

14113543 B: 11423 P: 5836 Total Pages: 12  
06/02/2023 04:15 PM By: ECarter Fees: \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: FIRST AMERICAN TITLE INSURANCE COMPANY - NCS SA  
215 S STATE ST STE 380SALT LAKE CITY, UT 841112371

Recording Requested by and  
When Recorded Return to:  
Metcalf Wolff Stuart & Williams LLP  
221 W. 6<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
Attention: Ari Kuchinsky

Tax Parcel No.: 15-01-429-013-0000

### **EASEMENT FOR BUILDING MAINTENANCE AND FIRE ACCESS**

THIS EASEMENT FOR BUILDING MAINTENANCE AND FIRE ACCESS (this "**Agreement**") is entered into as of the 2<sup>nd</sup> day of June, 2023 (the "**Effective Date**"), by and between SLC 117 W 400 S, LLC, a Delaware limited liability company ("**Grantor**"), and 400 SOUTH, LLC, a Utah limited liability company ("**Grantee**"). Grantor and Grantee are sometimes hereinafter referred to as the "**Parties**", for the consideration and purposes set forth herein.

#### **Recitals**

WHEREAS, Grantor is the owner of that certain tract of real property situated in Salt Lake City, Utah, as more particularly described on Exhibit A attached hereto and made a part hereof (the "**Parking Parcel**").

WHEREAS, Grantee is the owner of that certain tract of real property situated in Salt Lake City, Utah, and contiguous to the Parking Parcel, as more particularly described on Exhibit B attached hereto and made a part hereof (the "**Building Parcel**").

WHEREAS, Grantee desires to obtain from Grantor, and Grantor has agreed to provide to Grantee, access over and across a ten (10) foot maintenance area located on the Parking Parcel in the area depicted and described on Exhibit C attached hereto and made a part hereof (the "**Easement Area**") for the purpose of providing maintenance and access (including but not limited to fire access) to improvements located on the Building Parcel for Grantee and for its tenants, contractors, customers, guests, invitees, agents, and employees (the "**Easement Purposes**").

#### **Agreement**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed to by the parties, Grantee and Grantor agree as follows:

1. **Grant of Easement.** Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to it paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, sell and convey to

Grantee and its successors and assigns, for the limited purposes and uses set forth herein, a non-exclusive access easement (the "**Access Easement**") for access over and across the Easement Area for the Easement Purposes.

TO HAVE AND TO HOLD the Access Easement unto Grantee, and its successors and assigns; and Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the Access Easement unto Grantee and its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise.

The Access Easement and other rights granted herein are not exclusive, and Grantor reserves unto itself and to the future owners of the Parking Parcel the right to utilize the Easement Area for such purposes as do not unreasonably obstruct, endanger or interfere with the Access Easement and other rights granted herein.

**2. Use of Easement; Limitations on Use of Easement.** The easement herein granted is non-exclusive and is provided to Grantee for the common use and benefit of Grantee and its respective agents, employees, customers, guests, patrons, invitees and tenants (and such tenants' respective agents, employees, customers, guests, patrons and invitees). No parking rights are granted hereunder. The use of the easements granted hereunder shall be without payment of any fee or other charge. For the avoidance of any doubt, the trash license provided to Grantee by Grantor in that certain Parking and Trash License Agreement, dated as of the date hereof and recorded concurrently with this Agreement, specifically grants to Grantee a license to store Grantee's trash receptacles for the purpose of collecting trash for pickup (the "**Trash License**"). Such Trash License may be located, either in whole or in part, in the Easement Area.

**3. Maintenance of Easements.** Grantee shall refrain from causing any damage to the Easement Area. Grantee and its successors shall immediately repair any damage caused by Grantee and their respective agents, employees, customers, guests, patrons, invitees and tenants (and such tenants' respective agents, employees, customers, guests, patrons and invitees), at Grantee's or its successor's sole cost and expense.

**4. Term.** This Agreement shall continue in full force and effect for so long as the building currently located on the Building Parcel as of the date of this Agreement (the "**Current Building**") remains standing. If the Current Building is demolished, this Agreement shall automatically terminate and be of no further force or effect; provided, however, if the Current Building is damaged by a casualty or condemnation and the owner of the Building Parcel chooses to rebuild such that the new building has substantially the same footprint as the Current Building, this Agreement shall not be terminated.

