

14123719 B: 11429 P: 79 Total Pages: 15
06/29/2023 04:22 PM By: adavis Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

WHEN RECORDED, PLEASE RETURN TO:

Mortgage Loan Department
First National Bank of Omaha
1620 Dodge Street, SC 1065
Omaha, Nebraska 68197

APN: 16-29-429-012, 16-28-302-001, 16-28-302-002, 16-29-429-005 &
16-29-429-006

ASSIGNMENT OF RENTS AND LEASES
(The Boyer Company – Millcreek Flats)

CT-168577-NTF
THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is made as of June 29, 2023, by BOYER MILLCREEK COMMON 1, L.C., a Utah limited liability company ("Borrower") to FIRST NATIONAL BANK OF OMAHA, a national banking association, as Administrative Agent for the Banks (in such capacity, together with its successors and assigns, if any, "Administrative Agent"). This Assignment is executed and delivered to Administrative Agent as Administrative Agent for the Banks under the syndicated loan made pursuant to a Building Loan Agreement dated of even date herewith by and between Borrower, Administrative Agent and the Banks (the "Building Loan Agreement"). Terms used in this Assignment with an initial capitalized letter that are not otherwise defined herein shall have the meanings ascribed to them by the Building Loan Agreement.

1. **Assignment.** In consideration of Administrative Agent's agreement to issue the Loan, as described below, and for other valuable consideration, receipt and adequacy of which is acknowledged by Borrower, Borrower grants and assigns to Administrative Agent:
 - (a) all of Borrower's right, title and interest in, to and under and with respect to any and all existing leases, licenses and other agreements of any kind relating to the use or occupancy of any of the property described in Exhibit A (the "Property"), as such documents are described in Exhibit B (collectively, "Existing Leases"); and

- (b) all of Borrower's right, title and interest in, to and under and with respect to any and all leases, licenses and other agreements of any kind relating to any use or occupancy of all or any portion of the Property entered into after the date of this Assignment (collectively, "Future Leases"); and
 - (c) all rents (or payments in lieu of rents), payments and liabilities at any time payable under any and all of the Existing Leases or Future Leases, any and all security deposits received or to be received by Borrower pursuant to any and all Existing Leases or Future Leases and all rights and benefits accrued to or to accrue to Borrower under any and all of the Existing Leases or Future leases (the "Collateral"). The Existing Leases, Future Leases and Collateral are collectively referred to as the "Leases," and a reference to Existing Leases, Future Leases, Collateral or Leases shall be a reference to the same as amended, extended, renewed or modified from time to time.
- 2. **Obligation Secured.** Borrower makes the foregoing grant and assignment to Administrative Agent for the purpose of securing:
 - (a) payment to Administrative Agent of all indebtedness evidenced by and arising under the Promissory Notes (collectively, the "Note") executed by Borrower in the aggregate principal amount of Forty-Nine Million One Hundred Fifty Thousand and No/100 Dollars (\$49,150,000.00), payable to Administrative Agent or its order, and dated as of the date of this Assignment as the same may be amended, extended, renewed or modified from time to time; and
 - (b) payment of all indebtedness and the performance of all obligations of Borrower to Administrative Agent now existing or arising after the date of this Assignment in connection with the loan evidenced by the Note (the "Loan"), including without limitation, all indebtedness and obligations secured by or arising under the Deed of Trust, Security Agreement and Assignment of Rents (hereinafter "Deed of Trust") on the Property dated as of the date hereof and securing the Note, and all of the other documents evidencing or securing the Loan (collectively, the "Loan Documents"), as all of the same may be amended, extended, renewed or modified from time to time; and
 - (c) the payment of all indebtedness and the performance of all obligations, which recite that they are secured by this Assignment, of Borrower to Administrative Agent now existing or arising after the date of this Assignment under this Assignment, as the same may be amended, extended, renewed or modified from time to time.
- 3. **Interpretation.** It is the intention of the Borrower that this Assignment shall constitute a present and absolute assignment to Administrative Agent. However, so long as there shall exist no Event of Default by Borrower in the payment of any sum due to Administrative Agent under the Loan Documents, or in the performance of any obligation, covenant or agreement contained in this Assignment, the Loan Documents or the Leases, as the same are to be performed by Borrower, in each such case, beyond all

applicable notice and cure periods, Borrower shall have the right to collect at the time of, but not more than thirty (30) days prior to, the date provided for payment, all rents, income and profits arising under the Leases and to retain and use the same.

