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WHEN RECORDED, PLEASE MAIL TO:

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Salt Lake City, Utah 84111-1537

EB 2245551 PG 1 OF 11
ERNEST D ROWLEY, WEGER COUNTY RECORDER
01-MAR-07 1101 AM FEE \$35.00 DEP JPM
REC FOR: LANDMARK TITLE

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (this "Agreement") is entered into this 1 day of February, 2007, by OGDEN CITY REDEVELOPMENT AGENCY, a body politic and a political subdivision of the State of Utah (together with its successors and/or assigns, "Ogden"), and BOYER OGDEN MALL, L.C., a Utah limited liability company (together with its successors and/or assigns, "Boyer").

RECITALS

A. WHEREAS, Ogden is the owner of certain parking facilities (the "Parking Facilities") located on certain real property located in Ogden, Utah, and more particularly described on "Exhibit "A"" attached hereto and made a part hereof (the "Parking Area");

B. WHEREAS, Ogden, as landlord, and Boyer, as tenant, entered into a certain Lease Agreement and Grant of Option to Lease Future Development Land dated as of December 13, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "Phase I Lease"), which Phase I Lease encumbers certain real property located in Ogden, Utah, as more particularly described on Exhibit "B" attached hereto and made a part hereof (the "Phase I Property");

C. WHEREAS, pursuant to and in accordance with the provisions of the Phase I Lease, Boyer has the right to enter into a lease (as amended, restated, supplemented or otherwise modified from time to time, the "Phase II Lease", and together with the Phase I Lease and each separate Lease that may be entered into in accordance with the provisions of the Phase I Lease or the Phase II Lease, the "Lease") for certain real property more particularly described on Exhibit "C" attached hereto and made a part hereof (the "Phase II Property"; and together with the Phase I Property, the "Shopping Center Property");

D. WHEREAS, Ogden is the sole owner of the fee simple interest in the Shopping Center Property and the Parking Area;

E WHEREAS, Ogden and Boyer have entered that certain Development Agreement, dated as of December 13, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "Development Agreement") for the development of the Phase I Property, and if Boyer elects to enter into the Phase II Lease, the Phase II Property;

F. WHEREAS, the Phase I Lease and the Development Agreement require that Boyer and Ogden enter into that certain Parking License Agreement, dated as of the date hereof (the "Parking Agreement") wherein the sub-tenants and owners or the mixed use office, retail and residential shopping center to be built upon the Phase I Property, and if Boyer elects, the Phase II Property (collectively, the "Shopping Center") and their agents, employees, licensees and invitees shall have an irrevocable, non-exclusive license to use the Parking Facilities upon the terms and conditions more fully set forth in the Parking Agreement;

G. WHEREAS, the Parking Area is currently subject to the provisions of that certain Agreement and Mortgage, dated as of July 8, 2003 and recorded in the Official Records of Weber County, Utah, as Entry No. 1957619, in Book 2406, at page 1761 (the "Mortgage"), which Mortgage was made by Ogden and Ogden City Corporation in favor of the United States Department of Commerce, Economic Development Administration (together with its successors and/or assigns, the "EDA"), and which Mortgage secures a grant made by the EDA to Ogden in the amount of \$1,500,000 (the "Grant");

H. WHEREAS, the EDA is unwilling to subordinate the Mortgage to the Parking Agreement, and therefore, if the EDA were to foreclose on the Mortgage, the right granted to Boyer pursuant to the Parking Agreement would (unless otherwise agreed by the EDA) cease to exist;

I. WHEREAS, Boyer's current construction lender is requiring Boyer and Ogden to enter into this Agreement in order for Boyer to obtain construction financing on the Project; and

J. WHEREAS, Ogden, as landlord under the Lease, has a substantial interest in the success and viability of the Shopping Center, and the construction thereof, and is therefore willing to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations set forth herein and for other good and valuable consideration, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Option to Boyer. In the event of, and upon the occurrence of, the commencement of a judicial action seeking judicial foreclosure of the Mortgage in the manner provided by law for the foreclosure of mortgages on real property (a "Foreclosure Proceeding");

