

Loan No. 102006

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

Wells Fargo Bank, National Association
Real Estate Group (AU # 07572)
1512 Eureka Road, Suite 350
Roseville, California 95661
Attn: Eileen Oquendo
Loan No. 102006

10850693
12/02/2009 03:22 PM \$23.00
Book - 9785 Pg - 1077-1082
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: ZJM, DEPUTY - MI 6 P.

**EIGHTH MODIFICATION AND
ADDITIONAL ADVANCE AND CONSOLIDATION AGREEMENT
AND ADDENDUM TO DEED OF TRUST
(Short Form)**

- A. BOYER QUARRY BEND, L.C., a Utah limited liability company ("Trustor"), is the current trustor under that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded December 7, 2005, as Entry No. 9575206 in Book 9227 at Page 3240, in the Official Records in the Office of the County Recorder of Salt Lake County, Utah, as modified by an Additional Advance and Consolidation Agreement (Short Form), recorded February 1, 2007 as Entry No. 9992092 in Book 9417 at Page 2168 (as so modified, "Deed of Trust"). The Deed of Trust encumbers certain real property described on Exhibit A, attached hereto and incorporated herein by this reference.
- B. Trustor and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary") have entered into that certain Eighth Modification and Additional Advance and Consolidation Agreement of even date herewith ("Eighth Modification"), wherein provision is made for amendment of the Deed of Trust and certain obligations secured thereby. This instrument ("Agreement") is an amendment to the Deed of Trust and a memorandum of the Eighth Modification, and the Eighth Modification is incorporated herein by this reference with the same effect and as though set forth herein in its entirety.
- C. The Modification provides, among other things, that Beneficiary shall make an additional advance to Trustor in the amount of FOUR MILLION FOUR HUNDRED TWENTY THOUSAND THREE HUNDRED NINETY-NINE AND 00/100THS DOLLARS (\$4,420,399.00), and that the indebtedness previously secured by the Deed of Trust and such additional advance shall be consolidated into one indebtedness in the aggregate principal amount of **THIRTY MILLION NINE HUNDRED EIGHTY THOUSAND THREE HUNDRED NINETY-NINE AND NO/100THS DOLLARS (\$30,980,399.00)**, which aggregate principal indebtedness shall be evidenced by a Third Amended and Restated Promissory Note of even date herewith, executed by Trustor to the order of Beneficiary ("Third Amended Note").
- D. Since the date of the Deed of Trust, Trustor and Beneficiary have entered into a separate interest rate swap transaction identified as Trade Number 536647; with a trade date of June 9, 2009 (such transaction, together with all documents and agreements relating thereto, including any ISDA Master Agreement, Schedule and/or Confirmation, together with all modifications, extensions, renewals and replacements thereof, is hereinafter referred to as the "Swap Contract").
- E. Trustor and Beneficiary have agreed that Trustor's obligations to Beneficiary with respect to the Third Amended Note and under the Swap Contract are to be secured by the Deed of Trust.

NOW, THEREFORE, Beneficiary and Trustor agree as follows:

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Page 1 of 5

BK 9785 PG 1077

1. **AMENDMENTS TO DEED OF TRUST.**

- 1.1 **Secured Obligations.** The "Secured Obligations" (as defined in the Deed of Trust) are hereby amended to include, in addition to all existing Secured Obligations, (a) all obligations of Trustor as the borrower under the Third Amended Note, and (b) the payment and performance of all covenants and obligations of Trustor under the Swap Contract. All references in the Deed of Trust to the "Note" or "Notes" are hereby amended to refer to the Third Amended Note.
 - 1.2 **Cross-Default.** The existence of any default by Trustor under the Swap Contract shall be a Default (as defined in the Deed of Trust) under the Deed of Trust and any Default by Trustor 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 warranty set forth in the Fifteenth Modification Agreement shall be a Default under the Deed of Trust and under the Swap Contract.
 - 1.3 **Security Interest.** In order to further secure payment and performance of all the Secured Obligations, Trustor grants to Beneficiary a security interest in, and unconditionally and irrevocably assigns, conveys, pledges and transfers unto Beneficiary all Trustor's right, title and interest, now or hereafter acquired, to the payment of money from Beneficiary to Trustor under the Swap Contract.
 - 1.4 **Legal Description.** The legal description attached to the Deed of Trust as Exhibit A is hereby deleted in its entirety and the legal description attached hereto as Exhibit A substituted therefor.
2. **NON-IMPAIRMENT.** Except as expressly provided herein, nothing in this Agreement shall alter or affect any provision, condition, or covenant contained in the Deed of Trust or affect or impair any rights, powers, or remedies of Beneficiary.
 3. **GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah, except if preempted by federal law.
 4. **COUNTERPARTS.** This 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.
 5. **INTEGRATION; INTERPRETATION.** This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the amendment of the Deed of Trust effectuated hereby and supercedes all prior negotiations or agreements, written or oral, and shall not be modified except by written instrument executed by all parties.

