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ADAM GARDINER
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 9 P.

WHEN RECORDED RETURN TO:

Wasatch Residential Group, LLC
Attn: Corey Johnson
620 South State Street
Salt Lake City, UT 84111

21-35-400-016

21-35-400-017-4001

21-35-400-017-4002

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (this “**Agreement**”) is made and entered into as of the 16th day November, 2017 (the “**Effective Date**”), by and between **GARDNER JORDAN BLUFFS, L.C.**, a Utah limited liability company (“**Gardner**”), and **WASATCH RESIDENTIAL GROUP, LLC**, a Utah limited liability company (“**Wasatch**”). The foregoing are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, pursuant to that certain Purchase and Sale Agreement between the Parties dated October 6, 2017 (the “**PSA**”), simultaneously with this Agreement, Wasatch’s affiliates, assignees or designees have acquired, and Gardner has conveyed, certain real property situated in the city of Midvale, Salt Lake County, Utah (the “**Wasatch Property**”);

WHEREAS, Gardner is the owner of certain parcels of land adjacent to or in the vicinity of the Wasatch Property, which are more particularly described on Exhibit A, and depicted on Exhibit B, attached hereto and made a part hereof by reference (such real properties, together with all of Gardner’s right, title and interest in and to all rights and privileges appurtenant thereto, the “**ROFR Properties**”);

WHEREAS, as partial consideration for Wasatch’s agreement to purchase the Wasatch Property under the terms and conditions of the PSA, Gardner has agreed to grant Wasatch a right of first refusal to purchase the ROFR Properties, or portion thereof, on the terms set forth in this Agreement.

AGREEMENT AND GRANT

NOW, THEREFORE, in consideration of the mutual promises set forth herein and in the PSA, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Right of First Refusal. For a period of ten (10) years from the Effective Date (the “**Term**”), Wasatch shall have the right of first refusal to purchase any qualifying portion of or all of the ROFR Properties upon the terms and conditions set forth in this Section 1 (the “**ROFR**”). Gardner may not seller, transfer, lease or otherwise dispose of all or any part of the ROFR Properties unless the provisions of this Section 1 have been satisfied. If at any time during the Term Gardner shall receive a bona fide offer from a third party for the purchase, transfer, lease, or other conveyance of all or any part of the ROFR Properties (whether or not solicited by Gardner) to an owner who intends to develop such portion of the ROFR Properties for “for rent” residential property (the “**Restricted Use**”), and Gardner either has accepted such offer or shall desire to accept such offer, Gardner shall notify Wasatch of any such offer (the “**Offering Notice**”) by notice to Wasatch specifying the following terms and information:

(a) the name and address of the third-party offeror, (b) the purchase price for the ROFR Properties or any portion of the ROFR properties, and (c) any other terms and conditions set forth in such offer or, if applicable, the purchase agreement between Gardner and such third-party offeror (the “**Third-Party Purchase Agreement**”). This ROFR and Agreement shall not apply to any portion of the ROFR Properties which Gardner develops or sells for a use other than a Restricted Use. The rights granted to Wasatch in this Section 1 shall not apply to a granting of a mortgage, deed of trust or other security agreement in favor of a third party (a “**Mortgage**”) or to the foreclosure, delivery of a deed in lieu of foreclosure or similar action of a Mortgage.

(a) Time Period to Exercise. Wasatch shall have ten (10) business days from the date of delivery of the Offering Notice to Wasatch to exercise the ROFR. Such right of first refusal shall be exercisable by Wasatch notifying Gardner in writing (within such 10-business day period) of Wasatch’s irrevocable election to purchase the ROFR Properties or the portion of the ROFR Properties which is the subject of the applicable Offering Notice, on the terms and conditions set forth in the Offering Notice (the “**Exercise Notice**”). If Wasatch does not deliver Wasatch’s Exercise Notice within such ten (10) business day period, Wasatch shall be deemed to have elected to not exercise the ROFR as to the portion of the ROFR Properties described in the Offering Notice only. In the event Wasatch does not desire to purchase the ROFR Properties, or portion thereof, on the terms set forth in the Offering Notice, Wasatch agrees to deliver to Gardner a written notice indicating that Wasatch is not exercising its rights as provided in this Section 1, provided, Wasatch’s failure to deliver such notice shall not extend such ten (10) business day period. Within ten (10) days of the delivery of the Exercise Notice, Wasatch and Gardner shall enter into a purchase agreement substantially in the form of the PSA but incorporating the terms of the Offering Notice.

