

After recording mail to:

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Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY INC  
1996 E 6400 S STE 120MURRAY, UT 841212162

## TENANTS-IN-COMMON AGREEMENT

This TENANTS-IN-COMMON AGREEMENT (the "**Agreement**") is entered into and will become effective on the date this Agreement is signed by the last party to sign it (the "**Effective Date**") and is between ACB, LLC, a Utah limited liability company (the "**ACB**"), JIMBO SLICE, LLC, a Utah limited liability company ("**Jimbo Slice**"), BOYER MIDAS 2100, L.C., a Utah limited liability company ("**Boyer**") and KGM, LLC, a Utah limited liability company ("**KGM**") (each sometimes referred to herein as a "**Tenant-in-Common**," and collectively referred to herein as the "**Tenants-in-Common**").

### RECITALS

A. The Tenants-in-Common have acquired certain percentage undivided interests (each, an "**Interest**") respectively set forth in Exhibit "A" in certain real property and improvements located in Salt Lake County, Utah, more particularly described in Exhibit "B" (the "**Property**").

B. The Tenants-in-Common desire to enter into this Agreement to provide for the orderly administration of their rights and responsibilities as to each other and as to others and to delegate authority and responsibility for the intended further operation and management of the Property.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. **Nature of Relationship Between Co-Tenants.**

(a) Tenants-in-Common Relationship; No Partnership. The Tenants-in-Common shall each hold their respective undivided interests in the Property as tenants-in-common (hereinafter referred to as the Interests). The Tenants-in-Common do not intend by this Agreement to create a partnership or joint venture among themselves, but merely to set forth the terms and conditions upon which each of them shall hold their respective Interests. Therefore, each Tenant-in-Common agrees to be excluded from the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended (the "**Code**"), with respect to the tenancy-in-common ownership of the Property and such exclusion commenced upon the acquisition the Interests in the Property.

(b) Reporting as Tenants-in-Common and Not as a Partnership. Each Tenant-in-Common hereby covenants and agrees to report on its federal and state income tax returns all items of income, deduction, and credits which result from its Interests. All such reporting shall be consistent with the exclusion of the Tenants-in-Common from Subchapter K of Chapter 1 of the Code. Further, each Tenant-in-Common covenants and agrees not to notify the Commissioner of Internal Revenue (the "**Commissioner**") that it desires that Subchapter K of Chapter 1 of the Code apply to the Tenants-in-Common and not to make any election that would treat the Tenants-in-Common as anything other than tenants-in-common.

(c) **Indemnity.** Each Tenant-in-Common hereby agrees to indemnify, protect, defend, and hold the other Tenants-in-Common free and harmless from all costs, liabilities, tax consequences and expenses (for example, taxes, interest and penalties), including without limitation reasonable attorneys' fees and costs, that may result from any Tenant-in-Common so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return, report, or other document.

(d) **No Agency.** Except as otherwise provided herein, no Tenant-in-Common is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Tenant-in-Common, or to incur any obligations with respect to the Property.

2. **Management.** The Tenants-in-Common hereby authorize and appoint JIMBO SLICE as the managing Tenant-in-Common (the "**Managing TIC**"). The Managing TIC, subject to the terms and provisions hereof, shall be the sole and exclusive manager of the Property to act on behalf of the Tenants-in-Common with respect to the management, operation, and maintenance of the Property.

3. **Duties of Managing TIC.**

(a) The Managing TIC shall use commercially reasonable efforts to undertake and discharge the following duties:

(i) Administer the day-to-day operations and affairs of the Property on behalf of the Tenants-in-Common, including, without limitation, the performance or supervision of the functions described in this Section 3 (a).

(ii) Arrange for the management of the Property and the services of other third parties to perform such duties or functions with respect to the Property as may reasonably be required.

(iii) Make payments on behalf of the Tenants-in-Common of all operating expenses (e.g., real estate taxes, association dues, insurance) required or otherwise authorized by this Agreement.

4. **Income and Liabilities.** Except as otherwise provided herein, each of the Tenants-in-Common shall be entitled to all benefits and obligations of Tenants-in-Common ownership of the Property. Accordingly, each of the Tenants-in-Common shall bear and be liable for the payment of their respective percentage share of all expenses of the Property, including without limitation all taxes, assessments, insurance, utilities, general operating expenses, and expenses with respect to any sale, lease, refinancing, or condemnation relating to the Property.

