

11682888
07/12/2013 02:18 PM \$22.00
Book - 10158 Pg - 8014-8020
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: SAM, DEPUTY - WI 7 P.

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

Wells Fargo Bank, National Association
Real Estate Group (AU #07572)
299 South Main Street, 6th Floor
Salt Lake City, Utah 84111
Attn: Michael Asay
Loan No. 101642

APN(s): 08-36-376-013

(Space Above For Recorder's Use)

MODIFICATION AGREEMENT AMENDING DEED OF TRUST

THIS MODIFICATION AGREEMENT AMENDING DEED OF TRUST ("**Agreement**") is executed to be effective as of June 27, 2013, by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, a national association (collectively with its successors or assigns, "**Lender**"), and GATEWAY ASSOCIATES, 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 Building Loan Agreement by and between Trustor and Lender dated June 6, 2005, as further amended and modified as follows by: that certain Additional Advance and Consolidation Agreement dated December 19, 2005 (collectively, "**First Additional Advance Agreement**"); that certain Second Additional Advance and Consolidation Agreement dated October 5, 2006 (collectively, "**Second Additional Advance Agreement**"); that certain Third Modification Agreement dated June 25, 2007; that certain Fourth Modification Agreement dated May 19, 2008; that certain Fifth Modification Agreement dated November 11, 2008; that certain Sixth Modification Agreement dated February 23, 2009; that certain Letter Modification dated March 23, 2009; that certain Letter Modification dated April 30, 2009; that certain Letter Modification dated May 8, 2009, that certain Letter Modification dated June 2, 2009; that certain Letter Modification dated June 30, 2009; that certain Letter Modification dated December 21, 2009; and that certain Seventh Modification Agreement dated March 24, 2011 (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 SIX MILLION FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$6,500,000.00), increased to EIGHTEEN MILLION FOUR HUNDRED THOUSAND AND NO/100THS DOLLARS pursuant to the First Additional Advance Agreement, and further increased to NINETEEN MILLION SIX HUNDRED THOUSAND AND NO/100THS DOLLARS pursuant to the Second Additional Advance Agreement ("**Loan**").
- B. The Loan is evidenced by that certain Promissory Note dated June 6, 2005, executed by Trustor payable to the order of Lender, as further amended and modified as follows by: that certain Additional Advance Promissory Note Secured by Deed of Trust dated December 19, 2005; that certain Additional Advance Promissory Note Secured by Deed of Trust dated October 5, 2006; that certain Amended and Restated Promissory Note dated November 11, 2008; that certain Second Amended and Restated Promissory Note dated March 23, 2009; and that certain Third Amended and Restated Promissory Note Secured by Deed of Trust dated March 24, 2011 (collectively, and as the same may be amended, modified, supplemented or replaced from time to

time, "**Note**") and is further evidenced and secured by certain other documents described in the Loan Agreement as "Loan Documents".

- C. Concurrently with the execution of this Agreement, Trustor shall execute a Fourth Amended and Restated Promissory Note, dated as of even date herewith, payable to the order of Lender, in the principal amount of FIFTEEN MILLION NINE HUNDRED EIGHTY THOUSAND AND NO/100THS DOLLARS (\$15,980,000.00) ("**Amended Note**"). The Amended Note amends and restates the Note in its entirety. Trustor hereby agrees that all terms, covenants and conditions of the Amended Note, including without limitation the manner in which interest shall be calculated thereunder, shall be effective as of the date hereof. Any reference to the Note hereinafter shall mean the Amended Note.
- D. The Note is secured by, among other things, a Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated June 6, 2005, executed by Trustor in favor of Landmark Title Company, as Trustee, for the benefit of Lender, as Beneficiary, and recorded June 23, 2005, as Instrument No. 9413044, in Book 9149, at Page 2756, in the office of the Recorder of Salt Lake County, Utah ("**Official Records**"), as further amended and modified as follows by: that certain Memorandum of Modification Agreement Amending Deed of Trust and Addendum to Deed of Trust dated March 24, 2011 and recorded March 31, 2011, as Instrument No. 11159796 in Book 9915, at Page 3965 in the Official Records (collectively, and as the same may be amended, modified, supplemented or replaced from time to time, "**Security Instrument**") encumbering real property described more particularly on Exhibit A attached hereto.
- E. The real property described more particularly on Exhibit A attached hereto, which is the subject of the Security Instrument, is hereinafter sometimes referred to as the "**Property**".
- F. Trustor 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.
- G. 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 **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.
 - 1.2 **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 Agreement 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 of this Agreement and recordation of this Agreement.
 - 1.3 **TITLE TO THE PROPERTY**. Since the recordation date of the Security Instrument (stated above), Trustor 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.

1.4 **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. **MODIFICATION OF SECURITY INSTRUMENT.** The Security Instrument is hereby supplemented and modified to incorporate the following, which shall supersede and prevail over any conflicting provisions of the Security Instrument:

2.1 Notice is hereby given that the Loan Documents have been modified pursuant to the Modification Agreement. Among other things, the maximum principal amount of the Loan has been reduced, the maturity date of the Loan has been extended, and certain additional payments have been required.

