

After Recording return document to:

Salt Lake City Recorder's Office  
P.O. Box 145515  
Salt Lake City, UT 84114-5515

Affects Sidwell Tax Parcel Numbers

15-01-105-001  
15-01-105-002  
15-01-105-003  
15-01-105-004

**13195441**  
02/18/2020 01:23 PM \$.00  
Book - 10897 Ps - 4884-4901  
**RASHELLE HOBBS**  
RECORDER, SALT LAKE COUNTY, UTAH  
SL CITY PLANNING  
BY: SSP, DEPUTY - WI 18 P.

## **Development Agreement & Public Access Easement**

RECORDED

FEB 06 2020

DEVELOPMENT AGREEMENT

CITY RECORDER

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 18 day of December, 2019 (the "Effective Date"), by and between SALT LAKE CITY, a municipal corporation of the State of Utah (hereinafter the "City"), and CW THE BEVERLY, LLC, a limited liability company organized under the laws of the State of Utah (hereinafter the "Developer"), with City and Developer collectively referred to as the "Parties" and individually, each a "Party".

RECITALS

A. Developer is the owner of approximately 0.9 acres of real property located at 45 – 53 South 600 West in Salt Lake County, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Developer previously submitted petition PLNSUB2019-00128 regarding a request for a Planned Development for a new residential development in the Gateway Mixed Use ("G-MU") zoning district as well as reductions to the perimeter and interior parking lot landscaping requirements. Developer also submitted petition PLNPCM2019-00129 regarding a Conditional Building and Site Design request for modifications to the exterior material requirements in the G-MU zone.

C. The City has identified, in its Official Plan, a midblock walkway on Developer's Property (the "Midblock Walkway") and all new residential construction within the G-MU zone must conform to the City's official plan for the location and implementation of midblock walkways ("Official Plan").

D. On, or around, June 13, 2019, Developer received that certain Record of Decision for the Beverly: Planned Development and Conditional Building and Site Design Review at Approximately 45-59 S. 600 West, which among other things stated that on June 11, 2019, the Salt Lake City Planning Commission approved petitions PLNSUB2019-00128 and PLNPCM2019-00129 with conditions that included, among other things, granting a public access easement providing public access to the Midblock Walkway and a development agreement to govern the Midblock Walkway (the "Approval Letter").

E. Upon Developer's installation and City's inspection and approval of the Midblock Walkway, which approval may not be unreasonably withheld, the Parties hereby agree to execute a Public Access Easement, in substantially similar form to the Public Access Easement attached hereto as Exhibit b, thereby allowing the public to use the Midblock Walkway subject to the terms of the Public Access Easement (the "Easement").

F. City, acting pursuant to its authority under the Municipal Land Use, Development and Management Act, Utah Code §§ 10-9a-101, -905, as amended, and in furtherance of its land use policies, goals objectives, ordinances, and regulations of Salt Lake City, in the exercise of its legislative discretion, has elected to approve and enter into this Agreement.

G. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the

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City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Governing Standards.

a. Generally. This Agreement establishes the rights, duties, and obligations for the Midblock Walkway, including the use, hours of operation, general configuration, and posting signage. The Midblock Walkway shall be developed by the Developer in accordance with the plans submitted to the City and by the terms of this Agreement.

3. Developer Obligations.

a. Developer agrees to construct the Midblock Walkway in accordance with the Official Plan, the plans submitted to the City, by the terms of this Agreement, and by the conditions contained within the Approval Letter. Notwithstanding anything in the foregoing to the contrary, any variations to the Midblock Walkway from what is depicted on Developer's submitted plans which are desired by Developer shall under no circumstances, without the specific approval of the City, modify Developer's obligations.

4. City Obligations.

a. The City shall have no obligations with respect to the Midblock Walkway unless the City must disturb the Midblock Walkway for unrelated maintenance, repair, installation, or otherwise for City infrastructure. In such event, City shall promptly replace the Midblock Walkway to substantially the same condition as existed prior to the City's disruption.

5. Signage. Developer shall place two (2) signs stating the hours of operation for the Midblock Walkway and that the same is open to the public.

6. Midblock Walkway Amenities. Developer shall install any, or a combination, of the following: (i) benches; (ii) patio areas; and/or (iii) shade cover at the North and South ends of the Midblock Walkway.

