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Mary Ann Trussell, Summit County Utah Recorder

01/08/2018 02:45:19 PM Fee \$26.00

By Landmark Title Company

Electronically Recorded

Upon recording, return to:

Boyer Snyderville Junction, L.C.

c/o The Boyer Company, L.C.

101 South 200 East, Suite 200

Salt Lake City, Utah 84111

Attn: Nate Boyer

Tax Parcel No. PCTC-401-AM, PCTC-5B AM, PCTC 402 AM, PCTC-403 AM & PCTC-404 AM

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is executed by BOYER SNYDERVILLE JUNCTION, L.C., a Utah limited liability company (together with its successors and/or assigns, the "Developer"), and is effective as of this the 8 day of January, 2018 (the "Effective Date").

RECITALS:

A. WHEREAS, Developer is the current owner of certain real property more particularly described in Exhibit "A" attached hereto (the "Developer Property");

B. WHEREAS, BOYER SNYDERVILLE 2, L.C., a Utah limited liability company, with an address of 101 South 200 East, Suite 200, Salt Lake City Utah, 84111 (together with its successors and/or assigns, "BS2"), as landlord, and SKULLYCANDY, INC., a Delaware corporation ("Skullcandy") entered into that certain Lease Agreement dated August 19, 2015, as amended by that certain First Amendment to Lease dated December 2, 2016, that certain Second Amendment to Lease Agreement dated April 18, 2017, and that certain Third Amendment to Lease Agreement dated December 21, 2017 (collectively, the "Lease") pursuant to which Skullcandy leases space in a building on certain real property identified in Exhibit "B" attached hereto (the "Skullcandy Leased Property");

C. WHEREAS, BS2 intends to sell the Skullcandy Leased Property to DPRE TECH CENTER 1, LLC, a Utah limited liability company (together with its successors and/or assigns, "DPRE") pursuant to that certain Agreement of Sale and Purchase dated as of October 6, 2017 (as amended, collectively, the "PSA");

D. WHEREAS, as a condition to DPRE entering into the PSA, Developer, who is an affiliate of BS2, has agreed to enter into this Declaration.

AGREEMENT:

NOW THEREFORE, in consideration of the terms of this Declaration and the mutual undertakings and agreements hereinafter contained, and in consideration of the recitals above, the Parties hereby agree as follows:

ARTICLE I
RESTRICTED USE

From and after the date of the Lease and during the term of the Lease (which term may not be extended except pursuant to extension options existing in such Lease as of the date hereof) (the "Lease Term"), Developer agrees that Developer, and its successors and/or assigns, shall not lease or sublease space within the Developer Property to companies that are in the business of manufacturing and selling consumer electronic headphone/audio industry (the "Exclusive Use") and which derive more than thirty (30) percent of their gross revenues from and after the date of the Lease from the sales of consumer electronic headphone/audio; provided, the foregoing exclusivity provision shall expire if: (a) Skullcandy transfers its rights under the Lease to any person or entity other than as permitted under the Lease; (b) Skullcandy is in default under the Lease; or (c) Skullcandy is not operating in substantially all of the property leased by Skullcandy.

ARTICLE III
APPLICATION TO ALL OWNERS, TENANTS, AND OCCUPANTS

This Declaration shall be a covenant running with the land of the Developer Property as a restriction against and as a benefit to the Developer Property during the Lease Term. This Declaration shall be for the benefit of the Developer, Skullcandy, DPRE, and their respective successor and assigns during the Lease Term. This Declaration shall be binding on the Developer Property and its successors and assigns during the Lease Term.

ARTICLE IV
DURATION AND AMENDMENT

Section 4.1 Duration. This Declaration shall continue in full force and effect until the expiration of the Lease Term or the earlier termination of the Lease. Upon such termination or expiration, DPRE agrees to execute such documents as may be requested by Developer and any of its successors and/or assigns to evidence the termination of this Declaration.

Section 4.2 Amendment. No amendment, change, or modification to this Declaration shall be valid unless it is in writing signed by Developer and DPRE.

ARTICLE V
MISCELLANEOUS

Section 5.1 Recitals. The recitals set forth above are hereby incorporated into this Declaration by this reference as if fully set forth herein.

Section 5.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any of the other provisions of this Declaration which shall remain in full force and effect.

Section 5.3 Further Assurances. Developer and DPRE shall execute and deliver any and all additional papers, documents, instruments, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the Developer and DPRE.

Section 5.4 Attorney's Fees. In the event any action is instituted by a party to enforce any of the terms and provisions contained herein, the prevailing party in such action shall be entitled to receive from the other party reasonable attorney's fees, costs, and expenses incurred in enforcing this Declaration.

Section 5.5 Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns.

Section 5.6 Entire Declaration. This Declaration constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Declaration and hereby supersedes any prior written or oral agreement or letter of intent between the Parties.

