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**When Recorded, Mail to:**

Dennis K. Poole  
Poole & Associates, L.C.  
4543 S 700 E, Ste 200  
Salt Lake City, UT 84107

E# 2385248 PG 1 OF 13  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
16-JAN-09 1147 AM FEE \$61.00 DEP SPY  
REC FOR: LANDMARK TITLE

Space Above for Recorder's Use

**OPTION TO PURCHASE AGREEMENT**

This Option to Purchase Agreement ("**Agreement**") is entered into as of December 23, 2008, by **Ogden City Redevelopment Agency**, a body politic and political subdivision of the State of Utah ("**Ogden RDA**"), and **Liberty Junction, LLC**, a Utah limited liability company ("**LJ**").

**BACKGROUND**

A. Ogden RDA is the owner of certain "**Parking Facilities**" (as that term is defined in the Residential Parking Agreement (defined below)) located on certain real property located in Ogden City, Weber County, Utah, and legally described on Exhibit A attached hereto and made a part hereof ("**Parking Area**").

B. Ogden RDA and Boyer Ogden Mall, L.C., a Utah limited liability company ("**Boyer Retail**") entered into that certain Parking License Agreement dated March 1, 2007, as evidenced by that certain Memorandum of Parking License Agreement, dated February 1, 2007, and recorded in the Weber County Recorder's Office on March 1, 2007, as Entry No 2245550 (collectively, as amended, restated, supplemented or otherwise modified from time to time, the "**Parking License Agreement**"), which Parking License Agreement grants to Boyer Retail and certain permitted users an irrevocable license to use the Parking Area in connection with the use of the certain real property located adjacent to the Parking Area and legally described on Exhibit B, attached hereto and made a part hereof ("**Overall Property**").

C. Ogden RDA, as landlord, and Boyer Retail, as tenant, are parties to that certain Lease Agreement and Grant of Option to Lease Future Development Land dated as of December 13, 2005, as amended by that certain First Amendment to Lease Agreement and Grant of Option to Lease Future Development Land dated as of December 1, 2006, as amended by that certain Second Amendment to Lease Agreement and Grant of Option to Lease Future Development Land dated as of the date hereof (together, as amended, restated, supplemented or otherwise modified from time to time, the "**Retail Lease**"), which Retail Lease encumbers a portion of the Overall Property legally described on Exhibit C ("**Retail Property**").

D. Ogden RDA, as landlord, and Boyer Ogden Mall Residential Holdings, L.C. ("**Boyer Residential**"), as tenant, entered into a certain Residential Ground Lease, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "**Residential Lease**"), pursuant to which Boyer Residential leases from Ogden RDA a certain

portion of the Overall Property legally described on Exhibit D attached hereto and made a part hereof (“**Residential Property**”).

E. In connection with the Residential Lease, Ogden RDA, as licensor, and Boyer Residential, as licensee, entered into a certain Residential Parking License Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “**Residential Parking Agreement**”) which granted Boyer Residential a license to use the Parking Facilities.

F. Boyer Residential, as sublandlord, and LJ, as subtenant, entered into a certain Residential Ground Sublease, dated as of the date hereof (“**Residential Sublease**”), pursuant to which LJ subleases the entire Residential Property from Boyer Residential.

G. Ogden RDA is the sole owner of the fee simple interest in the Residential Property and the Parking Area.

H. 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 (“**Mortgage**”), which Mortgage was made by Ogden RDA and Ogden City Corporation in favor of the United States Department of Commerce, Economic Development Administration (“**EDA**”), and which Mortgage secures a grant made by the EDA to Ogden RDA in the amount of \$1,500,000 (“**Grant**”).

I. The EDA is unwilling to subordinate the Mortgage to the Residential Lease, the Residential Parking Agreement and the Residential Sublease, and therefore, if the EDA were to foreclose on the Mortgage, the rights granted to LJ pursuant to the Residential Parking Agreement and the Residential Sublease would (unless otherwise agreed by the EDA) cease to exist.

J. LJ’s current construction lender and tax credit investor member are requiring LJ and Ogden RDA to enter into this Agreement in order for LJ to obtain construction financing on the improvements to be constructed on the Residential Property and for equity contributions necessary for the construction and development of the Residential Property.

K. Ogden RDA and Boyer Retail previously entered into that certain Right of First Refusal Agreement dated February 1, 2007, and recorded in the Weber County Recorder’s Office on March 1, 2007, as Entry No. 2245551 (“**Boyer ROFR Agreement**”), which granted Boyer Retail the right to purchase the Parking Area and the Parking Facilities in the event of Ogden RDA’s default under the Mortgage or in the event Ogden RDA desired to sell the Parking Area and Parking Facilities.

