



W2685784

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

Wells Fargo Bank, National Association
Commercial Real Estate Banking Group
P.O. Box 45490
MAC U1228-063
Salt Lake City, Utah 84145-0490
Attention: Jessica Perez

E# 2685784 PG 1 OF 9
ERNEST D ROWLEY, WEBER COUNTY RECORDER
08-May-14 0453 PM FEE \$31.00 DEP SC
REC FOR: LANDMARK TITLE COMPANY
ELECTRONICALLY RECORDED

Loan No. 1343OU-3

APN: 01-083-0002; 01-083-0003; 01-083-0004;
01-083-0007; 01-083-0006; and 01-083-0008

(Space Above For Recorder's Use)

SECOND MODIFICATION AGREEMENT AMENDING DEED OF TRUST

THIS SECOND MODIFICATION AGREEMENT AMENDING DEED OF TRUST ("**Agreement**") is entered into as of May 5, 2014 with an effective date of April 15, 2014, by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (collectively with its successors or assigns, "**Lender**"), and BOYER-WASHINGTON BOULEVARD ASSOCIATES NO. 2, LTD., a Utah limited partnership ("**Trustor**"). Lender is the beneficiary hereunder for indexing purposes by the clerk of court. This is not a novation.

RECITALS

- A. Pursuant to the terms of that certain Loan Agreement by and between Trustor and Lender dated October 17, 2002, as further amended and modified by: (i) that certain Modification Agreement dated May 21, 2004, (ii) that certain Letter Agreement dated August 2, 2004, (iii) that certain Third Modification Agreement dated April 25, 2005, (iv) that certain Fourth Modification Agreement dated May 25, 2007, (v) that certain Fifth Modification Agreement dated April 22, 2008, (vi) that certain Modification Agreement (Secured Swap Contract) dated July 23, 2008 and recorded on September 18, 2008 as Entry No. 2365568 in the official records of Weber County, Utah, (vii) that certain Additional Advance and Consolidation Agreement dated May 25, 2011, and (viii) that certain Eighth Modification Agreement of even date herewith (collectively, and as the same may be amended, modified, supplemented or replaced from time to time, "Loan Agreement"), Lender made a loan to Trustor in the original principal amount of THREE MILLION NINE HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED NINETY-FIVE AND NO/100 DOLLARS (\$3,924,595.00) ("**Loan**"). evidenced by that certain Promissory Note Secured by Deed of Trust dated October 17, 2002, executed by Trustor payable to the order of Lender, in the principal amount of the Loan ("**Note**"), as further amended, restated and modified as follows by (i) that certain Amended and Restated Promissory Note Secured by Deed of Trust dated May 25, 2011 in the principal amount of the Loan (as the same may be amended, modified, supplemented or replaced from time to time, "**First Amended Note**"), and (ii) that certain Second Amended and Restated Promissory Note Secured by Deed of Trust dated effective as of April 15, 2014 in the

principal amount of THREE MILLION NINE HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED NINETY-FIVE AND NO/100 DOLLARS (\$3,924,595.00) (as the same may be amended, modified, supplemented or replaced from time to time, "**Second Amended Note**") and is further evidenced and secured by certain other documents described in the Loan Agreement as Loan Documents. Capitalized terms used in this Agreement shall have the meanings attributed to such terms in the Loan Agreement.

- B.** The Note is secured by, among other things, that certain a Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated October 17, 2002, executed by Trustor, in favor of LEGACY LAND TITLE COMPANY, as Trustee, for the benefit of Lender, as Beneficiary, and recorded on November 7, 2002, as Entry No. 1888073 in Book 2283, beginning on Page 2018 of the county records of Weber County, Utah, as further amended and modified by that certain Additional Advance and Consolidation Agreement (Short Form) dated May 25, 2011 and recorded on May 31, 2011 as Entry No. 2528995 of the county records of Weber County, Utah (collectively, and as the same may be amended, modified, supplemented or replaced from time to time, "**Security Instrument**") encumbering real property described more particularly therein.
- C.** Borrower and Lender have entered into that certain Eighth Modification Agreement dated of even date herewith ("**Modification Agreement**"), wherein provision is made for (a) amendment of the Security Instrument; and/or (b) amendment of certain obligations secured by that Security Instrument.
- D.** All exhibits, schedules or other items attached hereto are incorporated herein by such attachment for all purposes.

