



W3025063

E# 3025063 PG 1 OF 9
Leann H. Kilts, WEBER COUNTY RECORDER
27-Dec-19 1052 AM FEE \$40.00 DEP PC
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

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

Wells Fargo Bank, National Association
PO Box 45490
MAC U1228-063
Salt Lake City, UT 84145-0490
Attn: Jessica Martinez
Loan No. 103649

CTIA #120169-ETF

**MEMORANDUM OF TENTH MODIFICATION AGREEMENT
AMENDING DEED OF TRUST**

The undersigned Trustor/Borrower and Lender declare that they have entered into that certain Tenth Modification Agreement dated of even date herewith ("**Tenth Modification Agreement**"), wherein provision is made for (a) amendment of that certain deed of trust dated February 23, 2007 and executed by BOYER OGDEN MALL, L.C., a Utah limited liability company, and OGDEN CITY REDEVELOPMENT AGENCY, a body politic and political subdivision of the State of Utah, as Trustor, to LANDMARK TITLE COMPANY, as Trustee, in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Beneficiary, which was recorded on March 1, 2007, as Instrument No. 2245552, in the Official Records of Weber County, Utah (as subsequently amended, the "**Deed of Trust**"), and/or (b) amendment of certain obligations secured by the Deed of Trust. This instrument is a memorandum of the modification agreement, and the same is incorporated herein by this reference with the same effect and as though set forth herein in its entirety. The Deed of Trust encumbers certain real property described on Exhibit A, attached hereto and incorporated herein by this reference.

Without limiting the generality of the foregoing, the Deed of Trust is hereby amended, modified and supplemented as follows:

1. **Obligations Secured.** Section 2.1(a) of the Deed of Trust is hereby deleted in its entirety with the following substituted therefor:

"2.1 **OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing the payment and performance of the following obligations (collectively "**Secured Obligations**"):":

- (a) Payment to Beneficiary of all sums at any time owing with interest thereon, according to the terms of that certain Fourth Amended and Restated Promissory Note Secured by Deed of Trust (as the same may be amended, modified, supplemented or replaced from time to time, the "**Note**") dated December 13, 2019, in the principal amount of Twelve Million Three Hundred Seven Thousand Five Hundred Seven and 08/100ths Dollars (\$12,307,507.08) executed by Borrower, and payable to the order of Beneficiary; and"

2. **NOT A NOVATION.** The parties each agree and acknowledge that the modifications set forth herein are not intended to be a novation or to constitute or evidence a new loan but rather a continuation of the existing Loan and the lien and charge of the Deed of Trust against the Property and all assets and properties described in the Deed of Trust shall continue unabrogated and in full force and effect.

3. **RATIFICATION OF DEED OF TRUST.** As amended by this instrument, the Deed of Trust is ratified and confirmed and continues in full force and effect and contains the entire understanding and agreement of the parties in respect of the Deed of Trust and supersedes all prior representations, warranties, agreements and understandings. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of Trustor and Lender, and their respective successors and assigns. No provision of this instrument may be changed, discharged, supplemented, terminated or waived except in a writing signed by Lender.
4. **MISCELLANEOUS.** Except for the amendments above stated, all of the conditions and covenants of the Deed of Trust shall remain in full force effect, unchanged, and the Deed of Trust is in all respects ratified, confirmed and approved. All of the terms and conditions of the Deed of Trust are incorporated herein by reference.
5. **COUNTERPARTS.** This instrument may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Signature pages may be removed from separate counterparts to form a single document.
6. **CHOICE OF LAW.** This instrument shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to conflicts of law principles.
7. **BINDING EFFECT.** The Deed of Trust as modified herein shall be binding upon and inure to the benefit of, Trustor and Lender and their respective successors and assigns.

(Signature pages follow)

Loan No. 103469

SIGNATURE PAGE OF LENDER:

Dated as of: December 13, 2019

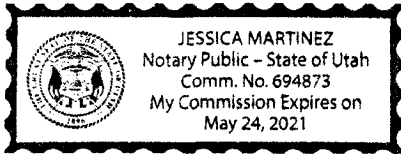
"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: *Ben Bliss*
Ben Bliss, Vice President

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

The foregoing instrument was acknowledged before me this 16TH day of December, 2019, by Ben Bliss, a Vice President of Wells Fargo Bank, National Association.



