

15
**Master Lease
Subordination
Agreement
Section 232**

**U.S. Department of Housing
and Urban Development
Office of Residential
Care Facilities**

OMB Approval No. 2502-0605
(exp. 06/30/2022)



W3137163

Public reporting burden for this collection of information is estimated to average 0.5 hour(s). This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Warning: Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

E# 3137163 PG 1 OF 15
LEANN H KILTS, WEBER COUNTY RECORDER
23-MAR-21 1214 PM FEE \$40.00 DEP DC
REC FOR: FIRST AMERICAN HTG.

Troutman Pepper Hamilton Sanders LLP
2000 K Street, NW
Suite 600
Washington, DC 20006
Attn: Blair Schiff, Esq.

(Space above this line for Recorder's Use)

**SUBORDINATION AGREEMENT
(For Master Lease Transactions)**

NOTICE: THE SUBORDINATION PROVIDED FOR IN THIS AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE INTEREST CREATED BY SOME OTHER OR LATER INSTRUMENT.

THIS AGREEMENT ("**Agreement**"), made as of this 31st day of December, 2020, by and among Ogden RP SNF, LLC, a Utah limited liability company, (the "**Borrower**" or "**Landlord**"), as Landlord, under the Master Lease hereinafter described, AHC BLS MT, LLC, a Utah limited liability company, as Master Tenant under the Master Lease (the "**Master Tenant**"), AHC Ogden LLC, an Idaho limited liability company, (the "**Subtenant**" or "**Operator**"), as subtenant of Master Tenant under the Sublease hereinafter described, and Berkadia Commercial Mortgage LLC, a Delaware limited liability company (the "**Lender**"), the owner and holder of the Security Instrument hereinafter described.

WITNESSETH:

WHEREAS, Borrower has executed a Healthcare Facility Note (the “**Note**”) evidencing a loan from Lender to Borrower (the “**Loan**”) secured by, *inter alia*, a Healthcare Deed of Trust, Assignment of Leases, Rents, and Revenue And Security Agreement, dated July 1, 2015 and recorded July 27, 2015 (the “**Security Instrument**”). The real property encumbered by the Security Instrument is described on Exhibit A attached hereto and incorporated herein by this reference (the “**Land**”), and the Security Instrument also encumbers the healthcare facility that is operated on the Land and authorized to receive insured mortgage financing pursuant to Section 232 of the National Housing Act, as amended or any subsequent legislation (the “**Healthcare Facility**”) and any other improvements situated on the Land (the “**Improvements**”), (the Land, the Healthcare Facility, and any other Improvements, together with any and all assets of whatever nature or wherever situated related to the Loan, are hereinafter sometimes referred to as the “**Project**”). The Note is insured by the Federal Housing Administration (“**FHA**”), an organizational unit of the United States Department of Housing and Urban Development (“**HUD**”) under the provisions of Section 232 of the National Housing Act and the regulations promulgated thereunder; and

WHEREAS, Borrower and Master Tenant have entered into that certain unrecorded of Master Lease Agreement dated September 1, 2018 (as the same may be amended from time to time, the “**Master Lease**”), relating to the Healthcare Facility for the term and upon the conditions set forth therein; a memorandum of said Master Lease is being recorded contemporaneously herewith; and

WHEREAS, Master Tenant and Operator have entered into a sublease relating to Operator’s operation of the Healthcare Facility, for the term and upon the conditions set forth therein (the “**Sublease**”); a memorandum of said Sublease is being recorded contemporaneously herewith; and

WHEREAS, Master Tenant and Operator each executed a regulatory agreement in favor of HUD in connection with the Loan (each as the same may be amended, modified and/or restated, from time to time, respectively, a “**Master Tenant Regulatory Agreement**” or an “**Operator Regulatory Agreement**”) which were recorded against the Project; and

WHEREAS, in connection with the Loan, Borrower and HUD entered into a Healthcare Regulatory Agreement - Borrower, which agreement was recorded against the Project (as the same may be amended, modified and/or restated, from time to time, the “**Borrower Regulatory Agreement**”). The documents and instruments that evidence, secure and govern the Loan (including but not limited to the Note, the Security Instrument, the Borrower Regulatory Agreement, the Master Tenant Regulatory Agreement, the Operator Regulatory Agreement, any security agreements, and this Agreement), as each of the same may be amended, modified and/or restated from time to time, shall hereinafter be referred to collectively as the “**Loan Documents**”; and

