

RECORDING REQUESTED
BY AND WHEN RECORDED
RETURN TO:

Real Estate Administration
University of Utah
505 Wakara Way, Suite 210
Salt Lake City, Utah 84108
Attn: Executive Director

ENT **111121:2022** PG 1 of 9
Andrea Allen
Utah County Recorder
2022 Oct 19 04:15 PM FEE 40.00 BY IP
RECORDED FOR Cottonwood Title Insurance Agency, Inc.
ELECTRONICALLY RECORDED

Tax Parcel Nos.: 580050043,
580050044, 580050045,
580050046, 580050042

(Space above this line for Recorder's use.)

RIGHT OF FIRST OFFER AGREEMENT

THIS RIGHT OF FIRST OFFER AGREEMENT (this "**Agreement**") is entered into as of October 19, 2022, between Westerly Properties, LLC, a Delaware limited liability company ("**Westerly**"), and the University of Utah, a body politic and corporate of the State of Utah ("**University**"). Westerly and University are referred to in this Agreement individually as a "**Party**," and collectively as the "**Parties**."

RECITALS

A. Westerly and University are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated July 21, 2022 ("**Purchase Agreement**") pursuant to which University agreed to purchase from Westerly the real property described on Exhibit "A" attached hereto and made a part hereof (the "**University Property**").

B. Pursuant to the terms of the Purchase Agreement, University agreed to grant Westerly a right of first offer to purchase the University Property.

C. In furtherance of such agreement, Westerly and University agreed to enter into this Agreement.

AGREEMENT

NOW THEREFORE, in consideration for mutual benefits to be derived herefrom and from the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Right of First Offer**. University hereby agrees as follows:

(a) If, at any time after the date hereof, University elects to sell the University Property to any party other than the Utah National Guard, the United States Army, an affiliate of the University, or any other party in connection with the relocation of Fort Douglas, University shall provide Westerly with written notice of such proposed sale (the "Notice of Proposed Sale").

(b) Exercise of Right of First Offer. Westerly shall have the right (the "Right of First Offer") for a period of ten (10) business days from and after University's delivery of the Notice of Proposed Sale to offer to purchase the University Property at the then fair market value determined by MAI appraisal using an appraiser mutually selected by Westerly and University. Such appraisal shall include the value of the ERUs for the University Property. Notwithstanding the foregoing, in no event shall the purchase price for the University Property be less than Fifteen Million and 00/100 Dollars (\$15,000,000.00). If Westerly fails to exercise its Right of First offer within such ten (10) business day period, such failure shall be deemed to be an election by Tenant to not exercise Westerly's right of first offer. If Westerly exercises its right to purchase under this Right of First Offer, Westerly shall have a period of ninety (90) days to complete the purchase of the University Property.

(c) Acceptance. University shall accept Westerly's offer by delivering a written notice to Westerly (the "Acceptance Notice") within ten (10) business days of receiving Westerly's offer. If University timely delivers the Acceptance Notice, University shall be deemed to have irrevocably accepted the agreement terms presented by Westerly.

2. Termination and Recordation. In the event Westerly notifies University that it will not be exercising its Right of First Offer, or is deemed to have failed to exercise such Right of First Offer, University may thereafter sell the University Property to any other party and this Agreement shall terminate. In the event Westerly purchases the University Property pursuant to Section 1 or the University Property is transferred by University to the Utah National Guard, the United States Army, an affiliate of the University, or any other party in connection with the relocation of Fort Douglas, this Agreement shall terminate upon closing of the transfer of the University Property. Upon termination of this Agreement, Westerly shall execute such documents as may be reasonably necessary to acknowledge such termination of record.