7. Maintenance; Additional Obligations. Developer shall be solely responsible to maintain the Midblock Walkway and keep the same in good working order safe for public use. City shall have no obligations with respect to the Midblock Walkway. Notwithstanding the foregoing, City shall be responsible to repair and replace the Midblock Walkway for any damage done by City, its employees, agents, third-party contractors, or other similarly situated individual hired by City.

8. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer:

CW The Beverly, LLC  
1222 W. Legacy Crossing Blvd. #6  
Centerville, UT 84014

Attention: Darlene Carter  
darlene@builtbycw.com

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To the City: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. General Term and Conditions.

a. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the project.

c. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

d. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

e. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

f. Agreement to Run with the Land. This Agreement shall be recorded in the Office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land and individual parcels and shall be binding on and shall benefit all successors in the ownership of any portion of the Property. No later than ten (10) days after the City enters into this Agreement, the City shall cause the same to be recorded in the official real estate records of the Salt Lake County Recorder's Office.

g. Applicable Law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with, the laws of the State of Utah.

h. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

i. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or

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delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

j. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

k. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the Parties hereto that in the event the Midblock Walkway has not been completed within ten (10) years from the date of this Agreement (the "Term"), the City shall have the right, but not the obligation, at the sole discretion of the City, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by written mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

10. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer as provided herein, upon written notice by Developer to the City of the same. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

11. Remedies. Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement.

12. Sale or Conveyance. If Developer sells or conveys the Property, the Property so sold and conveyed shall bear the same rights, privileges, obligations, and duties as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

13. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

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14. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

15. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

16. Integration. This Agreement constitutes the entire understanding and agreement between the Parties, and supersedes any previous agreement, representation, or understanding between the parties relating to the subject matter hereof.

17. Remedies/Costs of Enforcement. Either Party hereto may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement. In the event of an Event of Default by Developer or in the event of a default hereunder by the City, that Party shall be liable for all costs and expenses incurred by the other Parties enforcing the provisions of this Agreement, whether or not legal action is instituted.

18. Amendment. This Agreement may be amended only in writing signed by the Parties hereto. The Mayor and/or his/her designee may review and execute on behalf of the City any and all amendments to this Agreement. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Property.

19. Non-Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

20. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES.** Developer represents that it has not: (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract 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 City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will now knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

21. **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT.** City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor ("**GRAMA**"). All materials submitted by

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Developer pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Developer. Any materials for which Developer claims a privilege from disclosure shall be submitted marked as "Business Confidential" and accompanied by a concise statement of reasons supporting Developer's claim of business confidentiality. City will make reasonable efforts to notify Developer of any requests made for disclosure of documents submitted under a claim of business confidentiality. Developer may, at Developer's sole expense, take any appropriate actions to prevent disclosure of such material. Developer specifically waives any claims against City related to disclosure of any material required by GRAMA.

[SIGNATURES FOLLOW]

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IN WITNESS WHEREOF, Developer has executed this Agreement by and through its respective, duly authorized representative as of this 19 day of DECEMBER, 2019.

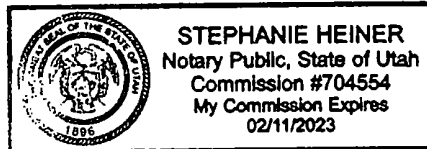
**DEVELOPER:**  
CW THE BEVERLY, LLC,  
a Utah limited liability company

By: [Signature]  
Name: Colin H. Wright  
Title: Manager

STATE OF UTAH )  
 )  
 ) :SS  
COUNTY OF Davis )

On this 19 day of December, 2019, personally appeared before me Darlene Carter, the authorized signer of CW THE BEVERLY, LLC, whose identity is personally known to me, to be the person who executed the Agreement on behalf of CW THE BEVERLY, LLC, and who duly acknowledged to me that she/he executed the same for the purposes therein stated.

[Signature]  
\_\_\_\_\_  
Notary Public  
Residing at:



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**EXHIBIT A**

The Property  
(information obtained from the online Salt Lake County Assessor Map)

Parcel No. 15011050010000

COM AT NW COR LOT 3 BLK 81 PLAT A SLC SUR S 3.5 RDS E 233 FT N 3.5 RDS W 233 FT TO BEG.

Parcel No. 15011050020000

COM 3.5 RDS S FR NW COR LOT 3 BLK 81 PLAT A SLC SUR S 2 RDS E 233 FT N 2 RDS W 233 FT TO BEG.