(a) Ogden shall promptly give written notice to Boyer of the filing of the Foreclosure Proceeding (the "Foreclosure Notice");

(b) Commencing upon the date that Boyer receives the Foreclosure Notice and continuing through and including the date which is ninety (90) days after the date upon which Boyer receives the Foreclosure Notice, Boyer shall have the right to purchase the Parking Area and Parking Facilities from Ogden for an amount equal to the sum of \$1,500,000 (the "Purchase Price"), which right shall be exercised by Boyer upon Boyer notifying Ogden, or Ogden's successors and/or assigns, of Boyer's election to purchase Parking Area and/or Parking Facilities within such ninety (90) day period.

(c) In the event Boyer has elected to purchase the Parking Area and Parking Facilities as provided in clause (b) above, Ogden shall, and shall cause its successors and/or assigns to, fully cooperate with the sale of the Parking Area and Parking Facilities to Boyer, and Boyer shall consummate the purchase of the Parking Area and/or Parking Facilities on or before the date which is ninety (90) days after the date Boyer received the Foreclosure Notice; and

(d) In the event Boyer has elected to purchase the Parking Area as provided in clauses (b) and (c) above, Ogden or its successors and/or assigns shall convey the Parking Area and/or Parking Facilities to Boyer by special warranty deed, which conveyance, subject to Boyer's payment of the Purchase Price to the EDA, shall not be subject to the lien of the Mortgage, and shall otherwise only be subject to matters of record relating to the Parking Area as of the date hereof.

Notwithstanding the foregoing to the contrary, in the event that Ogden or its affiliate cures all defaults under the Mortgage, or such defaults have been waived by the EDA, and/or the Foreclosure Proceeding is terminated prior to the time that Boyer purchases the Parking Area in accordance with the provisions of this Agreement, the option to purchase the Parking Area pursuant to the provisions of this Agreement shall be null and void except and to the extent any Foreclosure Proceeding is subsequently filed or reinstated.

2. Right of First Refusal to Purchase Ogden's Interest. If Ogden proposes to sell, transfer or otherwise convey all or any part of Ogden's interest in the Parking Area and/or Parking Facilities to any person or entity during the term of the Lease (the "Term"), such sale shall be subject to Boyer's right, title and interest under this Agreement. Boyer shall have a right of first refusal, during the Term, to purchase any interest in the Parking Area which Ogden proposes to sell or convey on the terms and conditions set forth in this Section 2.

(a) Definitions. As used in this Section 2, the following terms shall have the meanings set forth:

(i) "Offer Price" means the purchase price set forth in a Third Person Offer.

(ii) "Purchase Price" means the net amount that Ogden would receive pursuant to the Third Person Offer after payment of all brokerage fees, title

insurance premiums, prorations, sale and closing costs and similar customary expenditures actually incurred in connection with the sale.

(iii) "Third Person Offer" means an offer made by the Third Person to purchase the interest of Ogden in any portion of the Parking Area and/or Parking Facilities. The Third Person Offer must contemplate a purchase for cash or readily available funds payable at closing of the purchase or an installment sale and may not contemplate an exchange, either in whole or in part, for other real or personal property. Any Third Person Offer must provide for a closing in all events within one hundred eighty (180) days. Ogden shall provide to Boyer a written copy of the proposed sale agreement relating to the Third Person Offer and all other documents, reports, surveys or other materials available to Ogden or the buyer relating to the property being sold.

(b) Procedure. The provisions of this Section 2 shall be invoked when Ogden proposes to accept a Third Person Offer.

(c) Information. Ogden shall at all times during the Term keep Boyer informed of its efforts to solicit or obtain a Third Person Offer and shall promptly provide Boyer with copies of all correspondence, appraisals, studies, reports and other information reasonably requested by Boyer in connection with the proposed sale such that Boyer is well informed regarding the property to be sold and the Third Person Offer.

