

**WHEN RECORDED, RETURN TO:**

**CITY OF SOUTH SALT LAKE  
COMMUNITY DEVELOPMENT DEPT.  
220 E. MORRIS AVE.  
SO. SALT LAKE, UTAH 84115**

13875814 B: 11297 P: 8852 Total Pages: 14  
01/24/2022 03:11 PM By: dsalazar Fees: \$40.00  
AGREE - AGREEMENT  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: CITY OF SOUTH SALT LAKE  
220 E MORRIS AVESALT LAKE CITY, UT 84115



(Space above for County Recorder's Use)

**Tax I.D. Numbers:** All or portions of

**MAINTENANCE AGREEMENT FOR THE PUBLIC RIGHT OF WAY WENTWORTH AVENUE ROADWAY, LANDSCAPE AND HARDSCAPE FROM 125 WEST TO WEST TEMPLE**

THIS MAINTENANCE AGREEMENT FOR THE PUBLIC RIGHT OF WAY WENTWORTH AVENUE ROADWAY, LANDSCAPE AND HARDSCAPE FROM 125 WEST TO WEST TEMPLE ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"), by and between BRC ADG QOZB 1 JV, LLC, a Utah limited liability company ("Owner"), and South Salt Lake City, a municipal corporation of the State of Utah ("City"). Except as otherwise specifically provided in this Agreement, the Owner and City are referred to in this Agreement, collectively, as the "Parties" and, individually, as a "Party".

**RECITALS**

A. Owner is the current owner of certain real property located in Salt Lake County, Utah, being more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Property").

B. City owns the non-vacated portion of Wentworth Avenue from 125 West to West Temple, that runs up to the portion of Wentworth Avenue from approximately 125 West to 155 West, anticipated to be vacated in connection with the Project (as defined below).

C. Owner plans to develop a multi-phased, mixed-use commercial development project on the Property (the "Project").

D. In connection with the review and approvals granted by City for the Owner to consolidate the Property as set forth on the Plat and develop the Project, City, by way of its planning commission and staff, imposed certain conditions of approval which requires the Owner to maintain the non-vacated portion of Wentworth Avenue from 125 West to West Temple ("Right of Way") which includes the street, curbs and gutters ("Roadway"), landscaping ("Landscape") and hardscapes ("Hardscapes"), within the Project and Right of Way and are intended to be made

available to Owner and its respective tenants, guests, agents, representatives, invitees, and licensees. The Right of Way is described and depicted on Exhibit B attached hereto.

E. The Parties have agreed to enter into this Agreement to specify the terms and conditions under which the Roadway, Landscape and Hardscape will be maintained, repaired, and replaced, when necessary, and to ensure that the conditions of approval imposed by City in connection with the Roadway, Landscape and Hardscape have been satisfied.

F. In addition, the Parties join in this Agreement for the purpose of City granting Owner, and its successors and assigns, a non-exclusive easement and right-of-way on, over, across, through, and under those portions of the Right of Way in order for Owner to construct, maintain, repair, and replace when necessary the Roadway, Landscape and Hardscape in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement for Roadway, Landscape and Hardscape. City hereby grants to Owner a non-exclusive easement (“Easement”) on, over, across, through, and under those applicable portions of the Right of Way for any and all lawful purposes that are necessary or desirable to construct, maintain, repair, and replace when necessary the Roadway, Landscape and Hardscape in accordance with this Agreement. For purposes of this Agreement, the term “Permittees” shall mean the Owner and all of its respective owners, members, managers, persons, entities, employees, contractors, consultants, agents, representatives, successors, or assigns who will assist or undertake in efforts to construct, maintain, repair, and replace the Landscape in accordance with this Agreement. City intends for the Easement to be construed as broadly and inclusive as necessary for Owner to construct, maintain, repair, and replace when necessary the Roadway, Landscape and Hardscape in accordance with this Agreement; provided, however, Owner shall not be permitted to impair or unreasonably interfere with the ownership and right-of-way interests of the City and the intended benefits for the general public.

