

When Recorded, Return to:
The Boyer Company, L.C.
101 South 200 East, Suite 200
Salt Lake City, UT 84111

Ent 452963 Bk 1226 Pg 217 - 229
PEGGY FOY SULSER, Recorder
WASATCH COUNTY CORPORATION
2018 Jun 20 03:56PM Fee: \$35.00 TC
For: Cottonwood Title Insurance Agency, In
ELECTRONICALLY RECORDED

(space above for recorder's use only)

Affecting Parcel Nos. 00-0020-8257
00-0020-8258

MEMORANDUM OF AGREEMENT REGARDING RIGHT OF FIRST REFUSAL AND EXCLUSIVE USES

This Memorandum of Agreement Regarding Right of First Refusal and Exclusive Uses ("**Memorandum**"), dated as of June 20, 2018, is executed by Boyer Heber City, L.C., a Utah limited liability company ("**Boyer Heber**"), Heber Gateway Office 1, L.C., a Utah limited liability company ("**Heber Gateway**" and, together with Boyer Heber, "**Sellers**"), and Young Advantage, Inc., a Utah corporation ("**Buyer**").

WHEREAS, pursuant to an Agreement for Purchase and Sale of Real Estate dated January 10, 2018 (the "**Agreement**"), Sellers have agreed to sell to Buyer that certain real property located in Heber City, ~~Wasatch~~ ^{Wasatch} County, State of Utah, described in Exhibit A attached hereto (the "**Property**");

WHEREAS, the Agreement provides for a right of first refusal in favor of the Sellers with respect to the Property, as set forth below;

WHEREAS, the Agreement describes the intended exclusive use of the Property by Buyer and the exclusive uses of certain adjacent property within the shopping center in which the Property is located; and

WHEREAS, Sellers and Buyer have agreed to record this Memorandum in accordance with provisions of the Agreement.

NOW, THEREFORE, Sellers and Buyer hereby acknowledge as follows:

1. After the Property has been conveyed to Buyer, Seller shall have the right of first refusal to match any offer to purchase the Property that Buyer receives and desires to accept within 10 calendar days after receiving notice from Buyer of such offer. If the time for Seller to exercise its right of first refusal expires on Saturday, Sunday, or a legal holiday in the State of Utah, the time is extended to the next working day. The foregoing right of first refusal shall not apply to any offer to purchase the Property made by Corporate Culver's or any Culver's franchisee.
2. The Property is benefited and/or burdened by the exclusive uses described in Exhibit B attached hereto.

The parties hereto have executed this Memorandum as of the date first written above.

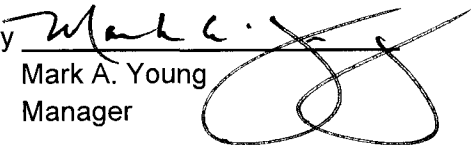
Boyer Heber City, L.C., a Utah limited liability company
By: The Boyer Company, L.C., a Utah limited liability company
Its: Manager

By _____
Brian W. Gochnour
Manager

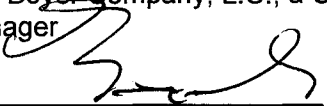
Heber Gateway Office 1, L.C., a Utah limited liability company
By: The Boyer Company, L.C., a Utah limited liability company
Its: Manager

By _____
Brian W. Gochnour
Manager

Young Advantage, Inc., a Utah corporation

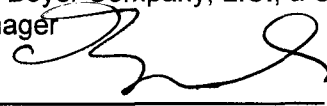
By  _____
Mark A. Young
Manager

Boyer Heber City, L.C., a Utah limited liability company
By: The Boyer Company, L.C., a Utah limited liability company
Its: Manager

By 

Brian W. Gochnour
Manager

Heber Gateway Office 1, L.C., a Utah limited liability company
By: The Boyer Company, L.C., a Utah limited liability company
Its: Manager

