

15-495-0002  
15-495-0003



\*W3114683\*

**UPON RECORDING RETURN TO:**

Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Attention: Lamont Richardson

E# 3114683 PG 1 OF 9  
Leann H. Kilts, WEBER COUNTY RECORDER  
31-Dec-20 0320 PM FEE \$40.00 DEP TN  
REC FOR: FIRST AMERICAN - FASHION POINTE  
ELECTRONICALLY RECORDED

**AGREEMENT REGARDING RESTRICTIVE USE**

THIS AGREEMENT REGARDING RESTRICTIVE USE (this "**Agreement**") is executed on this the 30th day of December, 2020, by BOYER GSA WAREHOUSE, L.C., a Utah limited liability company ("**Boyer Warehouse**"), and BOYER GSA WAREHOUSE LAND, L.C., a Utah limited liability company ("**Boyer Land**"), each with an address of 101 South 200 East Suite 200, Salt Lake City, Utah 84111. Boyer Warehouse and Boyer Land are each referred to herein individually as a "**Party**" and collectively as the "**Parties.**"

**RECITALS:**

- A. WHEREAS, Boyer Warehouse is the current owner of certain real property more particularly described on **Exhibit "A"** attached hereto (the "**Parcel 1**");
- B. WHEREAS, Boyer Land is the current owner of certain real property more particularly described on **Exhibit "B"** attached hereto (the "**Parcel 2**");
- C. WHEREAS, the Parties desire to enter into this Agreement for purposes of establishing certain rights and obligations of the respective owners of each of Parcel 1 and Parcel 2.

NOW THEREFORE, in consideration for ten dollars (\$10.00), the receipt of which is hereby acknowledge, and for other good and valuable consideration, the Parties hereby agree as follows:

**AGREEMENT:**

**ARTICLE I**  
**RESTRICTED USE; ENFORCEMENT**

**Section 1.1 Restricted Use.** From and after the date hereof, no portion of the Parcel 2 may be used for any of the following uses without the consent of the owner of Parcel 1 (which consent may be withheld in such owner's sole and absolute discretion):

- (a) any use which constitutes a public or private nuisance;
- (b) any use which produces noise or sound which may be heard outside of any building and is objectionable due to intermittence, beat, frequency, shrillness or loudness;

(c) any use which produces any noxious odor which may be smelled outside any building other than such odors as are typically incidental to first class operations, including odors typically incidental to beauty and nail salons, restaurants, cafeterias, fast food restaurants or other food service establishments;

(d) any use which produces any excessive quantity of dust, dirt or ash;

(e) any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);

(f) any manufacturing, distillation, refining, smelting, agriculture or mining operation, other than light manufacturing, which for the purposes hereof means, fabrication, manufacturing, assembly or processing of materials that are in refined form and that do not in their transformation create smoke, gas, odor, dust, noise, vibration of earth, soot or lighting to a degree that is offensive when measured at the property line of Parcel 2;

(g) any mobile home or trailer court, mortuary, funeral home, lot for the sale of new or used vehicles, labor camp, junkyard, stock yard or use involving animal raising;

(h) any operation for drilling for and/or removal of subsurface substances;

(i) any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;

(j) the use, generation or storage of hazardous materials, other than office and janitorial supplies and materials customarily used in connection with uses of the Land Property which are not prohibited hereunder, provided such use, generation or storage shall comply with all applicable laws;

(k) any automobile body and fender repair shop operation;

(l) any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions;

(m) any gambling or off-track betting facility;

(n) any "second hand" store, "surplus" store, pawn shop or tattoo parlor;

(o) any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building;

(p) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(q) any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer;

(r) any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall;

(s) any establishment selling or exhibiting drug-related paraphernalia, which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff, or any establishment whose employees' standard uniform or dress is substantially intended to draw customer patronage by an appeal to the customer's sexual interest; or

(t) Any massage parlor or similar establishment providing erotic services under the guise of providing massages or health/spa services.

**Section 1.2 Design Approval.** Prior to constructing any building on Parcel 2, the owner of Parcel 2 (the "**Submitting Owner**") will deliver a copy of the design plans for such building (including plans showing the design of the exterior façade of the building) (the "**Plans**") to the owner of Parcel 1 (the "**Approving Owner**"). Within twenty (20) days after receipt of a full and complete set of the Plans, Approving Owner will either approve or disapprove of the Plans; provided, the Approving Owner's approval shall not be unreasonably withheld, conditioned or delayed so long design of the building(s) on Parcel 2 is of similar quality and aesthetics to the building(s) located on Parcel 1. If Approving Owner disapproves of any element of the Plans, then Approving Owner will notify the Submitting Owner in writing of any required changes thereto, and the Submitting Owner will incorporate the Approving Owner's proposed changes into the Plans and redeliver it, as revised, to the Approving Owner for approval in accordance with the foregoing procedure. Once the Plans have been approved by the Approving Owner, the Submitting Owner shall be permitted to construct such building substantially in accordance with the approved Plans. Thereafter, no changes to the exterior of such building may be made unless the Submitting Owner submits Plans to the Approving Owner for its approval in accordance with the foregoing procedure.

