UPON RECORDING RETURN TO:

Parr Brown Gee & Loveless 101 South 200 East, Suite 700 Salt Lake City, Utah 84111 Attention: Lamont Richardson Ent 488584 Bk 1324 Pg 421 – 432 PEGGY FOY SULSER, Recorder WASATCH COUNTY CORPORATION 2020 Nov 16 08:43AM Fee: \$44.00 TC For: Cottonwood Title Insurance Agency, In ELECTRONICALLY RECORDED

Tax Parcels: 00-0020-8253, 00-0020-8254, 00-0020-8255, 00-0020-8256, 00-0020-8259,

00-0020-8263, 00-0020-8264, 00-0020-8261, 00-0020-8262, 00-0020-5667

AGREEMENT REGARDING RESTRICTIVE USE

THIS AGREEMENT REGARDING RESTRICTIVE USE (this "Agreement") is executed on this the 12th day of November, 2020, by BOYER HEBER CITY, L.C., a Utah limited liability company, and HEBER GATEWAY OFFICE 1, L.C., a Utah limited liability company, each with an address of 101 South 200 East Suite 200, Salt Lake City, Utah 84111 (together with their respective successors and/or assigns, collectively the "Developer").

RECITALS:

- A. WHEREAS, Developer is the current owner of one hundred percent of the undivided interests in certain real property more particularly described on **Exhibit "A"** attached hereto (the "**Developer Property**");
- B. WHEREAS, Developer has entered into certain leases with respect to the Developer Property (as amended, restated, supplemented, assigned or otherwise modified from time to time, each a "Lease") with certain tenants identified (by their common trade name) on Exhibit "B" (together with their respective successors and/or assigns, each a "Tenant") or has previously sold portions of real property which is adjacent to the Developer Property to certain purchasers (together with their respective successors and/or assigns, each a "Purchaser");
- C. Pursuant to the Lease for each applicable Tenant, or purchaser agreements with an applicable Purchaser, Developer has agreed to grant the applicable Tenant or Purchaser certain exclusive use rights and/or agreed to restrict certain uses with respect to the Developer Property, which rights are set forth on Exhibit "B" (collective the "Restricted Use(s)").
- **D.** WHEREAS, Developer may, from time to time, elect to sell portions of the Developer Property and Developer desires to enter into this Agreement in order to restrict any party acquiring an interest in any portion of the Developer Property from using the Developer Property for the Restricted Uses.

AGREEMENT:

NOW THEREFORE, in consideration of the terms of this Agreement and the mutual undertakings and agreements hereinafter contained, and in consideration of the recitals above, the Developer hereby subjects the Developer Property to the following terms:

ARTICLE I RESTRICTED USE; ENFORCEMENT

Section 1.1 Restricted Use. From and after (a) the date of each Lease with the applicable Tenant, and so long as such Lease is in full force and effect, and (b) the purchase of the Property by a Purchaser, no portion of the Developer Property may be used by any owner, tenant, subtenant or other user in violation of the Restricted Uses without (a) in the case of a Tenant, Developer's prior written consent, which consent may be withheld in Developer's sole and absolute discretion, and (b) in the case of a Purchaser, such Purchaser's prior written consent which may be withheld in such Purchaser's sole and absolute discretion. The designation of a party as Tenant or Purchaser is set forth on Exhibit "B." In addition, Developer may, from time to time, add additional Restricted Uses to this Agreement by recording an amendment to this Agreement (the "Additional Restricted Uses"), which Additional Restricted Uses will, for all purposes of this Agreement, constitute Restricted Uses, provided, no such Additional Restricted Uses shall be binding on any portion of the Developer Property which has been conveyed to a third party prior to the recording of the amendment containing such Additional Restricted Uses. Furthermore, Developer may, from time to time, record an amendment to this Agreement removing Restrictive Uses from the provisions of this Agreement (thereby making the uses so removed not Restrictive Uses).

Section 1.2 Enforcement. Developer 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 Developer 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 the Developer Property, as a restriction against the Developer Property. This Agreement shall be for the benefit of the Developer and, with respect to the Restricted Uses granted to a Purchaser, the applicable Purchaser, 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 the Developer Property. The rights of Developer hereunder shall only be assigned pursuant to a separate assignment agreement which specifically conveys the rights of Developer under this Agreement and which is recorded against the Developer Property.