Parcel No. 15011050030000

COM AT SW COR LOT 3 BLK 81 PLAT A SLC SUR S 5 FT E 10 RDS N 5 FT E 14.25 FT N 74.25 FT W 179.25 FT S 74.25 FT TO BEG.

Parcel No. 15011050040000

COM 179.25 FT E FR SW COR LOT 3 BLK 81 PLAT A SLC SUR E 53.5 FT N 77.25 FT W 53.5 FT S 77.25 FT TO BEG.

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**EXHIBIT B**

**Easement Form**

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WHEN RECORDED, RETURN TO:  
CW The Beverly, LLC  
ATTN: Urban Development  
1222 W. Legacy Crossing Blvd., STE 6  
Centerville, UT 84014

Parcel No. 15-01-105-001

RECORDED

FEB 06 2020

CITY RECORDER

**PUBLIC ACCESS EASEMENT AGREEMENT**

THIS PUBLIC ACCESS EASEMENT AGREEMENT ("Agreement") is made and entered into by and between CW THE BEVERLY, LLC, a Utah limited liability company ("Grantor") and SALT LAKE CITY CORPORATION, a Utah municipal corporation ("Grantee"). The Parties may be referred to herein collectively as "Parties" or, individually, each a "Party".

**RECITALS**

A. Grantor is the fee simple owner of those certain parcels of real property located in Salt Lake City, Salt Lake County, State of Utah, as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Grantor Property").

B. In that certain letter dated June 13, 2019 RECORD OF DECISION FOR THE BEVERLY: PLANNED DEVELOPMENT AND CONDITION BUILDING AND SITE DESIGN REVIEW AT APPROXIMATELY 45-59 S 600 W, Grantee has requested Grantor to convey to Grantee a perpetual, non-exclusive public access easement over, under, through and across those portions of the Grantor Property identified on Exhibit "B" attached hereto and incorporated herein by this reference (the "Easement Property").

C. The Parties desire to enter into this Agreement for the purpose of evidencing their respective rights and obligations in connection with the Easement Property.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of ten and 00/100 dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby covenants and agrees as follows:

1. Grant of Easement. Grantor hereby gives, grants, and conveys, unto Grantee, its successors and assigns, a perpetual, non-exclusive public access easement on, across, under, or

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over the Easement Property for the purpose hereinafter stated, subject to the terms, conditions, and limitations set forth herein (the "Easement"). The Easement only extends across the Easement Property and does not include the right for the public to enter the remainder of Grantor's Property without the prior written permission by Grantor, which permission may be withheld for any reason. Grantor retains the right to install any landscaping, irrigation systems, buildings, utilities, roadways, structures or other improvements on, under, across, or over, the Easement Property so long as any such improvements do not block, hinder, close, impede the use of, or otherwise interfere with the purpose for which the Easement has been granted.

2. Purpose of Easement. It is intended that the Easement shall provide non-exclusive public access across the Easement Property. The Easement is established for quiet, non-motorized, passive recreational public access purposes, such as walking, cycling, jogging, and running.

3. Rights of Grantor. Grantor, and its successors and assigns, shall have the right to use the Easement Property, as Grantor may determine in Grantor's reasonable discretion. Notwithstanding the foregoing, Grantor shall not interfere with the purposes stated in Section 2.

4. Maintenance; Additional Obligations. Grantor shall be solely responsible to construct, install, and maintain the Easement Property and any improvements upon the Easement Property and keep the same in good working order and safe for public use. Grantee shall have no obligations whatsoever with respect to the Easement Property. Notwithstanding the foregoing, Grantee shall be responsible to repair and replace the Easement Property for any damage done through the willful misconduct or gross negligence of Grantee, its heirs, successors, employees, agents, or contractors.

5. Non-Exclusive Easement. The Easement granted herein is non-exclusive, and Grantor reserves unto itself, its successors and assigns, the right to use, pass and repass over and upon the Easement Property in any manner that is consistent with the Easement purposes stated in Section 2.

6. Amendment. This Agreement may be terminated, modified or amended only upon the mutual written consent of the Parties, or the Parties' respected legal representatives, successors or assigns, and any such amendment shall become effective only upon the recording of the same in the Public Records of Salt Lake County, Utah.

7. Benefits, Burdens, and Parties. All benefits and burdens arising under this Agreement shall run in favor of Grantee and Grantor, and their respective successors and assigns, and shall run with title to the Easement Property and the Grantor Property.