2. Maintenance Obligation and Standards. Owner shall maintain, repair, and replace, when necessary, the Public Right of Way, including the Roadway, Landscape and Hardscape at their sole cost and expense and at all times in good condition and repair and to a level comparable to the standard of maintenance generally maintained in other commercial mixed-use projects similar in terms of age, quality, size, location, quality of construction, and appearance within the City with said maintenance, repair, and replacement to include and be subject to, without limitation, the following:

(i) Maintaining, repairing, and replacing, when necessary, all improvements of the Roadway, Landscape and Hardscape in a condition with the type of materials originally approved by City or using substitute materials as approved by City

(ii) Maintaining and watering all landscaped areas, improvements, and plants within the Landscape, including, any sprinkler systems, water lines, maintaining all drainage, vegetation, and related improvements in a condition with the type of materials and vegetation

originally approved by City or using substitute materials or plants that are in all reasonable respects equal or superior in quality, use, and durability;

(iii) Maintaining, repairing and replacing all improvements on the Roadway, including repairing asphalt, patching potholes, maintaining the line and grade of curb and gutter, and mitigating trip hazards; maintaining pavement markings, maintaining traffic and parking signs; maintaining all drainage and coordinating the removal of snow and ice;

(iv) Maintaining, repairing and replacing all improvements in the Hardscape area; including mitigating trip hazards; coordinating the removal of ice and snow; maintaining all traffic signs and maintaining all drainage;

(v) Maintaining, repairing and replacing all underground utility service lines from the Owner's connection to the main that run under any portions of the Roadway, Landscape or Hardscape;

(vi) Undertaking commercially reasonable efforts to remove papers, debris, filth, and refuse from the Roadway, Landscape and Hardscape to the extent reasonably necessary to keep the Roadway, Landscape and Hardscape in a clean and orderly condition and free from any unreasonable obstructions;

(vii) All work to be performed on the Roadway, Landscape and Hardscape under this Agreement will be performed in such a way as to minimize to the extent possible the impact on businesses and operations conducted within the Project and traffic to and from the Property, including ensuring that all dedicated streets, roadways, and rights-of-way applicable or adjacent to the Landscape and Hardscape will be unobstructed and substantially accessible at all times;

(viii) All work to be performed on the Roadway, Landscape and Hardscape under this Agreement will be performed in a safe, lien-free manner and condition and in compliance with all applicable governmental laws, City standards and right-of-way permit requirements; and

(ix) Prior to the final completion of work to be performed on the Roadway, Landscape and Hardscape under this Agreement, those disturbed and impacted areas will promptly be restored to a condition substantially similar to what the Right Of Way was in prior to the commencement of such work.

3. Release. The Parties mutually agree to indemnify, defend and hold the other harmless from and against any and all third party claims for loss, liability, damage, or expense, including reasonable attorney fees, to the extent arising out of or in connection with the Agreement. However, neither Party shall be indemnified hereunder for any loss, liability damage, or expense resulting from its sole negligence or willful misconduct.

4. Insurance. Owner shall maintain or cause to be maintained on its behalf insurance policies of the types required below with insurance companies authorized to do business in the State of Utah, (i) having a Best Insurance Reports rating "A" or better and a financial size category of "X" or higher, or (ii) otherwise being acceptable to the City with coverage limits and provisions at least sufficient to satisfy the requirements set forth below. All sureties shall be listed in the

Department of the Treasury Circular 570, with bond amounts not exceeding the 'underwriting limitation' amount.

