

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

Wells Fargo Bank, National Association  
Real Estate Banking Group (AU #1074)  
PO Box 45490  
Salt Lake City, UT 84111  
Attention: Lauri Parent  
Loan No. 1019518

APN(S): 45-703-0003, 45-703-0004, 45-703-0005,  
45-703-0007 and 45-703-0008

105289-CAF

(Space Above For Recorder's Use)

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

THIS SECOND MEMORANDUM OF MODIFICATION AGREEMENT AMENDING DEED OF TRUST ("**Agreement**") is executed on January 24, 2022, by and among **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (collectively with its successors or assigns, "**Lender**"), **BOYER NW QUADRANT, L.C.**, a Utah limited liability company, and **BG LEHI BLOCK GAS, L.C.**, a Utah limited liability company (individually and collectively, as the context may require, and in each case jointly and severally, as "**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 Term Loan Agreement by and between Borrower and Lender dated January 17, 2020, as amended by that certain Letter Agreement dated June 3, 2021, by that certain First Modification Agreement and Joinder dated July 15, 2021, and by that certain Second Modification Agreement executed concurrently with this Note (as the same may have been or may be amended, modified, supplemented or replaced from time to time, "**Loan Agreement**"), Lender made a loan to Borrower in the original principal amount of TEN MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$10,750,000.00) ("**Loan**"). The Loan is evidenced by that certain Promissory Note Secured by Deed of Trust dated as of January 17, 2020, executed by Borrower payable to the order of Lender, in the principal amount of the Loan, as amended by that certain Amended and Restated Promissory Note dated July 15, 2021, and as further amended by that certain Second Amended and Restated Promissory Note dated July 15, 2021 (as the same may have been or 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.
- B.** The Note is secured by, among other things, a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, dated January 17, 2020, executed by Borrower, as Trustor, in favor of the trustee named therein, as Trustee, for the benefit of Lender, as Beneficiary, and recorded on January 17, 2020, as Instrument No. 6813:2020 of the Recorder's Office of Utah County, Utah, and as amended by that certain Memorandum of Modification Agreement Amending Deed of Trust dated July 15, 2021, and recorded on July 15, 2021, as Instrument No. 125714:2021 of the Recorder's Office of Utah County, Utah (as amended and as affected by any partial reconveyances, the "**Security Instrument**"), encumbering real property described more particularly therein. The real

property which is the subject of the Security Instrument is hereinafter sometimes referred to as the "**Property**" and is described on **Exhibit A** attached hereto, amended by that certain Modification of Deed of Trust dated July 15, 2021.

- C. Trustor and Lender have entered into that certain Second Modification Agreement dated of even date herewith ("**Modification Agreement**") wherein, among other things, provision is made for amendment of the Security Instrument.
- D. Trustor and Lender have further agreed, pursuant to the Modification Agreement, to modify the Loan and Loan Documents to, among other things, (i) reduce the Loan to the amount of **FOUR MILLION FIVE HUNDRED THIRTY-ONE THOUSAND SEVEN HUNDRED SEVENTY-NINE AND NO/00 DOLLARS (\$4,531,779.00)**, and (ii) extend the maturity date to January 17, 2023.
- E. 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.** Trustor has delivered to Lender all of the relevant formation and organizational documents of Trustor, the partners, members, managers or joint venturers of Trustor (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. Trustor hereby certifies that: (i) the above documents are all of the relevant formation and organizational documents of Trustor; (ii) they remain in full force and effect; and (iii) they have not been amended or modified since they were 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, together with the Modification 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 of this Agreement.
  - 1.4 **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.
  - 1.5 **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. **MODIFICATION OF LOAN DOCUMENTS.** The Security Instrument and the other Loan Documents and Other Related Documents have been supplemented and modified to incorporate the following, which shall supersede and prevail over any conflicting provisions of the Loan Documents or Other Related Documents:
  - 2.1 **Maturity Date.** All references in the Loan Documents to the Maturity Date including, without limitation, the definition of Maturity Date in the Loan Agreement, are hereby amended to extend the Maturity Date from January 17, 2022, to January 17, 2023.
  - 2.2 **Reduction of Commitment Amount of the Loan.** The principal sum that Lender agrees to lend and Borrower agrees to borrow pursuant to the terms and conditions of the Loan Documents shall be reduced to FOUR MILLION FIVE HUNDRED THIRTY-ONE THOUSAND SEVEN HUNDRED SEVENTY-NINE AND NO/100THS DOLLARS (\$4,531,779.00).
  - 2.3 **Conforming Modifications.** Each of the Loan Documents and Other Related Documents is modified to be consistent herewith and to provide that it shall be a default or a Default thereunder if Borrower shall fail to comply with any of the covenants herein or if any representation or warranty by Borrower herein is materially incomplete, incorrect, or misleading as of the date hereof.
  - 2.4 **References.** Each reference in the Loan Documents or Other Related Documents to any of the Loan Documents or Other Related Documents shall be a reference to such document as modified herein. The Security Instrument is hereby modified, to the extent necessary, to be consistent with the modifications of 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, the Other Related Documents, or the actions or omissions of Lender in respect of the Loan or the Loan Documents or the Other Related 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. **DEFINED TERMS.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings attributed to such terms in the Loan Agreement.
8. **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.
9. **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.
10. **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 as of the date set forth in the preamble above.

