

ENT **102714:2021** PG 1 of 8
Andrea Allen
Utah County Recorder
2021 Jun 03 02:14 PM FEE 40.00 BY CS
RECORDED FOR Cottonwood Title Insurance Agency, Inc
ELECTRONICALLY RECORDED

RECORDATION REQUESTED BY:

Marci Morgan Cox, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

WHEN RECORDED MAIL TO:

Marci Morgan Cox, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

CT-143173 - CAF

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ASSIGNMENT OF LEASES, RENTS AND PROFITS

BORROWER: **LEHI SPECTRUM OFFICE 2, L.C.**, a Utah limited liability company

LENDER: **NATIONWIDE LIFE INSURANCE COMPANY**, an Ohio corporation

Legal Description: See Exhibit A.

Parcel Identification No(s): 45-629-0002

ASSIGNMENT OF LEASES, RENTS AND PROFITS

This ASSIGNMENT OF LEASES, RENTS AND PROFITS (the "Assignment") is executed as of June 3, 2021, by **LEHI SPECTRUM OFFICE 2, L.C.**, a Utah limited liability company, having its principal office at 101 South 200 East, Suite 200, Salt Lake City, Utah 84111 ("Borrower"), to and in favor of **NATIONWIDE LIFE INSURANCE COMPANY**, an Ohio corporation, together with its successors and assigns, having its principal office at One Nationwide Plaza, Fifth Floor, Columbus, Ohio 43215, Attention: Real Estate Investments, 1-5-701 (collectively, "Lender").

RECITALS:

A. Borrower is the present owner in fee simple of certain real property located in the City of Lehi, County of Utah, and State of Utah (the "State"), and being more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the "Real Property").

B. Lender has made a loan to Borrower in the principal sum of TWENTY NINE MILLION AND NO/100 DOLLARS (\$29,000,000.00) (the "Loan") as evidenced and represented by that certain Promissory Note of even date herewith executed and delivered by Borrower and payable to Lender in the amount of \$29,000,000.00 (as the same may be amended, extended, renewed, restated, replaced, supplemented or otherwise modified from time to time, the "Note"), which Note is secured by that certain Trust Deed and Security Agreement of even date herewith (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Security Instrument" encumbering the Real Property and other property more specifically described in the Security Instrument (all of which property is referred to herein and in the Security Instrument as, the "Property").

C. Lender, as a condition to making the Loan and to obtain additional security therefor, has required the execution of this Assignment by Borrower. The Loan is governed by that certain Loan Agreement dated as of the date hereof by and between Borrower and Lender (as the same may be amended, extended, renewed, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") (capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement, as applicable).

IN CONSIDERATION of the principal sum of the Note and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. Assignment. In order to further secure the payment of the Loan, Borrower irrevocably, absolutely and unconditionally assigns, transfers, and sets over to Lender, its successors and assigns, all of the right, title, interest, and estate that Borrower may now or later have in, to and under (a) the Leases; (b) the Rents; (c) the right to collect and receive all the Rents; and (d) the right to enforce and exercise, whether at law or in equity or by any other means, all terms and conditions of the Leases. This Assignment is intended by Borrower and Lender to constitute a present, absolute assignment and not a collateral assignment for additional

security only. Upon full payment of the Indebtedness, satisfaction of the Obligations and written request by Borrower, Lender shall transfer, set over, and assign to Borrower all right, title, and interest of Lender in, to, and under the Leases and the Rents.

2. License. Until an Event of Default occurs, Borrower shall have a revocable license (which may only be revoked as provided in Section 3 below) (the "License") from Lender to exercise all rights extended to the landlord under the Leases. Borrower shall hold the Rents (excluding any Termination Fees from Major Tenant Leases and any Termination Fees from any Leases in excess of \$100,000, which shall be paid directly and entirely to Lender) or an amount sufficient to: (i) discharge all current sums due and payable on the Indebtedness; and (ii) timely perform all Obligations, in trust for the payment of the Indebtedness and performance of the Obligations and, prior to the occurrence of an Event of Default, Borrower may use, distribute and enjoy all Rents remaining thereafter.