- a. Workers' Compensation Insurance: Statutory workers' compensation insurance (Part A). Such insurance shall also include employer's liability (Part B) insurance in a limit of not less than \$1,000,000 for each: accident, disease, employee. No owner or officer may be excluded.
- b. General Liability Insurance: Commercial General Liability insurance on an occurrence basis arising out of claims for bodily injury (including death) and property damage. Such insurance shall provide coverage for ongoing operations and products-completed operations, blanket contractual, broad form property damage, personal and advertising injury, independent contractors and sudden and accidental pollution liability [pollution liability arising out of a hostile fire] with not less than \$2,000,000 per occurrence limit combined bodily injury and property damage, with not less than \$3,000,000 aggregate limit, provided the general policy aggregate shall apply separately to the Contractor on a per project basis. Any aggregate limit that does not apply separately to the premises shall be at least double the required per occurrence limit. Any Railroad limitation(s) shall be removed, if any work will be performed within or adjacent to a railroad right of way.
- c. Additional Insured Endorsements. All policies of liability insurance required to be maintained by the Owner shall be endorsed to name the City as additional insured for ongoing operations (ISO CG 20 10 or equivalent) and completed operations (ISO CG 20 37 or equivalent).
- d. Waiver of Subrogation Endorsements: The Owner hereby waives any and every claim for recovery from the City, Lenders and their respective offices and employees for any and all loss or damage covered by any of the insurance policies to be maintained under this Owner agreement to the extent that such loss or damage is recovered under any such policy. To the extent the foregoing waiver would preclude coverage under any insurance required by this Section, the Owner shall give written notice of the terms of such waiver to each insurance company which has issued, or which may issue in the future, any such policy of insurance (if such notice is required by the insurance policy) and shall cause each such insurance policy to be properly endorsed, or to otherwise contain one or more provisions that prevent the invalidation of the insurance coverage by reason of such a waiver.
- e. Notice of Incident or Accident: Owner shall agree to disclose to the City, all incidents or occurrences of accident, injury, and/or property damage, regardless of whether such incidents are submitted as claims under the contractor's insurance policies.
- f. Evidence and Verification of Insurance: On or before the effective date of each policy and on an annual basis at least 10 days prior to each policy anniversary, the Owner shall furnish the City with (1) certificates of insurance or binders, in a form acceptable to the City, evidencing all of the insurance required by the provisions of this Section.
- g. Policy Cancellation and Change: All insurance policies shall be endorsed so that if at any time they are canceled, such cancellation shall not be effective for the City for 30 days, except for non-payment of premium which shall be for 10 days. If any material change in coverage should occur, the Owner shall provide notice of any material change in coverage to the City immediately.

h. No Duty to Verify or Review: No provision of this Section or any provision of any Document related to this agreement shall impose on the City any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by the Owner, nor shall City be responsible for any representations or warranties made by or on behalf of the Owner to any insurance company or underwriter. Any failure on the part of the City to pursue or obtain the evidence of insurance required by this agreement from the Owner and/or failure of the City to point out any non-compliance of such evidence of insurance shall not constitute a waiver of any of the insurance requirements in this agreement.

6. Liens. Owner will not permit any mechanic's lien, materialmen's lien, or other lien of any kind on the Roadway, Landscape and Hardscape areas by anyone claiming by reason of any act or omission of Owner, or any of its employees, agents, representatives, contractors, subcontractors, successors, or assigns, and Owner indemnifies, defends, and holds City harmless for, from, and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments on account of any such liens. Provided, however, this indemnification does not apply to the extent any claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments on account of any such liens caused by the active or passive negligence of City, or its respective employees, contractors, consultants, agents, representatives, successors, or assigns or caused by parties that are not controlled by Owner or not authorized to access the Roadway, Landscape and Hardscape under this Agreement.

7. Default. In the event any Party fails to perform any provision of this Agreement, which failure continues for a period of ten (10) business days after receipt of written notice specifying the particulars of that failure, that failure will constitute a default and any other Party may thereafter institute legal action against the defaulting Party for specific performance, declaratory or injunctive relief, monetary damages, or any other remedy provided by law; provided, however, that the defaulting Party will not be deemed to be in default if the failure to perform cannot be rectified within the ten business (10) day period and that Party is diligently proceeding to rectify the particulars of that failure and rectifies the failure as soon as practicable.

8. Attorneys' Fees. In the event any Party commences litigation to enforce this Agreement, the unsuccessful Party to that litigation will pay, within ten (10) business days of the date when any judgment becomes final and all rights of appeal therefrom have expired, all costs and expenses, including reasonable attorneys' fees, incurred by the successful Party (which costs and expenses will be included in the amount of the judgment).

9. Notices. Any notice or demand to be given by a Party to another Party must be given in writing by personal delivery; electronic transmittal (with a duplicate copy also given by any other delivery method permitted); express mail, FedEx, UPS, or any other similar form of delivery service that keeps delivery receipts; or United States mail, postage prepaid, certified and return receipt requested, and addressed to that Party at the address specified on that Party's signature page. Any Party may change the address at which it desires to receive notice on written notice of that change to the other Party. Any notice will be deemed to have been given, and will be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a

notice because of an address change which was not properly communicated will not defeat or delay the giving of a notice.