(b) Escrow. Upon Wasatch giving Gardner the Exercise Notice, Gardner and Wasatch shall open an escrow account with a recognized title insurance or trust company selected by Wasatch. Such escrow shall be subject to the standard escrow instructions of the escrow agent to the extent such instructions are not inconsistent with the terms of this Section 1 or the terms of the Offering Notice. At or before the close of escrow, Gardner shall deliver to the escrow agent its special warranty deed (or such other type of deed as is specified in the Offering Notice) conveying to Wasatch all of Gardner’s right, title and interest in the ROFR Properties or the portion of the ROFR Properties which is the subject of the applicable Exercise Notice, free and clear of all liens and encumbrances, except liens for taxes and assessments and easements, covenants and restrictions of record which were attached to the ROFR Properties as of the Effective Date, attached during the Term through Wasatch’s action or inaction, as the case may be, have been granted by Gardner in lieu of a taking by the power of eminent domain or the like, have been approved by Wasatch, or which do not materially or adversely affect the use of the ROFR Properties as a commercial property or as otherwise specified in the Offering Notice. In the event Gardner (in the exercise of Gardner’s good faith reasonable efforts) is unable to convey title as required, Wasatch agrees that Wasatch’s sole remedy or recourse shall be one of the following: (i) to accept such title as Gardner is able to convey, (ii) bring an action for specific performance, or (iii) to elect not to consummate its exercise of the right of first refusal as to the ROFR Properties or the portion of the ROFR Properties which is the subject of the applicable Exercise Notice, in which case the right of first refusal shall lapse as to the ROFR Properties or the portion of the ROFR Properties which is the subject of the applicable Exercise Notice and Gardner shall be entitled to sell and convey the ROFR Properties or the portion of the ROFR Properties which is the subject of the applicable Exercise Notice to the original third-party offeror identified in the applicable Offering Notice, or its permitted assignee, free and clear of any right granted to Wasatch under this Section 1; *provided, however*, if the applicable Offering Notice describes only a portion of the ROFR Properties, then the rights granted to Wasatch under this Agreement shall continue in full force and effect as to the remaining ROFR Properties for the remainder of the Term.

(c) Close of Escrow. Notwithstanding any term or provision contained in the Third-Party Purchase Agreement to the contrary, the close of escrow of the sale of the ROFR Properties, or the portion of the ROFR Properties which is the subject of the applicable Exercise Notice, to Wasatch shall occur no later than the date that is forty five (45) days after Wasatch gives Gardner the Exercise Notice. At the close of escrow of the sale of the ROFR Properties to Wasatch pursuant to Wasatch's ROFR under this Section 1, this Agreement shall terminate if the sale is for all of the ROFR Properties. If the close of escrow is for the sale of a portion of the ROFR Properties to Wasatch pursuant to Wasatch's ROFR under this Section 1, then this Agreement shall terminate only as to the portion of the ROFR Properties sold, leased, or transferred to Wasatch and the rights granted to Wasatch under this Agreement shall continue in full force and effect as to the remaining ROFR Properties for the remainder of the Term.

(d) Limitation and Termination of Right. Notwithstanding any other provision or right contained in this Agreement to the contrary, in the event Wasatch shall exercise its ROFR to purchase the ROFR Properties, or the portion of the ROFR Properties which is the subject of the applicable Offering Notice, by giving the Exercise Notice, and Wasatch shall fail to purchase the ROFR Properties or the portion of the ROFR Properties which is the subject of the applicable Exercise Notice on the terms set forth or incorporated by reference in the Exercise Notice and in this Section 1 (except if such failure is the result of a default by Gardner of its obligations under this Section 1), Wasatch's ROFR set forth in this Section 1 shall cease to exist only as to the ROFR Properties or the portion of the ROFR Properties set forth in the Exercise Notice.