WHEREAS, the Master Lease and Sublease are being assigned by the Master Tenant to the Lender to secure the Loan; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth. Unless otherwise provided, capitalized terms used herein are defined in Section 10, and where not otherwise defined shall have the meaning given them in the Security Instrument.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Master Lease and Sublease, all terms and conditions set forth in the Master Lease and Sublease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Master Tenant, Operator and Landlord thereunder shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Security Instrument, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the Lender thereunder, and shall hereafter be junior and inferior to the lien and charge of the Security Instrument, all on the terms and conditions of this Agreement. The parties further agree as follows:

1. Relationship to Other Agreements. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Master Lease and Sublease relating to the subordination of the Master Lease and Sublease and the leasehold interests and estates created thereby to the lien or charge of the Security Instrument.

2. Consent to Leases. Lender consents to the Master Lease and Sublease.

3. Project Operating Deficiencies.

(a) For purposes herein, any of the following circumstances constitute a “**Project Operating Deficiency**”:

(i) The Operator fails to make any payments pursuant to the Sublease, if such payments are intended to be used by Borrower to make the required debt service payments pursuant to the Loan Documents and if such failure, in HUD’s discretion, has a materially adverse effect on the Project;

(ii) Debt service coverage, as calculated in accordance with HUD underwriting procedures, is below 1.0 for one quarter and if, upon request by HUD or Lender, the Operator does not promptly provide a plan that is acceptable to HUD to improve financial operations;

(iii) Centers for Medicare and Medicaid Services (“CMS”), or any applicable or successor authority, issues a notice to Operator of a denial of payments by CMS (or a fiscal intermediary) for new admissions at the Healthcare Facility and either (1) HUD concludes that the Operator is not diligently and adequately working to address such denial of payments or (2) despite

Operator effort such denial is not released within one hundred twenty (120) days;

- (iv) CMS designates the Healthcare Facility to be a “**Special Focus Facility**” or another Governmental Authority has made an equivalent designation;
- (v) A notice is issued to Operator of a proposed denial, proposed refusal to issue, or proposed termination of the Permits and Approvals for the Healthcare Facility and either (1) HUD concludes that the Operator is not diligently and adequately working to address the matter or (2) despite Operator effort that proposed denial, proposed refusal to issue or proposed termination is not rescinded within 120 days; or
- (vi) A second revisit survey is required as a result of failure to clear deficiencies cited in any survey or equivalent examination by applicable Governmental Authority.

(b) Operator shall give written notice to HUD and the Lender of any Project Operating Deficiency within two (2) business days of the occurrence of same.

(c) If a Project Operating Deficiency occurs, Lender may provide Operator with notice of the Project Operating Deficiency and, with HUD’s consent, request that Operator select and engage the services of a management consultant (“**Consultant**”). HUD shall not grant its consent if HUD is exercising its rights to request a Consultant pursuant to the Operator Regulatory Agreement. Upon Lender’s notice and request, Operator shall select and engage the services of a Consultant for the period of time necessary to remedy such Project Operating Deficiency. Such Consultant shall be unaffiliated with Operator and must be approved in advance by HUD and Lender. HUD and Lender shall not unreasonably withhold or delay their approval of the Consultant.

(d) If Operator fails to select and engage a Consultant within ten (10) days after Operator’s receipt of such notice and request by Lender, HUD and/or the Lender may select and engage a Consultant and give notice of the same to Operator. Operator shall be responsible for the payment of all reasonable fees and expenses which such Consultant incurs in carrying out its duties with respect to the Project.

(e) Consultant shall review the management of the Project, make recommendations to Operator for the correction of the Project Operating Deficiency and, subject to applicable Legal Requirements governing the confidentiality of patient records, have complete access to the Project and its records, offices and facilities in order to carry out its duties under such engagement. Operator shall instruct Consultant to prepare and deliver to HUD, the Lender and Operator a written report of Consultant’s recommendations within thirty (30) days after its engagement.