ARTICLE IV DURATION AND AMENDMENT

- Section 4.1 <u>Duration</u>. This Agreement shall continue in full force and effect until all Leases terminate or expire, or until Developer records a document electing to terminate this Agreement in it entirety.
- Section 4.2 <u>Amendment</u>. No amendment, change, or modification to this Agreement shall be valid unless it is in writing signed by Developer. No amendment, change, or modification to this Agreement (other than a termination or removal of a Restrictive Use) will be applicable to a portion of the Developer Property owned by a third party unless such amendment, change, or modification is signed by such third party.

ARTICLE V MISCELLANEOUS

- Section 5.1 <u>Recitals</u>. The recitals set forth above are hereby incorporated into this Agreement by this reference as if fully set forth herein.
- Section 5.2 <u>Severability</u>. 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 <u>Further Assurances</u>. Each owner of a portion of the Developer Property 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 <u>Attorney's Fees</u>. In the event any action is instituted by Developer 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 <u>Successors and Assigns</u>. 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 Developer Property 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 <u>Applicable Law</u>. This Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Utah.
- Section 5.8 <u>Waiver of Covenants, Conditions, or Remedies</u>. The waiver by Developer 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 Developer of any other covenant, condition, or promise, or of the time for performing any other

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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.

Section 5.9 Counterparts. This Agreement may be executed in counterparts. A signature on any counterpart shall function and have the effect of a signature on all counterparts.

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK — SIGNATURE BLOCKS APPEAR BELOW]

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

DEVELOPER:

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

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

By:

Name: Brian W. Gochnour

Its: Manager

HEBER GATEWAY OFFICE 1, L.C., a Utah limited liability company, by its manager

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

By:

Name: Brian W. Gochnour

Its: Manager

STATE OF UTAH) : ss. COUNTY OF SALT LAKE)
On this day of November, 2020, personally appeared before me Brian W. Gochnour, Manager of The Boyer Company, L.C., a Utah limited liability company, a manager of BOYER HEBER CITY, L.C., a Utah limited liability company, who executed the foregoing instrument on behalf of said company.
My Commission Expires: 8 28 2021 Residing at: Davis County
STATE OF UTAH : SS. COUNTY OF SALTIAKE
COUNTY OF SALT LAKE)
On this // day of November, 2020, personally appeared before me Brian W. Gochnour,

instrument on behalf of said company.

Residing at:

Manager of The Boyer Company, L.C., a Utah limited liability company, a manager of HEBER GATEWAY OFFICE 1, L.C., a Utah limited liability company, who executed the foregoing

AVRY BYINGTON
Notary Public State of Utah
Comm. Exp.: Aug. 28, 2021
Comm. Number: 696614

Exhibit "A"

(Legal description of the Developer Property)

PARCEL 1:

Lots 3, 4, 5, 6, 7, 8, 9, 13 and 14 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.

PARCEL 2:

Lots 11 and 12 of Valley Station Amended Subdivision, according to the official plat thereof recorded February 10, 2019 as Entry No. 409158 in Book 1123 at Page 126 of the official record of the Wasatch County Recorder, Wasatch County, Utah.

Parcel 3:

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 Channel 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 Lot 3 to a point on the Southerly line of said Heber City/Wasatch County Flood Control Channel 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 Parcels: 00-0020-8253, 00-0020-8254, 00-0020-8255, 00-0020-8256, 00-0020-8259, 00-0020-8263, 00-0020-8264, 00-0020-8261, 00-0020-8262, 00-0020-5667 (for reference purposes only)

Exhibit "B"

(Restricted Uses)

CAFÉ RIO (Tenant)

Restricted Use: Provided Tenant is open, operating and not in any material uncured default hereunder, Landlord shall not sell or lease space within the Developer Property to any user or tenant for the operation of a Mexican or Tex-Mex style restaurant. The foregoing restriction shall not apply to: (a) any tenant, its successors, replacements or assigns in the Developer Property with whom Landlord has a signed lease agreement as of the date of full execution of this Lease, or (b) any tenant in the Developer Property occupying more than 7,000 square feet of leased space. The exclusive use granted herein shall be personal to Tenant or its assignees that continue operating the Premises for the same Permitted Use and under the same Trade Name.