4. **Covenants.** Borrower covenants and agrees as follows:

- (a) to perform all of the covenants, representations and agreements of the lessor, and not to violate any of the warranties of the lessor, under the Leases; not to suffer or permit any release, abatement or reduction of liability of any of the lessees except in the ordinary course of Borrower's business to the extent such action does not have a material impact on the Loan; not to create any right or excuse for any of the lessees to withhold payment of rent or fail to comply with any other liability under any of the Leases or to otherwise cease performance of any of lessee's obligations under the Leases; and
- (b) to give prompt notice to Administrative Agent of any notice of default with respect to any of the Leases which are not residential Leases or a notice or notices of default from lessees that would materially impact or interfere with Borrower's obligations under the Loan Documents, whether the default be of the lessees or Borrower, and to furnish Administrative Agent with complete copies of said notices; and
- (c) until the indebtedness secured hereby shall have been paid in full, and except as otherwise specified in the Loan Agreement, the Borrower covenants and agrees not to enter into any new Leases that are not at market rates without the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld, delayed, or conditioned, and which consent shall be deemed given if not communicated by Administrative Agent in writing within ten (10) Business Days of the receipt of request therefor from Borrower). The Borrower shall furnish to the Administrative Agent, upon request, a fully executed copy of each non-residential Lease and each amendment and/or material modification of a non-residential Lease entered into by Borrower, together with all exhibits and attachments thereto, whether or not such Lease or amendment or material modification of a Lease requires the consent of the Administrative Agent, which Leases shall automatically be deemed to be assigned to Administrative Agent pursuant to the terms hereof, and shall make, execute and deliver to the Administrative Agent, upon demand, any and all instruments that may be reasonably necessary or desirable therefor or to otherwise effectuate the terms of this Assignment. The terms and conditions of this Assignment shall, however, apply to all Leases, whether or not such instruments are executed or delivered by the Borrower. The Administrative Agent shall upon request deliver to any non-residential tenant occupying all or a portion of the Mortgaged Premises under a Lease, a subordination, non-disturbance and attornment agreement substantially in Administrative Agent's form (subject to commercially reasonable modifications) or in a form reasonably approved by Administrative Agent, conditioned upon performance by the tenant of the terms and conditions of such Lease; and

- (d) not to terminate, modify or amend any of the terms of any non-residential Leases in any material manner or grant any concession or waive, excuse or condone any failure of lessees under the Leases, or in any manner release or discharge the lessees from any obligations, covenants, conditions or agreements to be performed by the lessees under the Leases, including, without limitation, the obligation to pay rent, or give any consent to exercise any option required or permitted by the terms of any of the Leases, either orally or in writing, or to accept the surrender of any of the Leases, except as appropriate in the reasonable judgment of Borrower and in the ordinary course of operating the Property; and
- (e) not to collect any of the rent, income or other liabilities arising or accruing under the Leases more than one (1) month in advance of the time when the same become due; and
- (f) not to discount any future accruing rents or other liabilities in connection with any of the non-residential Leases or Leases that would materially impact the Loan; and
- (g) not to execute any other assignment of any of the Leases, any interest in any of the Leases or any of the rents or payments due or to become due in connection with the Leases; and
- (h) to enforce in a commercially reasonable manner, or secure the performance by the lessees of, the covenants, representations, warranties and agreements contained in the leases, and to enforce and secure in a commercially reasonable manner all remedies available to Borrower against the lessees, in case of default under any of the Leases by the lessees; and
- (i) not to alter, modify or change the terms of any guaranty of any non-residential Leases or Leases that would materially impact the Loan or cancel or terminate any such guaranty, except as appropriate in the reasonable judgment of Borrower and in the ordinary course of operating the Property; and
- (j) not to consent to any termination, assignment or subletting by any lessee, except as appropriate in the reasonable judgment of Borrower and in the ordinary course of operating the Property; provided that the foregoing shall not be construed to place Borrower in default under this Assignment in the case of any termination, assignment or subletting, which, under the terms of a particular Lease, does not require the consent of the lessor; and
- (k) not to subordinate, or agree or consent to subordinate, any of the Leases to any security instrument or other encumbrance without Administrative Agent's prior written consent, which may be withheld in Administrative Agent's sole discretion; and provided further, that any such subordination or agreement or consent to subordinate without such consent shall be null and void; and to deliver to Administrative Agent, from time to time, upon Administrative Agent's request, an executed counterpart of each and every Lease; and to execute and record such

