



W2333766

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National
Association
Real Estate Group (AU #07572)
1512 Eureka Road
Suite 350
Roseville, CA 95661

E# 2333766 PG 1 OF 11
ERNEST D ROWLEY, WEBER COUNTY RECORDER
09-APR-08 3:29 PM FEE \$36.00 DEP SC
REC FOR: LANDMARK TITLE COMPANY
ELECTRONICALLY RECORDED

Attn: Eileen V. Oquendo
Loan No. 103649

**MODIFICATION AGREEMENT
(Secured Swap Contract)**

THIS MODIFICATION AGREEMENT ("Modification Agreement") is executed to be effective as of April 1, 2008, by and between Wells Fargo Bank, National Association ("Lender"), and BOYER OGDEN MALL, L.C., a Utah limited liability company ("Borrower").

- A. Pursuant to the terms of a loan agreement ("Loan Agreement") between Borrower and Lender, dated February 23, 2007, Lender made a loan to Borrower in the principal amount of Fourteen Million Three Hundred Thousand and 00/100ths Dollars (\$14,300,000.00) ("Loan"). The Loan is evidenced by a promissory note and by certain other documents described in the Loan Agreement (the "Loan Documents"). The Loan Documents are secured by, among other things, a deed of trust ("Deed of Trust") dated February 23, 2007, executed by Borrower, as Trustor, in favor of Lender, as Beneficiary. The Deed of Trust was recorded on March 1, 2007, as Instrument No. 2245552, in the Official Records of Weber County, Utah. The real property which is the subject of the Deed of Trust is hereafter defined as the "Property".
- B. Since the date of the Loan, Borrower and Lender have entered into a separate interest rate exchange transaction evidenced by that certain Confirmation Agreement, dated February 22, 2008 (hereinafter the "Swap Contract"). The term "Swap Contract" includes all documents and agreements which form a part of or supplement the Confirmation Agreement together with modifications, extensions and renewals of any such documents.
- C. Borrower's obligations to Lender under the Swap Contract are to be secured by the Deed of Trust. Lender's obligations to pay money to Borrower under the Swap Contract, if any, are to be assigned to Lender as additional collateral for the Loan.

LTC 44409

NOW, THEREFORE, Borrower and Lender agree as follows:

1. **REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants, as of the effective date above, that:
 - 1.1 **Title To The Property.** Since the recordation date of the Deed of Trust (stated above), Borrower has not further encumbered the Property, including, without limitation, by entering into any Deed of Trust or mortgage, ground lease, and/or any option to purchase or right of first refusal with respect to the Property.
 - 1.2 **No Default.** No Default (as defined in the Deed of Trust), breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under the Deed of Trust (or under any of the Loan Documents) and all representations and warranties herein and in the Loan Documents are true and correct.
2. **MODIFICATION OF DEED OF TRUST.** The Deed of Trust (and the other Loan Documents) are hereby supplemented and modified to incorporate the following terms, which shall supersede and prevail over any conflicting provisions:
 - 2.1 **Secured Obligations.** The Secured Obligations (as defined in the Deed of Trust) are hereby amended to include, in addition to all existing Secured Obligations, the payment and performance of all covenants and obligations of Borrower under the Swap Contract.
 - 2.2 **Cross-Default.** The existence of any default by Borrower under the Swap Contract shall be a Default (as defined in the Deed of Trust) under the Deed of Trust and any Default by Borrower under the Deed of Trust (or under any of the other Loan Documents) shall be a Default under the Swap Contract. Any breach of any representation or condition under this Modification Agreement shall be a Default under the Deed of Trust and under the Swap Contract.
 - 2.3 **Security Interest.** In order to further secure payment and performance of all of the Secured Obligations, Borrower grants to Lender a security interest in, and unconditionally and irrevocably assigns, conveys, pledges, and transfers unto Lender, all of Borrower's right, title and interest, now or hereafter acquired, to the payment of money from Lender to Borrower under the Swap Contract.
3. **NON-IMPAIRMENT.** Except as expressly provided herein, nothing in this Modification Agreement shall alter or affect any provision, condition, or covenant contained in the Deed of Trust (or in any other Loan Document) or affect or impair any rights, powers, or remedies of Lender.