By 

Brian W. Gochnour
Manager

Young Advantage, Inc., a Utah corporation

By _____
Mark A. Young
Manager

STATE OF UTAH

COUNTY OF SALT LAKE

On the 20th day of June, 2018, personally appeared before me Brian W. Gochnour, who acknowledged himself/herself to be the Manager of Boyer Company, L.C., a Utah limited liability company who is named as Manager to Boyer Heber City, L.C., a Utah Limited Liability Company, a limited liability company, and that he/she, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Notary Public

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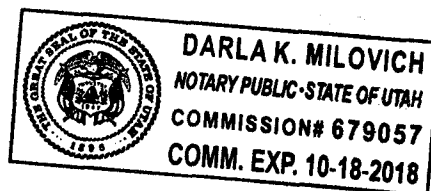
STATE OF UTAH

COUNTY OF SALT LAKE

On the 20th day of June, 2018, personally appeared before me Mark A. Young, who being by me duly sworn did say that he is the President of Young Advantage, Inc. and that the foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Board of Directors, and said Mark A. Young acknowledged to me that said corporation executed the same.



Notary Public

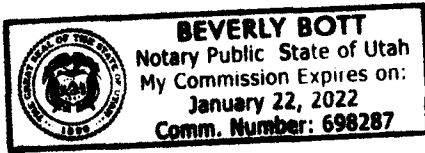


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Beverly Bott
Notary Public



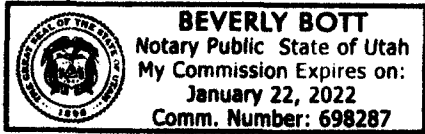
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Beverly Bott
Notary Public

**Heber Gateway office 1,*



STATE OF UTAH

COUNTY OF SALT LAKE

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Notary Public

Exhibit A

Legal Description of the Property

PARCEL 1:

Lots 7 and 8, VALLEY STATION SUBDIVISION, according to the official plat thereof as recorded in the office of the Wasatch County Recorder, State of Utah, recorded August 20, 2008 as Entry No. 339276 in Book 972 at Page 2269.

PARCEL 1A:

The terms and conditions of that certain Maintenance, Cross Access and Sewer Line Easement and Termination of Right-of-Way Agreement recorded August 19, 2008 as Entry No. 339257 in Book 972 at Page 2156 of official records.

PARCEL 1B:

Easements for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial vehicles as more particularly defined by that certain Easements with Covenants and Restrictions Affecting Land (ECR), recorded August 26, 2008 as Entry No. 339496 in Book 973 at Page 594, and amended December 29, 2010 as Entry No. 365811 in Book 1028 at Page 750 of official records.

PARCEL 1C:

Cross Access and Utility Easements and the terms and conditions contained therein, as disclosed by that certain Agreement recorded June 10, 2009 as Entry No. 349092 in Book 993 at Page 1006, and in that Amendment recorded September 29, 2017 as Entry No. 443351 in Book 1202 at Page 1748 of official records.

Tax Id No.: 00-0020-8257 and 00-0020-8258

Exhibit B**Exclusive Uses****VALLEY STATION – CO-TENANCIES and EXCLUSIVES USES GRANTED****AMERICA FIRST CREDIT UNION**

Closed: 7.22.14
 Sq. Ft.:
 Co-Tenancy: None
 Exclusive: None

ANYTIME FITNESS

Signed: 8.3.12
 Sq. Ft.: 5,000
 Co-Tenancy: None

Exclusive: (§10.2) - Provided Tenant is open, operating and not in default under any of the terms or conditions of this Lease beyond any applicable cure period and there has been no change or modification to the Permitted Use described in Article 1, Landlord agrees that it shall not lease, rent or barter space within the Shopping Center to any person or entity for the operation of a fitness center, including specifically a "women only" fitness facility. The foregoing exclusive shall not apply to any tenant, its successors, assigns or replacements, in the Shopping Center with whom Landlord has an executed lease agreement as of the date of this Lease.

