

**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

Holland & Hart LLP  
Attn: Matthew T. Wirthlin, Esq.  
222 S. Main St., Ste. 2200  
Salt Lake City, UT 84101

Tax Parcel Nos.: 16-06-4 54-022 and  
16-06-4 54-023

*102851 - CAM*

(Space above this line for Recorder's use only)

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7/9/2021 2:31:00 PM \$40.00  
Book - 11203 Pg - 9713-9724  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 12 P.

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**MEMORANDUM OF ENCROACHMENT AGREEMENT**

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THIS MEMORANDUM OF ENCROACHMENT AGREEMENT (this "*Memorandum*") is executed to be effective as of July *9<sup>th</sup>*, 2021 (the "*Effective Date*"), by The Citizen, LLC, a Utah limited liability company, having an address at 7585 Union Park Ave., Ste. 200, Midvale, UT 84047 ("*Citizen*").

This Memorandum is to be recorded against the real property owned by Citizen and described in attached Exhibit A for the purpose of providing notice to third parties of the existence of the Encroachment Agreement between Citizen and Salt Lake City Corporation, a Utah municipal corporation, a copy of which is attached hereto as Exhibit B.

[Signature Page Follows]

IN WITNESS WHEREOF, Citizen has executed this Memorandum to be effective as of the Effective Date.

THE CITIZEN, LLC,  
a Utah limited liability company

By: SB  
Steve Broadbent, Manager

STATE OF UTAH §

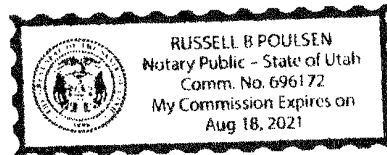
COUNTY OF SALT LAKE §

The foregoing instrument was acknowledged before me on July 7<sup>th</sup>, 2021, by Steve Broadbent as Manager of The Citizen, LLC, a Utah limited liability company.

RB  
Notary Public  
Residing at: MIDVALE, UT

My commission expires:

Aug 18, 2021



## EXHIBIT A

### Legal Description of the Property

A portion of Lots 5 and 6, Block 23, Plat "B", Salt Lake City Survey, located in the Southeast quarter of Section 6, Township 1 South, Range 1 East, Salt Lake Base and Meridian, comprised of two (2) parcels identified by Salt Lake County Parcel Nos. 16-06-454-022 and 16-06-454-023 (Basis of Bearing is North 00°01'48" West along the monument line between two (2) Salt Lake City Street Monuments found in 400 East Street at 600 South Street and 500 South Street), more particularly described as follows:

Beginning at the Northwest corner of Lot 5, Block 23, Plat "B", Salt Lake City Survey (Northwest corner measured South 00°01'48" East 69.21 feet along the monument line and North 89°58'12" East 68.57 feet from the Salt Lake City Monument found at the intersection of 400 East Street and 500 South Street), and running thence along the North line of said Block 23, North 89°57'37" East 313.50 feet (measured North 89°58'18" East 313.68 feet) to the West right-of-way line of Denver Street; thence along said West right-of-way line South 00°01'50" East 283.53 feet (measured South 00°01'35" East 283.64 feet) to the North line of Trolley Towns, a Utah Condominium Project, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder as Entry No. 11872277 in Book 2014P at Page 164; thence along said North line South 89°54'27" West 148.50 feet (measured South 89°54'29" West 148.58 feet) to the East line of said Lot 5; thence along said East lot line North 00°01'50" West 60.92 feet (measured North 00°01'43" West 60.96 feet) to the Northeast corner of a Warranty Deed on file in the office of the Salt Lake County Recorder as Entry No. 6411178 in Book 7448 at Page 1883; thence along the North line of said Deed South 89°57'37" West 165.00 feet (measured South 89°58'05" West 165.09 feet) to the West line of said Block 23; thence along said West block line North 00°01'50" West 222.75 feet (measured North 00°01'51" West 222.86 feet) to the point of beginning.

Tax Parcel Nos. 16-06-454-022 and 16-06-454-023

**EXHIBIT B**

**Encroachment Agreement**

[Attached]

06/22/2021

**ENCROACHMENT AGREEMENT**

THIS ENCROACHMENT AGREEMENT ("Agreement") is made and entered into as of the date recorded by the Salt Lake City Recorder's office by and between **SALT LAKE CITY CORPORATION**, a Utah municipal corporation, 451 South State, Rm. 425, PO Box 145460, Salt Lake City, Utah 84114-5460 ("City"), and **THE CITIZEN, LLC**, a Utah limited liability company, 7585 Union Park Ave. Ste.200, Midvale, Utah 84047 ("Citizen").

