

12999430
5/31/2019 11:47:00 AM \$40.00
Book - 10786 Pg - 8320-8328
RASHELLE HOBBS
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 9 P.

WHEN RECORDED, MAIL TO:

Paperbox Developers, LLC
Attn: Steven W. Farnsworth
180 N. University Ave., Ste. 200
Provo, UT 84601

Affects Parcel Nos. 15-01-129-029-0000
and 15-01-129-041-0000
FATCO NCS - 785818-ai

ACCESS, UTILITY AND DRAINAGE EASEMENT

THIS ACCESS, UTILITY AND DRAINAGE EASEMENT (the “**Agreement**”) is made and entered into this 8th day of May, 2019 (the “**Effective Date**”), by and between TELEGRAPH EXCHANGE LLC, a Utah limited liability company (“**Grantor**”), and PAPERBOX DEVELOPERS, LLC, a Utah limited liability company (“**Grantee**”).

RECITALS

- A. Grantor is the owner of the real property known by the street address 360 West 200 South, Salt Lake City, Utah and Salt Lake County Assessor’s Parcel No. 15-01-129-029-0000 (the “**Grantor’s Property**”).
- B. Grantee is the record owner of the real property known by the street address 340 West 200 South, Salt Lake City, Utah and Salt Lake County Assessor’s Parcel No. 15-01-129-041-0000 (the “**Grantee’s Property**”).
- C. Grantee desires to install, maintain and repair certain underground utilities (the “**Improvements**”) on a portion of the Grantor’s Property, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “**Easement Area**”).
- D. Grantee desires to direct certain storm water from the surface of the Grantee’s Property across the surface of Grantor’s Property in the Easement Area (the “**Storm Water**”).
- E. Grantee desires to obtain right of access for pedestrians and vehicles to Grantee’s Property across the Grantor’s Property in the Easement Area (the “**Access Rights**”).
- F. The Improvements will include a sewer line (the “**Sewer Line**”). Grantor desires to connect to the Sewer Line for the Grantor’s Project (as defined below) (the “**Grantor’s Sewer Connection**”).
- G. Grantor is willing to grant an easement to Grantee for the Improvements, the Storm Water and Access Rights on the Easement Area on the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easements. Grantor hereby grants to Grantee a perpetual, nonexclusive easement (a) over, across and under the Easement Area for the construction, repair and maintenance of the Improvements (the “**Improvements Easement**”), (b) across the Easement Area for the flow of the Storm Water (the “**Storm Water Easement**”), and (c) across the Easement Area for ingress and egress for pedestrian use and right of access for vehicles of Grantee Benefited Parties (as defined below) and emergency vehicles (the “**Access Easement**”; together with the Improvements Easement and the Storm Water Easement, the “**Easements**”) on the terms of this Agreement.

2. Use of Easements. The Easements are granted subject to the following Grantee obligations and restrictions:

a. Prior to commencing construction of the Improvements, Grantee shall submit to Grantor and Salt Lake City (the “**City**”) for approval the plans and specifications for the Improvements (the “**Plans and Specifications**”). The Plans and Specifications shall permit Grantor to install the Grantor’s Sewer Connection on the Sewer Line, and Grantee hereby grants Grantor the right to install the Grantor’s Sewer Connection at Grantor’s sole cost and expense. Grantee shall construct, at Grantor’s sole cost and expense, the Improvements in accordance with the Plans and Specifications, as approved by Grantor and the City. If the condition of the Grantor’s Property is not suitable for the Storm Water or Access Rights, Grantee’s Plans and Specifications shall include such improvements on the Grantor’s Property that Grantee reasonably believes are required to enable Grantee to utilize the Storm Water Easement and Access Easement (the “**Additional Improvements**”). Grantee shall construct, at Grantee’s sole cost and expense, the Additional Improvements in accordance with the Plans and Specifications approved by Grantor and the City. Grantee acknowledges and agrees that Grantee makes no representations or warranties regarding the condition of Grantor’s Property and the suitability of Grantor’s Property for Grantee’s use and enjoyment of the Access Rights and the Easements.