5. **Obligations of the Tenants-in-Common.**

(a) **Documents.** The Tenants-in-Common each agree to perform such acts as may be reasonably necessary to carry out the terms and conditions of this Agreement.

(b) **Limitation on Liability.** Notwithstanding any provision of this Agreement to the contrary, (i) the liability of each Tenant-in-Common under this Agreement shall be limited to such Tenant-in-Common's Interest in the Property, and (ii) no manager, member, trustee or beneficiary of any Tenant-in-Common shall have any personal liability hereunder whatsoever unless such liability is the result of the gross negligence or willful misconduct of such manager, member, trustee or Beneficiary.

6. **Transfers and Encumbrances of Interests.** No Tenant-in-Common may give, sell, exchange, encumber, or otherwise transfer its Interest or give, sell, exchange, encumber, or otherwise

transfer a direct or indirect controlling equity interest in a Tenant-in-Common to a third party without first complying with the right of first offer set forth in Section 7 below, and with the following requirements:

- (a) The transferee shall agree in writing to be bound by this Agreement;
- (b) The transferring Tenant-in-Common shall execute such other instruments as counsel for the other Tenants-in-Common may deem necessary or desirable to cause the transferee to become a tenant in common with the other Tenants-in-Common subject to this Agreement; and
- (c) The transferee shall pay all reasonable expenses connected with the transfer including, but not limited to, preparing and recording appropriate documents to evidence the transferee's Interest, subject to this Agreement.

Any purported transfer of any Interest contrary to the terms of this Agreement shall be void and of no force or effect to all the terms and conditions of this Agreement.

7. **Right of First Refusal.** Except for a conveyance of KGM's membership interest by The Boyer Company, L.C. to Karen G. Mata or a party designated by Karen G. Mata, which is not subject to the Notice or Right of First Refusal provisions contained herein, no Tenant-in-Common may sell, exchange, assign, convey, or otherwise transfer, voluntarily or involuntarily, any Interest in the Property (including any interest in any Improvements thereto) to any third party (collectively a "**Transfer**"), or enter into any agreement to Transfer any Interest, without first giving written notice (the "**Notice**") to the other Tenants-in-Common of the selling Tenant-in-Common's intention to Transfer an Interest in the Property. The Notice shall set forth the terms and conditions of the proposed Transfer, including the purchase price and the method of payment. If the Transfer is to be made in exchange for property of the proposed transferee, the Notice shall also include the dollar value placed on the transferee's property by the transferee and the selling Tenant-in-Common. The non-selling Tenants-in-Common shall have the right (the "**Right of First Refusal**"), for a period of thirty (30) days after delivery of the Notice to the non-selling Tenants-in-Common, to elect to match the terms and conditions of the proposed Transfer, except that if the terms of the proposed Transfer include the exchange of property, the purchasing Tenants-in-Common may pay for the interest in the Property in cash rather than through the exchange of property. If both non-selling Tenants-in-Common elect to exercise their Right of First Refusal, they shall allocate the Interest being purchased from the selling Tenant-in-Common pro rata based on their respective Interests. If the non-selling Tenants-in-Common do not notify the selling Tenant-in-Common of their respective elections to exercise the Right of First Refusal within such thirty (30)-day period, or if such Tenants-in-Common notify the selling Tenant-in-Common that they each have elected not to exercise its Right of First Refusal, then the selling Tenant-in-Common may complete the proposed Transfer free of the Right of First Refusal on the same terms and conditions offered to the non-selling Tenants-in-Common as set forth in the Notice; *provided, however*, that if the proposed Transfer is not completed within ninety (90) days of the expiration of the thirty (30)-day election period set forth above, then the Right of First Refusal shall again apply to the proposed Transfer. Except for Transfers expressly exempted from the Right of First Refusal pursuant to the following sentence, the Right of First Refusal held by the Tenants-in-Common pursuant to this section shall apply to each and every Transfer that is proposed (whether or not actually completed) during the duration of this Agreement, notwithstanding that the Right of First Refusal might not be exercised with respect to one or more previous proposed or completed Transfers. Notwithstanding the foregoing, no Right of First Refusal shall apply (and the transferring Tenant-in-Common shall have no obligation to give a Notice) with respect to a proposed Transfer of an Interest in the Property from (a) a partnership to its partners or former partners in accordance with partnership interests, (b) a limited liability company to its members or former members in accordance with their interest in the limited liability company, (c) a corporation or other entity to its equity holders in accordance with such equity interests, (d) a Tenant-in-