"LENDER"

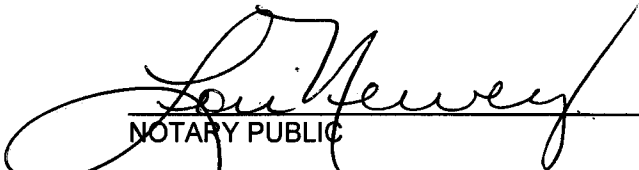
**WELLS FARGO BANK, NATIONAL ASSOCIATION**  
a national banking association

By:   
Name: Erik Bengtzen  
Title: Director

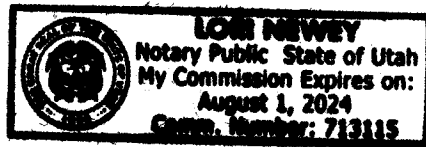
STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

On this 24<sup>th</sup> day of January, 2022, before me LORI NEWEY, personally appeared **ERIK BENG TZEN**, a Director of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document and acknowledged he/she executed the same on behalf of such association.

Witness my hand and official seal.

  
NOTARY PUBLIC

[SEAL]



*[Signatures continue on following pages]*

"TRUSTOR"

**BOYER NW QUADRANT, L.C.**

a Utah limited liability company

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

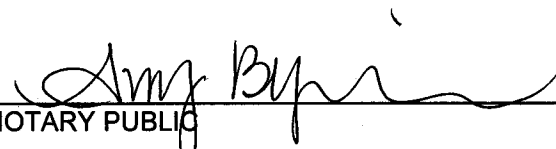


By: \_\_\_\_\_  
Name: Brian Gochnowicz  
Title: Manager

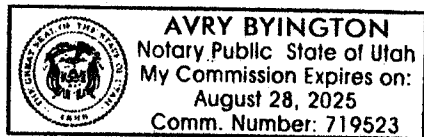
STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

On this 24<sup>th</sup> day of January, 2022, before me Amy Byington, personally appeared Brian Gochnowicz, a Manager of The Boyer Company, L.C., a Utah limited liability company, a Manager of **BOYER NW QUADRANT, L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document and acknowledged he/she executed the same on behalf of such limited liability company.

Witness my hand and official seal.

  
\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]



**[Signatures continue on following page]**

"TRUSTOR"

**BG LEHI BLOCK GAS, L.C.**,  
a Utah limited liability company

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

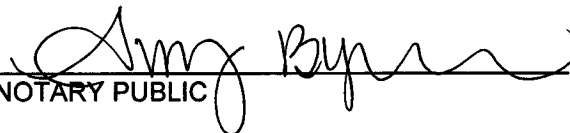


By: \_\_\_\_\_  
Name: Brian Gochnowe  
Title: Manager

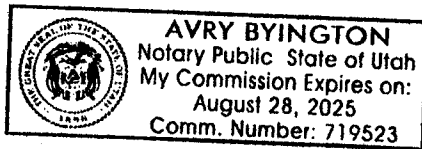
STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

On this 24<sup>th</sup> day of January, 2022, before me Avery Byington, personally appeared Brian Gochnowe, a Manager of The Boyer Company, L.C., a Utah limited liability company, a Manager of **BG LEHI BLOCK GAS, L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document and acknowledged he/she executed the same on behalf of such limited liability company.

Witness my hand and official seal.

  
\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]



**EXHIBIT A**

**LEGAL DESCRIPTION**

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

Lots 3, 4, 5, 7 and 8, LEHI BLOCK PLAT "A", according to the official plat thereof, recorded in the Utah County Recorder's office on March 12, 2020 as Entry No. 31840:2020.