-
4. **MISCELLANEOUS.** This Modification Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah, except if preempted by federal law. Time is of the essence of each term hereof.
 5. **COUNTERPARTS.** This Modification Agreement may be executed in several counterparts by the parties with the same effect as if the parties executing the several counterparts had all executed one counterpart.
 6. **INTEGRATION: INTERPRETATION.** This Modification Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated therein and supercedes all prior negotiations or agreements, written or oral, and shall not be modified except by written instrument executed by all parties.
 7. **LIMITATION OF OGDEN CITY'S LIABILITY.** Notwithstanding any term or provision contained herein, save and except Ogden City's right, title and interest now and hereafter held or acquired in and to the Subject Property which has been mortgaged, pledged, assigned, granted and liened to secure the debt evidenced by the Notes, Ogden City shall have no personal liability for the debt evidenced by the Notes or any of the representations, warranties or covenants contained herein or in any of the other Loan Documents. Without limiting the foregoing, Ogden City shall not be responsible (other than with respect to its interest in the Subject Property which has been mortgaged, pledged, assigned, granted and liened as provided herein) to make payments on the Aggregate Loan, procure insurance, pay taxes, or make any similar payments hereunder, all of which shall be Borrower's obligation hereunder (subject to the terms of the Loan Documents); provided, however, nothing contained in this document shall limit Ogden City's grants, pledges, assignments and liens made or provided hereby, the same shall secure the debt evidenced by the Notes and all obligations under the Loan Documents as provided herein, and Lender may foreclose upon, and realize on any and all such collateral, the Subject Property, and/or the interests of Ogden City in the Subject Property to secure, pay and satisfy the debt evidenced by the Notes and such obligations evidenced by the Loan Documents as provided in and by the Deed of Trust and this document.

IN WITNESS WHEREOF, Borrower and Lender have caused this Modification Agreement to be duly executed as of the date first above written.

"BENEFICIARY/LENDER"

Wells Fargo Bank, National Association

By: Ben Bliss
Ben Bliss, Assistant Vice President

"BORROWER/TRUSTOR"

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

By: The Boyer Company, L.C., a Utah limited liability company, Member and Manager

By: Steven B. Ostler
Steven B. Ostler, President and Manager

"NON-BORROWER TRUSTOR"

Ogden City Redevelopment Agency

By: _____
Mathew R. Godfrey, Executive Director

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

IN WITNESS WHEREOF, Borrower and Lender have caused this Modification Agreement to be duly executed as of the date first above written.

"BENEFICIARY/LENDER"

Wells Fargo Bank, National Association

By: _____
Ben Bliss, Assistant Vice President

"BORROWER/TRUSTOR"

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

By: The Boyer Company, L.C., a Utah limited liability company, Member and Manager

By: _____
Steven B. Ostler, President and Manager

"NON-BORROWER TRUSTOR"

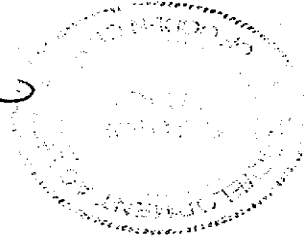
Ogden City Redevelopment Agency

By: *Mathew R. Godfrey* _____
Mathew R. Godfrey, Executive Director

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

ATTEST:

Lee Ann Peterson
City Recorder - *Acting*



GUARANTOR'S CONSENT

The undersigned ("Guarantor") consents to the foregoing Third Modification Agreement and the transactions contemplated thereby and reaffirms its obligations under the Completion Guaranty and Repayment Guaranty ("Guaranty") dated February 23, 2007. Guarantor further reaffirms that its obligations under the Guaranty are separate and distinct from Borrower's obligations.