10. Covenants Run With the Land. The terms and conditions of this Agreement and the Easement are a burden on the Right of Way, and are appurtenant to and for the benefit of the Property and each part thereof, and run with the land.

11. Injunctive Relief. In the event of any violation or threatened violation of this Agreement, any Party has the right to enjoin that violation or threatened violation in court. The right of injunction is in addition to all other remedies set forth in this Agreement or provided by law or in equity.

12. Breach Will Not Permit Termination. No breach of this Agreement will entitle a Party to terminate this Agreement, but that limitation does not affect in any manner any other rights or remedies which a Party may have by reason of any breach of this Agreement.

13. Governing Law. This Agreement is governed by the laws of the State of Utah.

14. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns.

15. Captions; Interpretation. The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement. All Exhibits referenced in and attached to this Agreement are incorporated in this Agreement. Unless otherwise specifically indicated, any references in this Agreement to paragraphs are to paragraphs in this Agreement.

16. Further Assurances. Each Party will use reasonable efforts and exercise reasonable diligence to accomplish and effect the easements, grants, and rights contemplated by this Agreement and will execute and deliver all further documents as may be reasonably requested by the other Party in order to fully carry out the easements, grants, and rights contemplated by this Agreement.

17. Counterparts. This Agreement may be executed in counterpart originals.

18. Waiver. Failure of any Party to exercise any right under this Agreement or to insist upon strict compliance with regard to any provision of this Agreement, will not constitute a waiver of that Party's right to exercise that right or to demand strict compliance with this Agreement.

19. Severability. The invalidity or unenforceability of a particular term or provision of this Agreement does not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if the invalid or unenforceable provision were omitted.

20. Construction. The Parties acknowledge that (i) each Party is of equal bargaining strength; (ii) each Party has actively participated in the drafting, preparation, and negotiation of this Agreement; (iii) each Party has consulted with its own independent counsel, and those other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement; (iv) each Party and its counsel and advisors have reviewed this Agreement; (v) each Party has agreed to enter into this Agreement following that review and the rendering of that advice; and (vi) any rule of

construction to the effect that ambiguities are to be resolved against the drafting Parties does not apply in the interpretation of this Agreement.

21. Relationship of Parties. This Agreement will not be deemed or construed, either by the Parties or by any third-party, to create the relationship of principal and agent or create any partnership, joint venture, or other association between the Parties.

22. Authorization. Each individual executing this Agreement represents that they have been duly authorized to execute and deliver this Agreement in the capacity and for the entity for whom that individual signs.

23. Entire Agreement. This Agreement (including Exhibits attached hereto) sets forth the entire understanding of the Parties with respect to the matters addressed in this Agreement and cannot be amended except pursuant to an instrument in writing signed by the Parties.

***[Intentionally Blank – Signature Pages and Acknowledgments to Follow]***

OWNER SIGNATURE PAGE

THIS AGREEMENT has been signed by Owner to be effected as of the Effective Date.

**OWNER:**

BRC ADG QOZB 1 JV, LLC,  
a Utah limited liability company

By: Alpha-Utopia, LLC  
a Utah limited liability company

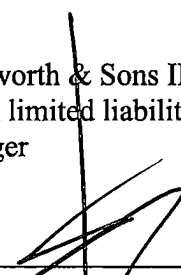
Its: Manager

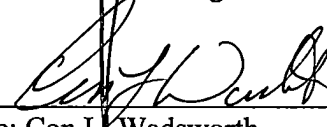
By: Wadsworth Alpha-Utopia, LLC  
a Utah limited liability company

Its: Manager

By: Wadsworth & Sons III, LLC,  
a Utah limited liability company

Its: Manager

By:   
Name: Kip L. Wadsworth  
Title: Executive Manager

By:   
Name: Con L. Wadsworth  
Title: Operations Manager





[CITY] SIGNATURE PAGE

THIS AGREEMENT has been signed by [CITY] to be effected as of the Effective Date.

