



W3050192

E# 3050192 PG 1 OF 10
Leann H. Kiltz, WEBER COUNTY RECORDER
24-Apr-20 0415 PM FEE \$40.00 DEP TN
REC FOR: SMITH KNOWLES PC
ELECTRONICALLY RECORDED

When Recorded Return To:
Blake D. Johnson
Smith Knowles, P.C.
2225 Washington Blvd., Suite 200
Ogden, Utah 84401

99-YEAR LEASE AGREEMENT

Weber County Parcels Affected:
02-028-0013
02-081-0004
02-028-0007

THIS 99-YEAR LEASE AGREEMENT (“Agreement”) is entered into as of the 24th day of April, 2020 (the “Effective Date”) by and between Clark Dee and Rachele Scothern, husband and wife, (“Scothern”), and Kevin Lynch (“Lynch”).

RECITALS

A. Scothern owns certain real property located at 1055 Capitol Street, Ogden, Utah 84401, known as Weber County Parcel No. 02-028-0007, as more particularly described on Exhibit A attached hereto (the “Scothern Parcel”).

B. Lynch owns certain real properties adjacent to the Scothern Parcel known as Weber County Parcel Nos. 02-028-0013 (herein “Driveway Lot”) and 02-081-0004 (herein “1062 25th St.”), as more particularly described on Exhibit B attached hereto.

C. For a number of years the Scothern parcel has used the Driveway Lot for parking and access for Scothern, occupants and tenants of the Scothern Parcel. Recently the Driveway Lot was sold to Lynch by Ogden City Corporation.

D. Whereas, Scothern would like to lease a portion of the Driveway Lot for exclusive ingress, egress, and parking.

E. Whereas, Lynch would like to lease a portion of the Scothern Parcel for exclusive use for the owners, occupants, and tenants of 1062 25th St.

F. Whereas, Scothern is willing to lease to Lynch a portion of the Scothern Parcel for such purpose subject to the terms and conditions set forth below; and Lynch is willing to lease to Scothern a portion of 1062 25th St. for such purpose subject to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Lease –

- a. Scothern Parcel. Subject to the terms and conditions set forth in this Agreement, Scothern hereby grants to Lynch, for the benefit of Lynch and any occupant or tenant of 1062 25th St., an exclusive lease of a portion of the Scothern Parcel which is

adjacent to the 1065 25th St. and described as: **“the southernmost 26 feet of the Scothern Parcel, measured as an area extending north 26 feet starting from the northern boundary of the Lynch Parcel and extending from the eastern boundary of the Scothern Parcel and extending approximately 36.3 feet to the western boundary of the Scothern Parcel, comprising approximately 943.8 feet”**, (herein, together with portions described in subsection (b) below, “Lynch Leasehold”).

- b. 4.9 Foot Parcel. In addition to the portion of the Scothern Parcel leased to Lynch as stated in subsection (a), Scothern claims an equitable interest in Weber County Parcel No. 02-028-0009 which is better described in Exhibit C attached. It is Scothern’s reasonable belief that Scothern and their predecessors of interest have used Parcel No. 02-028-0009 exclusively and adverse to the owners of record sufficient to claim an interest through equitable claims of ownership or use by prescriptive easement. Included in the Lynch Leasehold is the **corresponding southernmost 26 feet of Parcel No. 02-028-0009, and area which is approximately 26 x 4.9 feet (127.4 square feet)**. In the event the owner of record for Parcel No. 02-028-0009 conveys to Scothern all rights and title to Parcel No. 02-028-0009, Lynch shall receive a leasehold interest of the portion of Parcel No. 02-028-0009 described herein, equal to Lynch’s interest in the remainder of the Lynch Leasehold. Within 30 days of any ownership status change, including conveyance by deed or quiet title judgment, Scothern shall notify Lynch of any changes to the ownership status of Parcel No. 02-028-0009. Lynch hereby acknowledges that Scothern’s ownership interest in Parcel No. 02-028-0009 could be clouded or challenged, and Scothern is not liable for any costs of improvement, maintenance, loss of income, or any other damages associated with any possible future termination of Lynch’s possession by the owners of record.

2. Grant of Lease – Lynch Parcel. Subject to the terms and conditions set forth in this Agreement, Lynch hereby grants to Scothern, for the benefit of Scothern and any occupant or tenant of the Scothern Parcel, an exclusive lease of a portion of the Driveway Lot which is adjacent to the Scothern Parcel, and described as: **“the northernmost 72 feet of the Driveway Lot, measured as an area extending south 72 feet from the northern boundary of the Driveway Lot and extending from the eastern boundary of the Driveway Lot and extending approximately 24.8 feet to the western boundary of the Driveway lot, comprising approximately 1785.6”**, (herein “Scothern Leasehold”).