additional assignments, in form and substance acceptable to Administrative Agent, as Administrative Agent may request, covering any and all of the Leases, and to pay all actual out of pocket costs incurred in connection with the preparation, execution and recording of all such assignments; and

- (l) not to exercise any right of election, whether specifically set forth in any of the Leases or otherwise, which would in any way materially diminish any obligation or liability of any of the lessees or which would have the effect of shortening the stated term of any of the Leases, except as appropriate in the reasonable judgment of Borrower and in the ordinary course of operating the Property; and at Borrower's sole cost, to prosecute and defend any legal action, arbitration or other controversy relating to any of the Leases or to Borrower's interest in any of the Leases and to pay all actual out of pocket costs and expenses (including, without limitation, attorneys' fees and court costs) actually incurred by Administrative Agent in connection with any such action, arbitration or controversy.

5. **Representations and Warranties.** In order to induce Administrative Agent to make the Loan to Borrower, Borrower represents and warrants to Administrative Agent that:

- (a) the Existing Leases, if any, are in full force and effect and are enforceable in accordance with their respective terms, and to Borrower's knowledge, that no breach or default, or event which would constitute such a breach or default after notice or the passage of time, or both, of any of the terms, covenants or conditions exists with respect to any of the Existing Leases; and
- (b) no rent payment or other payment under any of the Existing Leases has been paid by any lessee for more than one (1) month in advance; and
- (c) the Existing Leases constitute all the Leases existing with respect to the Property as of the date of this Assignment; and
- (d) each of the Existing Leases constitutes the entire agreement between the respective lessees and Borrower, and there are no other agreements, undertakings or representations, either written or oral, with respect to the Property; and
- (e) none of the lessor's interest under any of the Leases has been transferred or assigned to any person or entity other than Administrative Agent.

6. **Defaults and Remedies.**

- (a) **Definition.** "Default" or "Event of Default" shall mean a default in payment of any of the indebtedness secured by this Assignment or the Loan Documents, after giving effect to any express curative provisions set forth herein or therein or a default in the performance of any obligation, covenant or agreement of Borrower contained in this Assignment or any of the Loan Documents or any of the Leases after giving effect to any express curative provisions set forth herein or therein.

- (b) **Loan Documents.** An Event of Default under this Assignment beyond the notice and cure periods set forth in the Building Loan Agreement shall be an Event of Default under each and every one of the Loan Documents.
- (c) **Remedies.** In addition to any and all remedies contained in the other Loan Documents, if an Event of Default has occurred and is continuing, Administrative Agent shall, and without regard to the adequacy of the security for the indebtedness and obligations secured by this Assignment and by the Loan Documents, either in person or by its agent, and with or without bringing any action or proceeding or obtaining a receiver appointed by a court, and without notice to or demand on Borrower, and without releasing Borrower from any obligations under this Assignment, have the following rights and remedies, each of which shall be exercisable in Administrative Agent's sole discretion:
- (i) to receive directly from the lessees under the Leases all rents, income, liabilities and other amounts arising or accruing under the Leases or from the Property and to so continue until Borrower is otherwise notified by Administrative Agent; and
 - (ii) to collect, sue for, settle, compromise and give acquittances for all of the rents and other payments that may become due under the Leases and avail Administrative Agent of and pursue all remedies for the enforcement of the Leases as Borrower's rights in and under the Leases as Borrower might have pursued but for this Assignment, all at Borrower's sole cost and expense; and
 - (iii) to take possession of the Property, and to have, hold, manage, lease and operate the same on such terms and for such period of time as Administrative Agent may deem proper and, either with or without taking possession of the Property in its own name, make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Administrative Agent.