3. Notices. Any notices, certificates, consents or other communication required to be sent or given under this Agreement must be in writing and will be deemed given to a Party when actually received. Notices, certificates, consents or other communications may be delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid, with written confirmation of receipt) to the following addresses and marked to the attention of the individual (by title) designated below (or to such other address, or individual as a Party may designate by notice to the other Parties):

To Westerly: Westerly Properties, LLC
 Paul W. Hardman and Lora Hardman
 3232 North 4200 West

Lehi, UT 84043
E-mail Address: hardlora@yahoo.com
Telephone No.: 801-376-4765

With a copy to: Dennis M. Astill
1802 W. South Jordan Parkway, 2nd Floor
South Jordan, UT 84095
E-mail Address: dennis@pearsonbutler.com
Telephone No.: 801-988-5891

To University: University of Utah – Real Estate Administration
505 Wakara Way, Suite 210
Salt Lake City, Utah 84108
Executive Director
E-mail Address: RealEstateNotices@utah.edu
Telephone No.: 801-587-8730

4. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the subject matter hereof. All exhibits mentioned in this Agreement are incorporated herein by reference. In the event of a default by Westerly under this Agreement, University shall have all other remedies permitted at law or in equity against Westerly, including, without limitation, specific performance. No subsequent amendment to this Agreement shall be binding upon Westerly or University unless reduced to writing and signed by the Party against whom such enforcement is sought. There are no representations or promises by either Party to the other except as are specifically set forth herein. This Agreement supersedes and revokes all previous conversations, negotiations, arrangements, letters of intent, writings, brochures, understandings, and information conveyed, whether oral or in writing, between the Parties and their respective affiliates. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any section or paragraph.

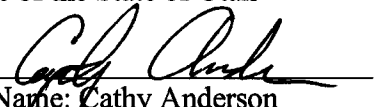
5. General Provisions. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Agreement shall inure to the benefit of, and be binding on, the Parties (or any other party obligated hereunder) and their respective successors and assigns. This Agreement and the rights of and obligations hereunder shall constitute covenants running with the land as to the University Property. This Agreement may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

UNIVERSITY

UNIVERSITY OF UTAH, a body politic and corporate of the State of Utah

By: 
Name: Cathy Anderson
Title: Chief Financial Officer and Vice President for Administrative Services

WESTERLY

WESTERLY PROPRTIES, LLC, a Utah limited liability company

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

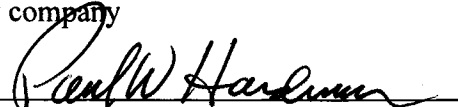
UNIVERSITY:


UNIVERSITY OF UTAH, a body politic and corporate of the State of Utah

By: _____
Name:
Title:

WESTERLY:

WESTERLY PROPRTIES, LLC, a Utah limited liability company

By: 
Paul W. Hardman
Manager

By: 
Lora M. Hardman
Manager

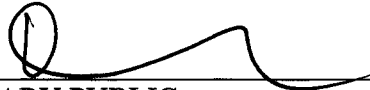
STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

On this 19 day of October, 2022, before me, the undersigned, personally appeared Cathy Anderson, known or identified to me to be authorized to act on behalf of the University of Utah, a body politic and corporate of the State of Utah, who executed the instrument on behalf of said body politic and corporate, and acknowledged to me that the body politic and corporate executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



NOTARY PUBLIC

My Commission Expires:

Residing at: Utah



STATE OF UTAH)

: ss.

COUNTY OF Salt Lake)

On this ___ day of October, 2022, before me, the undersigned, personally appeared _____, known or identified to me to be a manager of Westerly Properties, LLC, a Delaware limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF UTAH)
)
) : ss.
COUNTY OF Utah)

On this 11 day of October, 2022, before me, the undersigned, personally appeared Paul W. Hardman known or identified to me to be a Manager of Westerly Properties, LLC, a Delaware limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Kimberly Adams
NOTARY PUBLIC

My Commission Expires: 7-7-2026

Residing at: Lehi, UT



STATE OF UTAH)
)
) : ss.
COUNTY OF Utah)

On this 11 day of October, 2022, before me, the undersigned, personally appeared Lora M. Hardman, known or identified to me to be a Manager of Westerly Properties, LLC, a Delaware limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Kimberly Adams
NOTARY PUBLIC