3. Approximations. The purpose of this Agreement is to grant mutual exclusive leaseholds of portions of the legal lots described herein. Measurements from eastern boundaries to western boundaries are approximations and the intent is to include the entire measurements of the lots from the east boundaries to the west boundaries of each lot and limited by the northern and southern descriptions of the leaseholds as described above. “Northernmost” and “Southernmost” measurements are not approximations and are intended to accurately describe leaseholds. Where the approximated width of the leaseholds does not match the legal lot width, the leasehold shall extend to the entire width of the lot subject to the leasehold.

4. Term and Termination. The term of the Leaseholds shall be for a period of ninety-nine (99) years commencing on the Effective Date (the “Term”), unless earlier terminated by either party as provided herein. Either party, or their successors in interest to their respective properties, shall have the right to terminate this Agreement and the leaseholds granted hereunder at any time upon providing five (5) years prior written notice to the current owner of other parcel.

5. Fencing. Both parties agree to allow, at the leaseholder's sole cost and expense, to place, build, or erect a fence around the leasehold interest held by that party, and no access gate is required to grant direct access to the owner of the leasehold interest.

6. Lease Fee. There is no separate lease fee under this agreement, as consideration for Scothern receiving the Scothern Leasehold is the granting of the Lynch Leasehold, and consideration for the Lynch Leasehold is the granting of the Scothern Leasehold. No separate reimbursement for property taxes, utilities, or other costs are required under this Agreement.

7. Maintenance. Each party is solely responsible for the maintenance, repair, and upkeep of their leasehold obtained through this Agreement. For purpose of this Agreement, each party has exclusive rights to use and possession of their respective leaseholds and may make alterations or improvements to their leasehold areas without permission of the other owner. However, the parties agree that no alterations may occur which changes the basic use and nature of each leasehold. In particular, the Scothern Leasehold shall remain a driveway providing parking and access to the Scothern Parcel and the Lynch Leasehold shall remain residential landscaping which may include a storage or yard building or traditional landscaping elements for residential use.

8. Insurance - Scothern At all times during the Term of this Agreement, Scothern shall maintain general liability insurance against claims for bodily injury, death or property damage arising out of the exercise by or under Scothern of the rights granted herein in a combined single limit amount of \$1,000,000.00. The insurance required to be maintained hereunder (a) shall be issued by an insurer authorized to do business in the state of Utah, and (b) shall provide that thirty (30) days' prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage shall be given to Lynch. Scothern shall deliver to Lynch a certificate evidencing the foregoing coverage on or before the commencement of this Agreement, and a certificate evidencing renewal of such coverage prior to the expiration of any of such coverage.

9. Insurance - Lynch At all times during the Term of this Agreement, Lynch shall maintain general liability insurance against claims for bodily injury, death or property damage arising out of the exercise by or under Lynch of the rights granted herein in a combined single limit amount of \$1,000,000.00. The insurance required to be maintained hereunder (a) shall be issued by an insurer authorized to do business in the state of Utah, and (b) shall provide that thirty (30) days' prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage shall be given to Scothern. Lynch shall deliver to Scothern a certificate evidencing the foregoing coverage on or before the commencement of this Agreement, and a certificate evidencing renewal of such coverage prior to the expiration of any of such coverage.

10. Limitations; Indemnity. The Parties' exercise of the rights and privileges granted under this Agreement shall be undertaken at Parties' sole risk, cost and expense. Both parties make no representation or warranty of any kind or nature, express or implied, with respect to the Scothern Leasehold or the Lynch Leasehold and the use thereof by or under either party pursuant to this Agreement. The parties shall indemnify, defend and hold harmless the other party and their members, directors, officers, managers, directors, employees, agents, invitees, permittees and Lessees from and against any and all claims, actions, judgments, liabilities, obligations, liens, injuries, damages, losses, costs, expenses and fees (including reasonable attorneys' fees) arising in any manner from use of the leaseholds granted herein by or under the beneficiary of the leasehold, the exercise by the leaseholder of any right or privilege granted under this Agreement, or the violation or breach by that party of any term or provision of this Agreement. This provision shall survive the termination of this Agreement. In the event litigation is initiated by the owners of record of Parcel No. 02-028-0009 against the parties of this Agreement (herein "Parties") to terminate the Parties' claims to Parcel No. 02-028-0009, the Parties shall,

to the extent possible, obtain an attorney to represent both Parties and Scothern shall be responsible for 80% of legal fees and costs, and Lynch shall be responsible for 20% of legal fees and costs. In the event only one party is made a party to the lawsuit by the owners of record to quiet title, the other party not listed in the lawsuit shall reimburse the listed party in the same proportions above based on the portion of Parcel No. 02-028-0009 under their exclusive control, unless otherwise agreed by the Parties or their successors in interest. Reimbursement or contribution for attorney fees by the Parties as stated in this subsection is limited to those reasonable attorney fees and costs related to a dispute of ownership or rights regarding Parcel No. 02-028-0009, and shall not apply to claims unrelated to the common interest of the Parties in establishing ownership and use of Parcel No. 02-028-0009 for the Parties.

