

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

Wells Fargo Bank, National Association
Commercial Real Estate (AU #1074)
P.O. Box 45490
Salt Lake City, Utah 84145-0490
Attention: Jessica Martinez
Loan No.: 1019524

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

(Space Above For Recorder's Use)

GROUND LESSOR'S ESTOPPEL AND AGREEMENT

THIS GROUND LESSOR'S ESTOPPEL CERTIFICATE AND AGREEMENT (this "**Agreement**") is executed as of April 16, 2020, by **BOYER NW QUADRANT LEHI BLOCK OFFICE 1, L.C.**, a Utah limited liability company ("**Owner**") for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION** (the "**Lender**") with respect to certain real property in Utah County, Utah described on **Exhibit A** attached hereto (the "**Premises**").

- A. Owner has entered into a Ground Lease Agreement dated effective as of March 20, 2020 (the "**Ground Lease**") with **LEHI BLOCK OFFICE 1, L.C.**, a Utah limited liability company, and **GARDNER LEHI BLOCK OFFICE 1, L.C.**, a Utah limited liability company, as tenants in common (individually and collectively, the "**Borrower**"), pursuant to which Borrower will lease the Premises from Owner. All capitalized terms used in this Agreement and not defined herein shall have the same meaning as in the Ground Lease.
- B. Borrower intends to construct an approximately 180,000 square-foot office building and related improvements and appurtenances on the Premises (together with all equipment, fixtures and machinery located therein, the "**Improvements**").
- C. The construction of the Improvements will be funded in part by Lender pursuant to a construction loan in the amount of **FORTY MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$40,300,000.00)** from Lender (the "**Loan**") and Lender requires that Owner deliver this Agreement as a condition to making the Loan to Borrower. The Loan is evidenced in part by Promissory Note delivered by Borrower in favor of Lender (the "**Note**"). The Note, Security Instrument (as defined below) and all other documents evidencing or securing the Loan are hereinafter referred to as the "**Loan Documents**".

NOW, THEREFORE, Owner certifies to Lender as follows:

1. **ESTOPPEL.** Owner acknowledges and represents that, as of the date hereof:
- 1.1 **Ground Lease Effective.** The Ground Lease has been duly executed and delivered, and, subject to the terms and conditions thereof, the Ground Lease is in full force and effect, the obligations of Owner and Borrower thereunder are valid and binding and there have been no modifications or additions to the Ground Lease, written or oral.
- 1.2 **No Default.** To the best of Owner's actual knowledge, as of the date hereof: (i) there exists no breach, default or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Ground Lease;

and (ii) there are no existing claims, defenses or offsets against Borrower under the Ground Lease.

1.3 No Litigation. No litigation has been commenced, threatened or is now pending against Owner or, to the best of Owner's knowledge, against Borrower on account of their respective interests in the Premises.

1.4 No Liens. As of the date of this Agreement, there is no mortgage lien or similar encumbrance on the fee interest in the Premises.

2. RECOGNITION OF LENDER AS LEASEHOLD MORTGAGEE. Owner is aware that Lender intends to make the Loan to Borrower to finance some of the costs of the construction of certain improvements (the "**Improvements**") on the Premises, which Loan shall be evidenced by the Note and which will be secured by a first and prior lien upon (i) Borrower's leasehold estate in the Premises; and (ii) Owner's fee interest in the Premises, pursuant to a Leasehold and Fee Construction Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing (the "**Security Instrument**"), and by other Loan Documents. Lender qualifies as a "Leasehold Mortgagee" under the terms of the Ground Lease and shall have all the rights given to a Leasehold Mortgagee under the Ground Lease.

3. SUBORDINATION. Lender and Owner hereby agree that:

3.1 Prior Lien. The Security Instrument and any modifications, renewals or extensions thereof (including, without limitation, any modifications, renewals or extensions with respect to any additional advances made subject to the Security Instrument), shall unconditionally be and at all times remain a lien on the Premises and Improvements prior and superior to the Ground Lease. In the event of any conflict between the provisions of the Loan Documents and the provisions of the Ground Lease, the provisions of the Loan Documents shall control.

3.2 Subordination. Lender would not make the Loan without this agreement to subordinate; and

3.3 Whole Agreement. This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Ground Lease to the lien of the Security Instrument and shall supersede and cancel, but only insofar as would affect the priority between the Security Instrument and the Ground Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Ground Lease to a deed or deeds of trust or to a mortgage or mortgages.