(e) Subsequent Sale by Gardner. In the event Wasatch waives or is deemed to have waived its right of first refusal to purchase the ROFR Properties or any portion thereof, Gardner shall have the right to sell and convey the ROFR Properties, or the portion of the ROFR Properties which is the subject of the applicable Offering Notice, to such third-party offeror on terms which are substantially similar to the terms set forth in the Offering Notice, and upon the consummation of such a sale, Wasatch's right of first refusal shall cease to exist only as to the portion of the ROFR Properties which is the subject of the applicable Offering Notice. In the event Gardner does not consummate such a sale to the third party offeror on terms substantially similar to those terms contained in the Offering Notice or shall desire to sell the ROFR Properties or any portion thereof to another third-party offeror on terms not substantially similar to the terms set forth in the Offering Notice (it being agreed an adjustment of purchase price by five percent (5%) is not a material change), then Wasatch's right of first refusal shall remain in full force and effect for the remainder of the Term, and Gardner shall be required to again offer the ROFR Properties or any portion thereof to Wasatch in accordance with this Section 1.

(f) Termination. Pursuant to the PSA, Wasatch has agreed that by not later than seven (7) years after the Effective Date, Wasatch shall have constructed at least 173 affordable housing units (the "**Minimum Housing Units**") which qualify for reimbursement of the affordable housing tax increment under both the Project Reimbursement Agreement and Property Reimbursement Agreement (as defined in the PSA). In the event of a breach of the obligation to construct the Minimum Housing Units on or prior to seven (7) years after the Effective Date, Gardner's sole remedy shall be to terminate this Agreement.

(g) Transferability of ROFR. Notwithstanding anything contained herein to the contrary, the rights granted to Wasatch under this Section 1 are personal to Wasatch, and the rights of Wasatch under this Section 1 may not be assigned, sold, pledge, encumbered, conveyed or otherwise transferred (whether directly, indirectly or as security) to any party without the prior written consent of Gardner in each instance, which approval may be withheld at Gardner's sole and absolute discretion; provided, however, the rights of Wasatch under this Agreement may be assigned without Gardner's consent to an entity any parent, subsidiary, affiliate, division, or entity controlling, controlled by, or under

common control with Wasatch. Any assignment that is not permitted by this Agreement is and shall be null and void for all purposes.

(h) Subordination. This Agreement is and shall remain subject and subordinate to any Mortgage now or hereafter encumbering the ROFR Property. Wasatch agrees to execute any document for the sole purpose of confirming the provisions of this Paragraph required by the holder of such mortgage, deed of trust or other security interest.

2. Miscellaneous.

(a) Covenant Running With the Land. This Agreement's covenants, conditions, and restrictions shall touch, concern, and run with the ROFR Properties for the duration of this Agreement, and shall be binding upon and inure to the benefit of Gardner, Wasatch, and their respective successors and assigns.

(b) Continued Effectiveness. Subject to the provisions of Section 1(h), if Gardner sells, transfers, leases or otherwise disposes of less than all of the ROFR Properties or sells, transfers, leases or otherwise disposes of a portion of the ROFR Properties in conjunction with other of Gardner's properties which are not subject to this Agreement, then the rights granted to Wasatch under this Agreement shall continue in full force and effect as to the remaining ROFR Properties not sold or transferred for the remainder of the Term or earlier termination of this Agreement as provided herein.

(c) Termination upon Transfer to Wasatch. Upon any vesting of all or any portion of the ROFR Properties' title in Wasatch, all covenants, conditions, restrictions, and reservations imposed under this Agreement shall automatically terminate and be of no further force and effect as to that portion of the ROFR Properties vested in Wasatch.

(d) Termination upon Expiration of Time. The parties agree that no further recording shall be necessary and this Agreement shall expire on its face on the date which is ten (10) years from the Effective Date, unless earlier terminated according to this Agreement's terms.