[CITY] Information:

[CITY]:

[CITY]

[CITY] CORPORATION,  
a municipal corporation of the State of Utah

APPROVED AS TO FORM  
DATE: 1/16/2022  
[Signature]  
CITY ATTORNEY

By [Signature]  
Print Name: Cherie Wood  
Title: Mayor

ATTEST

[Signature]  
CITY RECORDER

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

<sup>20</sup> The foregoing instrument was acknowledged before me this 24 day of JANUARY,  
2022, by CHERIE WOOD, the MAYOR  
of [CITY] Corporation, a municipal corporation of the State of Utah.



[Signature]  
NOTARY PUBLIC  
Residing at: OGDEN, UT

My Commission Expires:  
09-30-2024

**EXHIBIT "A"**  
**TO**  
**MAINTENANCE AGREEMENT FOR WENTWORTH LANDSCAPE AND**  
**HARDSCAPE**

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**LEGAL DESCRIPTION OF PROPERTY**

The real property referenced in the foregoing Maintenance Agreement for Wentworth Landscape and Hardscape as the "Property" is located in South Salt Lake City, in Salt Lake County, Utah and is more particularly described as follows:

**Wentworth Road Vacation remaining portion**

A road being a portion of Wentworth Avenue located in Block 39, Ten Acre Plat "A", Big Field Survey in the Northeast Quarter of Section 24, Township 1 South, Range 1 West, Salt Lake Base and Meridian and is described as follows:

**Beginning** at the intersection the westerly right-of-way line of West Temple Street and the northerly right-of-way line of Wentworth Avenue, which is 125.00 feet S. 00°11'58" W. from the Northeast corner of said Lot 11, Block 39, Ten Acre Plat "A", Big Field Survey, said point is also 731.52 feet S. 00°22'28" W. and 32.88 feet N. 89°48'02" W. from a Street Monument at the intersection of 2100 South and West Temple Street; thence S. 00°11'58" W. 37.10 feet along said westerly right-of-way line of West Temple Street; thence N. 89°48'02" W. 130.00 feet along the southerly right-of-way line of Wentworth Avenue; thence N. 00°11'58" E 37.10 feet to the northerly right-of-way line of Wentworth Avenue; thence S. 89°48'02" E. 130.00 feet along said northerly right-of-way line of Wentworth Avenue to the **Point of Beginning**.

The above-described parcel of land contains 4,823 square feet in area or 0.0111 acres, more or less.

**EXHIBIT "B":** By this reference, made a part hereof.

**BASIS OF BEARING:** S. 00°22'28" W. along the monument line of West Temple Street between the street monuments at 2100 South Street and 2700 South Street.