8. Governing Law; Venue. The Parties acknowledge that this Agreement was entered into in the State of Utah. This Agreement shall be construed and governed in accordance with the laws of the State of Utah without giving effect to any choice of laws or rules thereof that may direct the application of laws of another jurisdiction. Venue for any legal action arising under this Agreement shall be in the district court in Salt Lake County, Utah.

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9. Paragraph Headings and Severability of Terms. The paragraph and subparagraph captions included herein are for reference only and shall not amend, modify or be used to interpret or construe the meaning or intent of the parties as to any of the terms and provisions hereof. If any provisions of this Agreement or the application thereof shall be held to be invalid or unenforceable in a court of law, the remainder of this Agreement shall otherwise remain valid and enforceable to the fullest extent permitted by law.

10. 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.

11. Enforcement. If either or both Parties fail to perform or breaches any obligation, requirement, duty or covenant contained herein, the other non-defaulting Party shall have the right, at its own option, in addition to any of its other rights, privileges or remedies otherwise stated elsewhere herein to bring an action for specific performance in a court of competent jurisdiction.

12. Waiver. Failure of either Party at any time to require performance of any provision of this Easement shall not limit such Party's right to enforce such provision, nor shall any waiver of breach of any provision of this Easement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.

13. Entire Agreement. This instrument constitutes the entire Agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement.

14. Effective Date. The Effective Date of this Agreement is the date this Agreement is recorded in the records of the Salt Lake County Recorder's Office.

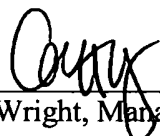
[SIGNATURES TO FOLLOW]

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

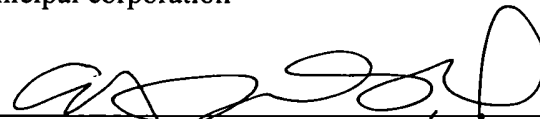
**GRANTOR:**

CW THE BEVERLY, LLC, a Utah limited liability company

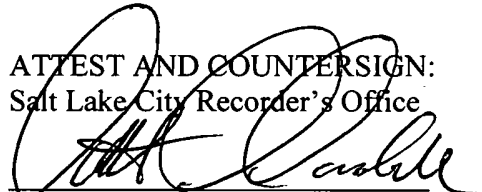
By:   
Colin H. Wright, Manager

**GRANTEE:**

SALT LAKE CITY CORPORATION, a Utah municipal corporation

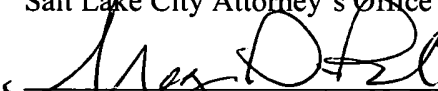
By:   
Erin Mendenhall, Mayor 2/4/2020

ATTEST AND COUNTERSIGN:  
Salt Lake City Recorder's Office

  
City Recorder

~~Attest~~  
Deputy

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

  
Megan J. DePaulis, Senior City Attorney  
Date: 1/29/2020



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CITY RECORDER

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**EXHIBIT A  
(Grantor Property)**

Beginning at a point on the easterly right-of-way line of 600 West Street; said point being North 00°01'00" West, 223.08 feet and North 89°59'00" East, 71.71 feet from found street monument in the intersection of 600 West Street and 100 South Street; said point also being North 00°04'12" East, 160.08 feet from the Southwest Corner of Block 81, Plat "A" of the Salt Lake City Survey, and running thence North 00°04'12" West, along said easterly right-of-way, 170.08 feet; thence North 89°55'32" East, 233.19 feet; thence South 00°04'12" West, 165.07 feet; thence South 89°55'28" West, 68.00 feet; thence South 00°04'12" West, 5.00 feet; thence South 89°55'28" West, 165.19 feet to the point of beginning.

Contains: 39,319 sq. ft. (or 0.90 acres)

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**EXHIBIT B**  
**(Easement Area)**

Beginning at a point being North 00°01'00" West, 228.32 feet and North 89°59'00" East, 294.91 feet from found street monument in the intersection of 600 West Street and 100 South Street; said point also being North 00°04'12" East, 160.08 feet from the Southwest Corner of Block 81, Plat "A" of the Salt Lake City Survey, and running thence North 00°04'12" East, 165.07 feet; thence North 89°55'32" East, 10.00 feet; thence South 00°04'12" West, 165.07 feet; thence South 89°55'28" West, 10.00 feet to the point of beginning.

Contains: 1,651 sq. ft.

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