**RECITALS:**

A. Citizen is the owner of certain improved real property located at approximately 515 South 400 East, Salt Lake City, Utah (Parcel No. 16-06-454-022 and 16-06-454-023) ("Citizen's Property").

B. City is the owner of certain real property adjoining or abutting Citizen's Property which is a public right of way.

C. Citizen desires to encroach upon the portion of the Encroached Property depicted hereto ("Encroached Property") as described in Paragraph 1 for balcony overhangs in its development of a multifamily apartment project (the "Project").

D. Citizen is financing the development of the Project with a loan from Wells Fargo Bank, National Association ("Lender") and insured by the U.S. Department of Housing and Urban Development ("HUD"), HUD Project No.: 105-35309, in the original principal amount of approximately \$61,104,000.00 (the "HUD Loan").

E. City agrees to Citizen's use of the **Encroached Property for such purposes** provided that Citizen complies with the mutual provisions and covenants contained herein.

**AGREEMENT:**

City and Citizen hereby agree as follows:

1. **ENCROACHMENT ALLOWANCE:** City hereby allows the Citizen to encroach upon the Encroached Property for the following purposes:

Balcony overhangs on the northeast and northwest of the building collectively measuring 417 sq. ft. (the "Improvements") and more particularly described in Exhibit "A", attached.

Such use is non-exclusive as described in Paragraph 8 and shall be subject to the terms and conditions stated hereinafter.

2. **TERM:** City grants to Citizen the right to encroach upon the Encroached Property for a period of sixty (60) years from the date hereof, or for the useful life and operation of the Project, whichever is later, subject to the terms of this Agreement (the "Term"). During the useful life and operation of the Project building that necessitates the encroachment upon the Encroached Property, Citizen shall have the option to renew this Agreement in Citizen's sole discretion, on the

terms and conditions provided herein for two (2) additional periods of ten (10) years each by notifying City in writing of Citizen's intention to renew within ninety (90) days before the expiration of the then current term of this Agreement, and by paying the Encroachment Fee (hereinafter defined) to be determined by the City according to its fee schedule in effect at the time of each renewal period.

3. **ENCROACHMENT FEE:** As consideration for the use of the Encroached Property and the privileges created herein, Citizen shall pay to City, in advance, an encroachment fee of TWENTY-ONE THOUSAND and no/100 DOLLARS (\$21,000.00) (the "Encroachment Fee"), payable upon execution of this Agreement. The Encroachment Fee shall be made payable to Salt Lake City Corporation and sent to Salt Lake City Corporation, Attention: Real Estate Services, PO Box 145460, Salt Lake City, Utah 84114-5460, unless Citizen is notified of a change of address in writing by City. The Encroachment Fee for any renewal period shall be paid in advance, at the beginning of the renewal period, according to the City's fee schedule then in effect.

4. **PLANS AND SPECIFICATIONS:** Citizen shall submit all plans and specifications to City for approval prior to doing any work or additional work on the Encroached Property, and shall obtain all permits required, and comply with all applicable local and state laws, codes and regulations, in connection with such work. Citizen shall make any changes in the plans or specifications as requested by City. Citizen shall provide two copies of record drawings to City. Citizen assumes, at its sole expense, the responsibility to ensure that its permitted activities within the Encroached Property do not otherwise disturb the surface use of the sidewalk or other subsurface uses of or in the Encroached Property.

5. **EXTENT OF WORK:** Citizen shall not erect or install any other structure, other than stated above, or make any other improvement on the Encroached Property without the prior written consent of City. Citizen shall install and maintain the Improvements at its sole expense.

6. **ACCESS CONTROL:** Unless otherwise agreed to in writing by City, Citizen shall maintain free passage for City and for City residents along the Encroached Property or public way during any construction. Citizen also shall restore the surface and Improvements of the Encroached Property or public way disturbed hereunder and repair any damage caused to the Encroached Property or public way as a result of its use thereof. The City shall have sole discretion to determine whether Citizen has complied with the requirements set forth in this Paragraph.

7. **REPAIR OF DAMAGE:** Citizen shall, upon written notice and at its sole expense, repair any damage caused to the Encroached Property, sidewalk, and other public Improvements as a result of Citizen's use thereof or the existence or removal of Citizen's Improvements thereon.

8. **NONEXCLUSIVE NATURE - USE BY CITY:** This Agreement and the rights created herein are not exclusive. Citizen's use of the Encroached Property is subject to any and all existing rights-of-way of all public utilities of any and every description now located in, over, or under the Encroached Property. It is also subject to rights of entry for the purpose of maintaining, altering, repairing, rerouting, removing, or replacing the same. At all times the Encroached Property is subject to any use City may desire, not inconsistent with Citizen's use. City shall not be liable to Citizen for any loss of use or damage to Citizen's Improvements thereon.