(e) Enforceability. This Agreement may be executed in one or more counterparts, each of which, when taken together, constitutes the original. If any term, provision or condition contained in this Agreement shall to any extent be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each remaining term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) Notice. All notices, waivers, statements, demands, approvals or other communications to be given under or pursuant to this Agreement shall be in writing, addressed to the Parties at their respective addresses as provided below, and shall be delivered by certified or registered mail, postage prepaid, as follows:

If to Wasatch:

Wasatch Residential Group, LLC
Attn: Jeff Nielson and Corey Johnson
620 South State Street
Salt Lake City, UT 84111

If to Gardner:

Gardner Jordan Bluffs, L.C.
Attn: Christian Gardner
201 South Main Street, Suite 2000
Salt Lake City, Utah 84111

(g) Amendment. This Agreement may only be amended or modified, in whole or in part, by recording, in the official records of Salt Lake County, Utah, an instrument in writing reciting such amendment, bearing the acknowledged signatures of the Parties.

(h) Non-Waiver. The failure of either Party to insist upon strict performance of any covenants, conditions, or terms of this Agreement shall not be construed as a waiver or relinquishment of any such covenants, conditions or terms, but the same shall be and remain in full force and effect.

(i) Headings. The captions and headings used herein are for convenience of reference only and shall not affect the interpretation of this Agreement.

(j) Construction. This Agreement shall be construed in accordance with the laws of the State of Utah and both Parties shall be considered the drafters of this Agreement.

(k) Attorneys' Fees. Each Party will be responsible for payment of their respective attorneys' fees in the negotiation and execution of this Agreement. In the event of any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive its costs and attorney fees.

(l) Recordation. Within five (5) days of the Effective Date, Wasatch will record this Agreement with the Salt Lake County Recorder's Office as against the ROFR Properties.

(m) Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are superseded by and merged into this Agreement.


[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned parties have created this Agreement effective as of the day and year first above written.

GARDNER:

GARDNER JORDAN BLUFFS, L.C., a Utah limited liability company, by its Manager

KC GARDNER COMPANY, L.C., a Utah limited liability company

BY 
Christian Gardner, Manager

STATE OF UTAH)
) ss.
County of SALT LAKE)

The foregoing instrument was acknowledged before me this 15 day of November, 2017, by Christian Gardner, a manager of KC Gardner Company, L.C., a Utah limited liability company, the manager of Gardner Jordan Bluffs, L.C., a Utah limited liability company on behalf of said company.


My commission expires: 10.16.20

Notary Public



WASATCH:

WASATCH RESIDENTIAL GROUP LLC
a Utah limited liability company

By: 
Name: Jeff Nielson
Title: Manager

STATE OF UTAH)
) ss.
County of SALT LAKE)

The foregoing instrument was acknowledged before me this 15 day of NOVEMBER, 2017, by JEFF NIELSON, the MANAGER of Wasatch Residential, a Utah limited liability company, on behalf of said company. Group LLC

My commission expires: 10.16.20

Notary Public



**EXHIBIT A TO RIGHT OF FIRST REFUSAL
ROFR PROPERTIES DESCRIPTION**

Those certain real properties located in Salt Lake County, State of Utah, and more particularly described as:

Beginning at a point on the Section line being South 00°12'34" West 2102.21 feet along the Section line from the Northeast Corner of Section 35, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