Common to the Tenant-in-Common's spouse, lineal descendant, or to one or more trusts, corporations, partnerships, or limited liability companies for the exclusive benefit of such Member or those members of such Tenant-in-Common's family specified in this clause, or (e) a trust to a beneficiary of such trust. Except as stated above, with respect to any Tenant-in-Common that is an entity, the transfer (or series of transfers) resulting in the change of beneficial ownership of more than 49% of the outstanding equity of such entity shall be deemed a Transfer for purposes of this section.

8. **Restriction on Partition Action.** To avoid the inequity of a forced sale and the potential adverse effect on the investment of each Tenant-in-Common in the Property, each Tenant-in-Common agrees that, as a condition precedent to exercising a right to partition (a "**Partition Action**") with respect to the Property, the Tenant-in-Common intending to file such action (the "**Electing Tenant-in-Common**") shall offer in writing its Interest for sale to the other Tenants-in-Common (each, a "**Non-Electing Tenant-in-Common**") at a price (the "**ROFR Price**") determined by the Electing Tenant-in-Common, which price shall be less than or equal to the Fair Market Value (as defined below) of the Electing Tenant-in-Common's Interest (less any unpaid obligations of such defaulting Tenant-in-Common owed to the purchasing Tenant-in-Common(s) pursuant to this Agreement). The Non-Electing Tenants-in-Common shall have the right, within sixty (60) days after receiving written notice of the Electing Tenant-in-Common's intent to file a Partition Action, to purchase the Electing Tenant-in-Common's Interest at the ROFR Price. If all non-selling Tenants-in-Common elect to purchase the Electing Tenant-in-Common's Interest at the ROFR Price, they shall allocate the Interest being purchased from the Electing Tenant-in-Common pro rata based on their respective Interests. If the Non-Electing Tenants-in-Common do not exercise the right to purchase the Electing Tenant-in-Common's Interest in the Property within sixty (60) days after receiving written notice of the Electing Tenant-in-Common's intent to file a Partition Action, then the Electing Tenant-in-Common may initiate a Partition Action with respect to its Interest in the Property. However, if the Electing Tenant-in-Common, as a result of the Partition Action, sells its Interest in the Property for a price equal to or less than the ROFR Price, then (a) the Electing Tenant-in-Common's Partition Action shall be null and void, and (b) all costs to all parties resulting from the Partition Action rendered null and void by this section shall be paid by the Electing Tenant-in-Common. "**Fair Market Value**" of a Tenant-in-Common's Interest shall be determined as follows: The Tenants-in-Common shall attempt, for a period of fifteen (15) days, to agree on the Fair Market Value of the applicable Interest. If the parties are unable to agree on such Fair Market Value within such fifteen (15)-day period, the parties shall select an independent MAI Certificated appraiser who is licensed in the state of Utah and has at least ten (10) years of experience in appraising properties similar to the Property, to appraise the Property and the Interest (or refer to such an appraisal performed within the previous twelve months), and the Fair Market Value to be paid shall be determined by such appraisal without any fractional interest discount. If the parties are unable to agree on an appraiser, the Electing Tenant-in-Common, on one hand, and the Non-Electing Tenants-in-Common, acting jointly, on the other hand, shall each pick their own independent appraiser meeting the foregoing requirements to appraise the value of the Interest as set forth above. If the higher of the two appraisals comes in at a difference of five percent (5%) or less of the lower appraisal, then the average of the two appraisals shall be used to determine the value of the Interest, which average shall be determinative as to Fair Market Value. If the higher appraisal is not within five percent (5%) of the lower appraisal, the two appraisers selected by the parties shall meet and agree on a value, which shall be determinative of Fair Market Value. If they cannot agree, they shall select an independent, qualified appraiser to appraise the value of the Interest as set forth above, which appraisal shall be determinative of Fair Market Value. If there is a dispute regarding this matter, it shall be submitted to binding arbitration before one arbitrator, either mutually selected by the parties or, if the parties are unable to agree on an arbitrator, by a court of competent jurisdiction in the State of Utah. The arbitration shall be conducted pursuant to the rules of the American Arbitration Association in Salt Lake County, Utah.