3. Revocation. Upon the occurrence of an Event of Default, whether or not legal proceedings have commenced and without regard to waste, adequacy of security for the Indebtedness, the Obligations or the solvency of Borrower, the License shall automatically terminate without notice by Lender (any such notice being expressly waived by Borrower). Upon such termination, (i) Borrower shall deliver to Lender within five (5) days after written notice from Lender (a) all Rents (including prepaid Rents) held or collected by Borrower from and after the date of the Event of Default, (b) all security or other deposits paid pursuant to the Leases, and (c) all previously paid charges for services, facilities or escalations to the extent allocable to any period after the Event of Default. Borrower agrees and stipulates that upon execution of this Assignment, Borrower's only interest in the Leases or Rents is as a licensee revocable upon an Event of Default.

4. Rent Collection. Upon and following the occurrence of an Event of Default, Borrower further agrees that it will cooperate with and facilitate in all reasonable ways Lender's collection of the Rents in accordance with the terms of the Loan Documents, and will, upon request by Lender, execute a written notice (the "Tenant Notice") to each tenant, occupant, licensee or governmental entity at the Property (collectively or individually, the "Tenant") directing said Tenant to pay all Rents, which are due and payable, directly to Lender; provided, however, Lender may notify any Tenant of the effectiveness of this Assignment without first giving notice to Borrower or requesting Borrower to execute Tenant Notice(s). Borrower acknowledges that following Tenant's receipt of such notice Borrower shall have no right or claim against Tenant for or by reason of any payments of rent or other charges made by Tenant to Lender pursuant to this Assignment.

5. Application of Rents. The Rents collected by Lender, after it commences exercising its rights under this Assignment, shall be applied in such order and manner of application as Lender may elect (notwithstanding the fact that the amount owing thereon may not then be due and payable or that the Indebtedness may otherwise be adequately secured). The Rents received by Lender hereunder and applied by Lender to the amounts due and owing by Borrower shall not serve to cure any default under any of the Loan Documents, nor shall any amounts received by Lender hereunder be in full satisfaction of the Loan unless such amounts are sufficient to pay such Loan in full (including any accrued but unpaid interest thereon, Prepayment Premiums, Late Charges and advances) in accordance with the terms of the Loan

Documents. Notwithstanding the foregoing, Termination Fees collected in accordance with Section 2 of this Assignment shall be used and applied pursuant to the terms of the Loan Agreement.

6. Lender as Creditor of Tenant. Upon execution of this Assignment, Lender, and not Borrower, shall be the creditor of any Tenant in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting any such Tenant; provided, however, that Borrower shall be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Notwithstanding the foregoing, Lender shall have the right, but not the obligation, to file such claims instead of Borrower and if Lender does file a claim, Borrower agrees that Lender (a) is entitled to all distributions on such claim to the exclusion of Borrower, and (b) has the exclusive right to vote such claim and otherwise to participate in the administration of the estate in connection with such claim. Lender shall have the option to apply any monies received by it as such creditor to the Indebtedness in such order and manner of application as Lender may elect. If a petition is filed under the Bankruptcy Code by or against Borrower, and Borrower, as landlord under any Lease, decides to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender at least ten (10) days' prior written notice of the date when Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender may, but shall not be obligated to, send Borrower within such ten-day period a written notice stating that (a) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (b) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender sends such notice, Borrower shall not reject the Lease provided Lender complies with subsection (b) of the preceding sentence.

7. Limitation of Lender's Liability. Lender shall not be obligated to perform or discharge any obligation under the Leases hereby assigned or by reason of this Assignment, and Borrower hereby agrees to indemnify, defend and hold Lender harmless against any and all liability, loss or damage which Lender might incur under the Leases, or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the terms of such Leases, including Lender's negligence or strict liability, except for claims and demands arising by reason of Lender's gross negligence, willful misconduct, or illegal acts.

8. Reinstatement after Default. Lender, at its sole option, may reinstate the Loan upon Borrower having complied with all the terms, covenants and conditions of the Loan Documents, and/or fully curing all of the defaults under said documents. In such event, Lender, at its sole option, may reinstate Borrower's license to collect Rents and return possession of the Property to Borrower. Thereafter Borrower shall remain in possession of the Property unless and until another Event of Default occurs under any of the Loan Documents, at which time Lender may, at its sole option, again revoke Borrower's license to collect Rents and may again take possession of the Property under authority, and pursuant to the terms and provisions, of this Assignment.