(f) Operator shall promptly implement any and all reasonable recommendations made by Consultant in order to promptly correct or cure the Project Operating Deficiency; provided, however, that in no event shall Operator implement any recommendation that would constitute a violation of applicable Legal Requirements or would otherwise constitute a default under the Loan Documents unless HUD and the Lender consent in writing to such

recommendation. HUD and Lender may give or withhold their consent in their sole and absolute discretion. Nothing herein shall impose any liability or obligation on HUD or the Lender to (i) request the appointment of a Consultant or (ii) otherwise remedy such Project Operating Deficiency, nor shall anything in this Section 3 cause HUD or the Lender to be deemed the operator of the Healthcare Facility.

A Project Operating Deficiency is not necessarily an Event of Default and shall not be considered an Event of Default unless such circumstance meets the requirements for an Event of Default pursuant to the relevant Loan Document.

4. Intentionally Omitted

5. Release of a Project from Master Lease.

Upon the occurrence of any of the following events, the Lender and HUD shall consent to: (a) termination of the Operator Regulatory Agreement and the Master Tenant Regulatory Agreement related to the Project; (b) release of the Project from the Master Lease; and (c) termination, amendment, and/or assignment of the Sublease (collectively, a “**Master Lease Release**”):

- (i) the bona fide sale or assignment by Landlord to a third party, which is not an Affiliate of Landlord, of the interests of Landlord in the Project;
- (ii) the bona fide sale or assignment by Operator to a third party, which is not an Affiliate of Operator, of the interests of Operator in the Project;
- (iii) the payment in full of the Loan; or
- (iv) any date upon which either (1) the contract of mortgage insurance is no longer in effect with regard to the Loan, or (2) HUD is no longer the owner, holder or insurer of the Loan;

provided, that:

- (1) each such preceding event is subject to consent by Lender and HUD to the extent set forth in the Loan Documents and Program Obligations;
- (2) each such preceding event may be subject to the rights of Borrower, Master Tenant, and Operator, as applicable, pursuant to the Master Lease and/or Sublease;
- (3) the Lender and HUD receive a written application of Master Tenant and/or Operator, as applicable, for each such release (each, a “**Release Application**”); and
- (4) the following conditions are satisfied:

(A) the Lease Coverage Ratio with respect to the Other Healthcare Facilities that will remain subject to the Master Lease after such Master Lease Release is at least 1.45 to 1.00 as of the date the Lender receives a Release Application, subject to HUD’s right to reduce the required Lease Coverage Ratio;

(B) in connection with subsections (i) and (ii) above, the purchaser or assignee of the interests of the Landlord or Operator in the Project obtains previous participation clearance and completes the documents required by Program Obligations; and

(C) in connection with subsections (i) and (ii) above, HUD reasonably approves the purchaser or assignee of the interests of the Operator in the Project as a qualified operator of the Healthcare Facility in accordance with Program Obligations, including without limitation HUD's normal and customary criteria applied in evaluating the experience, reputation, litigation and claims history, insurability, and financial strength of a proposed operator of the Healthcare Facility.

6. Lender's Right to Cure.

(a) Master Tenant and Operator hereby each agrees that it will not exercise any right granted to them under the Master Lease and Sublease, respectively, or which it might otherwise have under applicable law, to terminate the Master Lease on account of a default of Borrower, or to terminate the Sublease as a result of a default of Master Tenant, or the occurrence of any other event, without first giving to Lender prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based.

Thereafter, Master Tenant shall not take any action to terminate the Master Lease, and Operator shall not take any action to terminate the Sublease, if Lender (i) within thirty (30) days after such notice, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (ii) shall diligently take action to obtain possession of the Project (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless and until Lender has obtained possession, but in no event to exceed one hundred eighty (180) days after such written notice to Lender by Master Tenant or Operator of its intention to terminate.

Notwithstanding any other provision of this Agreement, in no event shall Master Tenant declare a default of the Master Lease against Borrower if Master Tenant is affiliated with Borrower, nor shall Operator declare a default of the Sublease against Master Tenant if Operator is affiliated with Master Tenant, unless either is requested to do so by HUD.