Dated as of: November 6, 2009

[Signature Pages to Follow]

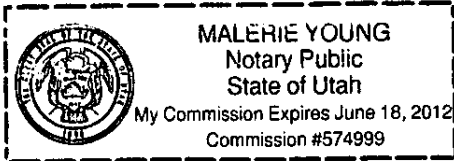
BENEFICIARY'S SIGNATURE PAGE:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: *Paul K. Mendenhall*
Paul K. Mendenhall, Vice President.

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 24 day of November, 2009, by Paul K. Mendenhall, Vice President of Wells Fargo Bank, National Association.



Malerie Young
NOTARY PUBLIC
Residing at: *Salt Lake City*

My commission expires: *June 18, 2012*

TRUSTOR'S SIGNATURE PAGE:

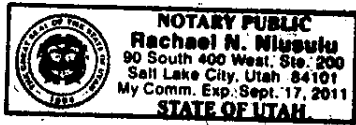
BOYER QUARRY BEND, L.C.,
a Utah limited liability company

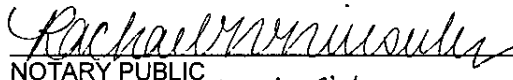
By: The Boyer Company, L.C.,
a Utah limited liability company
Its Manager

By: 
Steven B. Ostler, Chief Executive Officer and
Manager

STATE OF UTAH)
)SS
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 24th day of November, 2009, by Steven B. Ostler, Chief Executive Officer and Manager of The Boyer Company, L.C., a Utah limited liability company, Manager of Boyer Quarry Bend, L.C., a Utah limited liability company.




NOTARY PUBLIC
Residing at: Salt Lake City

My commission expires: 9.17.11

PROPERTY DESCRIPTION

Exhibit A to that certain Eighth Modification and Additional Advance and Consolidation Agreement (Short Form), dated as of November 6, 2009, by and between Boyer Quarry Bend, L.C., a Utah limited liability company, as Trustor, and Wells Fargo Bank, National Association, as Beneficiary.

That certain real property located in Salt Lake County, Utah and more particularly described as follows:

PARCEL 1:

Lot 5, **QUARRY BEND SUBDIVISION**, according to the official plat thereof, filed in Book "2005P" of Plats, at Page 392 of the Official Records of the Salt Lake County Recorder.

EXCEPTING FROM PARCEL 1 ABOVE ANY PORTION THEREOF WITHIN THE TRACT IDENTIFIED AND DESCRIBED AS "ROAD DEDICATION B" IN THAT CERTAIN PLAT ENTITLED "ROAD DEDICATION SR-209" RECORDED JUNE 15, 2006 AS ENTRY NO. 9754372, IN BOOK 2006P OF PLATS, AT PAGE 168 OF THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER.
(28-05-331-002)

PARCEL 2:

"NEW LOT 3, QUARRY BEND SUBDIVISION":

All that land being part of Quarry Bend Subdivision, recorded as Entry No. 9575193 in Book 2005P, at Page 392 of the official records of the Salt Lake County Recorder; in the State of Utah, County of Salt Lake, City of Sandy, being part of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian; being more particularly described as follows:

Beginning at a point on the South Line of said Subdivision located 820.81 feet South 89°06'33" East along the Section Line and 91.73 feet North from the South Quarter Corner of said Section 5; and running thence North 0°00'03" West 91.04 feet to a point of curvature; thence Northwesterly along the arc of a 225.00 foot radius curve to the left a distance of 213.61 feet (Central Angle equals 54°23'46"; and Long Chord bears North 27°11'56" West 205.68 feet) to a point of reverse curvature; thence Northwesterly along the arc of a 1500.00 foot radius curve to the right a distance of 116.54 feet (Central Angle equals 4°27'05"; and Long Chord bears North 52°10'17" West 116.51 feet); thence North 39°17'17" East 30.25 feet to the Westerly Line of Lot 3 of said Subdivision; thence along said Westerly Lines of said Lot 3 the following two courses: North 50°59'35" West 22.80 feet to the most Westerly Corner thereof; and North 39°00'26" East 50.22 feet; thence South 89°45'08" East 495.31 feet along the Southerly Line of Lot 1 of said Quarry Bend Subdivision; thence North 0°17'59" East 35.95 feet; thence South 89°42'01" East 119.62 feet; thence South 1°32'10" West 156.25 feet; thence South 7°27'07" West 151.14 feet; thence South 9°17'57" West 90.28 feet; thence South 15°55'37" West 47.56 feet; thence South 21°06'01" West 31.55 feet to the South Line of said Subdivision; thence along said South Line the following three courses: North 89°06'33" West 166.01 feet; North 86°49'06" West 200.22 feet to a point of curvature; and Northwesterly along the arc of a 788.05 foot radius curve to the right a distance of 33.45 feet (Center bears North 0°53'28" East; Central Angle equals 2°25'55"; and Long Chord bears North 87°53'34" West 33.45 feet) to the point of beginning.