Nothing set forth in this Section shall be deemed to limit or otherwise alter the rights of Administrative Agent under any of the Loan Documents, or at law or in equity in the event of a Default, nor shall Administrative Agent be obligated to exercise any of its rights in this Section.

- (d) **Notice.** Lessees under the Leases are hereby irrevocably authorized and notified by Borrower to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Administrative Agent for the payment to Administrative Agent of any rental or other sums which may be, or hereafter become, due under the Leases, or for the performance of any of such lessees' undertakings under the Leases, and such lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing.

- (e) **Proceeds.** Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the right to apply all such rents, income and profits received from the lessees under the Leases to the payment of any of the following in such amounts and in such order as Administrative Agent shall deem appropriate in Administrative Agent's sole discretion;
- (i) the indebtedness secured by this Assignment and by the Loan Documents, together with all actual out of pocket costs and attorneys' fees of Administrative Agent incurred in attempting to enforce Administrative Agent's rights hereunder or thereunder, in such order or priority as Administrative Agent, in Administrative Agent's sole discretion, may determine; any statute, law, or custom to the contrary notwithstanding;
 - (ii) all actual out of pocket expenses of managing the Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or independent contractors as Administrative Agent may deem necessary, and all actual out of pocket expenses of operating and maintaining the Property, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, any other liens, premiums for all insurance which Administrative Agent may deem necessary, the cost of all alterations, renovations, repairs or replacements, and all actual out of pocket expenses incident to taking and retaining possession of the Property.
- (f) **Relationship.** Nothing contained in this Assignment shall be construed as constituting Administrative Agent as trustee or "mortgagee in possession."
7. **Exculpation.** Administrative Agent shall not directly or indirectly be liable to Borrower or any other person as a consequence of the exercise of the powers granted to Administrative Agent in this Assignment, or as a result of Administrative Agent's exercise of Administrative Agent's rights in the event of an Event of Default, and no such liability shall be asserted or enforced against Administrative Agent, all such liability being expressly waived and released by Borrower, and Borrower indemnifies Administrative Agent and holds Administrative Agent harmless from and against all such liability, except, in each such case, to the extent arising out of Administrative Agent's gross negligence, willful misconduct, or illegal acts.

Administrative Agent shall not be obligated to perform or discharge any obligation, duty, or liability of Borrower under the Leases, or by reason of this Assignment. Borrower hereby indemnifies and holds Administrative Agent harmless from and against any and all liability, loss, damage, cost or expense (including attorneys' fees) which Administrative Agent might incur or suffer under the Leases or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Administrative Agent by reason of any alleged obligation or undertaking on Administrative Agent's part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, except, in each such case, to the extent arising out of Administrative Agent's gross negligence, willful misconduct, or illegal acts.

Administrative Agent shall not be liable for any loss sustained by Borrower or any third party resulting from Administrative Agents' failure to lease the Property after an Event of Default or from any other act or omission of Administrative Agent in managing the Property after Default. Should Administrative Agent incur or suffer any liability, loss, damage, cost or expense (including attorneys' fees) under the Leases or by reason of this Assignment, or in the defense of any such claims or demands, the amount of such liability, loss, damage, cost, expense, and attorneys' fees, shall be secured by this Assignment and the Loan Documents, , except, in each such case, to the extent arising out of Administrative Agent's gross negligence, willful misconduct, or illegal acts, and Borrower shall pay the same to Administrative Agent upon demand by Administrative Agent. Upon failure of Borrower to so pay Administrative Agent, Administrative Agent may, at Administrative Agent's option, declare all sums secured by this Assignment and the Loan Documents immediately due and payable and exercise any other remedy available at law or in equity.

