

00909953 B: 2054 P: 1250

Page 1 of 11

Alan Spriggs, Summit County Utah Recorder

11/01/2010 12:36:47 PM Fee \$35.00

By LANDMARK TITLE COMPANY

Electronically Recorded by Simplifile

**PREPARED BY AND UPON
RECORDATION RETURN TO:**

Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111
Attention: David E. Gee, Esq.
Tax Parcel No. KJS-1

HOUSING PARCEL RESTRICTIVE COVENANT

THIS HOUSING PARCEL RESTRICTIVE COVENANT (this "**Restrictive Covenant**"), is entered into as of this the 29th day of October, 2010, by BOYER SNYDERVILLE JUNCTION, L.C., a Utah limited liability company ("**Declarant**").

RECITALS

A. Declarant owns certain real property located in Summit County, Utah, described on **Exhibit A** attached hereto and made a part hereof (the "**Property**").

B. That portion of the Property described on **Exhibit B** attached hereto and made a part hereof is to be used for an affordable housing project ("the "**Housing Parcel**").

C. Declarant desires to create certain deed restrictions with respect to the Housing Parcel that limits the use for a period of time of that Parcel to non-transient residential purposes identified in this Restrictive Covenant.

NOW, THEREFORE, in order to impose a coherent development regime upon the Property, Declarant hereby declares as follows:

1. **Definitions.** Certain capitalized terms which are used in this Restrictive Covenant are defined in this Restrictive Covenant prior to this Section. In addition to those previously defined terms, the following capitalized terms shall have the meanings indicated:

"Governmental Authorities" means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies.

"Government Requirements" means, with respect to a specified matter, all laws, ordinances, statutes, regulations or other similar laws promulgated by Governmental Authorities having jurisdictions over that matter.

"Mortgage" means a recorded mortgage, deed of trust or other security agreement creating a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness.

"Mortgagee" means a Person which is the mortgagee, beneficiary or other secured party under a Mortgage.

"Owner" means, with respect to a specified Parcel, the Person that, at a specified time, is the owner of record in the office of the County Recorder of Summit County, Utah of a fee or an undivided fee interest in a specified Parcel or portion of a specified Parcel. In the event that, at any time, there is more than one Owner of a Parcel, the liability of each such Owner for performance or compliance with the applicable provisions of this Restrictive Covenant shall be joint and several. Notwithstanding any applicable theory or law relating to a Mortgage, the term **"Owner"** shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Parcel encumbered by the Mortgage pursuant to foreclosure, trustee's sale or any other conveyance, sale or other arrangement or proceeding in lieu thereof. A ground lessee or other long term tenant shall not be deemed to be an Owner for purposes of this Restrictive Covenant.

"Parcel" means any one of the Parcels.

"Parcels" means any legally subdivided tract or parcel of the Property.

"Person" means any natural Person, legal entity or trust.

"Prohibited Use" means including, without limitation, hotel, lodging, rooming house, time-share, quarter-share or similar use based on a time period or time periods of less than thirty (30) consecutive days or ownership interests of less than all of the fee title.

"Restrictions" is defined in Section 2.

"Research Park Parcels" means the Parcels described on Exhibit "C" attached hereto and incorporated herein by this reference.

"Term" means that period commencing with the date of this Restrictive Covenant and continuing until December 31, 2030.

2. **Housing Restrictions.** Declarant hereby irrevocably imposes the following restrictions and limitations on the Housing Parcel (the **"Restrictions"**) for the benefit of the Research Park Parcels, which shall continue throughout the Term.

(a) The Housing Parcel shall only be used for non-transient residential use purposes and uses necessary and appropriate to such non-transient residential use, including a club house and rental office, but which use does not include the Prohibited Uses defined in Section 3.

(b) No dwelling on the Housing Parcel shall be rented or leased for a period of less than thirty (30) days.

(c) No commercial, office or industrial building shall be constructed or maintained on the Housing Parcel (excluding the rental office authorized in (a) above).

Nothing herein shall preclude the Owner of the Housing Parcel from imposing additional housing covenants, conditions and restrictions upon the Housing Parcel, including, but not limited to those which require occupants of the housing units located upon the Housing Parcel to meet specific income limitations or other qualifications as a condition to occupancy.

3. Prohibited Uses and Practices. No Person or entity shall conduct any activity on or use the Housing Parcel that is inconsistent with the Restrictions. Any activity or enterprise on, or use of the Housing Parcel inconsistent with the purpose of this Restrictive Covenant is likely to cause material damage to the Housing Parcel and thereof is expressly prohibited. Without limiting the foregoing, the Housing Parcel shall not be used for Prohibited Uses.