9. **MAINTAIN STRUCTURE:** Citizen shall maintain, at its sole expense, the Improvements and entire structures of the Project, including the facilities and public improvements, located on the Encroached Property.

10. **INSURANCE: Requirements for All Policies** Citizen, at its own expense, shall secure and maintain in force during the term of this Agreement, including any renewal terms, all insurance coverage required by state and local law. Citizen shall also comply with the following minimum insurance coverage:

A. Commercial general liability insurance with the City as an additional insured, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general aggregate. These limits can be covered either under a CGL insurance policy alone, or a combination of a CGL insurance policy and an umbrella insurance policy or a CGL insurance policy and an excess insurance policy. The policy shall protect City, Citizen, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the Citizen's operations under this Agreement, whether performed by Citizen itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for Encroached Property operations and the acts of independent contractors. If this Permit is renewed pursuant to Paragraph 2 above, the Permittee shall secure insurance coverage at the levels of coverage that the City is requiring of similar Permittees at the time of such renewal.

B. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to City.

C. All policies of insurance shall be issued by insurance companies licensed to do business in the state of Utah and either:

- (1) Currently rated A- or better by A.M. Best Company;

**OR**

- (2) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended

D. Citizen shall furnish certificates of insurance, acceptable to City, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

E. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing, in a manner approved by the City Attorney's office, 30 days prior written notice to City.

13. **INDEMNIFICATION:** Citizen shall indemnify, save harmless and defend City and its agents and employees from and against all claims, liens, losses, demands, damages, actions,

costs, expenses, and charges of any and every kind, including attorney fees, arising out of or by reason of Citizen's use of the Encroached Property or any activities conducted thereon by Citizen, its agents, employees, invitees, or trespassers. Citizen's duty to defend City including its agents and employees, shall exist regardless of whether City, including its agents or employees or Citizen or its agents may ultimately be found to be liable for anyone's negligence or other conduct. Notwithstanding anything herein to the contrary, the hold harmless requirement of the Citizen to indemnify the City is limited to available liability insurance proceeds and/or Surplus Cash, as such term is defined in the Regulatory Agreement for Multifamily Projects by and between the Citizen and the United States Department of Housing and Urban Development ("HUD"). Additionally, any obligation to indemnify shall not apply to HUD should HUD become a successor in interest to the Owner.

14. **COVENANT TO RUN WITH THE CITIZEN'S REAL PROPERTY:** Citizen agrees that this Agreement or notice thereof may be recorded against the Citizen's Property and shall be binding upon and be a covenant running with Citizen's Property described on Page 1 above and shall be binding upon the heirs, executors, administrators, successors, and assigns of Citizen and upon the successors and assigns of City.

15. **ASSIGNMENT:** This Agreement may be assigned by either party, but only with the written consent of the other party.

16. **RELEASE OF COVENANT:** Upon the Project no longer needing to utilize the Encroached Premises when Citizen's Improvements have been removed, Citizen shall file a notice of termination and release of encumbrance, if requested in writing by City, with the Salt Lake County Recorder.

17. **DESIGNATED REPRESENTATIVE - NOTICE:** Any notice(s) required or permitted to be given pursuant to this Agreement may be personally served or may be served by certified mail, return receipt requested, to the following:

City:

Salt Lake City Corporation  
c/o Property Management  
451 South State St., Room 425  
PO Box 145460  
Salt Lake City, Utah 84114-5460

Citizen:

The Citizen, LLC  
7585 Union Park Ave., Ste. 200  
Midvale, Utah 84047

With a copy to:

Lender:  
Wells Fargo Bank, National  
Association

18. **DEFAULT – REMEDIES.** In the event of any default hereunder by Citizen, as long as the HUD Loan is in place on the Project, the City's sole remedies are limited to injunctive relief by requiring specific performance or monetary relief seeking damages. Consequently, the City hereby waives any right to terminate this Agreement or require removal of the Improvements in the event of default by Citizen. Furthermore, in the event of default by Citizen, the City shall



provide copy of said notice to the Lender and if the Citizen fails to cure said default, Lender shall have thirty days (30) days to cure said default on Citizen's behalf.

19. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES:**

Citizen represents that they/it/he/she 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 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 City's 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 City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

20. **AMENDMENT:** This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and shall not be modified or amended without the written approval of all Parties.

21. **NOISE ORDINANCE:** Citizen agrees it shall not violate the provisions of City Code 9.28, "Noise Control". Any such violation shall be a default under this Agreement.