11. Default; Remedies. If either party shall default in the performance of any of its covenants or obligations under this Agreement, and such default shall continue for a period of thirty (30) days after notice shall have been given specifying the default and demanding that same be cured, the defaulting party shall have the right, without waiving or releasing any other right or remedy available at law or in equity, to cure the default. If the defaulting party elects to cure the default, that party shall reimburse the non-defaulting party for any and all costs and expenses (including reasonable attorneys' fees) incurred by non-defaulting party in effecting such cure. Notwithstanding the foregoing, in the case of an emergency, such thirty (30)-day cure period shall be reduced to an amount of time that is reasonable under the circumstances, and if any default prevents or significantly impairs the reasonable use of the non-defaulting party's lease, such thirty (30)-day cure period shall be reduced to one (1) day.

12. Notices. All notices, demands, requests, consents, approvals, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered, or three (3) days after the date when mailed by first class or certified mail (return receipt requested), postage prepaid, or the next day after the date when mailed by respectable overnight delivery service (such as FedEx or UPS), addressed to the respective addresses of the parties set forth below, or at such other address as the parties may designate in writing to the other.

If to Lynch:

Kevin D. Lynch
1062 25th Street
Ogden, UT 84401

If to Scothern:

Clark and Rachele Scothern
1168 E 3250 North
North Ogden, UT 84414

13. Record ability of Lease; Assignment. The Leases granted pursuant to this Agreement are intended to be bind each party and each parties' successors in interest to the Scothern Parcel and the Lynch Parcel. Either party may cause or permit the recordation of this Agreement or any amendment or modification hereof in the public land records of Weber County, Utah.

14. Entire Agreement. The parties acknowledge and agree that this Agreement sets forth the final and complete agreement between the parties hereto with respect to the subject matter hereof.

15. Legal Description. The parties understand that no licensed surveyor was used to create an exact legal description of the properties referenced herein, nor of the areas subject to the leaseholds.

The parties acknowledge that estimates used may not be exact descriptions of the areas as they appear on recorded documents or physically.

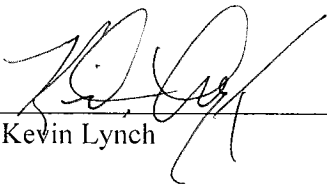
16. Attorneys' Fees. The prevailing party in any suit or other proceeding brought for the enforcement or interpretation of this Agreement shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and litigation expenses, including, without limitation, expert witness fees incurred in the pursuit of such suit or proceeding.

17. Nonwaiver. This Agreement does not waive or alter any rights either party may have in regards to the subject property, including but not limited to, current licenses, easement rights which have accrued, ownership interests, possessory rights, etc.

18. Miscellaneous. This Agreement shall be governed by the laws of the state of Utah. Captions are for reference only and are not a part hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Electronic signature (e.g. pdf file sent via email) shall constitute original signatures. Subject to the limitations set forth in section 13 above, this Agreement shall bind and benefit the parties' respective successors and assigns. No third party beneficiary rights are intended except as expressly provided herein. The Agreement's provisions are severable. No waiver will be construed as a continuing waiver or consent to a later breach. Rights and remedies are cumulative. Any amendment or modification to this Agreement must be in writing and signed by the parties. Each individual executing this Agreement on behalf of an entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity and that this Agreement is binding upon said entity in accordance with its terms.

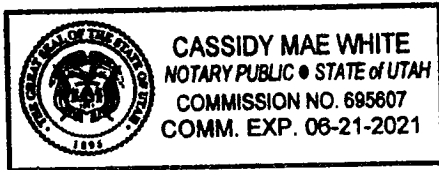
[Signatures on following page]

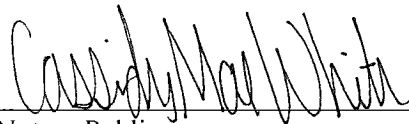
IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed effective as of the Effective Date.


By: Kevin Lynch

STATE OF UTAH)
 : ss
COUNTY OF WEBER)

Subscribed and sworn to before me on this 24th day of April, 2020, by Kevin Lynch.