CAFÉ RIO

Signed: 6.20.13
 Sq. Ft: 3,000
 Co-Tenancy: None

Exclusive: (§10.2) - Provided Tenant is open, operating and not in any material uncured default hereunder, Landlord shall not sell or lease space within the Shopping Center 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 Shopping Center with whom Landlord has a signed lease agreement as of the date of full execution of this Lease, or (b) any tenant in the Shopping Center 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

Signed: 8.12.10
 Sq. Ft.:

Co-Tenancy: (§8.4) - Can terminate if Wal-Mart isn't open within 18 months of Lease

Exclusive: (§8.3) - 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 Shopping

Center, 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 Shopping Center, 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 Shopping Center to comply with such restriction, during the Term.

DOLLAR TREE

Signed: 12.8.11

Sq. Ft. 9,000

Co-Tenancy: None

Exclusive: (§A13a) - Provided Tenant is not in any material uncured default hereunder, Tenant shall have the exclusive use in the Shopping Center (and specifically excluding that portion of the Shopping Center 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 Shopping Center 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]

Restrictions: (§A13b) - 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 Shopping Center 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

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

FAMOUS FOOTWEAR

Signed: 12.21.11

Sq. Ft.: 5,000

Co-Tenancy: (§7 and 8) - Opening: Wal-Mart and 1 of Petco, Dollar Tree, rue21 or Maurices; On-going: Wal-Mart and 2 of Petco, Dollar Tree, rue 21 or Maurices

Exclusive: (§11) - Landlord and Tenant agree that it is to the mutual benefit of both parties and the Shopping Center 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 Shopping Center. Landlord covenants, warrants, and agrees that it has not leased and shall not, throughout the term

hereof, lease space in the Shopping Center to another tenant or permit another tenant to continue operating whose primary business (defined as using 30% or more of the gla 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

Signed:12.20.11

Sq. Ft. 1,200

Co-Tenancy: (Rider) -- Opening: Wal-Mart and at least 50% of GLA in Building B

Exclusive: (§2.11) - 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 Shopping Center (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 Shopping Center 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

Signed:10.25.11

Sq. Ft.: 3,200

Co-Tenancy: None

Exclusive: (§10.2) - 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 Shopping Center to any bakery themed restaurant including, but not limited to, Zupa's, Great Harvest, Comer 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 Shopping Center 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

Signed:8.23.12

Sq. Ft.: 1,540

Co-Tenancy: None

Exclusive: (§10.2) Except for the now existing rights of existing tenants and occupants of the Shopping Center and their permitted successors, replacements, sublessees and assigns under their existing leases or occupancy agreements for premises in the Shopping Center 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 Shopping Center 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 Shopping Center 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

Signed: 10.17.08

Sq. Ft.: 5,000

Co-Tenancy: (§10.1 - 10.3) - Opening: Wal-Mart; On-going: Walmart (or reasonable equivalent) and 70% of Shopping Center in-line with Wal-Mart

Exclusive: (§9.2) - 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 Shopping Center, 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

Signed: 4.24.13

Sq. Ft.: 1,310

Co-Tenancy: None

Exclusive: (§10.2) - 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 Shopping Center 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 Shopping Center 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 Shopping Center. The exclusive use granted herein shall be personal to Tenant.

PETCO

Signed: 12.20.11

Sq. Ft.: 10,000

Co-Tenancy: (§10b) - Opening: Wal-Mart and 2 of Famous Footwear, Maurice's and Rue 21; On-going: Same or like replacement.

Exclusive: (§10a) - 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 Shopping Center except for (i) the rights of any tenant whose existing lease for its premises in the Shopping Center 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 Shopping Center, (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

Signed: 2.23.12

Sq. Ft.: 1,200

Co-Tenancy: None

Exclusive: (§10.2) - 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 Shopping Center 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

Signed: 9.8.14

Sq. Ft.: 16,366

Co-Tenancy: (§12.4) Wal-Mart

Exclusive: (§12.2) - 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 Shopping Center or within a one mile radius of the Shopping Center ("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 Shopping Center 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.

TTTAN MOBILE

Signed: 2.21.17
 Sq. Ft. 1,287
 Co-Tenancy: None
 Exclusive: None

WAL-MART

Signed: 8.26.08
 Sq. Ft.:
 Co-Tenancy: None
 Restrictions: (§3) - 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 on Exhibit A-2) so long as the same does not contain more than 10,000 square feet of building space.