**5. Indemnity.** Grantee hereby releases and agrees to indemnify, defend, protect, and hold harmless Grantor and its affiliates, officers, partners, principals, members, directors, officers, shareholders, representatives, employees, and agents (each a "**Grantor Party**" and collectively, the "**Grantor Parties**") from and against any and all losses, damages, claims, liabilities, actions, proceedings, disputes, costs, and expenses (including reasonable attorneys' fees) (collectively, "**Claims**") arising out of the use or occupancy of the Easement Area by Grantee and any of Grantee's tenants, contractors, customers, guests, invitees, agents, and employees (each, a "**Grantee Party**", and collectively, the "**Grantee Parties**"), **INCLUDING ANY AND ALL**

**SUCH CLAIMS ARISING OUT OF ANY GRANTOR PARTY'S OWN NEGLIGENCE OR STRICT LIABILITY**, excluding, however, any such Claims to the extent arising out of the gross negligence or willful misconduct of such Grantor Party. Grantee shall reimburse Grantor for any damage to the Easement Area or any areas adjacent to the Easement Area caused by Grantee or any other Grantee Parties. Grantee's indemnification obligations under this Section 5 are independent of whether Grantee carries sufficient insurance to cover such indemnification obligations and this Section 5 shall survive any termination of this Agreement.

**6. Waiver and Release for Damage to Grantee Property in the Easement Area.**

Grantee acknowledges that, to the fullest extent permitted by applicable law, neither Grantor nor any other Grantor Parties shall have any liability for, and Grantee hereby waives and releases Grantor and any other Grantor Parties from, any and all damage to property or other items owned by Grantee or any Grantee Parties and located in, on, or around the Easement Area (including, without limitation, any loss or damage to any such property due to theft, vandalism or accident), **INCLUDING ANY AND ALL SUCH DAMAGE ARISING OUT OF ANY GRANTOR PARTY'S OWN NEGLIGENCE OR STRICT LIABILITY**, excluding, however, any such damage to the extent arising out of the gross negligence or willful misconduct of such Grantor Party. This Section 6 shall survive the termination of this Agreement.

**7. Insurance; Waiver of Subrogation.**

a. Insurance. Grantee shall maintain (or shall cause a single tenant of the Building Parcel to maintain on its behalf) in full force and effect at all times during the term of this Agreement, at its sole cost and expense a policy of commercial general liability insurance with a minimum combined single basis of not less than \$1,000,000 per occurrence, and \$3,000,000 annual aggregate for the Easement Area. In addition, Grantee shall cause any tenant of Grantee using the Easement Area to maintain worker's compensation coverage as required by law, and employer's liability coverage, with a limit of not less than \$1,000,000 and waiver by such tenant's insurer of any right of subrogation against Grantor by reason of any payment pursuant to such coverage. Notwithstanding the foregoing, upon prior written notice to Grantee, Grantor may increase the amount of insurance coverage required hereunder to account for inflation, but not more frequently than once every five (5) years. The insurance required in this Section may be provided under a blanket policy or policies that also cover other locations, provided that the coverage afforded by reason of the use of such blanket policy shall not be reduced or diminished below the amount required in this Section. The aforesaid policies shall be provided at Grantee's sole cost and expense and shall name Grantor as additional insured. Certificates of renewal policies shall be delivered to Grantor within thirty (30) days prior to the expiration of the term of each policy. All insurance policies, and the certificates evidencing same, must contain a provision that the insurer will give Grantor at least thirty (30) days' notice in writing in advance of any cancellation or lapse in coverage or the effective date of any reduction in any amounts of coverage. Notwithstanding anything in this Agreement to the contrary, Grantor shall have the right to suspend the use of the Access Easement granted hereunder until Grantor has received proof reasonably satisfactory to Grantor evidencing that the insurance required hereunder, with the required additional insured endorsements, has been obtained and is being maintained pursuant to the terms of this Agreement. Any policy of insurance required hereunder: (i) shall be issued by financially responsible insurance companies licensed and authorized to do business in the State of Utah with general policy holder's rating of not less than A and a financial rating of not less than Class XII, as rated in the most current available "Best's Key Rating Guide"; (ii) shall be primary,

and any insurance carried by Grantor shall be noncontributing; and (iii) shall in the case of liability insurance, include a cross-liability endorsement.

b. Waiver of Subrogation. Grantee for and on behalf of itself and any other Grantee Parties hereby waives its rights of recovery against Grantor and the Grantor Parties for any insured loss (or any loss which would have been insured by the liability insurance described above and/or so-called special form causes of loss property insurance). Grantee shall obtain (and shall cause any other Grantee Party to obtain) any special endorsements required by its or their respective insurer to evidence compliance with the aforementioned waiver.

