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1/29/2020 3:22:00 PM \$40.00
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RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 10 P.

CITY RECORDER

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

Parcel No. 16-06-205-029
16-06-205-027
116264 CAU

STORM SEWER EASEMENT DECLARATION AND AGREEMENT

THIS STORM SEWER EASEMENT DECLARATION AND AGREEMENT ("Declaration and Agreement") dated the 24th day of January, 2020, is made between SALT LAKE CITY CORPORATION, a Utah municipal corporation ("City"), and STH MAGNOLIA, LLC, a Utah limited liability company ("Lessee").

RECITALS

A. City owns Lot 1 ("Lot 1") and Lot 4 ("Lot 4"), located within Violin School Common (the "Subdivision"), located in Salt Lake City, Salt Lake County, State of Utah, as more particularly described on Exhibit A, attached hereto and incorporated herein.

B. On or about December 20, 2019, the City and Lessee entered into a ground lease for Lot 1 (the "Ground Lease"), upon which Lessee will construct and own a permanent supportive housing development (the "Project").

C. Lessee desires to construct and install an underground storm sewer and related facilities (the "Storm Drain Facilities") under Lot 4 to serve the Project on Lot 1.

D. The City is willing to grant an easement on a portion of Lot 4 for the Storm Drain Facilities (the "Easement Area") as described and depicted on Exhibit B attached hereto and incorporated herein, subject to and in conformance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Easement. The City hereby declares, grants, and reserves to itself, a perpetual, non-exclusive easement on and under the Easement Area (the "Easement") for the benefit of the owner of Lot 1 and Lessee as the holder of the leasehold interest in Lot 1 pursuant to the terms of the Ground Lease (which includes its successors-in-interest to the Project and leasehold interest on Lot 1). The Easement is granted for the express purpose for the construction, installation, and maintenance of the Storm Drain Facilities, and to thereafter own, operate, maintain, repair and replace the Storm Drain Facilities, within the Easement Area. The Easement shall also include the right of ingress and egress to the Easement Area.

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

3. Construction and Use Requirements. The Lessee shall construct and use the Storm Drain Facilities 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 the City.

(b) After installation, repair, maintenance, or any disturbance of the Easement Area related to the Storm Drain Facilities, Lessee shall fully repair and rebuild the Easement Area and restore the Easement Area to at least 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 Lessee at its sole cost and expense, and thereafter during the term of the Ground Lease be owned by Lessee, and during such term shall be operated, maintained, inspected, protected, repaired, removed and replaced by Lessee at Lessee's sole cost and expense, and without any cost, expense or obligation on the part of the City. Upon Lessee's failure to perform such obligations, the City may elect to perform such maintenance and bill any reasonably related maintenance or repair costs to Lessee. If Lessee fails to maintain the Storm Drain Facilities, the City may take any required action and bill Lessee for any reasonably related maintenance or repair costs. Any costs billed by the City to Lessee shall be paid within 30 days.

(d) Lessee 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 use of the Lot 4. 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) Lessee agrees that all work performed or to be performed in the Easement Area in connection with any construction, service or activity performed by Lessee shall be substantially free of any leaks or other damage caused by or otherwise attributable to any such construction, service or other activity by Lessee. 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, Lessee shall, at its sole cost and expense, correct all such defective work promptly after receipt of written notice from the City to do so. If Lessee fails to correct such defective work within the reasonable timeframe prescribed by the City in said notice, the City may perform the work and Lessee shall reimburse the City, as billed, for all costs and expenses incurred by the City in performing such corrective work.

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

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

(i) Lessee 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.

(j) 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.

(k) No supervision or advisory control, if any, exercised by the City on its behalf hereunder, shall relieve Lessee 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 Lessee, 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.

(l) Lessee's use of the Easement Area shall not unreasonably interfere with City's use of the Easement Area.

(m) In the event any lien is recorded against Lots 1 or 4 in connection with the installation of the Storm Drain Facilities or Lessee's use of the Easement Area or entry onto Lot 4, Lessee shall cause such lien to be released, and if it is not released within 120 days, or a bond has not been obtained to cover the cost of the lien, City may, but is not obligated to, pay such amounts as is necessary to cause it to be released, in which case Lessee shall upon demand, immediately reimburse City such amounts.

6. Reservation of Rights. Nothing herein shall be constructed to change, qualify, restrict or limit, in any way, the City's title to or interest in Lots 1 or 4 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; provided, however, that the City shall not erect permanent structures on or otherwise interfere with Lessee's use of the Storm Drain Facilities. All rights granted herein are subject to all existing easements, recorded or implied. If the City or any other owner of all or a portion of Lot 4 or other adjacent parcels wishes to interconnect with the Storm Drain Facilities, then the parties shall cooperate in revising this Declaration and Agreement so that Lessee and any other owner of all or a portion of Lot 4 may agree on the terms of such interconnection.