L. Ogden RDA, as landlord under the Lease and licensor under the Residential Parking Agreement, has a substantial interest in the success and viability of the Residential Property, and the construction of improvements thereon, and is therefore willing to enter into this Agreement.

**AGREEMENT**

1. **Option to LJ.** 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 ("**Foreclosure Proceeding**"):

(a) Ogden RDA will promptly give written notice to LJ of the filing of the Foreclosure Proceeding ("**Foreclosure Notice**").

(b) Commencing upon the date that LJ receives the Foreclosure Notice and continuing through and including the date which is 90 days after the date upon which LJ receives the Foreclosure Notice, LJ will have the right, subject to the rights granted pursuant to the Boyer ROFR Agreement, to purchase the Parking Area and Parking Facilities from Ogden RDA for an amount equal to the sum of \$1,500,000 ("**Purchase Price**"), which right will be exercised by LJ upon LJ notifying Ogden RDA and Boyer Retail, or Ogden RDA's or Boyer Retail's successors and/or assigns, of LJ's election to purchase the Parking Area and Parking Facilities within such 90-day period. Ogden RDA hereby directs LJ to pay the Purchase Price directly to the EDA to be used to repay the Mortgage on Ogden RDA's behalf. Such direct payment to the EDA will be deemed for all purposes of this Agreement to be a payment of the Purchase Price by LJ to Ogden RDA.

(c) In the event LJ has elected to purchase the Parking Area and Parking Facilities as provided in Section 1(c), and Boyer Retail has not delivered notice to LJ that Boyer Retail is electing to exercise its purchase rights under the Boyer ROFR Agreement, Ogden RDA will, and will cause its successors and/or assigns to, fully cooperate with the sale of the Parking Area and Parking Facilities to LJ, and LJ will consummate the purchase of the Parking Area and Parking Facilities on or before the date which is 90 days after the date LJ received the Foreclosure Notice.

(d) In the event LJ has elected to purchase the Parking Facilities and Parking Area as provided in Sections 1(b) and 1(c), Ogden RDA or its successors and/or assigns will convey the Parking Area and Parking Facilities to LJ by special warranty deed, which conveyance, subject to LJ's payment of the Purchase Price to the EDA, will not be subject to the lien of the Mortgage, and will otherwise only be subject to matters of record relating to the Parking Area as of the date hereof, including, without limitation, that certain Parking License Agreement, dated February 1, 2007, and recorded in the Weber County Recorder's Office on March 1, 2007 as Entry No 2245550 ("**Parking License**"), but specifically excluding the Boyer ROFR Agreement which will be deemed terminated and of no further force and effect as a result of Boyer Retail's failure to purchase the Parking Facilities and Parking Area according to the terms of the Boyer ROFR Agreement. Notwithstanding the foregoing to the contrary, the Parking License may, from time to time, be separated into separate agreements pursuant to which certain parking stalls in the Parking Facilities are allocated to specific portions of the Retail Property. In the event the Parking License is so separated, LJ's rights under this Agreement will be subject and subordinated to the Parking License and any such separate agreements, provided such agreements are on substantially the same terms as the Parking License, and LJ will execute such documents as may be necessary to confirm such subordination. Without limiting the generality of the foregoing, LJ acknowledges and consents to the allocation of 198 parking stalls to that

portion of the Retail Property more particularly described as Lot 11D, Ogden City Entertainment Subdivision – Phase 2 3<sup>rd</sup> Amendment, according to the official plat thereof, recorded November 10, 2008, as Entry Number 2374459 at Page 42 in Book 69 of Plats in the official records of Weber County, Utah.

(e) Notwithstanding the foregoing to the contrary, in the event that Ogden RDA 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 LJ purchases the Parking Area and Parking Facilities in accordance with the provisions of this Agreement, or in the event Boyer Retail elects to purchase the Parking Area and Parking Facilities pursuant to the Boyer ROFR Agreement, the option to purchase the Parking Area and Parking Facilities pursuant to the provisions of this Agreement will be null and void except and to the extent any Foreclosure Proceeding is subsequently filed or reinstated.

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

3. **Runs with Land.** This Agreement and the covenants and obligations created by this Agreement are intended to be and will constitute covenants running with the land as to the Residential Property and the Parking Area, and will be binding upon and will inure to the benefit of Ogden RDA and LJ 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 Residential Property or the Parking Area, the person or entity so acquiring or coming to have such interest in the Residential Property or the Parking Area, as applicable, will be deemed to have consented to, and will be bound by, each and every provision of this Agreement. Ogden RDA's and LJ's rights and obligations under this Agreement will run with the Residential Lease and the Residential Sublease, will be appurtenant to the Residential Lease and the Residential Sublease and may not be partitioned or separated from the Residential Lease or Residential Sublease or any part thereof, except as may be expressly provided in this Agreement or approved by Ogden RDA. Notwithstanding the foregoing to the contrary, LJ may assign its rights and obligations under this Option to a Leasehold Mortgage Lender or Fee Mortgage lender (as defined in the Residential Lease).