(b) For the purposes of facilitating Lender's rights hereunder, Lender shall have, and for such purposes is hereby granted by Borrower, Master Tenant and Operator, the right to enter upon the Project thereon for the purpose of effecting any such cure.

(c) Master Tenant and Operator each hereby agrees to give to Lender concurrently with the giving of any notice of default under the Master Lease or Sublease, a copy of such notice by mailing the same to Lender in the manner set forth herein below, and no such notice given to Borrower or Master Tenant which is not at or about the same time also given to Lender shall be valid or effective against Lender for any purpose.

7. Intentionally Omitted.

8. Subject to the terms and conditions of this Agreement, the Master Lease and Sublease and all estates, rights, options, liens (whether contractual or statutory), security interests and charges therein contained or created under the Master Lease and Sublease are and shall be subject and subordinate to the lien or interest of (a) the Security Instrument on the Landlord's

interest in the Project in favor of Lender, its successors and assigns insofar as it affects the real and personal property comprising the Project, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, (b) the Borrower Regulatory Agreement, (c) the Master Tenant Regulatory Agreement, (d) the Operator Regulatory Agreement, and (e) any security agreements entered into by Master Tenant and/or Operator in favor of the Lender and/or HUD relating to the Project. The parties to the Master Lease and Sublease agree to execute and deliver to Lender and/or HUD such other instrument or instruments as the Lender and/or HUD, or their respective successors or assigns, shall reasonably request to effect and/or confirm the subordination of the Master Lease and Sublease to the lien of the Security Instrument and the above-described Regulatory Agreements and security agreements. Landlord and Master Tenant agree that they shall not take any actions to enforce any of their respective lien rights and/or security interests, if any, without first obtaining the written consent of Lender.

9. Notices. All notices, demands and other communications (“**Notice**”) under or concerning this Agreement shall be in writing. Each Notice shall be addressed to the intended recipients at their respective addresses set forth herein, and shall be deemed given on the earliest to occur of (1) the date when the Notice is received by the addressee; (2) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made and payment of charges for next or second Business Day delivery, respectively; or (3) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

Any Notice hereunder shall be addressed as follows:

To Master Tenant and Operator: AHC BLS MT, LLC
9350 South 15 East
Suite 900
Sandy, Utah 84070
Attn: Brad Holmes

With a copy to: AHC of Ogden, LLC
9350 South 15 East
Suite 900
Sandy, Utah 84070
Attn: Brad Holmes

To Landlord: Ogden RP SNF, LLC
 9350 South 15 East
 Suite 900
 Sandy, Utah 84070
 Attn: Brad Holmes

To Lender: Berkadia Commercial Mortgage LLC
 323 Norristown Road, Suite 300
 Ambler, PA 19002
 Attn: Asset Management

or to such other address as a party may hereafter notify the other parties in writing by notice sent to the above address.

10. MISCELLANEOUS.

(a) Counterpart Execution. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.

(b) Governing Law. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of Utah.

(c) Agreement Runs with Land. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.

(d) Definitions. For the purposes of this Agreement, except as otherwise expressly specified or required or unless the context clearly indicates a contrary intent, the following words shall be defined as follows:

“**Affiliate**” is defined in 24 CFR 200.215, or any successor regulation.

“**EBITDAR**” means, relating to any period, the following amounts of the Other Operators on a consolidated basis for all of the Other Healthcare Facilities: earnings (net income or net loss) from operations before (a) interest expense and mortgage insurance premiums, (b) income tax expense, (c) depreciation expense, (d) amortization expense, and (e) fixed rent payments pursuant to the Other Subleases.

“**Governmental Authority**” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), including Healthcare Authorities, whether now or hereafter in existence.

“**Healthcare Authorities**” shall mean any Governmental Authority or quasi-Governmental Authority or any agency, intermediary, board, authority or entity with jurisdiction over the

ownership, operation, use or occupancy of the Healthcare Facility as a skilled nursing or assisted living facility or nursing home.