CHASE (Tenant)

Restricted Use: Tenant shall have the exclusive right to operate (the following defined as the "Exclusive Services") as a full service financial institution, including ATMs and/or drive-through facilities, both directly and through subsidiaries and affiliates, including without limitation providing banking, mortgage lending, insurance and securities services in the Developer Property, and that no other financial institution (including without limitation, a drive-through facility or ATM), except a credit union, shall be allowed to operate or perform any Exclusive Services in or on the Developer Property, provided that Tenant is not in default under the Lease and in occupancy. Landlord shall enforce such restriction and exclusive right of Tenant herein, and cause all such other tenants in the Developer Property to comply with such restriction, during the Term.

DOLLAR TREE (Tenant)

Restricted Use: Provided Tenant is not in any material uncured default hereunder, Tenant shall have the exclusive use in the Developer Property (and specifically excluding that portion of the Developer Property owned by Wal-Mart) for the operation of a single price point variety retail store ("Exclusive" or "Exclusive Use"). Landlord shall not lease, rent, occupy or permit any other premises in the Developer Property to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant, whose "principal business" (hereinafter defined) is for the operation of a single price point variety retail store. Principal business defined as selling such merchandise in 25% or more of the sales floor area including ½ of the adjacent aisle space.

Provided Tenant is not in any material default hereunder left uncured beyond applicable period to cure, Landlord will not permit any other occupant in the Developer Property to operate the following uses (hereinafter, "Restricted Uses") without Tenant's consent and such consent shall be in Tenant's sole and absolute discretion:

- (1) Variety retail operations with the word "Dollar" in their trade name (the foregoing shall not restrict non-variety retail operations with the word "Dollar" in their trade name such as "Dollar Cuts");
- (2) A close-out store; or

(3) a non-membership warehouse store occupying less than 30,000 square feet that sells restaurant supplies, janitorial supplies and related items.

FAMOUS FOOTWEAR (Tenant)

Restricted Use: Landlord and Tenant agree that it is to the mutual benefit of both parties and the Developer Property as a whole to establish and maintain a mixture of retail stores with a balanced and diversified selection of merchandise, goods and services within the Developer Property. Landlord covenants, warrants, and agrees that it has not leased and shall not, throughout the term hereof, lease space in the Developer Property to another tenant or permit another tenant to continue operating whose primary business (defined as using 30% or more of the gross leasable area of such tenant's premises), is the sale of open stock, brand footwear, such as, but not limited to, DSW, Shoe Carnival, Rack Room or Shoe Pavilion.

GNC (Tenant)

Restricted Use: Landlord covenants and agrees that, subsequent to the execution of this Lease, Landlord shall not enter into any new leases with other tenants in the Developer Property (including temporary leases, kiosks and carts), which contains a use clause permitting the tenant to conduct a business for the primary purpose of the sale of health foods, vitamins, mineral and herbal supplements or sports nutrition supplements (the "Restricted Business"), nor permit any tenant to conduct the Restricted Business in violation of such tenant's use clause. "Primary purpose" shall be defined as a store selling the aforesaid items within an area which occupies in excess of the lesser of: (a) five percent (5%) of its floor area or (b) one hundred (100) square feet of floor area, This prohibition on other uses shall not be applicable to any tenants in the Developer Property occupying in excess of 6,000 contiguous square feet of floor area operating under a single trade name or to a tenant with whom Landlord has entered into a lease agreement prior to the date hereof, but only if Landlord has notified Tenant in writing of said lease agreement prior to the date hereof.

KNEADERS (Tenant)

Restricted Use: Provided Tenant has not been in uncured, material default under the terms and conditions of this Lease, Landlord agrees that it shall not sell or lease space in the Developer Property to any bakery themed restaurant including, but not limited to, Zupa's, Great Harvest, Corner Bakery, Paradise Bakery and/or Panera Bread. The foregoing shall not apply to any tenant, its successors or assigns, with signed lease agreements for space within the Developer Property as of the date of full execution of this Lease or to any full service restaurant or any restaurant with over 7,000 square feet of leased space. The exclusive use granted herein shall be personal to Tenant and shall be valid provided there has been no change in the Permitted Use.