NOW, THEREFORE, Trustor and Lender agree as follows:

1. **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants, as of the effective date above, that:
- 1.1 **FORMATION AND ORGANIZATIONAL DOCUMENTS.** Borrower has previously delivered to Lender all of the relevant formation and organizational documents of Borrower, the partners, members, managers or joint venturers of Borrower (if any), and all guarantors of the Loan (if any) and all such formation documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Borrower hereby certifies that: (i) the above documents are all of the relevant formation and organizational documents of Borrower; (ii) they remain in full force and effect; and (iii) they have not been amended or modified since they were previously delivered to Lender.
- 1.2 **FULL FORCE AND EFFECT.** The Note and other Loan Documents, as amended hereby, are in full force and effect without any defense, counterclaim, right or claim of set-off; all necessary action to authorize the execution and delivery of this Agreement has been taken; and this Agreement is a modification of an existing obligation and is not a novation.
- 1.3 **NO DEFAULT.** No Default (as defined in the any of the Loan Documents or any of the Other Related Documents), breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under the Security Instrument any of the Loan Documents (as modified by this Agreement) or any of the Other Related Documents and that all representations and warranties herein and in the other Loan Documents are true and correct, and shall survive execution and recordation of this Agreement.
- 1.4 **TITLE TO THE PROPERTY.** Since the recordation date of the Security Instrument (stated above), Borrower has not further encumbered the Property, including, without

limitation, by entering into any deed of trust, deed to secure debt or mortgage, ground lease, and/or any option to purchase or right of first refusal with respect to the Property.

- 1.5 **INTERVENING LIENS.** The lien of the Security Instrument is a first lien on the property described therein and covered thereby and that this Agreement will not cause intervening liens to become prior to the lien of the Security Instrument. If any intervening lien exists or hereafter arises, Trustor shall cause the same to be released or subordinated to the lien of the Security Instrument, without limiting any other right or remedy available to Lender. Trustor has no legal or equitable claim against any mortgagor, trustor or grantor named in the Security Instrument which would be prior to the lien of the Security Instrument, or which would entitle Trustor to a judgment entitling Trustor to an equitable lien on all or any portion of that property prior in lien to the Security Instrument.
2. **NOTICE OF AMENDMENT; AMENDMENT SECURITY INSTRUMENT.** Notice is hereby given that the Loan Agreement, Second Amended Note, Security Instrument and other Loan Documents have been amended and modified pursuant to the Modification Agreement. The Security Instrument is hereby modified and amended to the extent necessary to be consistent with the Modification Agreement.
3. **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 Security Instrument against the Property and all assets and properties described in the Security Instrument shall continue unabrogated and in full force and effect.
4. **RATIFICATION OF DEED OF TRUST.** As amended by this Agreement, the Security Instrument 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 Security Instrument and supersedes all prior representations, warranties, agreements and understandings. The Security Instrument 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 Agreement may be changed, discharged, supplemented, terminated or waived except in a writing signed by Lender.
5. **RELEASE AND DISCHARGE.** Trustor fully, finally, and forever releases and discharges Lender, and its respective successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity, that Trustor has or in the future may have, whether known or unknown, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Lender in respect of the Loan or the Loan Documents, and (ii) arising from events occurring prior to the date of this Agreement.
6. **MISCELLANEOUS.** Except for the amendments above stated, all of the conditions and covenants of the Security Instrument shall remain in full force effect, unchanged, and the Security Instrument is in all respects ratified, confirmed and approved. All of the terms and conditions of the Security Instrument are incorporated herein by reference.
7. **COUNTERPARTS.** This Agreement 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.
8. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to conflicts of law principles.
9. **BINDING EFFECT.** The Security Instrument as modified herein shall be binding upon and inure to the benefit of, Trustor and Lender and their respective successors and assigns.

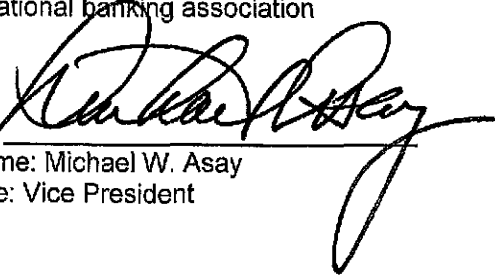
Except as modified herein, all of the terms and provisions of the Security Instrument shall remain in full force and effect and are hereby ratified and confirmed.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Trustor and Lender have caused this document to be duly executed effective as of April 15, 2014.

LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

By: 
Name: Michael W. Asay
Title: Vice President

"TRUSTOR"

BOYER-WASHINGTON BOULEVARD ASSOCIATES NO 2, LTD.
a Utah limited Partnership

By: THE BOYER COMPANY, L.C.
a Utah limited liability company,
its General Partner

By: _____
Name: _____
Title: Manager

By: GARDNER PROPERTY HOLDINGS, L.C.
a Utah limited liability company,
its General Partner

By: _____
Name: Kem C. Gardner
Title: Manager

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGE.]

IN WITNESS WHEREOF, Trustor and Lender have caused this document to be duly executed effective as of April 15, 2014.