(d) Election to Purchase. Boyer shall have thirty (30) days after receipt of the Third Party Offer to notify Ogden whether it elects to purchase the property being sold pursuant to the Third Person Offer.

(e) Closing. If Boyer elects to purchase the property being sold pursuant to the Third Person Offer, the closing of the purchase by Boyer shall be held at a mutually acceptable place on the date designated by Boyer, which shall not be later than the last to occur of (i) the date the proposed closing is to occur under the Third Person Offer, and (ii) sixty (60) days after receipt by Boyer of the Third Person Offer. At the closing Ogden and Boyer shall execute and/or deliver such documents, instruments and procedures as are reasonably appropriate and customary. At the election of Boyer, the Purchase Price shall be paid on the same terms as set forth in the Third Person Offer.

(f) Failure of Boyer to Purchase. If Boyer does not timely elect to purchase the property being sold pursuant to the Third Person Offer pursuant to this Section 2, or if Boyer so elects but fails for any reason to conclude on a timely basis the sale or purchase of such interest, then Ogden may sell the property to the buyer which made the Third Person Offer and strictly on the terms set forth in the Third Person Offer. If the transaction contemplated by the Third Person Offer does not close with the buyer which executed the Third Person Offer strictly within the time periods specified for closing the Third Person Offer, Boyer's right of first refusal pursuant to this Section 2 shall be reinstated and Ogden shall again be required to comply with the provisions of this

Section 2 prior to selling any interest in the Parking Areas and/or Parking Facilities to any person or entity.

3. Covenants regarding Mortgage. Ogden shall not amend, restate, supplement or otherwise modify the terms of the Mortgage without Boyer's prior written consent, which consent may be withheld in Boyer's sole discretion. Without limiting the foregoing, Ogden shall not modify the maturity date under the Mortgage or increase the Grant or any other amount which is secured by the Mortgage. Ogden shall promptly provide Boyer with any notice, written or oral, Ogden receives under the Mortgage from the EDA, including, without limitation, any notices of any defaults by Ogden under the Mortgage. Borrower shall perform each and every obligation and condition under the Mortgage on or before the time Ogden is obligated to perform such obligations under the Mortgage.

4. Runs with Land. This Agreement and the covenants and obligations created by this Agreement are intended to be and shall constitute covenants running with the land as to the Shopping Center Property and the Parking Area, and shall be binding upon and shall inure to the benefit of Ogden and Boyer and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. By acquiring or in any way coming to have an interest in the Shopping Center Property or the Parking Area, the person or entity so acquiring or coming to have such interest in the Shopping Center Property or the Parking Area, as applicable, shall be deemed to have consented to, and shall be bound by, each and every provision of this Agreement. Ogden's and Boyer's rights and obligations under this Agreement shall run with the Lease, shall be appurtenant to the Lease and may not be partitioned or separated from the Lease or any part thereof, except as may be expressly provided in this Agreement or approved by Ogden in writing in connection with a separate Lease entered into in accordance with the provisions of the Lease. Notwithstanding the foregoing to the contrary, Boyer may assign its rights and obligations under this Lease to a Qualified Pledgee (as such term is defined in the Lease).

5. Further Assurances. Each of Ogden and Boyer shall execute any such further documentation reasonably required by the other party to confirm the rights and obligations of Boyer and Ogden under this Agreement.

6. Entire Document. This Agreement contains the entire understanding of the Ogden and Boyer and supersedes all prior oral or written understandings relating to the subject matter set forth herein.

7. Counterpart Signatures. This Agreement may be executed in counterparts each of which shall be deemed an original. An executed counterpart of this Agreement transmitted by facsimile shall be equally as effective as a manually executed counterpart.

8. Successors and Assigns. This Agreement shall inure for the benefit of and shall be binding on each of the parties hereto and their respective successors and/or assigns.