LITTLE CAESAR'S (Tenant)

Restricted Use: Except for the now existing rights of existing tenants and occupants of the Developer Property and their permitted successors, replacements, sublessees and assigns under their existing leases or occupancy agreements for premises in the Developer Property and which permit such existing tenant or occupant and their permitted successors, replacements, sublessees and assigns to engage in any use which would otherwise be prohibited hereunder, Landlord covenants and agrees that during the Term, as such term may be extended pursuant to the provisions of the Lease, Landlord shall refrain from leasing other space in the Developer Property for the following primary purposes: sale or offering of carry-out or delivery pizza ("Tenant's Exclusive Right"). Examples of prohibited uses

would be Domino's Pizza, Pizza Hut, Papa John's, Papa Murphy's, Pizza Patron, Big Daddy's Pizza, etc. Tenant's Exclusive Right shall not prohibit another tenant in the Developer Property from selling pizza as an ancillary sales item or for offering pizza as a menu item, provided that pizza is not a primary menu item (defined as more than 15%) of such tenant's menu. In addition, Tenant's Exclusive Right shall not apply to any sit-down pizza style restaurant that is larger than 3,000 square feet including, but not limited to, California Pizza Kitchen, and Settebello Pizzeria Napoletana.

MAURICE'S (Tenant)

Restricted Use: During the Term or any extension thereof, provided Tenant is not in default hereunder, Landlord covenants and agrees that it shall not lease space in the Developer Property, and no space shall be occupied for the purpose of, without Tenant's prior written consent, which consent may be withheld or granted at Tenant's sole discretion, to any tenant occupying more than three thousand square feet (3,000') of leased space but less than ten thousand square feet (10,000') of leased space whose primary sales are derived from the sale of apparel. The foregoing exclusive shall not apply to Rue 21 or Famous Footwear.

MYBULLFROG.COM (Tenant)

Restricted Use: Provided Tenant is open and operating from the Premises, is not in default past any applicable notice and cure period, and there has been no change in the Permitted Use, Landlord agrees that it shall not lease, sublease or sell space in the Developer Property to anyone for the sale and service of Verizon wireless products. The foregoing exclusive shall not apply to any tenant, its successors, replacements or assignees, in the Developer Property with whom Landlord has an executed lease agreement as of the date of full execution of this Lease or to any tenant occupying more than 10,000 square feet of leased space in the Developer Property. The exclusive use granted herein shall be personal to Tenant.

PETCO (Tenant)

Restricted Use: So long as Tenant is not in material monetary default under this Lease beyond applicable notice and cure periods, Landlord covenants and agrees that during the term of this Lease, Tenant shall have the exclusive right to engage in any and/or all aspects of the pet related uses in the Developer Property except for (i) the rights of any tenant whose existing lease for its premises in the Developer Property would permit such tenant to engage in such use, (ii) a national or first quality regional grocery store tenant operating in not less than twenty thousand (20,000) square feet of contiguous leasable floor area in the Developer Property, (iii) Wal-Mart, and (iv) incidental sales. As used herein, incidental sales means the sale or display for sale of such items or services, not as the primary use of the competing tenant and taking up no more than five hundred (500) square feet of such tenant's leasable floor area.

SPORT CLIPS (Tenant)

Restricted Use: Provided Tenant is open, operating and not in default under the terms of this Lease past any applicable cure period, Landlord agrees that it shall not sell or lease space in the Developer Property for or permit the operation of a themed type facility offering haircuts in the price range of approximately Ten Dollars (\$10.00) each. The foregoing shall not apply to: (a) any tenant, its successors or assigns, with whom Landlord has an executed lease agreement as of the date of full execution of this Lease (but Landlord will not amend any such lease to permit a violation of the provisions of this Section 10.2), (b) any tenant providing haircuts in a price range over Twenty Dollars (\$20.00) each, or (c) any tenant providing haircuts in any price range so long as haircuts are only a part of the overall personal care services offered by such tenant.