4. **Further Assurances.** Each of Ogden RDA and LJ will execute any such further documentation reasonably required by the other party to confirm the rights and obligations of LJ and Ogden RDA under this Agreement.

5. **Entire Agreement.** This Agreement contains the entire understanding of Ogden RDA and LJ and supersedes all prior oral or written understandings relating to the subject matter set forth herein.

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

7. **Successors and Assigns.** This Agreement will inure to the benefit of and will be binding on each of the parties hereto and their respective successors and/or assigns.

8. **Authority.** Each individual executing this Agreement does thereby 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.

9. **Subordination.** Notwithstanding anything set forth herein to the contrary, this Agreement is and will remain subordinate to the Mortgage; provided, such subordination will not affect the rights of LJ to exercise its rights under Section 1 hereof.

*Signatures, Acknowledgments, and Exhibits Follow*

Ogden RDA and LJ have executed this Agreement to be effective as of the date first set forth above.

**OGDEN RDA:**

**Ogden City Redevelopment Agency**  
a body politic and political subdivision  
of the State of Utah

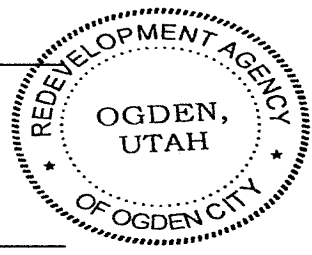
By: *Matthew R. Godfrey*  
Name: Matthew R. Godfrey  
Title: Executive Director

Attest:

*Andi Maussell*  
City Recorder

Approved as to Form:

*Buck Banner*  
City Attorney



**LJ:**

**Liberty Junction, LLC**  
a Utah limited liability company  
by its manager:

Cowboy Partners, L.C.  
a Utah limited liability company

By: \_\_\_\_\_  
Name: Mark R. Cornelius  
Title: Vice President

Ogden RDA and LJ have executed this Agreement to be effective as of the date first set forth above.

**OGDEN RDA:**

**Ogden City Redevelopment Agency**  
a body politic and political subdivision  
of the State of Utah

By: \_\_\_\_\_  
Name: Matthew R. Godfrey  
Title: Executive Director

Attest:

\_\_\_\_\_  
**City Recorder**

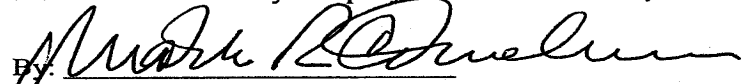
Approved as to Form:

\_\_\_\_\_  
**City Attorney**

**LJ:**

**Liberty Junction, LLC**  
a Utah limited liability company  
by its manager:

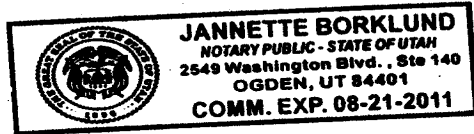
Cowboy Partners, L.C.  
a Utah limited liability company

By:   
Name: Mark R. Cornelius  
Title: Vice President

State of Utah )  
 ) ss.  
County of Weber )

The foregoing instrument was acknowledged before me on December 23<sup>rd</sup>, 2008, by Matthew R. Godfrey, executive director of the Ogden City Redevelopment Agency.

*Jannette Borklund*  
Notary Public



State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me on December \_\_\_\_, 2008, by Mark R. Cornelius, vice president of Cowboy Partners, L.C., the manager of Liberty Junction, LLC.

\_\_\_\_\_  
Notary Public



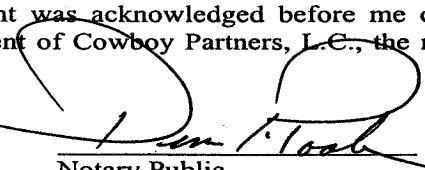
State of Utah )  
 ) ss.  
County of Weber )

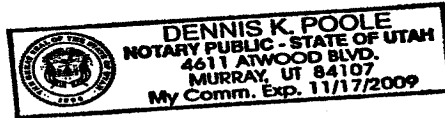
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\_\_\_\_\_  
Notary Public

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me on December 23, 2008, by Mark R. Cornelius, vice president of Cowboy Partners, L.C., the manager of Liberty Junction, LLC.

