

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

Wells Fargo Bank, National Association
Real Estate Banking Group (AU #1074)
PO Box 45490
Salt Lake City, Utah 84111
Attention: Daniel R. Stanworth
Loan No.: 1019524

**AGREEMENT REGARDING
TENANCY IN COMMON AGREEMENT AND ASSIGNMENT
AND SUBORDINATION OF MANAGEMENT RIGHTS**

THIS AGREEMENT REGARDING TENANCY IN COMMON AGREEMENT AND ASSIGNMENT AND SUBORDINATION OF MANAGEMENT RIGHTS (this "Agreement") is made as of the 16th day of April, 2020 is by and among **LEHI BLOCK OFFICE 1, L.C.**, a Utah limited liability company ("*Boyer Borrower*"), having its principal address at 101 South 200 East, Suite 200, Salt Lake City, Utah 84111, and **GARDNER LEHI BLOCK OFFICE 1**, a Utah limited liability company ("*Gardner Borrower*", and together with Boyer Borrower, individually and collectively, jointly and severally, the "*Borrower*" or "*Borrowers*", as applicable), having its principal address at 201 S. Main Street, Suite 2000, Salt Lake City, Utah 84111, and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association ("*Lender*"), whose mailing address is PO Box 45490, Salt Lake City, Utah 84111, and is entered into with reference to the following facts:

RECITALS

A. Each Borrower is a true tenant-in-common holding an undivided leasehold interest in and to the real property located in the County of Utah, State of Utah, and more particularly described in **Exhibit A** hereto (the "*Property*").

B. Each Borrower has executed and delivered that certain Co-Tenancy Agreement dated as of March 20, 2020 (the "*Co-Ownership Agreement*") setting forth certain rights and obligations with regard to the Property and providing for management of the Property by **KC GARDNER COMPANY, L.C.**, a Utah limited liability company (the "*Manager*").

C. Borrowers have jointly applied for a loan in the maximum principal amount of **FORTY MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$40,300,000.00)** ("*Loan*") from Lender, and Lender has agreed to extend the Loan jointly and severally to Borrowers, as co-borrowers, subject to the terms and conditions of that certain Construction Loan Agreement of approximately even date herewith between Borrowers and Lender (as the same may be amended, modified, restated, extended and/or renewed from time to time, the "*Loan Agreement*"). The Loan Agreement is evidenced by that certain Promissory Note of even date herewith evidencing the Loan in the principal amount of **FORTY MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$40,300,000.00)** with interest thereon executed by Borrowers and delivered to Lender (as the same may be amended, modified, restated, extended and/or renewed from time to time, the "*Note*"). Capitalized terms used herein without definition shall have the meanings given to such terms in the Loan Agreement.

The Loan is secured by a Leasehold and Fee Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing on the Property from Borrowers for the benefit of Lender (as the same may be amended, modified, restated, extended and/or renewed from time to time, the "*Deed of Trust*"). Capitalized terms used herein without definition shall have the meanings given to such terms in the Loan Agreement.

D. As a condition to extending the Loan to Borrowers, Lender requires that Borrowers execute this Agreement, and Borrowers acknowledge and agree that Lender is relying on the waiver of rights contained in this Agreement in extending the Loan to Borrowers. Lender would not enter into the Loan absent the agreements contained herein.

E. By this Agreement, Borrowers desire to set forth certain agreements with Lender with regard to the Loan and its administration and the Property and its development, construction, management and operation, to waive and relinquish their rights to partition their undivided ownership interests in the Property, each during the term of the Loan, and to assign to Lender certain rights under the Co-Ownership Agreement and to subordinate certain rights thereunder to the lien of the Deed of Trust, all subject to the terms of this Agreement.