4. Breach, Restoration and Remedies.

(a) Where Declarant becomes aware of a violation or potential violation of the Restrictions, whether precipitated by the Owner of the Housing Parcel or by a third Person, Declarant may notify the Owner of the Housing Parcel in writing of such violation, potential violation, damage or potential damage. Upon receipt of such notice by the Owner of the Housing Parcel, such Owner agrees to immediately take action to prevent or stop the activity which potentially or actually violates the terms or intent of this Restrictive Covenant.

(b) The Owner of the Housing Parcel shall have thirty (30) days after receipt of such notice to undertake actions, that are reasonably calculated to swiftly correct the conditions caused by such violation. If the Owner of the Housing Parcel fails to take such corrective action, Declarant may (but shall not have the obligation to) undertake appropriate action, including legal action, to effect such corrections. The cost of such corrections, including Declarant's expenses, court costs, and attorney's fees, shall be paid by the Owner of the Housing Parcel.

(c) Declarant acknowledges and recognizes that actual or threatened instances of non-compliance under this Restrictive Covenant constitute immediate and irreparable harm to the Research Park Parcels. The Declarant is entitled to invoke the equitable jurisdiction of any court to enforce this Restrictive Covenant including, without limitation, specific performance or injunction.

(d) Declarant's remedies set forth in this Restrictive Covenant are cumulative. Any, or all, of the remedies may be invoked by the Declarant if there is an actual or threatened violation of this Restrictive Covenant. A delay in enforcement of this Restrictive Covenant by Declarant shall not be construed as a waiver of Declarant's right to enforce the terms of this Restrictive Covenant.

5. Costs, Taxes & Fees. The Owner of the Housing Parcel shall have all responsibilities and shall bear all costs and liabilities of any kind related to the operation, upkeep,

and maintenance of the Housing Parcel, including, without limitation, responsibility for the control of noxious weeds in accordance with all applicable Government Regulations. Each Owner of the Housing Parcel shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority against or with respect to the Parcels which it owns.

6. Indemnity. Each Owner of the Housing Parcel also agrees to defend and indemnify Declarant against obligations arising from past, present or future dumping of hazardous materials on the Parcels it owns, and any obligations associated with their cleanup or containment; provided, however that the indemnity contained herein shall have no application to any dumping of hazardous materials which occurred by or at the request of the Declarant.

7. Covenants Run with the Land. This Restrictive Covenant and the Restrictions, and covenants created by this Restrictive Covenant are intended by the Declarant to be, and shall constitute, covenants running with the land and shall be binding upon each Owner of the Housing Parcel and any Person who acquires or comes to have any interest in any such Parcel, and their respective grantors, transferees, lessees, heirs, devisees, Personal representatives, successors, and assigns. This Restrictive Covenant and all of the Restrictions, covenants, provisions, and requirements hereof shall also inure to the benefit of the Research Park Parcels and Declarant and their successors and assigns. Each Owner of the Housing Parcel shall comply with, and all interests in the Housing Parcel shall be subject to, the terms of this Restrictive Covenant. By acquiring, in any way coming to have an interest in, or occupying a Parcel, the Person so acquiring, coming to have such interest in, or occupying a Parcel, shall be deemed to have consented to, and shall be bound by, and have the benefit of, each and every provision of this Restrictive Covenant.

8. Subsequent Sale, Exchange or Involuntary Conversions. Declarant agrees for itself and for its successors and assigns that reference to this Restrictive Covenant will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Housing Parcel is conveyed, granted or let to any other Person, and that a copy of this Restrictive Covenant will be attached thereto or the recording information of this Restrictive Covenant used to incorporate this Restrictive Covenant by reference into such conveyance.

9. Amendments. The Owner of the Housing Parcel and the Declarant may by mutual written agreement amend this Restrictive Covenant. Any such amendment shall be filed in the County Recorder's office of Summit County, Utah. Nothing in this Section shall require the Declarant to agree to any amendment or to consult or negotiate regarding any amendment.

10. Assignment of Rights of Declarant. The rights of Declarant under this Agreement shall be held, and are assignable or will be deemed assigned, as follows:

(a) The Declarant may remain as Declarant as long as it or any Person it controls is an Owner of any the Research Park Parcel.

(b) At any time, but in all events after Declarant and any Person it controls ceases to be an Owner of any Research Park Parcel, Declarant may designate either of the following to be the successor Declarant by recording a written amendment to this

Restrictive Covenant in the Official Records of Summit County:

- (i) Any Owner of any of the Research Park Parcels; or
- (ii) Any owner's association existing with respect to some or all of the Research Park Parcels.
- (c) If Declarant and its affiliates cease to be an Owner of any of the Research Park Parcels and fail to designate a successor Declarant, the successor Declarant shall be the Owner of the largest Research Park Parcel determined by the square footage of land in each Research Park Parcel.

