

ENT 58006 BK 4665 P6 217
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1998 Jun 09 4:09 pm FEE 23.00 BY SS
RECORDED FOR FIRST AMERICAN TITLE CO

WHEN RECORDED RETURN TO:

Peter M. Ennenga
2180 South 1300 East, Suite 520
Salt Lake City, Utah 84106

AGREEMENT OF RESTRICTIONS

THIS AGREEMENT IS MADE this 5th day of June, 1998, by and between LAKE RIDGE ASSOCIATES, L.C., a Utah limited liability company, with principal offices at 127 South 500 East, Suite 100, Salt Lake City, Utah (the "Seller"), and ZZYZX LAND & DEVELOPMENT, L.C., a Utah limited liability company, with principal offices at P.O. Box 9235, Salt Lake City, Utah ("Zzyzx").

RECITALS:

- A. The Seller is the owner of certain real property located in Utah County, Utah, which is described on Schedule "A" attached hereto (the "Seller's Site").
- B. Zzyzx is the owner of certain real property located in Utah County, Utah, which is described on Schedule "B" attached hereto (the "Zzyzx Site"), and is near or adjacent to the Seller's Site.
- C. The Seller and Zzyzx wish to impose restrictions on the use and operation of the Seller's Site.

NOW THEREFORE, the Seller and Zzyzx agrees as follows:

1. Restrictions. The Seller agrees that it will not lease or sell, or approve any sublease or assignment of an existing lease or amendment to an existing lease, in any manner which would allow any person to use any portion of the Seller's Site for a food service establishment which primarily features in its menu, or advertises or promotes as its principal menu, prepared or "fresh Mex" Mexican food. By way of illustration, but without limiting the generality of the foregoing, the parties acknowledge that the following would constitute prohibited food service establishments: Garcia's of Scottsdale, On the Border, Quilla's, Rubio's and La Salsa. The foregoing shall not be applicable to any fast-food establishment featuring or specializing in the sale of prepared Mexican food (non "fresh-Mex" products) such as Taco Bell, Del Taco or Taco Time, and other food establishments whose principal menu is not "Fresh-Mex" products but which serve Mexican entrees (whether prepared or "Fresh-Mex") as a minor part of a more diverse menu.

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2. Failure of Performance. In the event of a breach, or attempted or threatened breach, of any obligation of this Agreement, the aggrieved party shall be entitled to obtain an injunction to specifically enforce the performance of such obligation, the parties hereby acknowledging the inadequacies of legal remedies and the irreparable harm that would be caused by any such breach, and/or to relief by all other available legal and equitable remedies from the consequences of such breach.

3. Release of Seller. If the Seller shall sell any portion of the Seller's Site in a manner and on terms consistent with paragraph 1 above, Zzyzx shall release the Seller, but not any successor in interest to the Seller, from any further obligation to comply with the restrictions set forth herein with regard to the sold property, unless the sold property should be reacquired by the Seller in which event the restrictions set forth in this Agreement will be fully reinstated.

4. Lapse of Restrictions. If the Zzyzx Site shall cease to be used as a food service establishment featuring as primary menu items, or advertising or promoting as principal menu items, prepared or "fresh Mex" Mexican food for a period of ninety (90) consecutive days, the restrictions set forth herein shall lapse and be of no further force or effect.

5. Attorney's Fees. If any party subject to this Agreement shall be required to enforce the terms hereof, the prevailing party shall be entitled to recover all costs incurred in connection with such enforcement, including attorney's fees.

6. Covenants Run with Land. Each and all of the covenants, restrictions and provisions of this Agreement a) shall be deemed to be covenants and restrictions which run with the land; b) are made with a direct, mutual and reciprocal benefit to the Seller's Site and the Zzyzx Site; c) will create mutual equitable servitudes upon the Seller's Site and the Zzyzx Site; d) will bind every person having any fee, leasehold or other interest in any portion of the Seller's Site or the Zzyzx Site at any time or from time to time to the extent that such portion is affected or bound by the covenants, restrictions and provisions to be performed on such parcel; and e) will inure to the benefit of the parties hereto and their respective successors and assigns with regard to the parcels described herein.

7. Transfers Subject to Agreement. The Seller agrees that any written instrument pursuant to which an interest in the Seller's Site may be transferred shall include provisions which reference this Agreement and state that the transfer of such interest is subject to the terms, conditions, covenants and restrictions of this Agreement.

IN WITNESS WHEREOF, the Seller and Zzyzx have executed this Agreement as of the date first above written.

SELLER:

LAKE RIDGE ASSOCIATES, L.C.,
by its manager:

THE BOYER COMPANY, L.C.
A Utah limited liability company

By: 
Its Manager

ZZYX:

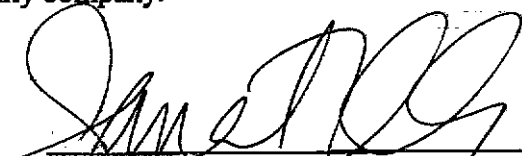
ZZYX LAND & DEVELOPMENT, L.C.
by its manager:

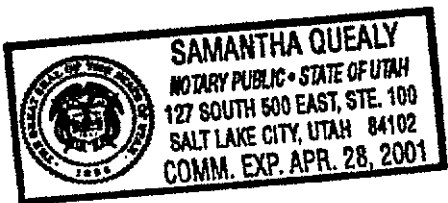

STANLEY D. KNOLES

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

On the 5th day of June, 1998, personally appeared before me,
Steven B. Oster, the manager of THE BOYER
COMPANY, L.C., a Utah limited liability company, which is the manager of LAKE RIDGE
ASSOCIATES, L.C., a Utah limited liability company.

My Commission Expires:


NOTARY PUBLIC



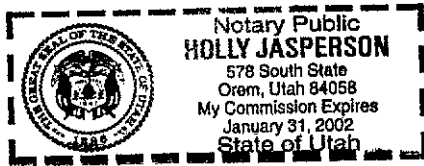
STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

On the 5th day of June, 1998, personally appeared before me STANLEY D. KNOLES, as manager of ZZYZX LAND & DEVELOPMENT, L.C., a Utah limited liability company.

[Handwritten Signature]

NOTARY PUBLIC

My Commission Expires:
01-31-2002



SCHEDULE "A"
(Seller's Site)

Parcels 1, 3, and 6, Lot 2, Plat "B" Amended, LAKE RIDGE DEVELOPMENT
SUBDIVISION, Orem, Utah, according to the official plat thereof on file and of record in
the Office of the Utah County Recorder.

SCHEDULE "B"
(Zzyzx Site)

Parcel 5, Lot 2, Plat "B" Amended, LAKE RIDGE DEVELOPMENT SUBDIVISION,
Orem, Utah, according to the official plat thereof on file and of record in the Office of the
Utah County Recorder.