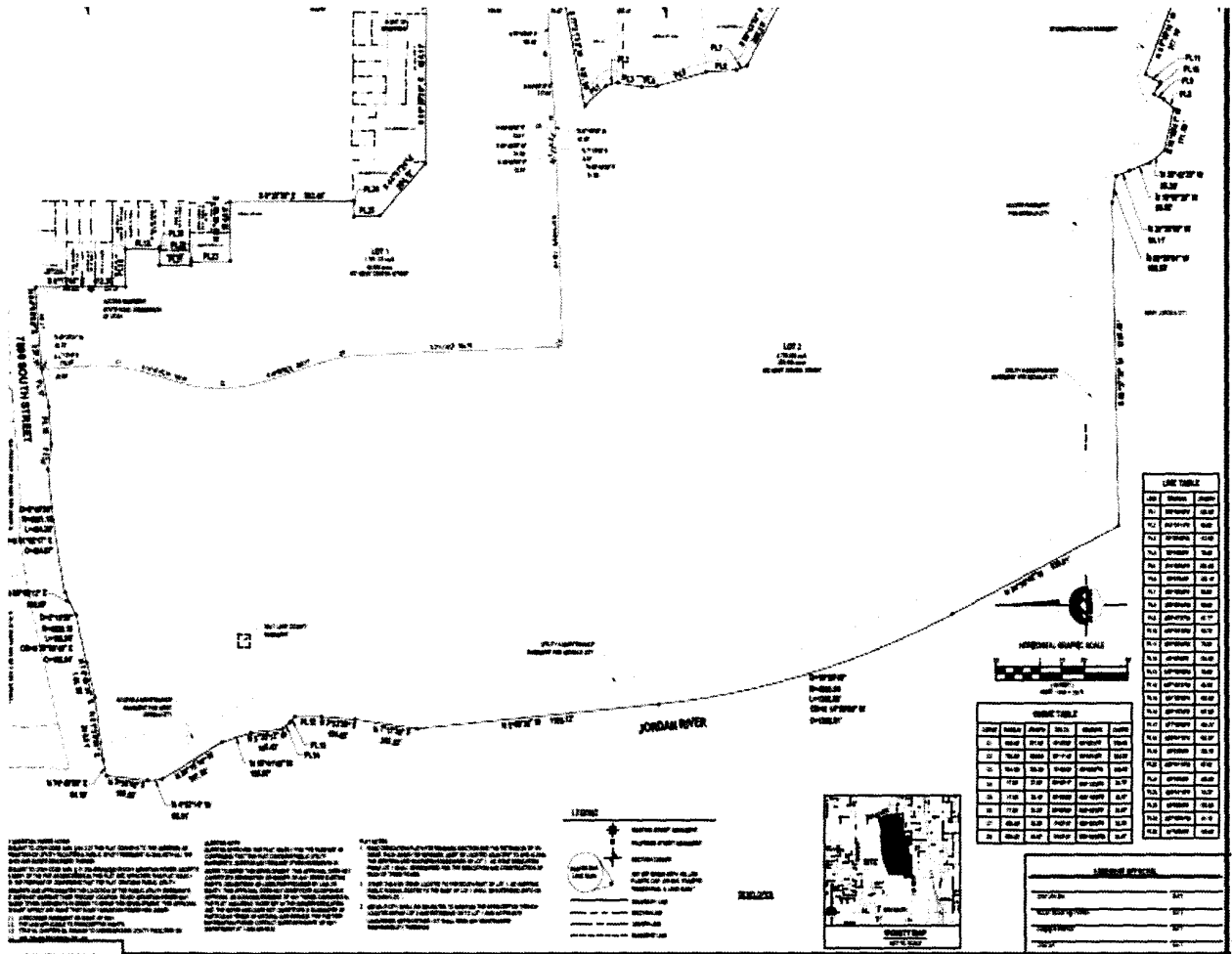
thence South 00°12'34" West 79.62 feet along the section line;
thence South 77°21'33" West 407.54 feet;
thence South 39°54'40" East 125.53 feet;
thence South 12°21'11" East 52.85 feet;
thence South 08°28'42" West 112.58 feet;
thence South 02°50'06" East 70.43 feet;
thence South 14°03'34" East 230.09 feet;
thence South 03°23'34" East 140.14 feet;
thence South 20°38'28" East 50.85 feet;
thence South 58°43'52" East 280.30 feet to section line;
thence South 00°29'40" East 1,803.42 feet along said section line;
thence North 65°55'16" West 317.16 feet;
thence South 24°04'44" West 75.08 feet;
thence North 59°54'19" West 55.73 feet;
thence South 23°47'27" West 47.77 feet;
thence South 38°00'44" West 59.69 feet;
thence North 75°55'41" West 171.55 feet;
thence North 35°42'23" West 85.29 feet;
thence North 18°07'28" West 98.62 feet;
thence North 20°33'59" West 64.11 feet;
thence North 80°30'01" West 105.53 feet;
thence South 88°37'38" West 1,286.49 feet;
thence North 24°58'40" West 838.81 feet;
thence Northwesterly 1,395.88 feet along the arc of a 4,000.00 foot radius curve to the right (center bears North 65°01'20" East and the chord bears North 14°58'50" West 1,388.81 feet with a central angle of 19°59'40") along the east bank of said Jordan River;
thence North 05°00'36" West 1,109.12 feet along the east bank of said Jordan River;
thence North 07°17'20" East 282.82 feet along the east bank of said Jordan River;
thence North 03°53'39" East 154.63 feet along the east bank of said Jordan River;
thence North 124.58 feet along the east bank of said Jordan River;
thence North 47°59'09" West 30.66 feet along the east bank of said Jordan River;
thence North 37°43'31" West 42.50 feet along the east bank of said Jordan River;
thence North 05°35'12" West 145.43 feet along the east bank of said Jordan River;
thence North 15°41'49" West 136.97 feet along the east bank of said Jordan River;
thence North 28°15'14" West 307.98 feet along the east bank of said Jordan River;
thence North 04°52'14" West 66.01 feet along the east bank of said Jordan River;