It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Administrative Agent, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Administrative Agent responsible or liable for any waste committed on the Property by the lessees or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death of any lessee, licensee, employee, invitee or other person.

8. **Foreclosure.** Upon issuance of a deed or deeds pursuant to any judicial or non-judicial foreclosure of the Security Instrument, all right, title and interest of Borrower in and to the Leases shall, by virtue of this Assignment, vest in and become the absolute property of the grantee or grantees of such deed or deeds without any further act or assignment by Borrower. Borrower hereby irrevocably appoints Administrative Agent, and its successors and assigns, as its attorney in fact, to execute all instruments of assignment or further assurance in favor of such grantee or grantees of such deed or deeds, as may be necessary or desirable for such purpose.

Nothing contained in this Assignment shall prevent Administrative Agent from terminating any subordinate Lease through such foreclosure, subject to any written agreement now or hereafter made by Administrative Agent in Administrative Agent's discretion to recognize the rights of any lessee if such lessee is not in default under its Lease.

9. **Loan Documents.** This Assignment is supplementary to, and not in substitution or derogation of, any of the provisions of the other Loan Documents. To the extent that this Assignment is inconsistent with the provisions of the other Loan Documents, such other Loan Documents shall control; and in particular, to the extent that this Assignment is inconsistent with the terms of the Security Instrument, the Security Instrument shall control. Administrative Agent may enforce any of the provisions of this Assignment prior to, simultaneously with, or subsequent to any of the rights or remedies under the other Loan Documents.

10. **Notices.** Any notice or other communication to any party in connection with this Agreement shall be in writing and shall be sent by manual delivery, electronic transmission, overnight courier or United States registered or certified mail, postage prepaid, return receipt requested addressed to such party at the address specified below, or at such other address as such party shall have specified to the other parties hereto in writing not less than ten (10) days prior to the effective date of the address change. Unless otherwise specified herein, all periods of notice shall be measured from the date of delivery thereof if manually delivered, from the date of sending thereof if sent by electronic transmission, from the first Business Day after the date of sending if sent by overnight courier, or from three days after the date of mailing if mailed. If any applicable statute shall provide a mandatory method for the delivery of notice, then the statutory method shall be followed.

If to Borrower: Boyer Millcreek Common I, L.C.
101 South 200 East, Suite 200
Salt Lake City, Utah 84111
Attn: President

With a copy to: Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attn: Lamont Richardson

If to Administrative Agent: First National Bank of Omaha
1620 Dodge Street, SC 1065
Omaha, Nebraska 68197
Attn: Senior Loan Officer, Commercial Real Estate Department

With a copy to: James D. Buser, Esquire
Pansing Hogan Ernst & Bachman LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114

With a copy to: Zions Bank
One South Main, Ste. 400
Salt Lake City, UT 84133
Attn: Katie Black, Commercial Real Estate Department
Email: katie.black@zionsbank.com

11. **Attorneys' Fees.** If Borrower shall become subject to any case or proceeding under the Bankruptcy Reform Act, as amended or recodified from time to time, Borrower shall pay to Administrative Agent on demand all actual out of pocket attorneys' fees, costs and expenses which Administrative Agent may incur in order to obtain relief from any provision of the Act which delays or otherwise impairs Administrative Agent's exercise

of any right or remedy under this Assignment or any of the Loan Documents, or in order to obtain adequate protection for any of Administrative Agent's rights or collateral.