11. Term of Restrictive Covenant. This Restrictions shall continue in existence during the entire Term but shall automatically be null and void after the end of the Term without further recordation of any notice of termination.

12. Miscellaneous.

(a) Partial Invalidity. If any provision of this Restrictive Covenant, or the application of this Restrictive Covenant, or the application of this Restrictive Covenant to any Person or circumstance is found to be invalid, the remainder of the provisions of this Restrictive Covenant, and the application of such provisions to Persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

(b) Titles. Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect. References in this Restrictive Covenant to a Section shall be deemed to be a reference to the corresponding Section of this Restrictive Covenant unless the context refers to another agreement, instrument or document.

(c) Successors. This Restrictive Covenant is binding upon, and will inure to the benefit of Declarant and its successors in interest and assigns. All subsequent Owners of the Housing Parcel are bound to all provisions of this Restrictive Covenant to the same extent as Declarant.

(d) Governing Law. This Restrictive Covenant will be interpreted and construed in accordance with applicable Utah law.

(e) Entire Agreement. This Restrictive Covenant sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

(f) Compliance With Law. All uses and practices permitted by this Restrictive Covenant, shall comply with all applicable Government Regulations.

(g) Effective Date. The effective date of this Restrictive Covenant will be the date signed by all parties.

(h) **Merger.** The Parties intend that this Restrictive Covenant will not merge. It being the intent of the Parties that the Restrictions will not be extinguished during the Term of this Restrictive Covenant but remains in full force during the Term enjoining Declarant or its successor in interest to comply with its terms and conditions regardless of who holds title to the underlying fee interest.

(i) **Change of Conditions Irrelevant.** The fact that any use of the Housing Parcel expressly prohibited by this Restrictive Covenant or otherwise determined inconsistent with the purpose of this Restrictive Covenant may become significantly more valuable or economical than permitted uses, or that neighboring properties may in the future be put entirely to uses inconsistent with this Restrictive Covenant, has been considered by Declarant in granting this Restrictive Covenant. It is Declarant's belief that any such changes will increase the public's benefit and interest in the continuation of this Restrictive Covenant, and it is the intent of Declarant that any such changes not be considered circumstances sufficient to terminate this Restrictive Covenant, in whole or in part. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Restrictive Covenant or be considered grounds for its termination.

(j) **Superiority of Restrictions.** Any Mortgage executed or entered against the Housing Parcel hereafter shall be subordinate to this Restrictive Covenant and in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Restrictive Covenant or otherwise compromise the Housing Parcel.

13. **Recordation.** Declarant shall record this Restrictive Covenant in timely fashion in the Office of the Recorder of Summit County, Utah, and Declarant may re-record this Restrictive Covenant or any notice or memorandum of this Restrictive Covenant at any time or from time to time as it may deem necessary or appropriate to preserve and give notice of Declarant's rights in this Restrictive Covenant.


[Signature Page Immediately Follows]

IN WITNESS WHEREOF, Declarant executed this Restrictive Covenant as of the date first set forth above.

DECLARANT:

**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: Stephen B. Osher
Its: Manager

STATE OF UTAH

COUNTY OF SALT LAKE

) ss:
)

BEFORE ME, the undersigned authority, on the 29th day of October, 2010, 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 BOYER SNYDERVILLE JUNCTION, L.C., a Utah limited liability company.

Rachael N. Niusulu
Notary Public

My Commission Expires: 9-17-11

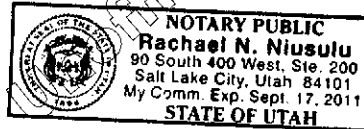


EXHIBIT "A"
TO
HOUSING PARCEL RESTRICTIVE COVENANT

Legal Description of Property

Lots 1, 2, 3, 4, 5 and 6, Park City Tech Center Subdivision, in accordance with a Subdivision Plat recorded October 28, 2010 as Entry No. 909756 in the Official Records of Summit County, Utah.

EXHIBIT "B"
TO
HOUSING PARCEL RESTRICTIVE COVENANT

Legal Description of Housing Parcel

Lot 3, Park City Tech Center Subdivision, in accordance with a Subdivision Plat recorded October 28, 2010 as Entry No. 909756 in the Official Records of Summit County, Utah.

**EXHIBIT "C"
TO
HOUSING PARCEL RESTRICTIVE COVENANT**

Legal Description of Research Park Parcels

Lots 4, 5 and 6, Park City Tech Center Subdivision, in accordance with a Subdivision Plat recorded October 28, 2010 as Entry No. 909756 in the Official Records of Summit County, Utah.