b. Grantee’s construction, maintenance and repair activities related to the Improvements and Storm Water and its use of the Easement Area as provided herein shall be performed in compliance with all applicable laws, rules and regulations, provided, that Grantee shall not engage in any activities that materially disturb any Grantor Benefited Party’s use of the Grantor’s Property.

c. Grantee shall provide Grantor written notice not less than five (5) days prior to commencing construction of the Improvements or Additional Improvements. Grantee shall provide written notice not less than two (2) business days prior to commencing any maintenance or repair of the Improvements or the Additional Improvements; provided, however, that if emergency work is required to be performed, no advance notice is required.

d. In the event that any Grantee Benefited Party disturbs the Easement Area in connection with its construction, maintenance or repair of the Improvements, Grantee shall restore the Easement Area to substantially the same condition as existed immediately prior to such activities causing a disturbance. Grantee shall use commercially reasonable efforts to complete all construction, maintenance or repairs to the Improvements in the Easement Area without interruption or delay.

e. Grantee acknowledges that Grantor and the Grantor Benefited Parties require continuous access to the remainder of Grantor's Property during any construction, maintenance or repair activities conducted by Grantee. Grantee shall not take any action that will prevent any pedestrian or vehicle access to any Grantor Benefited Party across the Easement Area (i.e., restrict any Grantor Benefited Party from crossing from one side of the Grantor's Property to the other side across the Easement Area).

f. In the event of any casualty that damages or destroys the Improvements, Grantee shall have the obligation to repair any damage, or replace any portion of the Improvements at its sole cost and expense; *provided, however*, in the event Grantor (i) has commenced or completed the development of Grantor's Project, and (ii) is utilizing the Sewer Line for Grantor's Project, Grantor shall pay Grantee twenty-five percent (25%) of any costs and expenses related to the repair of the Sewer Line, on demand.

g. No Grantee or Grantee Benefited Party shall park or stop any vehicles, motorcycles, bicycles or other mode of transportation in the Easement Area, thereby blocking or otherwise impeding the flow of traffic in the Easement Area.

h. Grantee shall indemnify, defend and hold Grantor harmless from any losses, claims or liabilities arising from Grantee's design and construction of the Improvements or Additional Improvements or use of the Easement Area. Grantee, and its subcontractors, shall maintain liability insurance naming Grantor or its designees as additional insureds, which insurance shall cover Grantee's indemnification obligations hereunder.

3. Grantee's Restrictions on Use.

a. Grantor retains the right to eject from the Easement Area any person whose use of the Easement Area does not comply with the intended use of the Access Easement or whose conduct creates an unreasonable disturbance.

b. Grantor reserves the right to close off the Easement Area for such reasonable periods of time as may be required for serious security situations or legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, before closing off any part of the Easement Area Grantor must give notice to Grantee of its intention to do so and must coordinate its closing with the activities of Grantee so that there is no unreasonable interference with the Access Rights.

c. Grantor reserves the right to establish rules and regulations governing Grantee's Access Easement.

4. No Liens. Grantee shall promptly pay all suppliers or contractors providing materials or labor for the construction, repair or maintenance of the Improvements. Grantee shall indemnify, defend and hold Grantor harmless from any lawsuits, liens, or other matters relating thereto. In addition, Grantor shall be authorized to use whatever means in its discretion it may deem appropriate to cause such liens or suits to be removed or dismissed and the cost thereof, together with actual attorneys' fees and costs, shall be immediately due and payable to Grantor by Grantee.