8. “As-Is”, “Where-Is”. The Easement Area is provided in an “as-is”, “where-is”, and “with all faults” condition, without any representation or warranty whatsoever. The Access Easement is conveyed subject to (i) all matters recorded in the Official Public Records of Salt Lake County, Utah, as of the Effective Date, and (ii) all rights of third parties to use the Easement Area or any portion thereof in common with other parties, if any, under zoning ordinances, development agreements, or other agreements with governmental authorities in effect on the Effective Date, whether recorded or unrecorded.

9. Compliance With Laws; No Liens. Grantee shall conduct (and shall cause all other Grantee Parties to conduct) all activities on the Easement Area in compliance with all applicable laws, statutes, ordinances, codes, and other legal requirements, including, without limiting the generality of the foregoing, obtaining any and all required licenses, permits, and other approvals for all such activities conducted thereon. Grantee shall keep (and shall cause all other Grantee Parties to keep) the Parking Parcel free and clear of any and all liens arising from or in connection with Grantee’s or any Grantee Parties’ use of the Easement Area pursuant to this Agreement, and Grantee shall discharge (or cause to be discharged) any such lien by payment or bonding within fifteen (15) days after the filing thereof, failing which Grantor shall have the right, but not the obligation, in addition to all other remedies provided hereunder, to discharge such lien at Grantee’s expense, and Grantor’s cost thereof shall be reimbursed by Grantee upon written demand therefor.

10. Limitation of Liability. The liability of each party hereunder and any recourse by one party against the other party shall be limited solely and exclusively to the interest of such party in the Easement Area, and neither party shall have any personal liability therefor. Notwithstanding anything in this Agreement to the contrary, liability under this Agreement shall be limited to actual damages and in no event shall any party be liable for any form of special, indirect, incidental, punitive or consequential damages under this Agreement, including, without limitation, relating to any loss of, or interference with, Grantee’s business or lost profits.

11. Estoppel Certificate. Each party agrees, at any time, and from time to time, upon at least ten (10) business days’ prior written notice from the other party, to execute, acknowledge and deliver to the requesting party, and /or to such other person, firm or corporation reasonably specified by the requesting party, a commercially reasonable estoppel certificate certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same are in full force and effect as modified and stating the modifications), (ii) the dates to which any and all sums due hereunder have been paid, and (iii) whether there exists any default (or circumstances which, with the giving of notice or the passage of time or both, would constitute a default) by either party under this Agreement, and, if so, specifying each such default (or

circumstances which, with the giving of notice or the passage of time or both, would constitute a default).

**12. Miscellaneous.**

a. Entire Agreement. Notwithstanding any terms, provisions or conditions of any other documents or instruments to the contrary, this Agreement constitutes the entire agreement among the Parties hereto as to the subject matter hereof, and the Parties do not rely upon any statement, promise or representation not herein expressed.

b. Amendments. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated except by an agreement in writing signed by the Parties hereto.

c. Governing Law. This Agreement shall be deemed to be a contract under the laws of the State of Utah which is performable in Salt Lake County, Utah, and for all purposes shall be construed and enforced in accordance with and governed by the laws of the State of Utah.

d. Counterparts. To facilitate execution, this Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof.

e. Binding on Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

f. No Partnership. Nothing contained herein shall be construed to create a partnership between or among the Parties, nor shall it cause them to be considered joint venturers or members of any joint enterprise. In addition, this Agreement is not intended to create any third-party beneficiary except as otherwise provided.

g. Notices. Any notice hereunder must be in writing, and shall be effective when deposited in the United States Mail, Certified (Return Receipt Requested), or with a recognized overnight courier service, addressed to the parties as set forth below (or as may be designated from time to time upon written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice):

To Grantor:                    SLC 117 W 400 S, LLC  
    c/o Endeavor Real Estate Group  
    500 W. 5<sup>th</sup> Street, Suite 700  
    Austin, Texas 78701

With a copy to:                Metcalfe Wolff Stuart & Williams, LLP  
    221 W. 6<sup>th</sup> Street, Suite 1300  
    Austin, Texas 78701  
    Attention: Ari Kuchinsky

To Grantee: 400 South, LLC  
2859 E. Palma Way  
Salt Lake City, Utah 84121  
Attention: Todd Wolfenbarger

With a copy to: Ray Quinney & Nebeker P.C.  
36 South State Street, Suite 1400  
Salt Lake City, Utah 84111  
Attention: Blake Bauman

h. No Dedication. No provision of this Agreement shall ever be construed to grant or create any rights whatsoever in or to any portion of the Parking Parcel other than the Access Easement. Nothing in this Agreement shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.