  
\_\_\_\_\_  
Notary Public



**Exhibit A**

**Legal Description of the Parking Area**

All of Lots 4 and 9, as identified on the plat entitled Ogden City Entertainment Subdivision – Phase 2 (Amended), recorded on October 16, 2006, in the Weber County Recorder's Office as Entry Number 2215219 in Book 64 at Page 78.

[For Reference Only: Assessor's Parcel Numbers 01-099-0001 and 01-099-0005] *ed*

*Option to Purchase Agreement*

**Exhibit B****Legal Description of the Overall Property**

Lot 10A, Ogden City Entertainment Subdivision – Phase 2 (Amended), according to the official plat thereof, filed at Page 78 in Book 64 of Plats in the official records of Weber County, Utah.

[For Reference Only: Assessor's Parcel Number 01-099-0006]

Lot 11C, Ogden City Entertainment Subdivision – Phase 2 (Amended) Lot 11 2<sup>nd</sup> Amendment, according to the official plat thereof, filed at Page 56 in Book 65 of Plats in the official records of Weber County, Utah (as modified by the boundary line adjustment instrument recorded August 27, 2008, as Entry Number 2361731 in the official records of Weber County, Utah).

[For Reference Only: Assessor's Parcel Number 01-100-0004]

Lots 11D and 11E, Ogden City Entertainment Subdivision – Phase 2 3<sup>rd</sup> Amendment, according to the official plat thereof, recorded November 10, 2008, as Entry Number 2374459 at Page 42 in Book 69 of Plats in the official records of Weber County, Utah.

[For Reference Only: Assessor's Parcel Numbers 01-104-0001 and 01-104-0002, respectively]

Residential Unit A-101, Residential Unit B-101, Residential Unit F-101, Retail Unit A-102, Retail Unit B-102, Retail Unit F-102, Residential Parking Unit A, Residential Parking Unit B, and the Retail Parking Unit, The Junction Condominiums, a Utah condominium project, according to the official plat thereof, recorded October 21, 2008, as Entry Number 2371302 at Pages 20 through 35 in Book 69 of Plats in the official records of Weber County, Utah, together with the undivided interests in the common elements appurtenant to such Units.

[For Reference Only: Assessor's Parcel Numbers 01-103-0001, 01-103-0002, 01-103-0003, 01-103-0004, 01-103-0005, 01-103-0006, 01-103-0007, 01-103-0008, and 01-103-0009, respectively]

**Exhibit C**

**Legal Description of the Retail Property**

Lot 10A, Ogden City Entertainment Subdivision – Phase 2 (Amended), according to the official plat thereof, filed at Page 78 in Book 64 of Plats in the official records of Weber County, Utah.

[For Reference Only: Assessor's Parcel Number 01-099-0006] ✓

Lot 11C, Ogden City Entertainment Subdivision – Phase 2 (Amended) Lot 11 2<sup>nd</sup> Amendment, according to the official plat thereof, filed at Page 56 in Book 65 of Plats in the official records of Weber County, Utah (as modified by the boundary line adjustment instrument recorded August 27, 2008, as Entry Number 2361731 in the official records of Weber County, Utah).

[For Reference Only: Assessor's Parcel Number 01-100-0004] ✓

Lots 11D and 11E, Ogden City Entertainment Subdivision – Phase 2 3<sup>rd</sup> Amendment, according to the official plat thereof, recorded November 10, 2008, as Entry Number 2374459 at Page 42 in Book 69 of Plats in the official records of Weber County, Utah.

[For Reference Only: Assessor's Parcel Numbers 01-104-0001 and 01-104-0002, respectively] ✓

Retail Unit A-102, Retail Unit B-102, Retail Unit F-102, and the Retail Parking Unit, The Junction Condominiums, a Utah condominium project, according to the official plat thereof, recorded October 21, 2008, as Entry Number 2371302 at Pages 20 through 35 in Book 69 of Plats in the official records of Weber County, Utah, together with the undivided interests in the common elements appurtenant to such Units.

[For Reference Only: Assessor's Parcel Numbers 01-103-0004, 01-103-0005, 01-103-0006, and 01-103-0009, respectively] ✓

**Exhibit D**

**Legal Description of the Residential Property**

Residential Unit A-101, Residential Unit B-101, Residential Unit F-101, Residential Parking Unit A, and Residential Parking Unit B, The Junction Condominiums, a Utah condominium project, according to the official plat thereof, recorded October 21, 2008, as Entry Number 2371302 at Pages 20 through 35 in Book 69 of Plats in the official records of Weber County Utah, together with the undivided interests in the common elements appurtenant to such Units.

[For Reference Only: Assessor's Parcel Numbers 01-103-0001, 01-103-0002, 01-103-0003, 01-103-0007, and 01-103-0008 respectively]