9. **1031 Exchange.** This Agreement shall at all times and for all purposes be construed and interpreted as consistent with the requirements of Revenue Procedure 2002-22 regarding Tenant-in-

Common agreements for undivided fractional interests which are eligible for tax-free exchange under Section 1031(a)(1) of the Code. Any provision herein that is inconsistent with the requirements of Section 1031 and Revenue Procedure 2002-22 is hereby deemed severed, void and unenforceable to the full extent necessary to preserve the availability of the like-kind exchange under Section 1031. Subject to the provisions of Sections 6, 7 and 8 above relating to restricted Transfers, all Tenants-in-Common reserve the right to escrow proceeds from a sale of their Interests in the Property to obtain tax deferral by the purchase of replacement property; *provided, however*, that each Tenant-in-Common shall be responsible for all of its own costs associated with escrowing the proceeds from such sale.

10. **General Provisions.**

(a) Mutuality; Reciprocity; Runs with the Property. All provisions, conditions, covenants, restrictions, obligations, and agreements contained herein: (i) are made for the direct, mutual, and reciprocal benefit of each and every part of the Property; (ii) shall be binding upon and shall inure to the benefit of each of the Tenants-in-Common (as defined as of the date hereof) and their respective successors and assigns and any other person or entity acquiring an undivided interest in the Property or any portion thereof, whether by operation of law or otherwise (collectively, "**Successors**"); (iii) shall create mutual, equitable servitudes, and burdens upon the undivided interest in the Property of each Tenant-in-Common in favor of the interest of every other Tenant-in-Common; and (iv) shall create reciprocal rights and obligations between the Tenants-in-Common and their respective Successors as covenants running with the Property for the benefit of the other Tenants-in-Common pursuant to applicable law. It is expressly agreed that each covenant contained herein: (i) is for the benefit of and is a burden upon the undivided interests in the Property of each of the Tenants-in-Common, (ii) runs with the undivided interest in the Property of each Tenant-in-Common, and (iii) benefits and is binding upon each Successor during its Tenants-in-Common ownership of any undivided interest in the Property and each owner having any interest therein derived in any manner through any Tenant-in-Common or Successor.

(b) Attorneys' Fees. If any action or proceeding is instituted between the Tenants-in-Common arising from or related to or with this Agreement, the Tenant-in-Common prevailing in such action or arbitration shall be entitled to recover from the other Tenant-in-Common all of its costs of such action or proceeding, including without limitation reasonable attorneys' fees and expenses.

(c) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

(d) Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of Utah without regard to conflicts or choice of law rules.

(e) Modifications. No modification, amendment, or change of this Agreement shall be valid unless the same is in writing and signed by all parties hereto. No waiver or discharge of any obligation or liability under this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such waiver or discharge is or may be sought. Any Tenant-in-Common hereto may specifically waive any breach of this Agreement by any other Tenant-in-Common, but no such waiver shall constitute a continuing waiver of similar or other breaches.

(f) Term. This Agreement shall commence as of the Effective Date and terminate upon the earlier to occur of (i) the execution of a written agreement signed by each Tenant-in-Common, or (ii) the conveyance of 100% of the undivided interests in the Property to a single owner.

(g) Severability. If any portion of this Agreement shall become illegal or invalid for any reason or shall be held by any court of competent jurisdiction to be illegal or invalid, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

(h) Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

(i) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. Evidence of execution may be transmitted by electronic, telephonic or digital means (e.g., via facsimile, email or internet transmission), which shall constitute an original for all purposes and be fully valid and enforceable against the transmitting party.

[Signature Pages Follow]

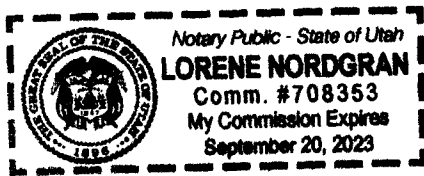
IN WITNESS WHEREOF, the Tenants-In-Common have executed this Agreement as of the date set forth above.