12. **Heirs, Successors and Assigns.** Subject to the limitations elsewhere contained in this Assignment, the terms of this Assignment shall be binding upon and inure to the benefit of the heirs, successors and assigns of Borrower and Administrative Agent, including, without limitation, any subsequent owner of the Property. There shall be no third party beneficiaries of this Assignment.
13. **Time.** Time is of the essence of each term of this Assignment.
14. **Headings.** All headings appearing in this Assignment are for convenience only and shall be disregarded in construing the substantive provisions of this Assignment.
15. **Law.** This Assignment shall be governed by and construed in accordance with the Laws of the State in which Property is located, except to the extent that Federal laws or the rules and regulations of the Office of Thrift Supervision, or its successor, preempt the laws of the State in which Property is located, in which case, Administrative Agent shall be entitled to such Federal rights and remedies without regard to conflicting limitation imposed by State law.
16. **Severability.** In the event any one of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability, at the option of Administrative Agent, shall not effect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.
17. **Waiver.** Nothing contained in this Assignment, and no act done or omitted by Administrative Agent pursuant to the powers and rights granted Administrative Agent, shall be deemed to be a waiver by Administrative Agent of its rights and remedies under the other Loan Documents; and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Administrative Agent under the terms of the other Loan Documents. The rights and remedies of Administrative Agent under this Assignment are cumulative, and no exercise of any right or remedy shall preclude the exercise of any other right or remedy or the later exercise of the same right or remedy. Waivers and approvals under this Assignment must be in writing to be effective; and, unless expressly stated, waivers and approvals shall apply only to the specific circumstances addressed. No waiver under this Assignment shall operate under any of the other Loan Documents.
18. **Satisfaction.** Upon payment in full of all indebtedness secured by this Assignment, this Assignment shall terminate and be of no further effect; but the affidavit of any officer of Administrative Agent showing that any part of said indebtedness and continuing force of this Assignment; and any person may, and is hereby authorized to rely upon any such affidavit.

19. **Interest.** In the event Administrative Agent expends funds on behalf of Borrower in exercising any of Administrative Agent's rights or remedies under this Assignment, such sums, including attorneys' fees, shall be secured by this Assignment and the other Loan Documents, and any such sums shall bear interest at the default rate specified in the Note until reimbursed by Borrower to Administrative Agent.
20. **Other Security.** Administrative Agent may take or release other security for the payment of the indebtedness secured by this Assignment, and Administrative Agent may release any party primarily or secondarily liable for the payment of any such indebtedness and may apply any other security held by Administrative Agent to the satisfaction of such indebtedness without prejudice to any of Administrative Agent's rights under this Assignment.
21. **Definition.** The terms "lessor" and "lessors" as used in this Assignment shall include all landlords, licensors and other parties in a similar position with respect to the Leases. The term "lessee" and "lessees" shall include any tenants and licensees and any other parties in a similar position, and shall also include any guarantors or other obligors of the Leases.
22. **Estoppel Certificate.** Within thirty (30) days after request by Administrative Agent, Borrower shall deliver, in recordable form, to Administrative Agent and to any party designated by Administrative Agent, estoppel certificates executed by Borrower (estoppel certificate form to be provided to Borrower by Administrative Agent). Borrower shall obtain execution by each of the non-residential lessees of such a certificate.
- Borrower's or any non-residential lessee's failure to deliver any such certificate in time shall be conclusive upon Borrower that: (i) this Assignment and such lessee's Lease are in full force and effect, without modification; (ii) there are no uncured defaults in Borrower's performance under this Assignment or in Borrower's and such lessee's performance under such lessee's lease; (iii) neither Borrower nor such lessee have any right of offset, counterclaim or deduction under this Assignment or such lessee's lease; and (v) no more than one (1) months' rent has been paid in advance under such lessee's Lease.
23. **Plural Borrower's, Other Obligors.** All persons and entities identified by the designation "Borrower," including, without limitation, all general partners or joint ventures (if any) of Borrower, are jointly and individually bound to perform each and every obligation of Borrower under this Assignment and are jointly and individually liable to Administrative Agent for such performance.
24. **Incorporation.** Exhibit A and Exhibit B, as attached to this Assignment, are incorporated into and made a part of this Assignment.
25. **State Law.** This Assignment is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Assignment and the provisions of

the Act, the provisions of the Act shall control and Administrative Agent shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

**[Space Below Intentionally Left Blank –
Signature Page to Follow]**


SIGNATURE PAGE – ASSIGNMENT OF RENTS

IN WITNESS WHEREOF, Borrower has executed this Assignment to be effective as of the date first above written.