9. Satisfaction of Security Instrument; Satisfaction of Assignment. This Assignment shall remain in full force and effect as long as the Loan remains unpaid in whole or in part. It is

understood and agreed that a complete release or satisfaction of the Security Instrument shall operate as a complete release or satisfaction of all of Lender's rights and interest hereunder, and that satisfaction of the Security Instrument shall operate to satisfy this Assignment.

10. Captions. The captions set forth at the beginning of the various paragraphs of this Assignment are for convenience only, and shall not be used to interpret or construe the provisions of this Assignment.

11. Documents Incorporated. The terms and conditions of the Loan Documents are incorporated into this Assignment as if fully set forth in this Assignment.

12. Joint and Several Liability. Where more than one Borrower is named herein, the obligations and liabilities of said Borrower shall be joint and several.

13. Changes in Writing. No modification, amendment or waiver of, or consent to any departure by Borrower from, any provision of this Assignment will be effective unless made in a writing signed by the party to be charged, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

14. Governing Law; Waiver of Jury Trial; Severability.

(a) THE PARTIES HERETO, TO THE FULL EXTENT PERMITTED BY LAW, EACH HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES HEREBY THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, AGAINST LENDER, ITS SUCCESSORS AND ASSIGNS, BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS, THE LOAN OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, LENDER'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER) IN CONNECTION WITH THE LOAN OR THE LOAN DOCUMENTS.

(b) THIS ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF UTAH,

WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS ASSIGNMENT MAY BE BROUGHT IN A COURT OF RECORD IN THE STATE OR IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SUCH STATE. BORROWER CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF EACH SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING, AND WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) If any clauses or provisions herein contained operate, or would prospectively operate, to invalidate this Assignment, then such clauses or provisions only shall be held for naught, as though not herein contained, and the remainder of this Assignment shall remain operative and in full force and effect.

[SIGNATURE PAGE FOLLOWS]

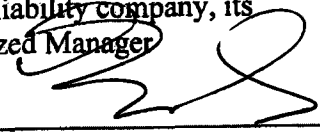
[Signature Page to Assignment of Leases, Rents and Profits]

IN WITNESS WHEREOF, Borrower has duly executed this Assignment as of the day and year first above written.

BORROWER:

LEHI SPECTRUM OFFICE 2, L.C., a Utah limited liability company

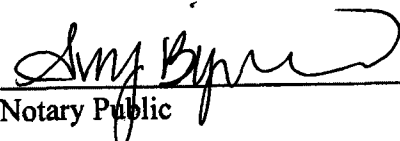
By: The Boyer Company, L.C., a Utah limited liability company, its Authorized Manager


By: _____
Print Name: BRIAN GOCHNOUR
Title: Manager

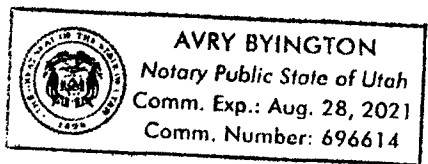
STATE OF UTAH :
 : SS:
COUNTY OF SALT LAKE :

Sworn to and acknowledged before me, a Notary Public in and for said state, by Brian Gochnour, the Manager of The Boyer Company, L.C., a Utah limited liability company, the Authorized Manager of Lehi Spectrum Office 2, L.C., a Utah limited liability company, for and on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunder subscribed my name and affixed my notarial seal on this 24 day of May, 2021.



Notary Public



**EXHIBIT A
PROPERTY DESCRIPTION**

PARCEL 1:

Lot 2, PLAT "A", LEHI SPECTRUM SUBDIVISION, according to the official plat thereof on file and of record in the office of the Utah County Recorder, recorded July 26, 2017 as Entry No. 71391:2017 as Map Filing No. 15632.

PARCEL 1A:

A non-exclusive easement for pedestrian ingress and egress as disclosed in that certain Declaration of Pedestrian Walkway Easements by and between Lehi Spectrum Office 1, L.C., a Utah limited liability company and Lehi Spectrum Office 2, L.C., a Utah limited liability company, dated May 17, 2019 and recorded May 20, 2019 as Entry No. 44541:2019.

PARCEL 1B:

A non-exclusive easement for ingress and egress as disclosed in that certain Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Botanical Point recorded April 13, 2016 as Entry No. 31977:2016.

Tax Id No.: 45-629-0002