“Lease Coverage Ratio” shall mean a ratio for the preceding twelve (12) month period in which:

- (a) the numerator is EBITDAR of the Other Operators for such period as set forth in the financial statements required hereunder for that period; and
- (b) the denominator is the amount of principal and interest due and payable on the Other Loans (exclusive of any prepayment penalties or premiums) and the amount of mortgage insurance premiums due and payable with respect to the Other Loans.

“Legal Requirements” shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities or Healthcare Authorities affecting the Project or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Operator, at any time in force affecting the Project or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Project or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“Material Risk of Termination” shall be deemed to occur when any of the applicable Permits and Approvals material to the operation of the Healthcare Facility is at substantial and imminent risk of being terminated, suspended or otherwise restricted in such a way that such termination, suspension or restriction would have a materially adverse effect on the operation of the Healthcare Facility, including without limitation, HUD’s determination that there is a substantial risk that deficiencies identified by applicable state and/or federal regulatory and/or funding agencies cannot be cured in such manner and within such time periods as would avoid the loss, suspension, or diminution of any Permits and Approvals that would have a materially adverse effect on the Project.

“Other Healthcare Facilities” shall mean the healthcare facilities that, following the occurrence of the Master Lease Release that is related to the applicable Release Application, will remain (i) subject to the Master Lease and (ii) encumbered by any Other Security Instrument.

“Other Loan” shall mean a loan made or held by Lender with respect to one or more of the Other Healthcare Facilities.

“Other Operator” shall mean the operator(s) of one or more of the Other Healthcare Facilities.

“Other Security Instrument” shall mean a security instrument that secures any Other Loan.

“Other Subleases” means the subleases entered into by the Other Operators with respect to the Other Facilities.

“Permits and Approvals” has the meaning set forth in the Operator Regulatory Agreement.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

COUNTERPART SIGNATURE PAGE
TO
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
AGREEMENT OR SUBORDINATION AGREEMENT

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

LENDER

Berkadia Commercial Mortgage LLC,
a Delaware limited liability company

By: *Kristie A. Alvelo*

Name: Kristie A. Alvelo

Title: Authorized Representative

STATE OF PENNSYLVANIA)
) SS:
COUNTY OF MONTGOMERY)

On this 4th day of FEB, 2021, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Kristie A. Alvelo, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in the Certificate first written above.

Margaret Benner
Notary Public in and for said County and State

My commission expires Oct. 6, 2021.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Margaret Benner, Notary Public
Horsham Twp., Montgomery County
My Commission Expires Oct. 6, 2021
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

COUNTERPART SIGNATURE PAGE
TO
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
AGREEMENT OR SUBORDINATION AGREEMENT

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

MASTER TENANT
AHC BLS MT, LLC,
a Utah limited liability company

By: *Steve Starks*
Name: Steve Starks
Title: Authorized Representative

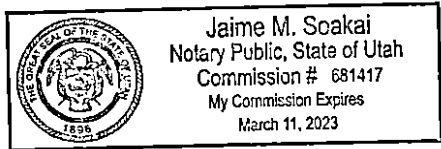
STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

On this 8TH day of FEBRUARY, 2021, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Steve Starks, the Authorized Representative known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in the Certificate first written above.

Jaime M. Soakai
Notary Public in and for said County and State

My commission expires 03-11-2023.



COUNTERPART SIGNATURE PAGE
TO
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
AGREEMENT OR SUBORDINATION AGREEMENT

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

OPERATOR
AHC of Ogden, LLC,
an Idaho limited liability company,

By: [Signature]
Name: Steve Starks
Title: Authorized Representative

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

On this 8th day of FEBRUARY, 2021, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Steve Starks, the Authorized Representative known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in the Certificate first written above.

[Signature]
Notary Public in and for said County and State

My commission expires 03-11-2023.

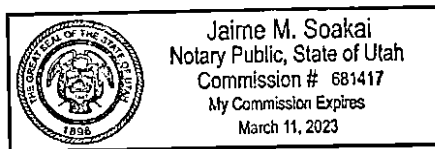


EXHIBIT A

All of Lot 5, Granite Pointe Phase 1, South Ogden City, Weber County, Utah, according to the Official Plat thereof recorded January 19, 2000 as Entry No. 1685049 in Book 51 at Page 35 of Official Weber County Records.

07-556-0004