Section 5.7 Applicable Law. This Declaration shall, in all respects, be governed by and construed in accordance with the laws of the State of Utah.

Section 5.8 Waiver of Covenants, Conditions, or Remedies. The waiver by any party hereto of the performance of any covenant, condition, or promise, or of the time for performing any act under this Declaration shall not invalidate this Declaration nor shall it be considered a waiver by such party of any other covenant, condition, or promise, or of the time for performing any other act required under this Declaration. The exercise of any remedy provided in this Declaration shall not be a waiver of any other remedy provided by law.


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IN WITNESS WHEREOF, this Declaration has been executed as of the Effective Date defined above.

BOYER:

BOYER SNYDERVILLE JUNCTION, L.C., a Utah limited liability company, by its Manager

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

By: 
Name: BRIAN GOCHNOW
Title: Manager

ACKNOWLEDGEMENT

STATE OF UTAH)
COUNTY OF Salt Lake : ss.

On the 5 day of January, 2018, personally appeared before me, Brian Gochnow, who being by me duly sworn did say that he or she is a manager of The Boyer Company, L.C., a Utah limited liability company the manager of BOYER SNYDERVILLE JUNCTION, L.C., a Utah limited liability company, and acknowledged to me that he or she executed the foregoing instrument on behalf of said company for its stated purpose.


NOTARY PUBLIC

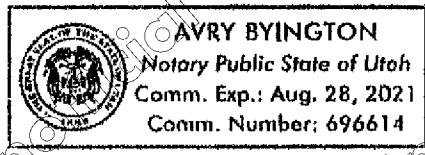


Exhibit "A" to Declaration of Covenants, Conditions, and Restrictions

(Legal description of the Developer Property)

The Property referred to in the foregoing instrument is located in Summit County, State of Utah, and is more particularly described as follows:

TAX PARCEL NO. PCTC-5B-AM:

Lot 5B, PARK CITY TECH CENTER LOT 5 SUBDIVISION AMENDING LOT 5 OF PARK CITY TECH CENTER SUBDIVISION, according to the official plat thereof recorded August 16, 2012 as Entry No. 951400 in the office of the Summit County Recorder, Summit County, Utah.

TAX PARCEL NO. PCTC-402-AM:

Lot 402, PARK CITY TECH CENTER LOT 4 SUBDIVISION AMENDING LOT 4 OF PARK CITY TECH CENTER SUBDIVISION, according to the official plat thereof recorded December 1, 2016 as Entry No. 1059105 in the office of the Summit County Recorder, Summit County, Utah.

TAX PARCEL NO. PCTC-403-AM:

Lot 403, PARK CITY TECH CENTER LOT 4 SUBDIVISION AMENDING LOT 4 OF PARK CITY TECH CENTER SUBDIVISION, according to the official plat thereof recorded December 1, 2016 as Entry No. 1059105 in the office of the Summit County Recorder, Summit County, Utah.

TAX PARCEL NO. PCTC-404-AM:

Lot 404, PARK CITY TECH CENTER LOT 4 SUBDIVISION AMENDING LOT 4 OF PARK CITY TECH CENTER SUBDIVISION, according to the official plat thereof recorded December 1, 2016 as Entry No. 1059105 in the office of the Summit County Recorder, Summit County, Utah.

Exhibit "B" to Declaration of Covenants, Conditions, and Restrictions

(Legal description of the Skullcandy Leased Property)

The Property referred to in the foregoing instrument is located in Summit County, State of Utah, and is more particularly described as follows:

PARCEL 1:

Lot 401, PARK CITY TECH CENTER LOT 4 SUBDIVISION AMENDING LOT 4 OF PARK CITY TECH CENTER SUBDIVISION, according to the official plat thereof recorded December 1, 2016 as Entry No. 1059105 in the office of the Summit County Recorder, Summit County, Utah.

PARCEL 2: (EASEMENT ESTATE)

The non-exclusive Open Space Easement that may be appurtenant to PARCEL 1 described above, as defined, described and created pursuant to that certain Declaration Of Open Space Easement And Restrictions recorded November 1, 2010 as Entry No. 909952, in Book 2054, at Page 1233 of the Official Records of the Summit County Recorder, within the following described property:

Lot 2 of the PARK CITY TECH CENTER SUBDIVISION, according to the official plat thereof recorded October 28, 2010 as Entry No. 909756 in the office of the Summit County Recorder, Summit County, Utah.

PARCEL 3: (EASEMENT ESTATE)

The non-exclusive easements that may be appurtenant to PARCEL 1 above, as described, defined and provided for in that certain Master Declaration For Park City Tech Center recorded July 26, 2012 as Entry No. 949994, in Book 2139, at Page 91 of the Official Records of the Summit County Recorder, Summit County, Utah.

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