[The said "New Lot 3, Quarry Bend Subdivision" being identified and depicted on that certain plat entitled "Notice of Approval of Lot Line Adjustment - Quarry Bend Subdivision", dated September 17, 2009 (certificate dated October 21, 2009), prepared by Great Basin Engineering-South, as Drawing 07-05BLA3, certified by Bruce D. Pimper, Utah RLS No. 362256, and recorded December 2, 2009 as Entry No. 1085068A, in Book 2009P, at Page 174 in the office of the Salt Lake County Recorder.]
(28-05-451-009)

(CONTINUED)

PARCEL 3:

"NEW LOT 8, QUARRY BEND SUBDIVISION":

A part of the Southeast Quarter of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at a point on the Northerly Line of 9400 South Street located 820.81 feet South 89°06'33" East along the Section Line; and 91.73 feet North from the South Quarter Corner of said Section 5; and running thence along said Northerly Line of 9400 South Street the following five courses: Northwestery along the arc of a 788.05 foot radius curve to the right a distance of 146.61 feet (Center bears North 3°19'23" East; Central Angle equals 10°39'34" and Long Chords bears North 81°20'50" West 146.40 feet; North 0°14'51" East 10.30 feet; Northwestery along the arc of a 778.05 foot radius curve to the right a distance of 31.99 feet (Center bears North 14°09'45" East; Central Angle equals 2°21'21" and Long Chord bears North 74°39'34" West 31.99 feet); North 61°40'05" West 116.01 feet; and Northwestery along the arc of an 893.50 foot radius curve to the right a distance of 80.71 feet (Center bears North 25°56'30" East; Central Angle equals 5°10'33" and Long Chord bears North 61°28'14" West 80.69 feet); thence along the Southeasterly Line of a Public Road as widened the following two courses: North 13°39'11" East 18.20 feet; and North 39°17'17" East 249.85 feet; thence Southeasterly along the arc of a 1500.00 foot radius curve to the left a distance of 116.54 feet (Center bears North 40°03'16" East; Central Angle equals 4°27'05" and Long Chord bears South 52°10'17" East 116.51 feet) to a point of reverse curvature; thence Southeasterly along the arc of a 225.00 foot radius curve to the right a distance of 213.61 feet (Central Angle equals 54°23'46" and Long Chord bears South 27°11'56" East 205.68 feet) to a point of tangency; thence South 0°00'03" East 91.04 feet to the point of beginning.

[The said "New Lot 8, Quarry Bend Subdivision" being identified and depicted on that certain plat entitled "Notice of Approval of Lot Line Adjustment - Quarry Bend Subdivision", dated September 17, 2009 (certificate dated October 21, 2009), prepared by Great Basin Engineering-South, as Drawing 07-05BLA3, certified by Bruce D. Pimper, Utah RLS No. 362256, and recorded December 2, 2009 as Entry No. 10850684, in Book 2009P, at Page 174 in the office of the Salt Lake County Recorder.]

(28-05-452-002)

PARCEL 4:

"NEW LOT 10, QUARRY BEND SUBDIVISION":

All that land being part of Quarry Bend Subdivision, recorded as Entry No. 9575193 in Book 2005P, at Page 392 of the official records of the Salt Lake County Recorder; in the State of Utah, County of Salt Lake, City of Sandy, being part of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian; being more particularly described as follows:

Beginning at a point located 1320.05 feet South 89°06'33" East along the Section Line; 832.63 feet North 0°26'14" East along the Sixteenth Section Line; and 17.09 feet North 89°45'09" West from the South Quarter Corner of said Section 5; and running thence South 15°30'00" East 34.86 feet to a point of curvature; thence Southerly along the arc of a 135.00 foot radius curve to the right a distance of 94.98 feet (Central Angle equals 40°18'42"; and Long Chord bears South 4°39'21" West 93.04 feet) to a point of reverse curvature; thence Southwesterly along the arc of a 295.00 foot radius curve to the left a distance of 119.84 feet (Central Angle equals 23°16'32"; and Long Chord bears South 13°10'26" West 119.02 feet); thence South 1°32'10" West 35.59 feet; thence North 89°42'01" West 119.62 feet; thence North 0°17'59" East 277.79 feet; thence South 89°45'09" East 144.48 feet to the point of beginning.

[The said "New Lot 10, Quarry Bend Subdivision" also being identified and depicted on that certain plat entitled "Notice of Approval of Lot Line Adjustment - Quarry Bend Subdivision", dated September 17, 2009 (certificate dated October 21, 2009), prepared by Great Basin Engineering-South, as Drawing 07-205BLA3, certified by Bruce D. Pimper, Utah RLS No. 362256, and recorded December 2, 2009 as Entry No. 10850684, in Book 2009P, at Page 174 in the office of the Salt Lake County Recorder.]

(28-05-451-010)