*[Remainder of Page Intentionally Left Blank; Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date set forth above.

**GRANTOR:**

**SLC 117 W 400 S, LLC,**  
a Delaware limited liability company

By: [Signature]

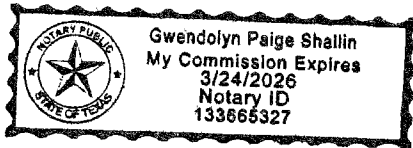
Name: Geoffrey Palmer

Title: EVP

**Acknowledgment**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of MAY, 2023, by Geoffrey Palmer, as EVP of SLC 117 W 400 S, LLC, a Delaware limited liability company, on behalf of said entity.



[Signature]  
Notary Public, State of Texas

[Signatures Continue on Following Page]

**GRANTEE:**

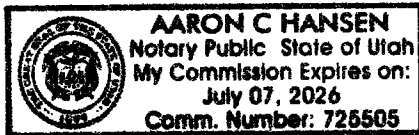
400 SOUTH, LLC,  
a Utah limited liability company

By: [Signature]  
Name: William A. Paulos  
Title: MANAGER

**Acknowledgment**

STATE OF UTAH §  
  §  
COUNTY OF Salt Lake §

This instrument was acknowledged before me on the 1<sup>st</sup> day of June, 2023 by William A. Paulos, as manager of 400 SOUTH, LLC, a Utah limited liability company, on behalf of said limited liability company.



[Signature]  
Notary Public, State of Utah



**EXHIBIT A**

**PARKING PARCEL**

**PARKING LOT WITH WEST FLAG:**

A portion of Parcel 15-01-429-013-0000 that has previously been conveyed to 400 South LLC located in Lot 6, Block 41, Plat "A", Salt Lake Survey, Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

Commencing at the Northeast Corner of said Lot 6 and running thence South 0°01'10" East 165.06 feet along the Easterly Line of said Lot 6 and South 89°57'27" West 99.00 feet to the TRUE POINT OF BEGINNING and running

Thence South 89°57'27" West 107.37 feet;

Thence North 0°01'10" West 165.06 feet to the North Line of said Lot 6;

Thence North 89°57'17" East along said North Line 13.03 feet;

Thence South 0°18'16" East 99.00 feet;

Thence North 89°57'17" East 68.86 feet;

Thence South 0°00'00" East 24.98 feet;

Thence North 90°00'00" East 25.00 feet; thence South 0°01'10" East 41.06 feet to the TRUE POINT OF BEGINNING.

**NOTCH LOT PARCEL:**

A portion of Parcel 15-01-429-013-0000 that has previously been conveyed to 400 South LLC located in Lot 6, Block 41, Plat "A", Salt Lake Survey, Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

Commencing at the Northeast Corner of said Lot 6 and running thence South 0°01'10" East 99.00 feet along the Easterly Line of said Lot 6 and South 89°57'17" West 99.00 feet to the TRUE POINT OF BEGINNING and running

Thence South 0°01'10" East 25.00 feet;

Thence North 90°00'00" West 25.00 feet;

Thence North 00°00'00" East 24.98 feet;

Thence North 89°57'17" East 24.99 feet to the TRUE POINT OF BEGINNING.

**FLAG LOT PARCEL:**

A portion of Parcel 15-01-429-013-0000 that has previously been conveyed to 400 South LLC located in Lot 6, Block 41, Plat "A", Salt Lake Survey, Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

Commencing at the Northeast Corner of said Lot 6 and running thence South 89°57'17" West 99.00 feet to the TRUE POINT OF BEGINNING and running

Thence South 0°01'10" East 99.00 feet;

Thence South  $89^{\circ}57'17''$  West 9.99 feet;  
thence North  $0^{\circ}00'00''$  East 99.00 feet to the North Line of said Lot 6;  
thence North  $89^{\circ}57'17''$  East 9.96 feet along said North Line to the TRUE POINT OF BEGINNING.