Jessica Martinez
NOTARY PUBLIC
Residing at: Salt Lake City, UT

My commission expires: May 24, 2021

Loan No. 103469

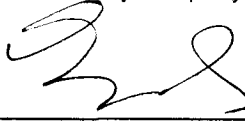
SIGNATURE PAGE OF TRUSTOR/BORROWER:

Dated as of: December 13, 2019

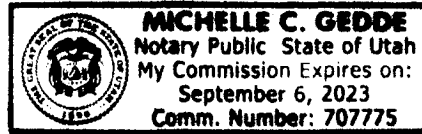
"TRUSTOR/BORROWER"

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


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

By: 
Brian Gochnour, Manager

STATE OF UTAH)
COUNTY OF Salt Lake) ss.



The foregoing instrument was acknowledged before me this 13 day of December, 2019, by Brian Gochnour, a Manager of The Boyer Company, L.C., a Utah limited liability company, Manager of Boyer Ogden Mall, L.C., a Utah limited liability company.


NOTARY PUBLIC
Residing at: Salt Lake County

My commission expires: September 6, 2023

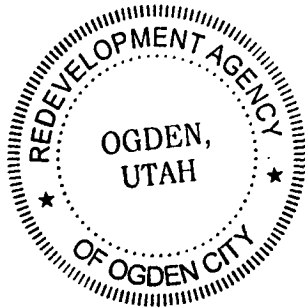
Loan No. 103469

SIGNATURE PAGE OF NON-BORROWER TRUSTOR:

Dated as of: December 13, 2019

"NON-BORROWER TRUSTOR"

OGDEN CITY REDEVELOPMENT AGENCY,



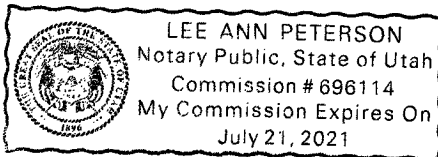
By: [Signature]
Name: Michael P. Caldwell
Title: Executive Director

ATTEST:

[Signature]
City Recorder

STATE OF UTAH)
COUNTY OF Weber) ss.

The foregoing instrument was acknowledged before me this 23rd day of December, 2019, by Michael P. Caldwell, Executive Director of Ogden City Redevelopment Agency.



[Signature]
NOTARY PUBLIC
Residing at: Weber County, Utah

My commission expires: 07-21-21

Loan No. 103469

NON-BORROWER TRUSTOR'S CONSENT

The undersigned ("**Non-Borrower Trustor**") consents to the Memorandum of Tenth Modification Agreement Amending Deed of Trust 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 and Boyer Ogden Mall, L.C., a Utah limited liability company, as Trustor, to Landmark Title 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.

Non-Borrower Trustor understands that the Lender's exercise of a non-judicial foreclosure sale under the subject Deed of Trust may, by virtue of Utah Code Ann. Section 57-1-32, result in the destruction of any subrogation, reimbursement or contribution rights which Non-Borrower Trustor may have against the Borrower. Non-Borrower Trustor further understands that such exercise by Lender and the consequent destruction of subrogation, reimbursement or contribution rights would constitute a defense to the enforcement of the Deed of Trust by Lender. With this explicit understanding, Non-Borrower Trustor nevertheless specifically waives any and all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Non-Borrower Trustor's rights of subrogation and reimbursement against the principal by the operation of Utah Code Ann. Section 57-1-32 or otherwise. Non-Borrower Trustor further specifically waives any and all rights and defenses that Non-Borrower Trustor may have because Borrower's debt is secured by real property; this means, among other things, that if Lender forecloses on any real property collateral pledged by Borrower, then the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Non-Borrower Trustor may have because Borrower's debt is secured by real property. These rights and defenses being waived by Non-Borrower Trustor include, but are not limited to, any rights or defenses based upon Utah Code Ann. Section 57-1-32 or Section 78B-6-901. This understanding and waiver is made in addition to and not in limitation of any of the existing terms and conditions of the Deed of Trust.

Notwithstanding any term or provision contained herein, save and except Non-Borrower Trustor'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 Note as provided herein, Non-Borrower Trustor shall have no personal liability for the debt evidenced by the Note or any of the representations, warranties or covenants contained herein or in any of the other Loan Documents. Without limiting the foregoing, Non-Borrower Trustor 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 Loan, procure insurance, pay taxes, or make any similar payments hereunder, all of which shall be Borrower's obligation (subject to the terms of the Loan Documents); provided, however, nothing contained in this consent shall limit Non-Borrower Trustor's grants, pledges, assignments and liens made or provided hereby, the same shall secure the debt evidenced by the Note 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 Non-Borrower Trustor in the Subject Property to secure, pay and satisfy the debt evidenced by the Note and such obligations evidenced by the Loan Documents as provided in and by the Deed of Trust.