F. The parties intend this Agreement to be binding upon their successors and assigns, to the same extent as though such successors and assigns were signatories to this Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, including, without limitation, the mutual promises and the covenants contained herein, the parties hereto agree as follows:

1. Incorporation of Recitals. Recitals A through F, inclusive, are incorporated herein by reference.

2. Appointment of Agent. Gardner Borrower and Boyer Borrower have appointed Manager as their agent for purposes of managing the Property in accordance with the terms, conditions and limitation of the Co-Ownership Agreement, and do hereby appoint Manager as their agent and attorney-in-fact for all purposes of the Loan Documents, including, without limitation, the giving and receiving of notices and other communications, the making of requests for advances, the making of all certifications and reports required pursuant to the Loan Documents and for the purpose of receiving and allocating advances made under the Loan Agreement and Note. Gardner Borrower and Boyer Borrower hereby acknowledge that such agreements are made for the benefit of Lender in extending and administering the Loan and that Lender may rely upon the acts, communications and omissions of Manager as being fully binding upon all Borrowers. Borrowers shall jointly and severally hold Lender harmless for such reliance. Notwithstanding the foregoing, the action of any of Gardner Borrower and Boyer Borrower and the requests, notices, reports and other materials submitted by either of Gardner Borrower and Boyer Borrower shall bind all Borrowers.

3. Assignment of Management Rights; Subordination. For value received, Borrowers do hereby assign, transfer, and set over to Lender all of their right, title and interest in and to the Co-Ownership Agreement, and any management rights as set forth therein, and all amendments, modifications, supplements, and addenda thereto, heretofore and hereafter entered into by Borrowers. Borrowers shall not amend, modify or terminate the Co-Ownership Agreement without the prior written consent of Lender which may be withheld or conditioned in its sole discretion. In addition, the Co-Ownership Agreement and any management rights as set forth therein, and all amendments, modifications, supplements, and addenda thereto, heretofore

and hereafter entered into by Borrowers, are and shall at all times be subject and subordinate to all of the rights of Lender arising in connection with the Loan, including, without limitation, the rights, liens and encumbrances of Lender pursuant to the Deed of Trust. This Agreement is made for the purpose of securing (a) the payment of all indebtedness evidenced by the Note, and (2) the performance of and compliance with all of the terms, covenants and conditions set forth herein, in the Loan Agreement, and all other Loan Documents, as each may be amended, modified, restated, extended and/or renewed from time to time.

4. Borrower Agreements. Borrowers agree:

(a) To faithfully abide by, perform and discharge each and every material obligation, covenant and agreement of the Co-Ownership Agreement to be performed by each Borrower thereunder, at no cost or expense to Lender, and: (i) to enforce in a commercial reasonable manner or secure the performance of each and every material obligation, covenant, condition and agreement contained in the Co-Ownership Agreement and to be performed by Manager; and (ii) except as may be permitted in the Loan Agreement, not to modify, extend or in any way alter the material terms of the Co-Ownership Agreement or accept a surrender thereof, or to waive, excuse, condone or in any manner release or discharge Manager of or from any material obligations, covenants, conditions and agreements to be performed by Manager in the manner and at the place and time specified in the Co-Ownership Agreement. Each Borrower hereby expressly releases, relinquishes and surrenders unto Lender all its right, power and authority to amend, modify, cancel, terminate or in any way alter the terms or provisions of the Co-Ownership Agreement or settle any claims for nonperformance under the Co-Ownership Agreement without the prior written consent of Lender (such consent not to be unreasonably withheld).

(b) That, at no cost or expense to Lender, each Borrower shall appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Co-Ownership Agreement or the obligations, duties or liabilities of each Borrower thereunder, and shall pay all out-of-pocket costs and expenses of Lender, including out-of-pocket attorneys' fees and expenses, in any action or proceeding concerning the Co-Ownership Agreement in which Lender may appear.