5. Grantee's Indemnification. Grantee covenants and agrees to defend, protect, indemnify and hold harmless Grantor from and against all claims, including any action or proceedings

brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) (collectively, "Losses") arising from or as a result of the negligent acts or omissions or willful misconduct of Grantee or any Grantee Benefited Party in exercise of the Easements or other rights granted by this Agreement or the negligence or willful misconduct by Grantee or any Grantee Benefited Party in the use of the Easements or other rights, except to the extent such Losses result from the negligence or willful act or omission of Grantor or any Grantor Benefited Party. The provisions of this Section shall survive the expiration or sooner termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

6. Grantor's Reservation of Rights. Except as otherwise expressly provided herein, Grantor reserves unto itself, its managers, members, employees, agents, successors and assigns, forever the right to cross over, across, through or under the Easement Area, and to install, at its sole cost and expense, the Grantor's Sewer Connection or grant other easements along, across or under the Easement Area, provided such other uses do not materially impair or materially diminish Grantee's use of the Easement Area for the purposes herein granted.

7. Grantor's Right to Relocate. Grantor has not determined the design or layout of the project Grantor intends to develop on the Grantor's Property (the "**Grantor's Project**"). Grantor may need to relocate the Improvements, Additional Improvements and/or the Easement Area in connection with Grantor's Project. Grantor reserves the right to relocate the Improvements, Additional Improvements and/or the Easement Area, provided that (a) Grantor pays the costs of such relocation, (b) Grantor coordinates Grantor's construction activities with Grantee to minimize the disruption of services to Grantee's Property during any period of relocation of the Improvements or Additional Improvements and (c) such relocation shall not (i) reduce or unreasonably impair the usefulness or function of Improvements, Additional Improvements and/or the Easement Area to Grantee and Grantee Benefitted Parties or otherwise materially burden Grantee or the operation of the business or improvements on Grantee's Property, (ii) cause Grantee or Grantee Benefitted Parties to incur additional obligations or liabilities, or (iii) cause Grantee or any business or improvements on Grantee's Property to fail to comply with any applicable laws, rules and regulations. Grantor's reservation of the right to relocate the Improvements, Additional Improvements and/or the Easement Area is a material condition to Grantor's agreement to grant the Easement.

8. Grantee's Storm Water Limitations. Grantee has represented to Grantor the Storm Water to be directed to the Easement Area will be a de minimis quantity. Grantor shall have the right to review and approve the quantity of Storm Water that Grantee proposes to pass through the Easement Area, and to verify such quantity based on actual usage. If Grantor is required to construct any improvements on the Grantor's Property, or take any action to accept the Storm Water that Grantor would not be required to otherwise take, Grantee shall immediately reimburse Grantor for such additional costs.

9. Sewer System Cost Sharing. By connecting the Sewer Line to the sewer main in 200 South Street, Grantee will utilize the available capacity in the sewer main located in 200 South Street. At such time as Grantor elects to develop Grantor's Project, if the City determines that Grantor is required to pay to upsize the sewer line in 200 South Street or any other City sewer system infrastructure (the "**Sewer System Upsizing Costs**"), Grantee shall pay Grantor a prorated share of such Sewer System Upsizing Costs on demand; *provided, however*, Grantee shall have no obligation to pay any amount of the Sewer Upsizing Costs if such demand from Grantor is delivered to Grantee after the eighteen-month anniversary of the Effective Date of this Agreement. Grantee's agreement to

pay a prorated share of the Sewer System Upsizing Costs is a material condition to Grantor's agreement to grant the Easements. For purposes of this Agreement, Grantee's "prorated share" shall mean fifty percent (50%) of all Sewer System Upsizing Costs but shall not exceed, in any event, \$50,000.00.

10. Benefited Parties. For purposes of this Agreement, "Benefited Parties" shall mean Grantor or Grantee, as the case may be, its managers, members, employees, agents, invitees, and its/their successors and assigns. Where appropriate, the term Grantor or Grantee also shall include any Grantor Benefited Party or Grantee Benefited Party, as the case may be. Salt Lake City shall be deemed a Benefited Party for emergency purposes.

11. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or a dedication of any portion of the Easement Area or the Improvements to or for the general public or for any public purpose whatsoever, it being the intent of the parties that this Agreement be strictly limited to and for the purposes expressed herein, and that the Improvements be used solely to service the Grantee's Property.