ACB, LLC, a Utah limited liability company

By: *Alan C. Bradshaw*  
Alan C. Bradshaw, Manager

STATE OF UTAH )  
                                  :SS  
COUNTY OF SALT LAKE )

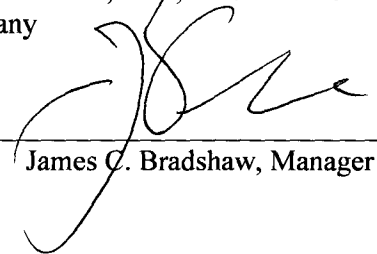
On this 2 day of December, 2022, personally appeared before me Alan C. Bradshaw, known to the undersigned Notary Public to be the Manager of ACB, LLC, a Utah limited liability company, who duly acknowledged to me that he executed the within and foregoing instrument by authority of the Operating Agreement of said limited liability company.



*Lorene Nordgran*  
NOTARY PUBLIC

JIMBO SLICE, LLC, a Utah limited liability company

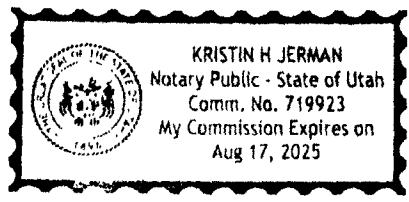
By: \_\_\_\_\_  
James C. Bradshaw, Manager



STATE OF Utah )  
  :SS  
COUNTY OF Salt Lake )

On this 6<sup>th</sup> day of December, 2022, personally appeared before me James C. Bradshaw, known to the undersigned Notary Public to be the Manager of Jimbo Slice, LLC, a Utah limited liability company, who duly acknowledged to me that he executed the within and foregoing instrument by authority of the Operating Agreement of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC





BOYER MIDAS 2100, L.C., a Utah limited liability company

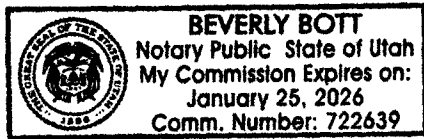
BY: The Boyer Company, L.C., a Utah limited liability company, its Manager



By: \_\_\_\_\_  
Name: Brian Gochnour  
Its: Manager

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

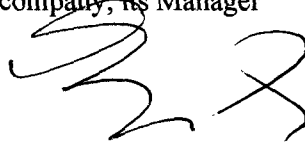
On this 5<sup>th</sup> day of December, 2022, personally appeared before me Brian Gochnour, known to the undersigned Notary Public to be the Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of Boyer Midas 2100, L.C., a Utah limited liability company, who duly acknowledged to me that he executed the within and foregoing instrument by authority of the Operating Agreement of Boyer Midas 2100, L.C.



  
\_\_\_\_\_  
NOTARY PUBLIC

KGM, LLC, a Utah limited liability company

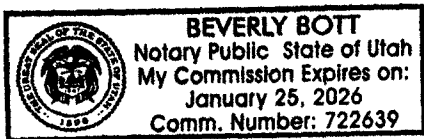
BY: The Boyer Company, L.C., a Utah limited liability company, its Manager



By: \_\_\_\_\_  
Name: BRIAN GOCHNOUR  
Its: Manager

STATE OF UTAH                    )  
  :SS  
COUNTY OF SALT LAKE        )

On this 5<sup>th</sup> day of December, 2022, personally appeared before me Brian Gochnour, known to the undersigned Notary Public to be the Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of KGM, LLC, a Utah limited liability company, who duly acknowledged to me that he executed the within and foregoing instrument by authority of the Operating Agreement of KGM, LLC.



Beverly Bott  
NOTARY PUBLIC

**EXHIBIT "A"**  
**To Tenants-in-Common Agreement**

**Tenants-In-Common Percentage Interests**

ACB, LLC	33.3333334%
JIMBO SLICE, LLC	33.3333333%
BOYER MIDAS 2100, L.C.	20.8333333%
KGM, LLC	12.5000000%

**EXHIBIT "B"**  
**To Tenants-In-Common Agreement**

Property Description

Real Property located in Salt Lake County, State of Utah, and described as follows:

All of Lots 1, 2, 3, 4, 5 and 6, Block 1, WINFIELD SUBDIVISION, a subdivision of part of Lot 20 and all of Lot 1, Block 2, Five Acres Plat "A", Big Field Survey.

Tax Parcel No. 16-20-126-007-0000