LENDER"

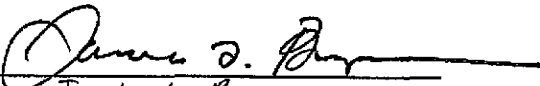
WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

By: _____
Name: Michael W. Asay
Title: Vice President

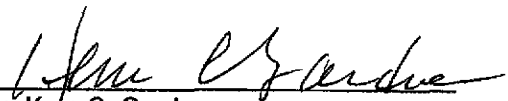
"TRUSTOR"

BOYER-WASHINGTON BOULEVARD ASSOCIATES NO 2, LTD.
a Utah limited Partnership

By: THE BOYER COMPANY, L.C.
a Utah limited liability company,
its General Partner

By: 
Name: Jacob L. Boyer
Title: Manager

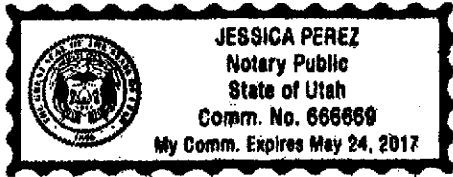
By: GARDNER PROPERTY HOLDINGS, L.C.
a Utah limited liability company,
its General Partner

By: 
Name: Ken C. Gardner
Title: Manager

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGE.]

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

The foregoing instrument was acknowledged before me this 6th day of ^{May} April, 2014, by Michael W. Asay, a Vice President of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, on behalf of such association.



[SEAL]

Jessica Perez

NOTARY PUBLIC

STATE OF UTAH)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of April, 2014, by _____, a Manager of THE BOYER COMPANY, L.C., a Utah limited liability company, a General Partner of **BOYER-WASHINGTON BOULEVARD ASSOCIATES NO. 2, LTD.**, a Utah limited partnership on behalf of such limited partnership.

NOTARY PUBLIC

[SEAL]

STATE OF UTAH)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of April, 2014, by Kem C. Gardner, a Manager of GARDNER PROPERTY HOLDINGS, L.C., a Utah limited liability company, a General Partner of **BOYER-WASHINGTON BOULEVARD ASSOCIATES NO. 2, LTD.**, a Utah limited partnership on behalf of such limited partnership.

NOTARY PUBLIC

[SEAL]

STATE OF UTAH)
) ss.
COUNTY OF _____)

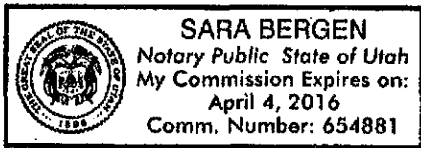
The foregoing instrument was acknowledged before me this _____ day of April, 2014, by Michael W. Asay, a Vice President of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, on behalf of such association.

NOTARY PUBLIC

[SEAL]

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 6th day of May, 2014, by Jacob L. Boyer, a Manager of THE BOYER COMPANY, L.C., a Utah limited liability company, a General Partner of **BOYER-WASHINGTON BOULEVARD ASSOCIATES NO. 2, LTD.**, a Utah limited partnership on behalf of such limited partnership.

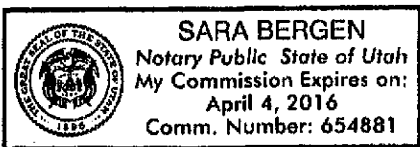


Sara Bergen
NOTARY PUBLIC

[SEAL]

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 6th day of May, 2014, by Kern C. Gardner, a Manager of GARDNER PROPERTY HOLDINGS, L.C., a Utah limited liability company, a General Partner of **BOYER-WASHINGTON BOULEVARD ASSOCIATES NO. 2, LTD.**, a Utah limited partnership on behalf of such limited partnership.



Sara Bergen
NOTARY PUBLIC

[SEAL]

EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to Modification Agreement Amending Deed of Trust between Boyer—Washington Boulevard Associates No., 2, Ltd., a Utah limited partnership, as Trustor, and Wells Fargo Bank, National Association (collectively with its successors or assigns, "Lender") entered into as of May 5, 2014 and made effective as of April 15, 2014.

All that certain real property located in Weber County, Utah described as follows:

Unit Nos. 102, 201, 301, 501, 502 and 601 contained within the Ogden City Centre Condominium Project, as the same is identified in the Record of Survey Map recorded in Weber County, Utah, as Entry No. 1206747 (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Condominium of the Ogden City Centre Condominium Project recorded in Weber County, Utah as Entry No. 1206749 in Book 1649 at page 371 (as said Declaration may have heretofore been amended or supplemented).

TOGETHER WITH the undivided ownership interest in said Project's Common Areas and Facilities that is appurtenant to said Units as more particularly described in said Declaration.

APN: 01-083-0002, 01-083-0003, 01-083-0004, 01-083-0007, 01-083-0006 and 01-083-0008