12. Duration; Modification. The Agreement shall be perpetual in duration, unless earlier modified or terminated by the mutual written agreement of the respective parties hereto, or their successors or assigns. Any provision, covenant, condition or restriction contained in this Agreement may be modified or amended by agreement of Grantor and Grantee, their successors or assigns. No modification or amendment of this Agreement will be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded in the Office of the Salt Lake County Recorder.

13. No Partnership. The parties hereto do not, by this Agreement, become partners or joint venturers of each other in the conduct of their respective businesses, or otherwise.

14. Compliance. Failure of a party hereto to insist upon strict performance of any provision hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this instrument shall be deemed to have been waived unless such waiver is in writing and signed by the party alleged to have waived its rights.

15. Successors. All provisions of this instrument, including the benefits and burdens, shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns.

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

17. Costs, Expenses and Remedies Upon Breach. In the event of a breach in any of the covenants or agreements contained herein, the breaching party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this agreement or in pursuing any remedy provided by the laws of the State of Utah, whether such remedies are pursued by filing suit or otherwise. Grantor and Grantee acknowledge that in the event of any default hereunder, it would be difficult to ascertain the exact money damages suffered by the non-defaulting party. Accordingly, the parties agree that such non-breaching party is entitled to appropriate equitable remedies in the event of any such default.

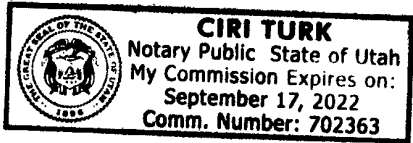
[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

IN WITNESS WHEREOF, the undersigned have executed this Access, Utility and Drainage Easement as of the date first-above written.

GRANTOR:

Telegraph Exchange LLC,
a Utah limited liability company

By: *Micah W. Peters*
Micah W. Peters
Its: Manager



STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)


The foregoing Access, Utility and Drainage Easement was acknowledged before me this 9th day of [May], 2019, by Micah W. Peters, the Manager of Telegraph Exchange LLC, a Utah limited liability company.

My Commission Expires:
9-17-2022

Ciri Turk
Notary Public

GRANTEE:

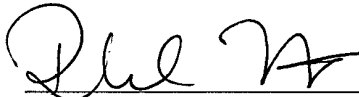
Paperbox Developers, LLC,
a Utah limited liability company

By: 
Print Name: Craig Bingham
Title: Authorized Representative

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

The foregoing Access, Utility and Drainage Easement was acknowledged before me this 8th day of [May], 2019, by Craig Bingham, the Authorized Representative of Paperbox Developers, LLC, a Utah limited liability company.

My Commission Expires:
6-18-2022


Notary Public

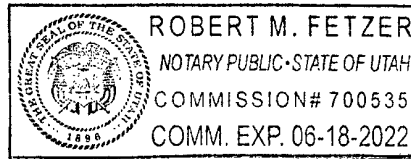


EXHIBIT A

Legal Description of Easement Area

A part of Lots 3 and 4, Block 66, Plat A, Salt Lake City Survey:

Beginning at a point on the North Line of 200 South Street located 250.98 feet North 89°59'19" East along said North Line from the Southwest corner of Block 66; and running thence North 0°00'47" West 161.36 feet; thence along the arc of a 27.71 foot radius curve to the left for a distance of 26.19 feet (Center bears South 54°07'18" West, Central Angle equals 54°08'49" and Long Chord bears North 62°57'07" West 25.23 feet) to a point of tangency; thence South 89°58'28" West 128.04 feet; thence North 0°01'10" West 22.49 feet; thence North 89°58'50" East 94.38 feet; thence South 0°01'10" East 1.76 feet; thence North 89°58'50" East 13.67 feet; thence North 0°01'10" West 1.30 feet; thence North 89°58'50" East 56.56 feet; thence North 0°01'10" West 5.19 feet; thence North 89°58'50" East 11.90 feet; thence South 0°00'47" East 200.04 feet to the North Line of 200 South Street; thence South 89°59'19" West 26.00 feet along said North Line to the point of beginning.

Contains 8,545 sq. ft.