4. RECOGNITION OF SUCCESSOR LESSEE. Unless Lender elects at foreclosure to terminate the Ground Lease, Owner agrees with Lender that, notwithstanding anything to the contrary in the Ground Lease, (a) Owner's consent shall not be necessary with respect to any acquisition of Borrower's interest in the Premises upon foreclosure by Lender or a transfer in lieu of foreclosure, or upon the initial assignment by a Lender following acquisition through foreclosure or transfer in lieu of foreclosure, and Owner shall be bound to Lender or such purchaser, grantee or other successor to Borrower's interest ("**Successor Lessee**") and Successor Lessee shall be bound to Owner under all of the terms, covenants and conditions of the Ground Lease for the balance of the term remaining and any extensions or renewals thereof which may be effected in accordance with any option therefore in the Ground Lease, with the same force and effect as if the Successor Lessee were the original lessee thereunder, and (b) in the event that Lender becomes a Successor Lessee and subsequently transfers the interest of Borrower under the Ground Lease to another Successor Lessee, Lender shall, upon such transfer, be released from liability under the Ground Lease for all obligations of the lessee thereunder arising after the date of such transfer.

5. **NEW LEASE.** Notwithstanding anything to the contrary in the Ground Lease, in the event that the Ground Lease shall terminate for any reason including, without limitation, a default by Borrower, or in the event that an actual or deemed rejection of the Ground Lease shall occur under any provision of the Bankruptcy Code (Title 11, United States Code) or any successor law having similar effect, then, and in any such event, Lender shall thereupon have the option to obtain a new lease ("**New Lease**") for the Premises in accordance with and upon the following terms and conditions:
- 5.1 Within forty-five (45) days after Lender has delivered to Owner written request for a New Lease (such written request to be delivered to Owner within forty-five (45) days after the termination or the actual or deemed rejection of the Ground Lease), Owner shall enter into a New Lease of the Premises with Lender (or its affiliate) or any entity succeeding to Lender's interest through foreclosure or similar proceeding (as applicable, the "**New Tenant**"); provided, however, that if Owner receives no such written request within said forty-five (45) day period, then all of Lender's rights to a New Lease hereunder shall automatically terminate.
- 5.2 The New Lease shall be effective as of the date of the termination or actual or deemed rejection of the Ground Lease and shall be for the remainder of the term of the Ground Lease (including the right to exercise any unexercised options to extend the term of the Ground Lease) at the same rent, additional rent and other charges provided in the Ground Lease and otherwise upon the same agreements, terms, covenants and conditions contained in the Ground Lease, except that the New Lease shall also include an additional indemnity paragraph under the terms of which the New Tenant shall indemnify and hold Owner harmless from and against all claims, demands or liability whatsoever by whomsoever made for loss or damage arising out of or in connection with the issuance of the New Lease and will promptly reimburse Owner for its costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims. The New Lease shall have the same relative priority in time and right as the Ground Lease and shall have the benefit of and vest in the New Tenant all of the same rights, title, interest, powers and privileges of Borrower under the Ground Lease; provided, Owner shall be obligated to defend such title against claims arising by, through or under the New Tenant only at the cost and expense of the New Tenant. The New Lease shall, subject to the same agreements, terms, covenants and conditions contained herein, also demise, convey and transfer to the New Tenant all right, title and interest which Borrower would have held in the Improvements, subject to all rights of Owner in the Improvements under the Ground Lease, including, but not limited to, all rights of Owner to reversion of the Improvements to it as provided in the Ground Lease. Concurrently with execution of the New Lease, Owner shall assign to the New Tenant its interest in and to all then existing subleases affecting the Premises as to which the tenant thereunder has attorned to and been recognized by Owner. During the period between the termination or actual or deemed rejection of the Ground Lease and execution of the New Lease, Owner shall not amend or modify such subleases or take any action which will adversely affect the Premises or give rise to any liens or encumbrances against the Premises.
- 5.3 As a condition to and concurrently with delivery of the New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under the Ground Lease from and after the date of the original default by Borrower, but for the termination or rejection as aforesaid, and shall fully otherwise remedy any existing defaults under the Ground Lease susceptible of cure by the New Tenant, and shall pay to Owner all costs and expenses, including but not limited to any insurance premiums paid by Owner in order to maintain the insurance coverage required under the terms of such of the Ground Lease from and after the date of the original default by Borrower, and the reasonable attorneys' fees, court costs and disbursements incurred by Owner by reason of the termination or actual or deemed rejection of the Ground Lease and in connection

with the execution and delivery of such New Lease. Any default which cannot be cured by the New Tenant until it obtains possession shall be cured by the New Tenant within a reasonable time after it obtains possession.