**EXHIBIT "B"**  
**TO**  
**MAINTENANCE AGREEMENT FOR WENTWORTH LANDSCAPE AND**  
**HARDSCAPE**

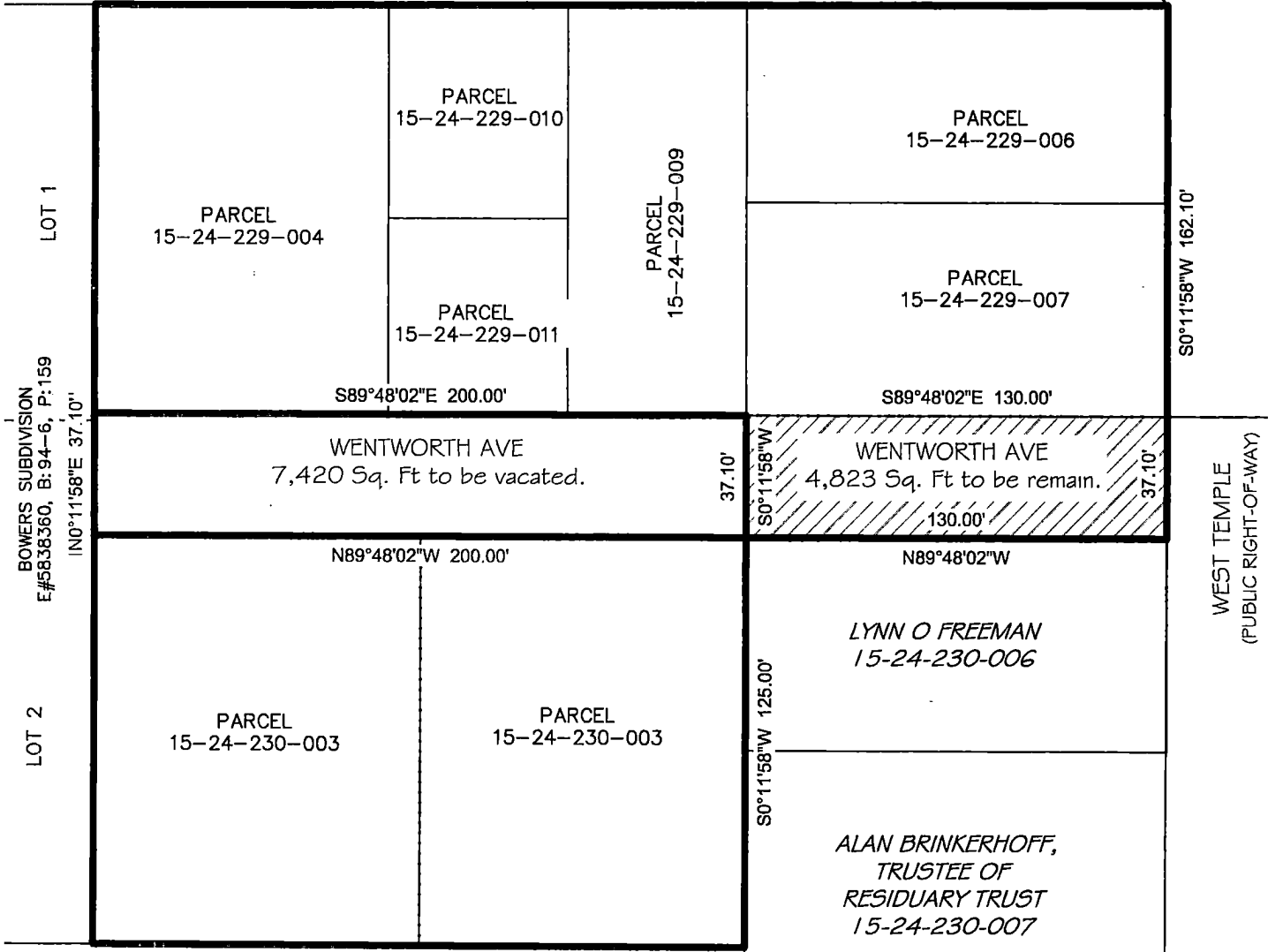
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**DESCRIPTION/DEPICTION OF THE RIGHT OF WAY**

UTOPIA AVE  
(PUBLIC RIGHT-OF-WAY)

POB - Northeast Corner Lot 11,  
Block 39, 10 Acre Plat "A" Big Field  
Survey

S89°48'02"E 330.00'



LOT 1  
BOWERS SUBDIVISION  
E:#5838360, B: 94-6, P: 159  
IN0°11'58"E 37.10'

LOT 2

S0°11'58"W 162.10'

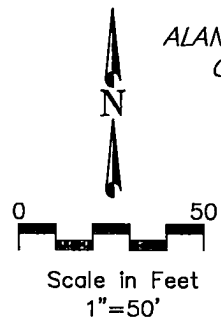
WEST TEMPLE  
(PUBLIC RIGHT-OF-WAY)

WENTWORTH AVE  
7,420 Sq. Ft to be vacated.

WENTWORTH AVE  
4,823 Sq. Ft to be remain.

LYNN O FREEMAN  
15-24-230-006

ALAN BRINKERHOFF,  
TRUSTEE OF  
RESIDUARY TRUST  
15-24-230-007



ALAN BRINKERHOFF, TRUSTEE  
OF RESIDUARY TRUST  
15-24-230-008

**LEGEND**

- Parcel Boundary
- Road Monument Line
- Adjacent Parcel

**EXHIBIT "B"**

WENTWORTH AVE  
Easement Area

Lot 11, Block 39, 10 Acre Plat "A" Big Field Survey  
Northeast Quarter, Section 24, T.1S., R.2E., S.L.B.&M.

PREPARED BY:

**CIR** | **CIVIL ENGINEERING + SURVEYING**

10718 South Beckstead Lane, Suite 102, South Jordan, Utah 84095

December 29, 2021 Page 3 of 3