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

8. Indemnification. Lessee 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 Lessee, employees of the City or third parties, or for environment liabilities, 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 Lessee'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 Lessee, and the use of such adjacent portions of the Lot 4, if any, as Lessee 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 gross negligence or willful misconduct of the City, its officers, directors, employees, agents and representatives, or any third parties.

9. Amendment; Assignment. This Declaration and Agreement may not be extended, terminated, modified, assigned or amended except by written agreement signed by each of the parties.

10. Integration. This Declaration and 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 Declaration and Agreement shall continue so long as the Project exists on Lot 1. Following expiration of the Ground Lease the City may request that the Lessee or its successor-in-interest remove the Storm Drain Facilities and restore the Easement Area to its condition prior to removal of the Storm Drain Facilities as is required under all applicable laws and regulations, or in the absence of a request for removal and restoration, the ownership and right to use such Storm Drain Facilities shall be deemed to have automatically transferred to the owner of Lot 1 who shall thereafter be deemed to assume all responsibilities, obligations, and liabilities with respect to the Storm Drain Facilities under this Declaration and Agreement.

12. Agreement to Run with the Land; Successors and Assigns. City intends that the covenants and restrictions set forth herein shall be covenants running with each of Lot 1 and Lot 4 and shall pass to and be binding upon each of such Lot's owner(s), including any purchaser, assignee, grantee, encumbrancer, or lessee of any portion of such Lot. The owner of Lot 1 acknowledges that the owner of Lot 4 may amend this Declaration and Agreement and the Subdivision, including the boundaries of Lot 4, and that the owner of Lot 1 consents to such amendment, provided that there are no changes to the boundary of Lot 1 and the owner of Lot 4 provides reasonably equivalent rights as are provided in the Easement and access to and use of the Storm Drain Facilities are not adversely affected.

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

14. Attorney Fees. In the event this Declaration and 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 Declaration and Agreement on behalf of the parties hereby warrant that they have the requisite authority to execute this Declaration and 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. Counterparts. This Declaration and 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.


18. Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. Lessee 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]

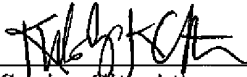
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers on the date first above written.

CITY:

SALT LAKE CITY CORPORATION, a Utah municipal corporation


Erin Mendenhall, Mayor

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


Senior City Attorney Kimberly Kohnhaus
Date JANUARY 16, 2020

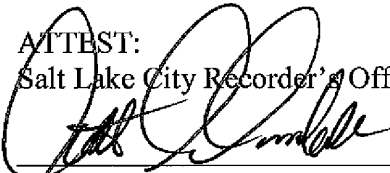
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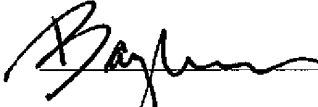


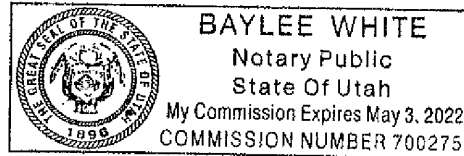
ATTEST:
Salt Lake City Recorder's Office


Deputy City Recorder

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

The foregoing instrument was acknowledged before me this 16 day of January, 2020, by Erin Mendenhall, Mayor of Salt Lake City Corporation, a Utah municipal corporation, who duly acknowledges to me that said instrument was executed by authority.


Notary Public

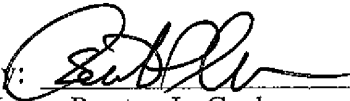


LESSEE:

STH MAGNOLIA, LLC, a Utah limited liability company, Lessor of Lot 1

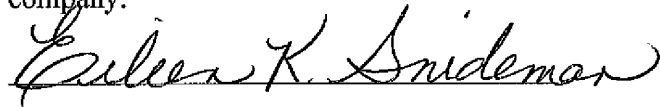
By its Manager, STH Magnolia Holdings, LLC, a Utah limited liability company

By its Manager, Shelter the Homeless, Inc., a Utah nonprofit corporation

By: 
Name: Preston L. Cochrane
Title: Executive Director

STATE OF UTAH)
)
) :SS
COUNTY OF SALT LAKE)

The foregoing instrument was duly acknowledged before me this 16 day of JANUARY, 2020, by Preston L. Cochrane, , as the Executive Director of Shelter the Homeless, Inc., a Utah nonprofit corporation, the manager of STH Magnolia Holdings, LLC, a Utah limited liability company, the manager of STH Magnolia, LLC, a Utah limited liability company.



Notary Public



EXHIBIT A

Property Legal Description

Lot 1 and Lot 4 of the subdivision plat entitled VIOLIN SCHOOL COMMON, recorded December 12, 2019, as Entry No. 13145119, in Book 2019P, beginning at Page 344, in the offices of the Salt Lake County Recorder

EXHIBIT B
Easement Area
(Legal Description and Depiction)

