

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

Wells Fargo Bank, National Association  
299 South Main Street, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84111

Attn: Malerie Young  
Loan No. 105820 and Loan No. 1005847

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**FIFTH MODIFICATION AGREEMENT  
AMENDING DEED OF TRUST**

THIS FIFTH MODIFICATION AGREEMENT AMENDING DEED OF TRUST ("Agreement") is entered into as of March 28, 2012, by and between BOYER HEBER CITY, L.C., a Utah limited liability company ("Trustor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary").

**RECITALS**

- A. Trustor and Boyer Heber Land, L.C., a Utah limited liability company ("Boyer Heber Land"), collectively as trustor, executed and delivered to Beneficiary that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of March 28, 2008, executed by Trustor and Boyer Heber Land, as Trustor, to Landmark Title Company, as Trustee, for the benefit of Lender, as Beneficiary, recorded on April 4, 2008, as Entry No. 334157 in Book 963 at Page 2397 in the Official Records of Wasatch County, Utah, as amended and modified by (i) that certain Modification Agreement Amending Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of August 19, 2008 and recorded on August 27, 2008 as Entry No. 339554 in Book 973 at Page 748, (ii) that certain Additional Advance and Consolidation Agreement and Addendum to Deed of Trust (Short Form), dated as of December 10, 2008, and recorded December 12, 2008 as Entry No. 342843 in Book 979 at Page 308; (iii) that certain Memorandum of Twelfth Modification Agreement Amending Deed of Trust dated as of June 21, 2010 and recorded September 2, 2010 as Entry No. 362250 in Book 1020 at Page 1317; (iv) that certain Memorandum of Thirteenth Modification Agreement Amending Deed of Trust, dated as of September 28, 2009 and recorded on November 9, 2010, as Entry No. 364311 in Book 1025 at Page 29 ("Deed of Trust"). Capitalized terms used and not otherwise defined herein shall have the meanings given them in the Deed of Trust.
- B. The Deed of Trust was executed pursuant to a loan agreement dated as of March 28, 2008 by and among Trustor and Boyer Heber Land, as borrower, and Beneficiary, as lender ("Original Loan Agreement"). The Deed of Trust secures certain obligations of Trustor under a promissory note described therein ("Original Note") and under the Original Loan Agreement.
- C. Since the most recent modification of the Deed of Trust, Trustor has succeeded to all the interest of Boyer Heber Land in the property encumbered by the Deed of Trust.
- D. Pursuant to an amended and restated building loan agreement of even date herewith between Trustor, as borrower, and Beneficiary, as Lender (the "Building Loan Agreement"), Trustor and Beneficiary are amending and restating the Original Loan Agreement to modify the terms of the loan evidenced by the Original Note and to provide for an additional loan to Trustor (the "Retail Loan") to finance the construction of certain retail improvements on the property described in the Deed of Trust.

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- E. In connection with the Building Loan Agreement, the Original Note is being amended and restated by a fourth amended and restated promissory note secured by deed of trust of even date herewith, and a promissory note secured by deed of trust of even date herewith is being executed by Trustor to evidence the Retail Loan.
- F. Trustor and Beneficiary desire to amend and modify the Deed of Trust to reflect the amendment and restatement of the Original Loan Agreement and the Original Note and to provide that the Deed of Trust will secure the Retail Loan.

NOW, THEREFORE, Trustor and Beneficiary hereby agree as follows:

1. **AMENDMENT OF DEED OF TRUST.** The Deed of Trust is hereby amended and modified as follows:
  - 1.1 **Identity of Trustor.** From and after the date hereof, Boyer Heber City, L.C. shall be the sole trustor under the Deed of Trust, and all references in the Deed of Trust to "Trustor" or to "Borrower" are hereby amended to refer to Boyer Heber City, L.C.
  - 1.2 **Property Encumbered.** The legal description on Exhibit A attached to the Deed of Trust is hereby deleted in its entirety and the legal description on Exhibit A attached hereto substituted therefor.
  - 1.3 **Obligations Secured.** Section 2.1 of the Deed of Trust is hereby deleted in its entirety and the following substituted therefor:

**OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing the following obligations ("Secured Obligations"):

- (a) Payment to Beneficiary of all sums at any time owing under (i) that certain Fourth Amended and Restated Promissory Note Secured by Deed of Trust dated as of March 28, 2012, in the principal amount of TEN MILLION ONE HUNDRED NINETY-FIVE THOUSAND FOUR HUNDRED AND NO/100THS DOLLARS (\$10,195,400.00), executed by Trustor, as borrower, and payable to the order of Beneficiary, as lender; and (ii) that certain Promissory Note Secured by Deed of Trust dated as of March 28, 2012, in the principal amount of FIVE MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$5,475,000.00), executed by Trustor, as borrower, and payable to the order of Beneficiary, as lender (collectively, the "Note"); and
- (b) Payment and performance of all covenants and obligations of Trustor under this Deed of Trust; and
- (c) Payment and performance of all covenants and obligations on the part of Borrower under that certain amended and restated building loan agreement ("Loan Agreement") dated as of March 28, 2012, by and between Borrower and Beneficiary, as lender; and
- (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Deed of Trust; and
- (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of

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Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

- (f) Payment and performance of all covenants and obligations of Trustor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Trustor and Beneficiary in connection with the Loans, as defined in the Loan Agreement; and
- (g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

1.4 **Collateral Description.** The description of "Collateral" in the Deed of Trust is hereby deleted in its entirety and the following substituted therefor:

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein or (ii) any existing or future improvements on the real property (which real property and improvements are collectively referred to herein as the "Subject Property"); together with all rents and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Trustor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; all of Trustor's right, title and interest, now or hereafter acquired, to the payment of money from Beneficiary to Trustor under any swap, derivative, foreign exchange or hedge

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transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Trustor and Beneficiary in connection with the Loan, as defined in the Loan Agreement, together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

1.5 **Rights of Beneficiary on Default.** The following is hereby added to the Deed of Trust as Section 4.4(c) thereof:

(c) In the event of any bankruptcy auction sale with respect to any or all of the Collateral, whether such sale is conducted pursuant to United States Code Title 11, Section 363 or United States Code Title 11, Section 1129(b)(2)(A), Beneficiary shall have the absolute right to bid and become the purchaser at any such sales and credit the Secured Obligations against any such successful bid.

1.6 **Address of Beneficiary for Notices.** The addresses to which notices to Beneficiary are to be sent under Section 7.10 of the Deed of Trust are hereby deleted in their entirety and the following substituted therefor:

Wells Fargo Bank, National Association  
(for overnight or hand delivery)  
299 South Main Street, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
(for U.S. mail)  
PO Box 45490  
Salt Lake City, Utah 84145-0490

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With a copy to:

Minneapolis Loan Center  
608 2nd Avenue South, 11th Floor  
Minneapolis, Minnesota 55402

Attn: Kyle Schwanke

2. **NON-IMPAIRMENT.** Except as expressly provided herein, nothing in this Agreement shall alter or affect any provision, condition, or covenant contained in the Note or other Loan Document or affect or impair any rights, powers, or remedies of Lender, it being the intent of the parties hereto that the provisions of the Deed of Trust shall continue in full force and effect except as expressly modified hereby.

3. **MISCELLANEOUS.** This Agreement and the other Loan Documents shall be governed by and interpreted in accordance with the laws of the State of Utah, except if preempted by federal law. In any action brought or arising out of this Agreement or the Loan Documents, Borrower, and the general partners and joint venturers of Borrower, hereby consent to the jurisdiction of any federal or state court having proper venue within the State of Utah and also consent to the service of process by any means authorized by Utah or federal law. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement. All capitalized terms used herein, which are not defined herein, shall have the meanings given to them in the other Loan Documents. Time is of the essence of each term of the Loan Documents, including this Agreement. If any provision of this Agreement or any of the other Loan

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Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been a part thereof.