*[Signature Page Follows]*

**DATED** as of the Effective Date set forth above.

**CITY:**

SALT LAKE CITY CORPORATION, a Utah municipal corporation

By: BT  
Blake Thomas, Director  
Department of Community and Neighborhoods

Approved as to Form:	
Salt Lake City Attorney's Office	
Date	06/22/2021
Sign	<u>KChytraus</u> <small>Kimberly Chytraus (Jun 22, 2021 07:49 MDT)</small>
Senior City Attorney, Kimberly Chytraus	

ATTEST & COUNTERSIGN:

Salt Lake City Recorder's Office

Dee Dee Robinson  
Dee Dee Robinson (Jun 22, 2021 09:41 MDT)

CITY RECORDER  
Minutes & Records Clerk

RECORDED  
CITY RECORDER

06/22/2021

[signature page to Encroachment Agreement]

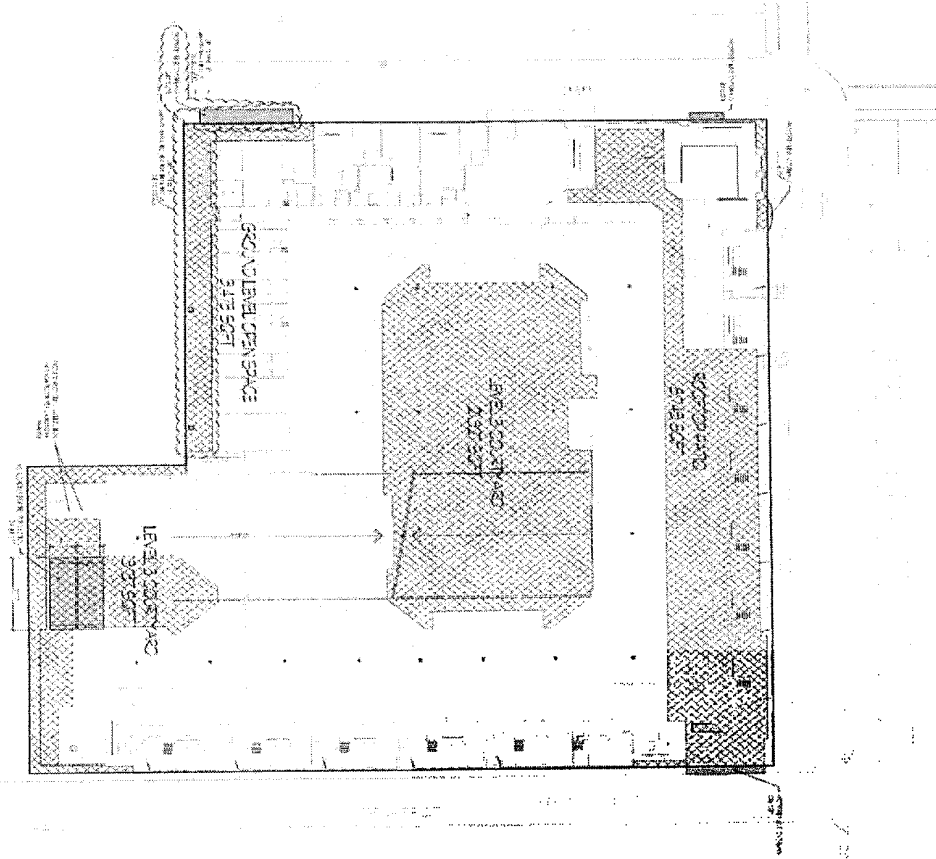
**CITIZEN:**

THE CITIZEN, LLC, a Utah limited liability  
company

By  \_\_\_\_\_  
Steve Broadbent, Manager

**ENCROACHMENT AGREEMENT TO OCCUPY PUBLIC PROPERTY**

**EXHIBIT "A"**



<b>NOTES:</b>	
1. ALL UTILITIES SHOWN ARE BASED ON RECORD PLANS AND FIELD SURVEY.	
2. ANY CHANGES TO UTILITIES MUST BE APPROVED BY THE APPROPRIATE AGENCIES.	
3. THE ENCROACHMENT AREA IS SHOWN WITH A HATCHED PATTERN.	
4. THE LOT AREA IS 1,200 SQ. FT.	
5. THE ENCROACHMENT AREA IS 400 SQ. FT.	

<b>ENCROACHMENT AGREEMENT TO OCCUPY PUBLIC PROPERTY</b>	
THIS AGREEMENT IS MADE THIS _____ DAY OF _____ 20____	
BY:	FOR:
_____	_____
_____	_____

<b>ENCROACHMENT AGREEMENT TO OCCUPY PUBLIC PROPERTY</b>	
THIS AGREEMENT IS MADE THIS _____ DAY OF _____ 20____	
BY:	FOR:
_____	_____
_____	_____