SPORTSMAN'S WAREHOUSE (Tenant)

Restricted Use: Provided Tenant is operating the authorized use upon the Premises and not in material uncured default beyond any applicable cure period hereunder, Landlord agrees that it will not (i) enter into a lease of any other space within the Developer Property or within a one mile radius of the Developer Property ("Restricted Area"); (ii) consent to the use and occupancy of any other space within the Restricted Area, by a tenant, subtenant, assignee, licensee or concessionaire, to the extent Landlord has such consent rights; nor (iii) enter into any instrument of sale for land in the Restricted Area, any of which actions are undertaken with any person or entity (collectively "Occupant") whose business includes the sale of sporting goods related to fishing, hunting, boating, camping, hiking, climbing and other related products, including without limitation footwear, clothing and accessories designed for use in such activities, specifically including Carhartt clothing, from a floor sales area greater than one thousand (1,000) square feet, including one-half (½) of all adjacent aisle space ("Exclusive Use"). In no event shall the foregoing restriction apply to Wal-Mart or any of the following: (a) department stores which primarily sell soft goods and housewares (including but not limited to Kohl's, TJ Maxx, Ross, Marshall's, Gordman's, Burlington Coat Factory, Bed Bath and Beyond, Home Goods) and which occupy 15,000 square feet or more with at least 25 locations regionally or nationally; (b) the retail sale of discount or fashion footwear which includes but is not limited to Shoe Carnival, Famous Footwear, Shoe Dept., DSW Shoes, or Off Broadway Shoes; (c) specialty and/or athletic footwear stores defined as a shoe store selling only one brand such as Nike, Nine West, or Cole Hahn; and (d) running stores, bicycle shops, golf shops, and/or any team sport or ball specific sporting goods store (such as, but not limited to, Hibbets Sporting Goods) or (e) any tenant, its successors, replacements or assigns in the Developer Property with whom Landlord has an executed lease agreement as of the date of full execution of this Lease, but Landlord shall honor its obligations pursuant to (ii) above. In the event Tenant ceases operating the Authorized Use upon the Premises, Landlord's obligations regarding the Exclusive Use shall be terminated if Tenant fails to recommence operating the Exclusive Use upon the Premises within one (1) year of ceasing to operate the authorized use. In addition, Landlord shall expressly prohibit the Exclusive Use in the Restricted Area by the terms of all leases entered into after the date of this Lease, and record a prohibition against utilizing any portion of the Restricted Area for the Exclusive Use prior to any sale of property within the Restricted Area.

WAL-MART (Purchaser)

Restricted Use: Developer covenants that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of the Wal-Mart Tract, either as owner or lessee, no space in or portion of the Developer Tract or the Outparcels, shall be leased or occupied by or conveyed to any other party for use as (i) a membership warehouse club, (ii) a pharmacy, (iii) a discount department store or other discount store, as such terms are defined below, but Ross Dress for Less and T.J. Maxx will be allowed, (iv) except as provided below, a variety, general or "dollar" store, (v) a grocery store or supermarket as such terms are defined below, or (vi) as any combination of the foregoing uses. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of building space used for the purpose of selling food for off premises consumption, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments.

"Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart. Nothing herein shall be construed as prohibiting the operation of one or more category retailers, such as Ross Dress for Less or T.J. Maxx, on the Outparcels or the Developer Tract. Category retailers are retailers selling primarily a single type of merchandise such as electronics, apparel, shoes, home improvement products, building supplies, sporting goods, office supplies and appliances. In no event shall any person or entity that operates a membership warehouse club, a pharmacy or a grocery store be deemed to be a category retailer. Notwithstanding the above, it shall be permissible for a dollar store to be operated out of Building E (as depicted in the Wal-Mart Lease) so long as the same does not contain more than 10,000 square feet of building space.

CULVERS (Purchaser)

Restricted Use: Buyer intends to operate a Culver's restaurant, which sells Butterburgers, Frozen Custard, Cheese Curds and related items, at the property (the "Authorized Use"). Provided Buyer is operating the Authorized Use at the property and is not in material uncured default beyond any applicable cure period hereunder, Developer agrees that it shall not sell or lease space, or allow any sub-lease of any space within the Developer Property to any business whose primary menu items (defined as 20% or more) are hamburgers, cheeseburgers or other specialty burgers. Developer also agree that it shall not sell or lease space, or allow any sub-lease of any space within the Developer Property whose primary menu items (defined as 20% or more) are frozen custard, shakes, and frozen yogurt. Examples of prohibited uses include, but are not limited to: Five Guys Burgers and Fries, SmashBurger, In & Out, Red Robin, and Cold Stone. This exclusive shall be personal to Buyer and shall not be applicable to any tenant, owner, or operator or its successor or assigns in the Developer Property operating prior to the date of closing. Further, at no time shall the exclusive be applicable to any tenant, owner, or operator in the Developer Property occupying in excess of ten thousand (10,000) square feet.