- 5.4** Nothing contained in this Section 4 shall be deemed to impose any obligation on Owner to deliver physical possession of the Premises to the New Tenant; provided Owner shall use reasonable efforts to join with and assist the New Tenant in removing any third parties from the Premises as long as Owner incurs no out-of-pocket cost or expense.
- 5.5** Lender, if it is the initial lessee under the New Lease, may assign such New Lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such New Lease contained and on the lessee's part to be performed and observed, provided that a certified copy of such assignment is provided to Owner.
- 6. NOTICES.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Owner or Lender appearing below

Lender: Wells Fargo Bank, National Association
Real Estate Banking Group (AU #1074)
(for overnight or hand delivery)
299 South Main Street, 6th Floor
Salt Lake City, Utah 84111

(for U.S. mail)
PO Box 45490
Salt Lake City, Utah 84145-0490
Attention: Daniel R. Stanworth
Loan # 1019524

with a copy to: Wells Fargo Bank, National Association
Minneapolis Loan Center
600 South 4th Street, 9th Floor
Minneapolis, Minnesota 55415-1526
Attention: Kyle Schwanke
Loan # 1019524

and

Snell & Wilmer L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Brian D. Cunningham, Esq.

Owner: Boyer NW Quadrant Lehi Block Office 1, L.C.
101 South 200 East, Suite 200
Salt Lake City, Utah 84111
Attention: President

with a copy to: Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Lamont R. Richardson, Esq.

7. **LENDER'S RELIANCE.** Owner makes this certification to Lender knowing that Lender will rely upon the contents hereof concerning the Ground Lease in funding the Loan and executing the Loan Documents.
8. **SUBSEQUENT PLEDGE.** Owner agrees that, if so requested by Borrower, Owner shall execute a deed of trust pledging its interest in the Premises to another lender if required by such other lender to allow Borrower to obtain permanent financing for the Improvements.
9. **MISCELLANEOUS.**
- 9.1 If any term, covenant, condition or agreement contained in this Agreement or the application thereof to any person, firm or entity shall at any time or to any extent be deemed or found to be invalid or unenforceable by operation of law, judicial proceedings, or otherwise, the remainder of this Agreement or the application of such term, covenant, condition or provision to persons or entities or to circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term, covenant, condition or provision of this Agreement or the application thereof shall be valid and enforced to the fullest extent permitted by law.
- 9.2 This Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.
- 9.3 This Agreement may be executed in two or more counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute but one and the same instrument and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.
- 9.4 This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. This Agreement may not be modified in any manner whatsoever except by an instrument in writing signed by each of the parties hereto.
- 9.5 At Lender's option and at no expense to Owner, Lender may record this Agreement in the office of the County Recorder for Utah County, State of Utah.

[Signature Pages to Follow]

Signature Page for Owner:

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

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

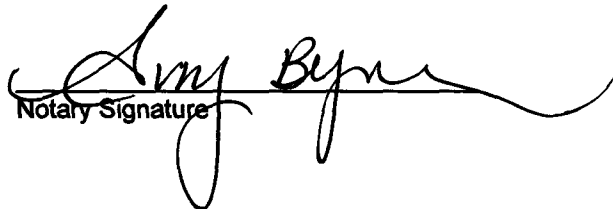


By: _____
Name: Brian Gochneour
Title: Manager

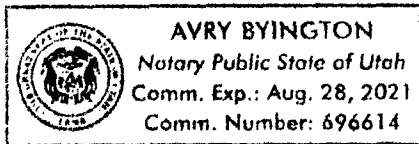
"Ground Lessor"

State of Utah)
County of Salt Lake) ss.

On this 6 day of April, in the year 2020, before me Avery Byington, a notary public, personally appeared Brian Gochneour, a Manager of THE BOYER COMPANY, L.C., a Utah limited liability company, the manager of **BOYER NW QUADRANT 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.

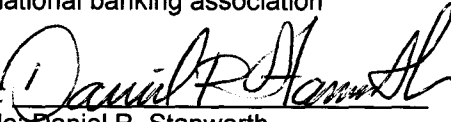

Notary Signature

(Notary Seal)



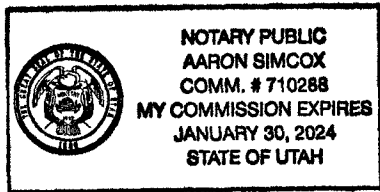
Signature Page for Lender:

WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

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

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**, 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)

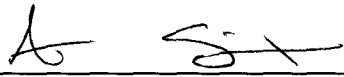

Notary Signature

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT A to GROUND LESSOR'S ESTOPPEL AND AGREEMENT dated as of April 16, 2020, executed by **BOYER NW QUADRANT LEHI BLOCK OFFICE 1, L.C.**, a Utah limited liability company, and **WELLS FARGO BANK, NATIONAL ASSOCIATION**.

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.