(c) That, if any Borrower fails to make any payment or to do any act as herein provided or fails to do so promptly upon demand by Lender, and does not promptly cure such failure within the time periods provided in the Loan Agreement, then Lender shall have the right, but without the obligation so to do, without releasing each Borrower from any obligation hereof and without notice to or demand upon each Borrower, to make such payment or to do such act in such manner and to such extent as Lender may deem reasonably necessary to prevent the material impairment of the security hereof, including, without limiting the generality of the foregoing, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender and to perform and discharge each and every obligation, covenant and agreement of each Borrower contained in the Co-Ownership Agreement, and in exercising any such rights or powers to employ counsel and pay such out-of-pocket costs and expenses as Lender shall incur, including, without limitation, attorneys' fees.

(d) To pay immediately upon demand all out-of-pocket sums expended by Lender under the authority hereof, together with interest thereon at the Default Rate (as defined in the Note).

5. Mutual Agreements. The parties agree:

(a) As long as no Default has occurred and is continuing under the Loan Documents (as Default is defined therein), each Borrower shall have the right to exercise all of its rights (other than its rights to amend, modify, cancel, terminate such agreement or any right to transfer, sell or partition the Property) under the Co-Ownership Agreement.

(b) In the event Lender elects to pursue some or all of its rights and remedies in connection with a Default, Lender shall be under no duty to assume each Borrower's rights and duties under the Co-Ownership Agreement. Each Borrower agrees that Lender does not and shall not assume any of each Borrower's obligations or duties concerning the Co-Ownership Agreement until and unless Lender shall expressly acknowledge in a separate writing its agreement to assume any such obligations or duties in connection with Lender exercising its rights hereunder.

(c) This Agreement is a current and unconditional assignment of the Co-Ownership Agreement. Lender shall, however, permit each Borrower to exercise its rights under the Co-Ownership Agreement (to the extent permitted above) except upon the occurrence and during the continuation of a Default. Upon the occurrence and during the continuation of such a Default, each Borrower shall immediately upon written request from Lender (i) deliver to Lender copies of all documents, correspondence, reports and notices in each Borrower's possession in any way relating to the Co-Ownership Agreement and (ii) cause and require Manager to perform all of its obligations under the Co-Ownership Agreement. Upon the occurrence of a Default, Lender may, at its option and upon written notice to Manager, assume and exercise any or all of its rights granted under this Agreement. Upon giving notice to Manager, Lender may elect to exercise and receive performance of all rights of each Borrower under the Co-Ownership Agreement, including, without limitation, the right to receive and collect all moneys and other performances receivable by, or payable to, each Borrower under the Co-Ownership Agreement, the right to give and receive copies of all notices and other instruments or communications, and the right to cure or take action with respect to a default under the Co-Ownership Agreement. Each Borrower hereby irrevocably constitutes and appoints Lender, upon the occurrence and during the continuation of a Default, as its attorney-in-fact solely to demand, receive and enforce each Borrower's rights with respect to the Co-Ownership Agreement, to give appropriate receipts, releases and satisfactions for and on behalf of each Borrower, and to do any and all acts in the name of each Borrower or in the name of Lender with the same force and effect as each Borrower could do if this Agreement had not been made. The exercise of any of the foregoing rights or remedies by Lender under this Agreement shall not cure or waive, modify or affect any notice of Default under any of the Loan Documents, or invalidate any act done pursuant to any such notice. Lender may exercise its rights hereunder as often as any such Default may occur and so long as any such Default may continue.

(d) Notwithstanding the foregoing, upon the occurrence and during the continuation of a Default, Lender may, in its sole and absolute discretion, elect to terminate all rights of Manager under the Co-Ownership Agreement, including, without

limitation, all rights to manage the Property or occupy or be in possession of any part of the Property. In no event shall Lender have any liability to any Borrower or any other person for any claims, damages, costs, liabilities or expenses arising from or in any way related to any such termination. Such right of termination may be exercised at any time during the continuation of a Default, notwithstanding that Lender may have previously elected to assume the rights of each Borrower pursuant hereto. Such termination shall not waive any claims or damages of Lender against any Borrower or Manager for events occurring prior to such termination or for the failure of Manager or any Borrower to comply with all agreements with respect to such termination. In the event of any such termination, each Borrower and Manager will turn over to Lender all books, records, keys, and other property of Borrowers and Manager relating to the operation of the Property and will reasonably cooperate with Lender in transferring the management and operation of the Property to Lender or such person as Lender may designate.