(Signature page follows)

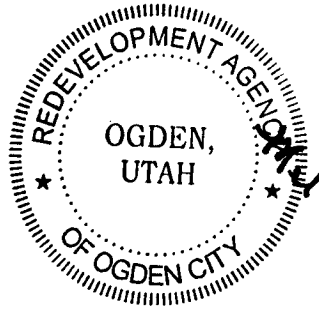
Non-Borrower Trustor's Consent

Loan No. 103469

AGREED: Dated as of: December 13, 2019.

"NON-BORROWER TRUSTOR"

OGDEN CITY REDEVELOPMENT AGENCY



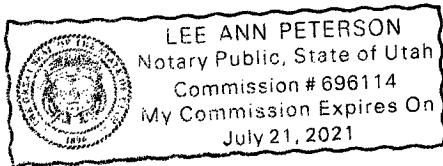
By: [Signature]
Name: Michael P. Caldwell
Title: Executive Director

ATTEST:

[Signature]
City Recorder

STATE OF UTAH)
COUNTY OF Weber) ss.

The foregoing instrument was acknowledged before me this 23rd day of December, 2019, by Michael P. Caldwell, Executive Director of Ogden City Redevelopment Agency.



[Signature]
NOTARY PUBLIC
Residing at: Weber County, Utah

My commission expires: 07-21-21

Loan No. 103469

EXHIBIT A - PROPERTY DESCRIPTION

Exhibit A to Memorandum of Tenth Modification Agreement Amending Deed of Trust dated as of December 13, 2019, between Boyer Ogden Mall, L.C., a Utah limited liability company, and Ogden City Redevelopment Agency, collectively, as Trustor, and Wells Fargo Bank, National Association, as Lender.

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

PARCEL 1:

Lot 10A, 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

A part of Lot 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, as modified by that certain Property Line Adjustment recorded August 27, 2008 as Entry No. 2361731 in the office of the Weber County Recorder, being described as follows:

A part of Block 32, Plat "A", Ogden City Survey, Ogden City, Weber County, Utah, more particularly described as follows: Beginning at the intersection of the Easterly right of way line of Kiesel Avenue and the Southerly right of way line of 23rd Street, said point also being the Northwest corner of Lot 11C, Ogden City Entertainment Subdivision-Phase 2 (Amended) Lot 11 2nd Amendment; running thence South 88°42'50" East 187.28 feet along said Southerly right of way line of 23rd Street to the West right of way line of Washington Boulevard; thence South 1°18'08" West 194.30 feet along said West right of way line; thence North 88°40'03" West 83.34 feet; thence North 30°00'04" West 8.49 feet; thence North 88°41'52" West 99.53 feet to the Easterly right of way line of Kiesel Avenue; thence North 1°18'08" East 186.95 feet along said Easterly right of way line of Kiesel Avenue to the point of beginning.

AND

Lots 11D and 11E, OGDEN CITY ENTERTAINMENT SUBDIVISION - PHASE 2 3RD AMENDMENT, according to the official plat thereof, filed in Book 69 of Plats, at Page 42 of the Official Records of the Weber County Recorder.

AND

RETAIL UNIT A-102, RETAIL UNIT B-102, RETAIL UNIT F-102, and the RETAIL PARKING UNIT, all contained within **THE JUNCTION CONDOMINIUMS**, a Utah condominium project as identified in the Condominium Plat recorded in the office of the Weber County Recorder, Weber County, Utah on October 21, 2008 as Entry No. 2371302, in Book 69 of Plats, at Pages 20 through 35, (as said Condominium Plat may have heretofore been amended or supplemented), and in the Declaration Of Condominium for The Junction Condominiums recorded in the office of the Weber County Recorder, Weber County, Utah on October 21, 2008 as Entry No. 2371303 (as said Declaration may have heretofore been amended or supplemented), together with the appurtenant interest in and to the common areas, limited common areas, and facilities more particularly described in said Record of Survey Map, Declaration and any amendments and/or supplements thereto.

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:

Parcel Identification Numbers: 01-099-0001, 01-099-0005, 01-099-0006, 01-103-0004, 01-103-0005, 01-103-0006, 01-103-0009, 01-104-0001, 01-104-0002 and 01-100-0004