4. **INTEGRATION; INTERPRETATION.** The Loan Documents, including this Agreement, contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing.
5. **EXECUTION IN 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.

*[Signature Pages to Follow]*

**(ALL SIGNATURES MUST BE ACKNOWLEDGED)**

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IN WITNESS WHEREOF, Trustor has caused this Agreement to be duly executed as of the date first above written.

BOYER HEBER CITY, L.C.,  
a Utah limited liability company

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

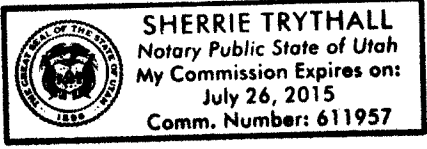
By: *Jacob L. Boyer*  
Jacob L. Boyer, Manager

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

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of March, 2012, by Jacob L. Boyer, Manager of The Boyer Company, L.C., a Utah limited liability company, Manager of Boyer Heber City, L.C., a Utah limited liability company.

*Sherrie Trythall*  
NOTARY PUBLIC  
Residing at: Salt Lake City UT

My commission expires 7/26/2015



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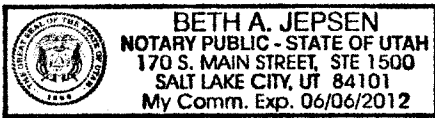
IN WITNESS WHEREOF, Beneficiary has caused this Agreement to be duly executed as of the date first above written.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: *Michael W. Asay*  
Michael W. Asay, Vice President

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

The foregoing instrument was acknowledged before me this 30th day of March, 2012, by Michael W. Asay, Vice President of Wells Fargo Bank, National Association.



*Beth A. Jepsen*  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My commission expires \_\_\_\_\_

EXHIBIT A  
Loan No. 105820 and Loan No. 1005847

### PROPERTY DESCRIPTION

Exhibit A to Fifth Modification Agreement Amending Deed of Trust dated as of March 28, 2012, by and among BOYER HEBER CITY, L.C., a Utah limited liability company ("Trustor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary").

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

#### **Parcel 1**

Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 17 of VALLEY STATION SUBDIVISION, according to the official plat thereof recorded August 20, 2008 as Entry No. 339276, in Book 972, at Page 2269 of the official records of the Wasatch County Recorder, Wasatch County, Utah

(Tax Serial Nos.: OVS-0003; OVS-0004; OVS-0005; OVS-0006; OVS-0007; OVS-0008; OVS-0009; OVS-0010; OVS-0011; OVS-0012; OVS-0013; OVS-0014; OVS-0015, OVS-0017)

#### **Parcel 2**

##### *Parcel 2A*

Lots 1, 2, and 3 of VALLEY STATION 2 SUBDIVISION, according to the official plat thereof recorded December 14, 2009 as Entry No. 355116 in Book 1006, at Page 790 of the official records of the Wasatch County Recorder, Wasatch County, Utah

(Tax Serial Nos.: OVS-2001; OVS-2002; OVS-2003)

AND

*[Legal description continues on following page.]*



EXHIBIT A  
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*Parcel 2B*

A part of the Northeast Quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Base and Meridian, U.S. Survey, in Wasatch County, Utah, more particularly described as follows:

Beginning at a point on the Southerly line of the Heber City/Wasatch County Flood Control Parcel as it exists at 45.00 foot width and the Northerly line of Lot 3 of the Valley Station 2 Subdivision as recorded in the office of the Wasatch County Recorder, said point being located 505.77 feet South 0°06'02" East along the Section line and 610.17 feet North 89°33'36" West from the Northeast corner of said Section 7, Township 4 South, Range 5 East, Salt Lake Base and Meridian, and running thence North 89°33'36" West 52.00 feet along the Northerly line of said Lot 3 to a point on the Southerly line of the said Heber City/Wasatch County Flood Control Parcel; thence North 0°26'24" East 21.00 feet; thence South 89°33'36" East 52.00 feet; thence South 0°26'24" West 21.00 feet to the point of beginning.

(Tax Serial No.: OHE-1572-5)