BORROWER:

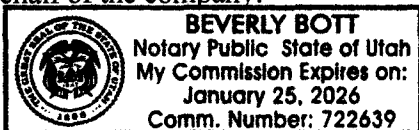
BOYER MILLCREEK COMMON 1, L.C.,
a Utah limited liability company, by its manager

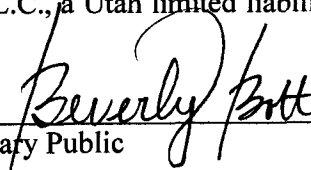
The Boyer Company, L.C., a Utah limited liability
company

By: 
Name: Brian Gochmour
Title: Manager

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

The foregoing instrument was acknowledged before me this 13th day of June, 2023, by Brian Gochmour, a manager of The Boyer Company, L.C., a Utah limited liability company, the manager of Boyer Millcreek Common 1, L.C., a Utah limited liability company, on behalf of the company.




Notary Public

(Seal) (Title)
My commission expires:
1/25/26

Residing at:
Salt Lake County

EXHIBIT A
Legal Description

A tract of land located in the Southwest Quarter of Section 28 and the Southeast Quarter of Section 29, Township 1 South, Range 1 East, Salt Lake Base & Meridian, more particularly described as follows:

Beginning at a point on the southerly line of Miller Avenue, as dedicated by the official plat of MALOUF ANNEX TO SALT LAKE CITY recorded February 28, 1980 as Entry No. 3405230 in Book 80-2 of Plats at Page 46 in the office of the Salt Lake County Recorder, located South 464.97 feet from the West 1/4 Corner of Section 28, T1 S, R1 E, SLB&M (Basis of Bearing: N89°48'00"E along the Monument line of 3300 South Street between two found monuments at the intersections of 1300 East Street and Highland Drive.); running thence along said southerly line S87°15'00"E 69.99 feet to the northwesterly corner of a boundary determined by that certain Warranty Deed recorded February 27, 1997 as Entry No. 6581680 in Book 7607 at Page 966 in the office of the Salt Lake County Recorder; thence along said deed the following three (3) courses: (1) South 233.09 feet; thence (2) N87°00'00"W 17.03 feet; thence (3) South 61.87 feet to the northeasterly corner of a boundary determined by the certain Warranty Deed recorded April 2, 1993 as Entry No. 5468895 in Book 6632 at Page 1674 in the office of the Salt Lake County Recorder; thence along said deed the following two (2) courses: (1) N86°24'00"W 60.32 feet; thence (2) S00°38'39"E 28.13 feet to the southeasterly corner of a boundary determined by that certain Warranty Deed recorded September 4, 2020 as Entry No. 13384562 in Book 11012 at Page 9411 in the office of the Salt Lake County Recorder; thence N86°24'00"W 125.30 feet to and along the southerly line of a boundary determined by that certain Warranty Deed recorded January 17, 1947 as Entry No. 1069758 in Book 515 at Page 38 in the office of the Salt Lake County Recorder; thence along said deed North 6.87 feet to the southeasterly corner of a boundary determined by that certain Warranty Deed (Special) recorded February 8, 1991 as Entry No. 5025925 in Book 6289 at Page 2602 in the office of the Salt Lake County Recorder; thence along said deed West 77.24 feet to the southeasterly corner of a boundary determined by that certain Special Warranty Deed recorded January 12, 2016 as Entry No. 12204361 in Book 10395 at Page 310 in the office of the Salt Lake County Recorder; thence along said deed North 317.09 feet to said southerly line of Miller Avenue; thence along said southerly line S87°15'00"E 209.52 feet to the point of beginning.

EXHIBIT B
Existing Leases

NONE