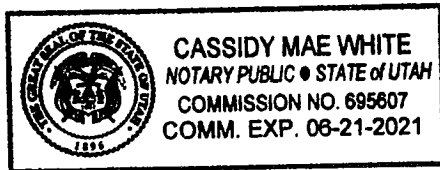

Notary Public

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed effective as of the Effective Date.

By: Clark Dee Scothern

STATE OF UTAH)
: ss
COUNTY OF WEBER)

Subscribed and sworn to before me on this 24th day of April, 2020, by Clark Dee Scothern.


Notary Public

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed effective as of the Effective Date.

By: Rachele Scothern

STATE OF UTAH)
: ss
COUNTY OF WEBER)

Subscribed and sworn to before me on this 24th day of April, 2020, by Rachele Scothern.

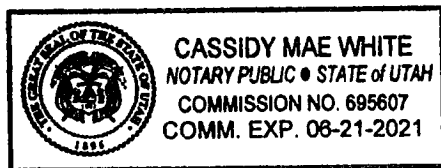

Notary Public

EXHIBIT A
(Legal Description)

PART OF LOT 2, KERSHAW'S SUBDIVISION, BLOCK 31, PLAT C, OGDEN CITY SURVEY, WEBER COUNTY, UTAH: BEGINNING AT A POINT 209.5 FEET WEST 303.77 FEET NORTH OF THE SOUTHEAST CORNER OF SAID BLOCK 31, AND ON THE SOUTH LINE OF KERSHAW AVENUE; RUNNING THENCE WEST 18.15 FEET; THENCE SOUTH 128 FEET; THENCE EAST 36.30 FEET; THENCE NORTH 128 FEET; THENCE WEST 18.15 FEET TO THE PLACE OF BEGINNING. ALSO: ALL RIGHTS-OF-WAY, EASEMENTS AND OTHER AND ALL INTEREST AND RIGHT IN AND TO LANDS LYING ADJACENT TO OR ADJOINING THE ABOVE DESCRIBED TRACT ON THE WEST AND SOUTH AND WITHIN SAID BLOCK 31.

TOGETHER WITH AND SUBJECT TO EXISTING RIGHTS-OF-WAY, TO-WIT: BEGINNING AT THE NORTHWEST CORNER OF AFORESAID PROPERTY; THENCE WEST 10 FEET; THENCE SOUTH 138; THENCE EAST 51.2 FEET THENCE NORTH 10 FEET; THENCE WEST 41.2 FEET; THENCE NORTH 128 FEET TO THE POINT OF BEGINNING.

More commonly known as 1055 Capital Street, UT.

SUBJECT TO THE RESTRICTIONS, CONDITIONS, COVENANTS, RIGHTS, RIGHTS OF WAY, AND EASEMENTS THAT ARE NOW OF RECORD, IF ANY.

Parcel No. 02-028-0007

EXHIBIT B
(Legal Descriptions)

Parcel No. 02-028-0013

Driveway Lot:

PART OF LOT 2, KERSHAW'S SUBDIVISION OF BLOCK 31, PLAT C, OGDEN CITY SURVEY, WEBER COUNTY, UTAH: BEGINNING AT A POINT 186 FEET WEST 176.00 FEET NORTH AND 41.2 FEET WEST FROM THE SOUTHEAST CORNER OF SAID BLOCK 31, RUNNING THENCE NORTH 128 FEET, THENCE WEST 24.8 FEET, THENCE SOUTH 102.00 FEET, THENCE EAST 23.46 FEET, THENCE SOUTH 0°11'56" EAST 26.00 FEET, MORE OR LESS, THENCE SOUTH 89°02'00" EAST 1.25 FEET, MORE OR LESS, TO BEGINNING. TOGETHER WITH AND SUBJECT TO A RIGHT OF WAY ORDER EAST 10 FEET.

Parcel No. 02-081-0004

1062 25th St.:

LOT 4, IVY LANE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE WEBER COUNTY RECORDER'S OFFICE.

EXHIBIT C
(Legal Description)

Parcel No. 02-028-0009

PART OF LOT 2, KERSHAW'S SUBDIVISION OF BLOCK 31, PLAT C, OGDEN CITY SURVEY, WEBER COUNTY, UTAH: BEGINNING ON THE SOUTH LINE OF CAPITOL STREET 303.77 FEET NORTH AND 186 FEET WEST FROM THE SOUTHEAST CORNER OF SAID BLOCK 31; THENCE WEST 4.9 FEET; THENCE SOUTH 128 FEET; THENCE EAST 4.9FEET; THENCE NORTH 128 FEET TO BEGINNING.