(e) The exercise by Lender of the foregoing rights shall not constitute a waiver of any of the remedies of Lender under the Loan Documents, or any other document or agreement existing at law or in equity, by statute or otherwise.

(f) BORROWERS SHALL JOINTLY AND SEVERALLY INDEMNIFY, DEFEND AND HOLD LENDER HARMLESS FOR, FROM AND AGAINST ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH IT MAY OR MIGHT INCUR UNDER THIS AGREEMENT OR UNDER OR BY REASON OF THIS AGREEMENT AND FOR, FROM AND AGAINST ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING IN ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN THIS AGREEMENT OR UNDER OR BY REASON OF THIS AGREEMENT, EXCLUDING, HOWEVER, ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER OR ANY OBLIGATIONS ARISING FROM AND AFTER THE DATE LENDER TAKES POSSESSION OF, OR TITLE TO THE PROPERTY. SHOULD LENDER INCUR ANY SUCH LIABILITY, LOSS OR DAMAGE UNDER THIS AGREEMENT OR UNDER OR BY REASON OF THIS AGREEMENT, OR IN THE DEFENSE OF ANY SUCH CLAIM OR DEMAND, THE AMOUNT THEREOF, INCLUDING REASONABLE, ACTUAL, OUT-OF-POCKET COSTS, EXPENSES AND ATTORNEYS' FEES, TOGETHER WITH INTEREST THEREON AT THE AGREED RATE, SHALL BE SECURED HEREBY AND BY THE OTHER LOAN DOCUMENTS, AND BORROWERS SHALL REIMBURSE LENDER THEREFOR IMMEDIATELY UPON DEMAND.

(g) Each Borrower covenants and agrees to transfer and assign to Lender any and all subsequent agreements which are entered into pursuant to, in replacement of or to serve substantially the same purpose as, the Co-Ownership Agreement, upon the same or substantially the same terms and conditions as herein contained, and to make, execute and deliver to Lender, upon demand, any and all instruments that may be necessary therefor. The foregoing shall not be deemed to be a consent to amendments or modifications to the Co-Ownership Agreement.

(h) Upon payment in full of all indebtedness, and performance of all obligations, secured hereby and termination of all obligations of Lender to make loans and advances and otherwise extend credit to each Borrower (other than by reason of the exercise by Lender of its rights and remedies), this Agreement shall become and be void and of no effect, but the affidavit of any officer of Lender showing that any such

conditions to release have not been satisfied shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this, and any person may and is hereby authorized to rely thereon. Upon such termination, all the estate, right, title, interest, claim and demand of Lender under the Co-Ownership Agreement shall revert to each Borrower, and Lender shall, at the request of each Borrower, promptly deliver to each Borrower an instrument canceling the Assignment and reassigning the Co-Ownership Agreement to each Borrower.

(i) Each Borrower warrants that the Co-Ownership Agreement has not been amended or modified except as set forth herein, that no event of default by each Borrower exists thereunder, that no event has occurred or exists which, with notice or lapse of time or both, would constitute an event of default by each Borrower thereunder, and that, to the knowledge of each Borrower, no event of default by Manager exists which, with notice or lapse of time or both, would constitute an event of default by Manager thereunder. Each Borrower warrants that except as specifically set forth in the Co-Ownership Agreement, there are no economic inducements or charges which are or may be payable for the services of either Borrower or Manager for property management services.