Agreed and Acknowledged:

Dated as of: April 1, 2008

"GUARANTOR"

The Boyer Company, L.C., a Utah limited liability company

By: 

Steven B. Ostler, President and Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

HAZARDOUS INDEMNITOR'S CONSENT

The undersigned ("Indemnitor") consents to the foregoing Third Modification Agreement and the transactions contemplated thereby and reaffirms its obligations under the Hazardous Materials Indemnity Agreement (Unsecured) ("Indemnity") dated February 23, 2007, and its waivers, as set forth in the Indemnity, of each and every one of the possible defenses to such obligations. Indemnitor further reaffirms that its obligations under the Indemnity are separate and distinct from Borrower's obligations.

Agreed and Acknowledged:

Dated as of: April 1, 2008

"INDEMNITOR"

The Boyer Company, L.C., a Utah limited liability company

By: 
Steven B. Ostler, President and Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

NON-BORROWER TRUSTOR'S CONSENT

The undersigned ("Non-Borrower Trustor") consents to the foregoing Third Modification Agreement and the transactions contemplated thereby and reaffirms its obligations under the Deed of Trust ("Deed of Trust") dated February 23, 2007, executed by Non-Borrower Trustor, as Trustor, to First American Title Insurance Company, as Trustee, in favor of Lender, as Beneficiary, said Deed of Trust having been recorded on March 1, 2007, as Instrument No. 2245552, in the Official Records of Weber County, Utah. The undersigned further reaffirms its waivers, as set forth in the Deed of Trust, of each and every one of the possible defenses to such obligations.

Agreed and Acknowledged:

Dated as of: April 1, 2008

"NON-BORROWER TRUSTOR"

Ogden City Redevelopment Agency

By: Mathew R. Godkey
Mathew R. Godkey, Executive Director

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

ATTEST:

Lee Ann Peterson
City Recorder *acting*



STATE OF UTAH

SS.

COUNTY OF Weber

The foregoing instrument was acknowledged before me this APRIL day of 2008, by MATTHEW R. GADFEAY, as Executive Director of OGDEN CITY REDEVELOPMENT AGENCY, a body politic & political subdivision of the state of UTAH.

Tracy Hansen
NOTARY PUBLIC
residing at Weber Co.

My commission expires: 12.02.08



STATE OF UTAH

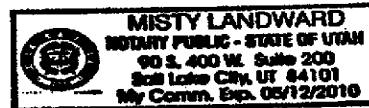
SS.

COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 7 day of April 2008, by Steven B. Oster as Manager of The Boyer Company L.C. Manager of Boyer Ogden Mall L.C., a Utah limited liability company

Misty Landward
NOTARY PUBLIC
residing at Salt Lake

My commission expires: May 12, 2010



STATE OF UTAH

COUNTY OF Salt Lake SS.

The foregoing instrument was acknowledged before me this 7 day of April
2008, by Benjamin E. Bliss as AVP
of Wells Fargo Bank a
National Association.

Tina Kennington
NOTARY PUBLIC
residing at _____

My commission expires: _____



DESCRIPTION OF SUBJECT PROPERTY

Description of Subject Property to the Modification Agreement executed by Boyer Ogden Mall, L.C., a Utah limited liability company, and Ogden City Redevelopment Agency, as Trustor, and Wells Fargo Bank, National Association, as Beneficiary, dated as of April 1, 2008.

All the certain real property located in the County of Weber, State of Utah, described as follows:

PARCEL 1:

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 58 of the Official Records of the Weber County Recorder.

PARCEL 2:

The non-exclusive rights for parking and for vehicular and pedestrian access, appurtenant to the interest of Boyer Ogden Mall, L.C., a Utah limited liability company, in PARCEL 1 above, pursuant to and created by that certain instrument entitled Parking License Agreement, the existence of which Parking License Agreement is disclosed by a Memorandum Of Parking License Agreement recorded March 1, 2007 as Entry No. 2245550 of the Official Records of the Weber County Recorder, in and to the following described property:

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.

SHOWN FOR REFERENCE ONLY:

- Tax Parcel No. 01-099-0001 ✓
- Tax Parcel No. 01-099-0005 ✓
- Tax Parcel No. 01-099-0006 ✓
- Tax Parcel No. 01-099-0007 ✓
- Tax Parcel No. 01-100-0001 ✓
- Tax Parcel No. 01-100-0002 ✓
- Tax Parcel No. 01-100-0003 ✓