**Section 1.3 Enforcement.** The owner of Parcel 1 shall have the right to prosecute any proceedings at law or in equity against any person or entity violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to owner of Parcel 1 under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

### **ARTICLE III**

### **APPLICATION TO ALL OWNERS, TENANTS, AND OCCUPANTS**

This Agreement shall be a covenant running with the land of Parcel 2 and as a restriction against Parcel 2. This Agreement shall be for the benefit of the owner of Parcel 1, and shall be

binding on each of its purchasers, tenants, subtenants, occupants, invitees or any other person or entity taking title to all or any portion of Parcel 2.

**ARTICLE IV**  
**DURATION AND AMENDMENT**

**Section 4.1 Duration.** This Agreement shall continue in full force and effect unless and until the Owner of Parcel 1 records a document terminating this Agreement in its entirety.

**Section 4.2 Amendment.** No amendment, change, or modification to this Agreement shall be valid unless it is in writing signed the owner of each Parcel.

**ARTICLE V**  
**MISCELLANEOUS**

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

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

**Section 5.3 Further Assurances.** Each owner of a portion of either parcel will 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.

**Section 5.4 Attorney's Fees.** In the event any action is instituted the Owner of Parcel 1 to enforce any of the terms and provisions contained herein, the prevailing Party shall be entitled to receive from the other Party reasonable attorney's fees, costs, and expenses incurred in such action.

**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 each owner of all or any portion of the Parcel 1 and Parcel 2 and their respective successors and assigns.

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

**Section 5.7 Applicable Law.** This Agreement 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 the owner of Parcel 1 of the performance of any covenant, condition, or promise, or of the time for performing

any act under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by the owner of Parcel 1 of any other covenant, condition, or promise, or of the time for performing any other act required under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law.

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

**BOYER WAREHOUSE:**

BOYER GSA WAREHOUSE, L.C., a Utah limited liability company, by its manager

Boyer Project Company, L.C., a Utah limited liability company, by its manager

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

By:   
Name: PATRICK MOFFAT  
Its: Manager

**BOYER LAND:**

BOYER GSA WAREHOUSE LAND, L.C., a Utah limited liability company, by its manager

Boyer Project Company, L.C., a Utah limited liability company, by its manager

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

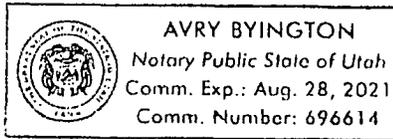
By:   
Name: PATRICK MOFFAT  
Its: Manager

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

On this 31 day of December, 2020, personally appeared before me Patrick Moffatt, a Manager of The Boyer Company, L.C., a Utah limited liability company, the manager of Boyer Project Company, L.C., a Utah limited liability company, the manager of BOYER GSA WAREHOUSE, L.C., a Utah limited liability company, who executed the foregoing instrument on behalf of said company.

Avry Byington  
NOTARY PUBLIC  
Residing at: Davis County

My Commission Expires: 8/28/2021

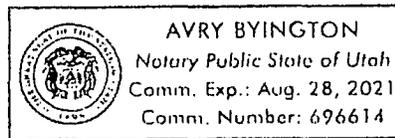


STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On this 31 day of December, 2020, personally appeared before me Patrick Moffatt, a Manager of The Boyer Company, L.C., a Utah limited liability company, the manager of Boyer Project Company, L.C., a Utah limited liability company, the manager of BOYER GSA WAREHOUSE LAND, L.C., a Utah limited liability company, who executed the foregoing instrument on behalf of said company.

Avry Byington  
NOTARY PUBLIC  
Residing at: Davis County

My Commission Expires: 8/28/2021



**Exhibit "A"**

(Parcel 1 Legal Description)

LOT 3, BOYER TWELFTH STREET SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE WEBER COUNTY RECORDER'S OFFICE.

**Exhibit "B"**

(Parcel 2 Legal Description)

LOT 2, BOYER TWELFTH STREET SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE WEBER COUNTY RECORDER'S OFFICE.