9. Authority. Each individual executing this Agreement does hereby represent and warrant to each other person so signing (and to each other entity for which such other person

may be signing) that he or she has been duly authorized to deliver this Agreement in the capacity and for the entity set forth where he or she signs.

10. Subordination. Notwithstanding anything set forth herein to the contrary, this Agreement is and shall remain subordinate to that certain Agreement and Mortgage, dated as of July 8, 2003 and recorded in the Official Records of Weber County, Utah, as Entry No. 1957619, in Book 2406, at page 1761 (the "Mortgage"), which Mortgage was made by Ogden and Ogden City Corporation in favor of the United States Department of Commerce, Economic Development Administration (the "EDA"); provided, such subordination shall not affect the rights of Boyer to exercise its rights under Section 1 hereof.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

"OGDEN"

OGDEN CITY REDEVELOPMENT AGENCY, a body politic and political subdivision of the State of Utah

By Matthew R. Godfrey
Matthew R. Godfrey, Executive Director

Attest:

Lee Ann Peterson
OGDEN CITY RECORDER, Acting



Approved as to Form:

Buck Crocker
AGENCY CITY ATTORNEY

"BOYER"

BOYER OGDEN MALL, L.C., a Utah limited liability company by its manager

THE BOYER COMPANY, a Utah limited liability company

By: Steven B. Oster
Name: Steven B. Oster
Its: Manager

[See next page for notary blocks]

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

The foregoing instrument was acknowledged before me this 21st day of February, 2007, by Matthew R. Godfrey, the Executive Director of the OGDEN CITY REDEVELOPMENT AGENCY, a body politic and political subdivision of the State of Utah.



Tracy Hansen
NOTARY PUBLIC
Residing at: Webber Co.

My commission expires

12-02-08

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

The foregoing instrument was acknowledged before me this 23rd day February, 2007, by Steven B. Ostler, the Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of Boyer Ogden Mall, L.C., a Utah limited liability company.



NOTARY PUBLIC
Residing at: Rachael N. Niusulu
Salt Lake City
My commission expires

8-20-07

EXHIBIT "A"
To
Right of First Refusal Agreement

Legal Description of Parking Area

Property situated in the City of Ogden, County of Weber, State of Utah

Lots 4 and 9, OGDEN CITY ENTERTAINMENT SUBDIVISION - PHASE 2 (AMENDED),
according to the official plat thereof, filed in Book 64 of Plats, at Page 78 of the Official Records
of the Weber County Recorder.

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SHOWN FOR REFERENCE ONLY:

TAX PARCEL NO. 01-099-0001 ✓
TAX PARCEL NO. 01-099-0005 ✓

EXHIBIT "B"

to

Right of First Refusal Agreement

Legal Description of Phase I

Lots 10A and 10B, OGDEN CITY ENTERTAINMENT SUBDIVISION - PHASE 2
(AMENDED), according to the official plat thereof, filed in Book 64 of Plats, at Page 78 of the
Official Records of the Weber County Recorder.

AND

Lots 11A, 11B, and 11C, OGDEN CITY ENTERTAINMENT SUBDIVISION - PHASE 2
(AMENDED) LOT 11 2ND AMENDMENT, according to the official plat thereof, filed in Book
65 of Plats, at Page 56 of the Official Records of the Weber County Recorder.

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SHOWN FOR REFERENCE ONLY:

TAX PARCEL NO. 01-099-0006 ✓

TAX PARCEL NO. 01-099-0007 ✓

TAX PARCEL NO. 01-099-0008 ✓

EXHIBIT "C"
to

Right of First Refusal Agreement

Legal Description of Phase II

Property situated in the City of Ogden, County of Weber, State of Utah

Lot 8, OGDEN CITY ENTERTAINMENT SUBDIVISION - PHASE 2 (AMENDED), according to the official plat thereof, filed in Book 64 of Plats, at Page 78 of the Official Records of the Weber County Recorder.

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SHOWN FOR REFERENCE ONLY:
TAX PARCEL NO. 01-099-0004 ✓