My Commission Expires: 7-7-2026

Residing at: Lehi, UT



Exhibit "A"**Legal Description of the University Property****PARCEL 1-A EAST:**

A parcel of land situate in the Northwest quarter of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the South line of the Northwest corner of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian, said point being South 89°48'58" West 389.49 feet along the South line of the Northwest quarter from the center of said Section 35 and running thence South 89°48'58" West 869.69 feet along said South line of the Northwest corner to a point at the centerline of an existing concrete canal; thence along the centerline of said concrete canal the following (12) twelve courses: 1) North 21°10'50" East 512.45 feet; 2) North 15°04'06" East 51.98 feet; 3) North 06°48'21" East 61.07 feet; 4) North 02°58'33" East 69.68 feet; 5) North 04°21'04" East 218.01 feet; 6) North 03°01'11" West 51.06 feet; 7) North 12°14'20" West 105.33 feet; 8) North 03°26'20" East 47.60 feet; 9) North 21°07'43" East 52.83 feet; 10) North 24°27'08" East 112.52 feet; 11) North 18°24'13" East 57.40 feet; 12) North 13°05'10" East 52.32 feet to a point on the East-West 40-acre line of the Northwest quarter of said Section 35; thence North 89°31'58" East 712.97 feet along said 40-acre line; thence South 41°18'16" East 154.77 feet; thence South 17°47'00" West 396.62 feet; thence South 08°21'00" West 852.33 feet to the point of beginning.

PARCEL 1-B:

A parcel of land situate in the Northwest quarter of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point South 89°48'58" West 16.90 feet along the quarter section line from the center of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian and running thence South 89°48'58" West 314.17 feet along the quarter section line; thence North 08°21'00" East 838.90 feet; thence North 17°47'00" East 357.27 feet; thence South 41°18'16" East 131.63 feet; thence South 00°11'44" West 1,070.32 feet to the point of beginning.

PARCEL 1-C:

A parcel of land situate in the Northwest quarter of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point South 00°10'41" West 193.78 feet West 16.50 feet from the East 1/16th corner of the Northwest quarter of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence South 00°10'41" West 24.26 feet; thence North 41°18'16" West 114.18 feet; thence North 17°47'00" East 51.50 feet to the Southerly line of a parcel of land conveyed by Warranty Deed to the United States of America, recorded November 3, 1988, Entry No. 33539, Book, 2555, Page 141; thence Southeasterly 125.71 feet along the arc of a 1,195.92 foot radius curve to the left (center bears North 64°38'16" East and the chord bears South 28°22'26" East

125.66 feet with a central angle of 06°01'22") along said Southerly line of said United States of America property to the point of beginning.

PARCEL 1-D:

A parcel of land situate in the Northwest quarter of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point South 89°31'58" West 124.82 feet from the East 1/16th corner of the Northwest quarter of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence South 01°23'58" West 46.26 feet; thence South 17°47'00" West 36.16 feet; thence North 41°18'16" West 106.49 feet thence North 89°31'58" East 82.47 feet to the point of beginning.

PARCEL 2:

A parcel of land situate in the Northwest quarter of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point South 89°48'58" West 331.08 feet from the center of Section 35, Township 4 South, Range 1 West, Salt Lake Base and Meridian and running thence South 89°48'58" West 58.41 feet; thence North 08°21'00" East 852.33 feet; thence North 17°47'00" East 396.62 feet; thence North 17°47'00" East 74.62 feet; thence North 01°23'58" East 46.26 feet; thence North 89°31'58" East 57.80 feet; thence South 01°24'00" West 56.46 feet; thence South 17°47'00" West 474.79 feet; thence South 08°21'00" West 838.90 feet to the point of beginning.

Tax Id No.: 58-005-0043, 58-005-0044, 58-005-0045, 58-005-0046 and 58-005-0042