**EXHIBIT B**

**BUILDING PARCEL**

A portion of Parcel 15-01-429-013-0000 that has previously been conveyed to 400 South LLC located in Lot 6, Block 41, Plat "A", Salt Lake Survey, Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

Commencing at the Northeast Corner of said Lot 6 and running thence South  $89^{\circ}57'17''$  West 108.96 feet along the North Line of said Lot 6 to the TRUE POINT OF BEGINNING and running

Thence South  $0^{\circ}00'00''$  East 99.00 feet;

Thence South  $89^{\circ}57'17''$  West 83.86 feet;

Thence North  $0^{\circ}18'16''$  West 99.00 feet to said North Line of Lot 6;

Thence North  $89^{\circ}57'17''$  East 84.39 feet along said North Line to the TRUE POINT OF BEGINNING.

**EXHIBIT C**

**EASEMENT AREA**

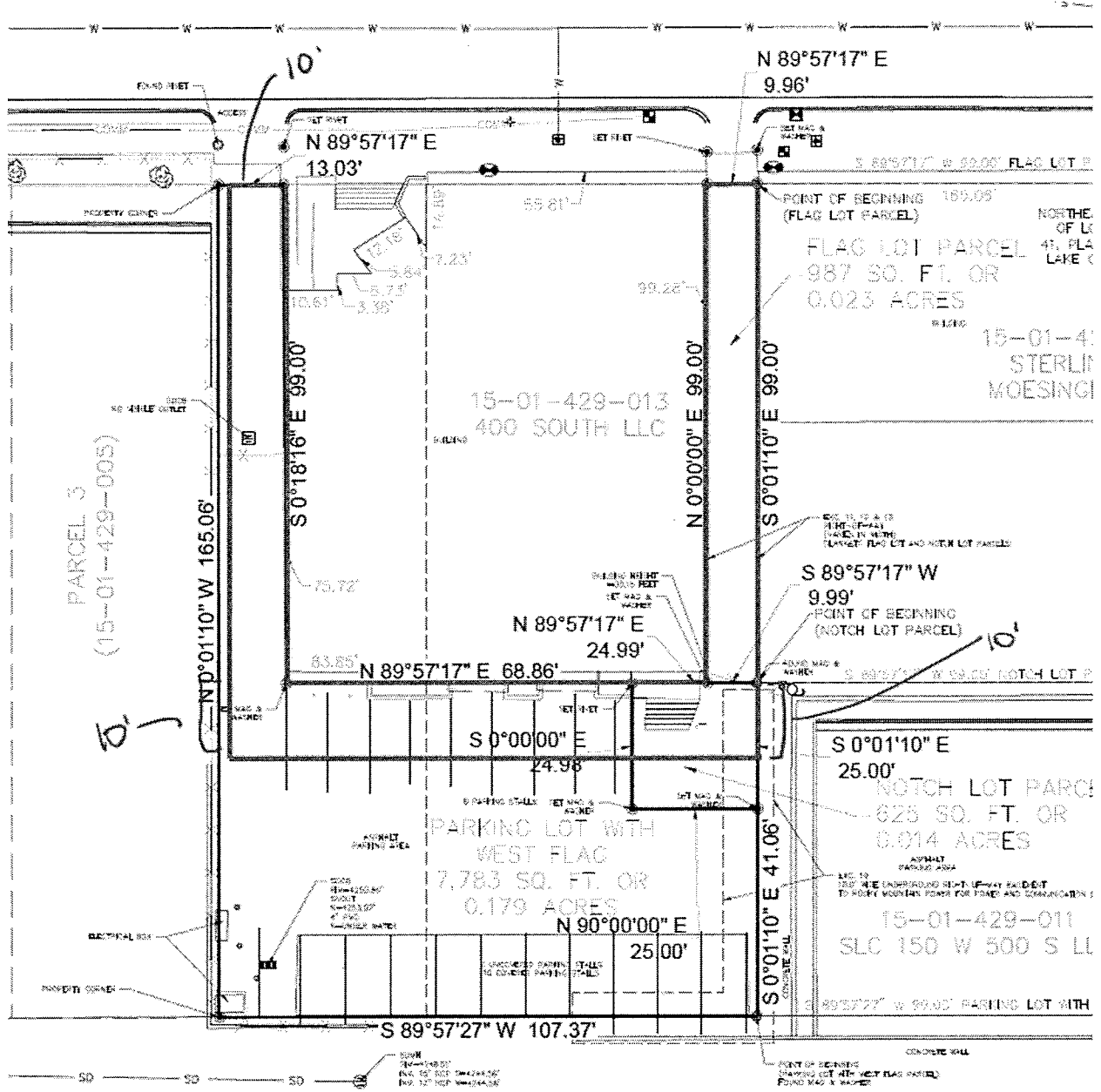


Exhibit C