2.2 Section 1.2(a) of the Security Instrument is hereby amended and restated in its entirety as follows:

“(a) Payment to Beneficiary of all sums at any time owing under that certain Fourth Amended and Restated Note (“Note”) dated as of June 27, 2013, in the principal amount of FIFTEEN MILLION NINE HUNDRED EIGHTY THOUSAND AND NO/100THS DOLLARS (\$15,980,000.00), executed by GATEWAY ASSOCIATES, LTD., a Utah limited partnership (“Borrower”), and payable to the order of Beneficiary, as lender; and”

2.3 The Security Instrument is further modified to secure payment and performance of the Loan, as amended and modified to date, in addition to all other Secured Obligations described therein.

3. **MISCELLANEOUS PROVISIONS.**

3.1 **NOTICES.** All notices, demands, or other communications under this Agreement and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Trustor: Gateway Associates, Ltd.
90 South 400 West, Suite 200
Salt Lake City, Utah 84101
Attention: Jacob Boyer

Lender: Wells Fargo Bank, National Association
Real Estate Group (AU #07572)
299 South Main Street, 6th Floor
Salt Lake City, Utah 84111
Attention: Michael Asay
Loan No. 101642

With copies to:

Wells Fargo Bank, National Association
Minneapolis Loan Center
608 2nd Avenue South, 11th Floor
Minneapolis, Minnesota 55402
Attention: Kyle Schwanke
Loan No. 101642

Snell & Wilmer L.L.P.
1200 17th Street, Suite 1900
Denver, Colorado 80202
Attention: Nicole W. Skorupka

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove

- 3.2 **COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 3.3 **DEFINED TERMS.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings attributed to such terms in the Loan Agreement.
- 3.4 **EXHIBITS, SCHEDULES AND RIDERS.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Agreement by such attachment for all purposes.
- 3.5 **NO IMPAIRMENT.** 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 Agreement to be duly executed as of the date first above written.

"TRUSTOR"

GATEWAY ASSOCIATES, LTD.,
a Utah limited partnership

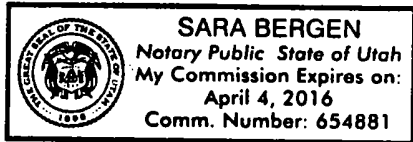
By: Boyer Gateway, L.C.,
a Utah limited liability company,
its General Partner

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

By: [Signature]
Name: Jacob L. Boyer
Title: Manager

STATE OF UTAH)
COUNTY OF Salt Lake) ss.

The foregoing instrument was acknowledged before me this 26th day of June 2013, by Jacob L. Boyer, the Manager of The Boyer Company, L.C., a Utah limited liability company, the ~~Member~~ of Boyer Gateway, L.C., a Utah limited liability company, the General Partner of GATEWAY ASSOCIATES, LTD., a Utah limited partnership.



[Signature]
NOTARY PUBLIC
Residing at: Salt Lake

My commission expires April 4, 2016

"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

By: *Michael Asay*
Name: *Michael Asay*
Title: *V.P.*

STATE OF UTAH

ss.

COUNTY OF *SALT LAKE*

The foregoing instrument was acknowledged before me this *27th* day of June 2013, by *MICHAEL ASAY*, a *VICE PRESIDENT* of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, on behalf of said association.

Jessie Perez
NOTARY PUBLIC
Residing at: *SALT LAKE*

My commission expires *May 24, 2017*

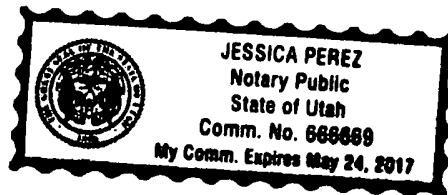
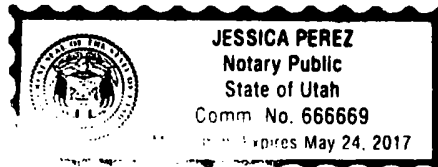


EXHIBIT A – DESCRIPTION OF PROPERTY

Exhibit A to Modification Agreement Amending Deed of Trust between GATEWAY ASSOCIATES, LTD., a Utah limited partnership, as Trustor, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Lender, dated as of June 27, 2013.

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

Lot 6, **BOYER GATEWAY**, according to the Subdivision Plat thereof, filed on February 26, 2001 as Entry No. 7828967, in Book "2001P" of Plats at Page 37 of the Official Records of the Salt Lake County Recorder.

EXCEPTING THEREFROM:

(a) The minerals and mineral rights conveyed to UNION PACIFIC LAND RESOURCES CORPORATION in that certain Mineral Deed dated as of April 1, 1971, the existence of which Mineral Deed and mineral rights is disclosed by that certain Donative Quitclaim Deed recorded July 25, 1991 as Entry No. 5101661, in Book 6339 at Pages 2004-2007, inclusive, of the Official Records of the Salt Lake County Recorder.

(b) The minerals and mineral rights reserved by UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, in that certain Special Warranty Deed recorded December 24, 1998 as Entry No. 7202238, in Book 8208, at Page 2578 of the Official Records of the Salt Lake County Recorder, wherein GATEWAY ASSOCIATES, LTD., a Utah limited partnership, is the Grantee.