6. Waiver of Right to Partition; No Sale of Transfer, Limited Leasing. Borrowers hereby waive and relinquish all statutory or common law rights and abilities to seek to or to actually partition their undivided interests in the Property. Each Borrower further waives any right of ouster. This Agreement shall become effective when executed by all the parties hereto. Once this Agreement becomes effective, it shall continue in full force and effect until such time as the Loan is performed and paid in full. During such time as this Agreement is effective, Borrowers, or any of them, shall have no right to partition, lease, sell or otherwise transfer their undivided interests in the Property without the prior written consent of Lender in its sole and absolute discretion. Lender agrees that, upon satisfaction in full of the Loan, as determined by Lender in its sole and absolute discretion, and at the request of each Borrower, Lender shall execute a release of this Agreement to be recorded in the public records of the County of Utah, State of Utah.

7. Miscellaneous Provisions. The following additional provisions shall apply to this Agreement:

(a) Successors and Assigns. Subject to the preceding terms and conditions of this Agreement, this Agreement shall be binding upon the successors and assigns of each Borrower.

(b) Further Documents. Each party agrees to make, execute, acknowledge and deliver on demand of the other, any and all documents reasonably required to carry out the purpose and intent of this Agreement.

(c) Attorneys' Fees; Indemnification. If any legal action is necessary to enforce the terms of this Agreement, Lender shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Lender may be entitled. Moreover, Borrowers jointly and severally agree to indemnify, defend and hold harmless Lender for any and all expenses, costs and damages incurred by Lender in connection with any attempted partition of the Property or other breach of this Agreement by Borrowers or any of them, or their successors and/or assigns.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

(e) Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand, or sent by registered or certified mail, postage prepaid, return receipt requested, through the United States Postal Service, or by overnight courier such as Federal Express to the addresses set forth in the Loan Agreement or such other addresses which the parties may provide in accordance therewith. Such notices, requests and demands, if sent by mail, shall be deemed given two (2) days after deposit in the United States mail, if sent by overnight courier, shall be deemed given one (1) Business Day (as defined in the Loan Agreement) after deposit with the overnight courier and if delivered by hand, shall be deemed given when delivered.

(f) No Release. The taking of this Agreement by Lender shall not effect the release of any other collateral now or hereafter held by Lender as security for the obligations secured hereby, nor shall the taking of additional security for such obligations hereafter effect a release or termination of this Agreement or any terms or provisions hereof.

(g) Further Assurances. Each Borrower, upon request of Lender, shall execute and deliver such further documents, as may be reasonably necessary to carry out the intent of this Agreement and to perfect and preserve the rights and interests of Lender hereunder and the priority thereof.

(h) No Waiver; Remedies. No failure or delay on the part of Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies hereunder are cumulative and may be exercised by Lender either independently of or concurrently with any other right, power or remedy contained herein or in any document or instrument executed in connection with the Loan.

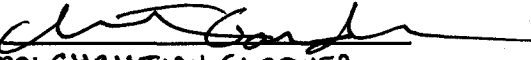
(i) Counterparts. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14th
day of April, 2020. ~~26th~~

GARDNER LEHI BLOCK OFFICE 1, L.C.
a Utah limited liability company

By: KC GARDNER COMPANY, L.C.
a Utah limited liability company
its Manager

By: 
Name: CHRISTIAN GARDNER
Title: Manager

LEHI BLOCK OFFICE 1, L.C.
a Utah limited liability company

By: THE BOYER COMPANY, L.C.
a Utah limited liability company
its Manager

By: _____
Name: _____
Title: Manager

"Borrower"

[SIGNATURES CONTINUE ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ~~10th~~ ^{14th} day of April, 2020.


GARDNER LEHI BLOCK OFFICE 1, L.C.
a Utah limited liability company

By: KC GARDNER COMPANY, L.C.
a Utah limited liability company
its Manager

By: _____
Name: _____
Title: Manager

LEHI BLOCK OFFICE 1, L.C.
a Utah limited liability company

By: THE BOYER COMPANY, L.C.
a Utah limited liability company
its Manager

By: 
Name: BRIAN GOETZ
Title: Manager

"Borrower"

[SIGNATURES CONTINUE ON FOLLOWING PAGES.]