thence North 05°54'45" East 189.03 feet along the east bank of said Jordan River to the south line of 7800 South;
thence North 74°43'59" East 64.19 feet along 7800 South;
thence North 81°38'00" East 249.51 feet along 7800 South;
thence North 74°46'34" East 146.30 feet along 7800 South;
thence Northeasterly 195.95 feet along the arc of a 4,829.15 foot radius curve to the right (center bears South 15°12'57" East and the chord bears North 75°56'48" East 195.94 feet with a central angle of 02°19'30") along 7800 South;
thence North 59°42'12" East 103.69 feet along 7800 South;
thence Northeasterly 494.28 feet along the arc of a 4,861.15 foot radius curve to the right (center bears South 11°49'30" East and the chord bears North 81°05'17" East 494.07 feet with a central angle of 05°49'33") along 7800 South;
thence South 81°32'25" East 102.50 feet along 7800 South;
thence North 85°15'24" East 147.80 feet along 7800 South;
thence North 77°33'30" East 153.21 feet along 7800 South;
thence North 84°59'59" East 25.96 feet along 7800 South;
thence South 40°23'21" West 42.72 feet;
thence South 04°13'16" East 170.59 feet;
thence Southwesterly 271.58 feet along the arc of a 846.00 foot radius curve to the right (center bears South 85°46'44" West and the chord bears South 04°58'31" West 270.42 feet with a central angle of 18°23'35");
thence South 14°10'19" West 165.04 feet;
thence Southerly 399.90 feet along the arc of a 759.00 foot radius curve to the left (center bears South 75°49'41" East and the chord bears South 00°55'19" East 395.29 feet with a central angle of 30°11'16");
thence South 16°00'58" East 253.77 feet;
thence Southeasterly 202.98 feet along the arc of a 841.00 foot radius curve to the right (center bears South 73°59'02" West and the chord bears South 09°06'07" East 202.48 feet with a central angle of 13°49'42");
thence South 02°11'16" East 894.78 feet;
thence Southeasterly 27.50 feet along the arc of a 17.50 foot radius curve to the left (center bears North 87°48'44" East and the chord bears South 47°12'24" East 24.76 feet with a central angle of 90°02'17");
thence North 87°46'28" East 724.49 feet;
thence North 87°46'28" East 151.42 feet;
thence Northeasterly 30.05 feet along the arc of a 465.00 foot radius curve to the left (center bears North 02°13'32" West and the chord bears North 85°55'23" East 30.05 feet with a central angle of 03°42'10");
thence North 84°04'18" East 217.54 feet;
thence Northeasterly 34.57 feet along the arc of a 535.00 foot radius curve to the right (center bears South 05°55'42" East and the chord bears North 85°55'23" East 34.57 feet with a central angle of 03°42'10");
thence North 87°46'28" East 182.08 feet to the point of beginning.

Contains 9,731,747 Square Feet or 223.410 Acres

EXHIBIT B TO RIGHT OF FIRST REFUSAL DEPICTION OF ROFR PROPERTIES

Lot 2 as shown in the attached



4833-1511-1764, v. 4

4846-0963-6432.3