHIBIT B

(Easement Area)



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Exhibit C
(Storm Drain Facilities Engineering Plans)



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