State of Utah)
County of SALT LAKE) ss.

On this 14 day of APRIL, in the year 2020, before me SONIA C. PEREZ, a notary public, personally appeared CHRISTOPHER GARDNER, a manager of KC GARDNER COMPANY, L.C., a Utah limited liability company, the Manager of GARDNER LEHI BLOCK OFFICE 1, L.C., a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



[Signature]
Notary Signature

(Notary Seal)

State of Utah)
County of _____) ss.

On this _____ day of _____, in the year 2020, before me _____, a notary public, personally appeared _____, a manager of THE BOYER COMPANY, L.C., a Utah limited liability company, the Manager of LEHI BLOCK OFFICE 1, L.C., a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

Notary Signature

(Notary Seal)

[SIGNATURES CONTINUE ON FOLLOWING PAGES.]

State of Utah)
) ss.
County of _____)

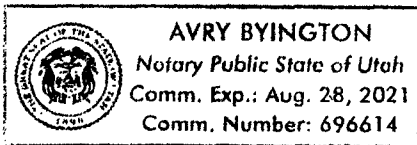
On this _____ day of _____, in the year 2020, before me _____, a notary public, personally appeared _____, a manager of KC GARDNER COMPANY, L.C., a Utah limited liability company, the Manager of **GARDNER LEHI BLOCK OFFICE 1, L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

Notary Signature

(Notary Seal)

State of Utah)
) ss.
County of Salt Lake)

On this 14 day of April, in the year 2020, before me Avry Byington, a notary public, personally appeared Brian Gocher, a manager of THE BOYER COMPANY, L.C., a Utah limited liability company, the Manager of **LEHI BLOCK OFFICE 1, L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



(Notary Seal)

Avry Byington
Notary Signature

[SIGNATURES CONTINUE ON FOLLOWING PAGES.]

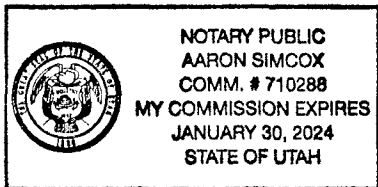
WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

By: *Daniel R. Stanworth*
Name: Daniel R. Stanworth
Title: Vice President

"Lender"

State of Utah)
County of Salt Lake) ss.

On this 14 day of April, in the year 2020, before me Aaron Simcox, a notary public, personally appeared DANIEL R. STANWORTH, an individual, a Vice President of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



(Notary Seal)

Aaron Simcox
Notary Signature

[SIGNATURES CONTINUE ON FOLLOWING PAGE.]

Acknowledged and Agreed:

KC GARDNER COMPANY, L.C.
a Utah limited liability company

By: [Signature]
Name: Christian Gardner
Title: manager

"Manager"

State of Utah)
) ss.
County of SALT LAKE)

On this 13 day of APRIL, in the year 2020, before me SONIA C. PEREZ, a notary public, personally appeared CHRISTIAN GARDNER MANAGER of **KC GARDNER COMPANY, L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



[Signature]
Notary Signature

(Notary Seal)

EXHIBIT A

DESCRIPTION OF PROJECT

All that certain real property located in the County of Utah, State of Utah, described as follows:

PARCEL 1:

Lot 1, LEHI BLOCK PLAT "A", according to the official plat thereof, recorded March 12, 2020 as Entry No. 31840:2020 in the Utah County Recorder's office.

PARCEL 2:

Lot 2, LEHI BLOCK PLAT "A", according to the official plat thereof, recorded March 12, 2020 as Entry No. 31840:2020 in the Utah County Recorder's office.

APN: 45-703-0001 and 45-703-0002