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Rhonda Francis Summit County Recorder

12/12/2018 08:13:38 AM Fee \$27.00

By FIRST AMERICAN TITLE-NCS-SLC1

Electronically Recorded

RECORD AND RETURN TO:

Baker Botts LLP
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002
Attention: Kimberly Schlanger, Esq.

Tax Parcel Nos. PCTC-402-AM; PCTC-403-AM; PCTC-404-AM; PCTC-5B-AM

FATEO NCS-903837-ai

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT
AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (this "Assignment") is made as of this 11th day of December, 2018 (the "Transfer Date") by and between, BOYER SNYDERVILLE JUNCTION, L.C., a Utah limited liability company ("Assignor") and PARK CITY JUNCTION LLC, a Utah limited liability company ("Assignee"). Assignor and Assignee are sometimes referred to in this Assignment as the "Parties."

RECITALS

A. Assignor and Summit County, a political subdivision of the State of Utah ("Summit County") are parties to that certain Development Agreement for the Summit Research Park dated December 20, 2008 and recorded as Entry No. 00860845 in Book 1959 at Page 1217 of the official records of the County Recorder of Summit County, Utah (the "Original Development Agreement"), as amended by that certain Amendment to Development Agreement for the Summit Research Park dated May 15, 2014 and recorded as Entry No. 01034562 in Book 2328 at Page 1194 of the official records of the County Recorder of Summit County, Utah (the "Amendment" and, together with the Original Development Agreement, as previously amended, the "Development Agreement").

B. Assignor and Assignee are parties to that certain Real Estate Purchase and Sale Agreement dated May 4, 2018 (the "Original PSA") as previously amended by an Amendment to Real Estate Purchase and Sale Agreement dated August 2, 2018, and that certain Second Amendment to Real Estate Purchase and Sale Agreement dated October 30, 2018 (the "Amendments" and, together with the Original PSA, the "PSA"), for the purchase of the Property described in the PSA and set forth in Exhibit A attached hereto and made a part hereof (the "Property").

C. Assignor and Assignee now desire to enter into this Assignment to transfer to Assignee the rights, duties and obligations of Assignor as "Developer" under the Development Agreement as to the Property, as more particularly set forth below.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Assignment. Assignor, as and to the extent accruing from and after the Transfer Date, and as to the extent applicable to the Property, hereby sells, assigns, transfers and conveys to Assignee all of Assignor's right, title, obligations, duties and interest in and to the Development Agreement. Subject to the terms and conditions hereof, this Assignment constitutes a direction and full authority for Summit County to deal with Assignee as a "Developer" of the Property as and to the extent reasonably necessary or appropriate to ensure the administration of the Development Agreement as it relates to the Property from and after the Transfer Date.

2. Representations and Warranties of Assignor. Assignor, with full knowledge that Assignee is relying upon the truth, accuracy and completeness of the statements made by Assignor herein, hereby certifies, represents and warrants to Assignee that:

(a) The Development Agreement is in full force and effect and, other than the Assignment, has not been modified, amended, added onto, extended or renewed, and is binding upon, and enforceable against Assignor in accordance with its terms.

(b) Assignor has not assigned or agreed to assign the Development Agreement to any other party.

(c) Except as disclosed in writing during the Feasibility Period (as defined in the PSA), Assignor is not in breach of, or in default under the Development Agreement, and Assignor knows of no event or condition which, with the passage of time or the giving of notice or both, would constitute such a breach or default by Assignor under the Development Agreement.

(d) No event has occurred, and no condition exists which, with the passage of time or the giving of notice or both, would constitute such a breach or default by Summit County under the Development Agreement. To the current actual knowledge of Assignor, Summit County has no existing defenses or offsets against the enforcement of the Development Agreement by Assignor or Assignee.

(e) Assignor has not commenced any action, or received any notice, with respect to the termination of the Development Agreement.

(f) All conditions and obligations under the Development Agreement to be performed by Assignor as "Developer" under the Development Agreement prior to the Transfer Date, including without limitation all obligations to construct, install or improve any portion of the Property, or any other property near, adjacent or contiguous to the Property, have been performed and satisfied (collectively, the "Assignor's Obligations"). By the execution of this Assignment, the Assignee does not, does not intend to, and shall not be deemed to have assumed

all or any part of the Assignor's Obligations arising prior to the Transfer Date, which shall remain the sole responsibility, obligation and cost of Assignor, notwithstanding the terms and conditions of this Assignment.

(g) Assignor has not granted a security interest in the Development Agreement to any party that continues and is enforceable.

3. Assignee's Indemnification. Assignee does hereby for itself and its legal representatives, successors and assigns agree to indemnify and defend Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees (collectively, "**Claims**"), arising out of or relating to the Development Agreement from and after the Transfer Date as and to the extent applicable to the Property, provided that nothing herein shall relieve Assignor of its obligations under the Development Agreement until Assignor has performed Assignor's obligations under the PSA and the Close of Escrow under the PSA has occurred.

4. Assignor's Indemnification. Assignor does hereby for itself and its legal representatives, successors and assigns agree to indemnify, defend and save harmless Assignee and its legal representatives, successors, and assigns, from and against any and all Claims, arising out of or relating to the Development Agreement prior to the Transfer Date as and to the extent applicable to the Property.

5. Acceptance and Assumption. Effective as of the Transfer Date, Assignee hereby accepts the foregoing assignment from Assignor and hereby assumes all of Assignor's obligations, liabilities, duties, covenants, representations and warranties with respect to the Property under the Development Agreement and covenants to keep, perform, fulfill and discharge all of the terms, covenants, conditions and obligations required to be kept, performed, fulfilled and discharged by Assignor with respect to the Property under the Development Agreement from and after the Transfer Date.

6. Effect on Development Agreement. Assignor and Assignee acknowledge, covenant and agree that this Assignment is subject to and does not waive or limit in any manner any of the terms, provisions, conditions or restrictions of the Development Agreement. The Parties do further acknowledge and agree that approval of this Assignment shall not constitute consent to or approval of any other assignment under the Development Agreement.

7. Attorneys' Fees. If any party hereto fails to perform any of its obligations under this Assignment or if a dispute arises between the Parties concerning the meaning or interpretation of any provision of this Assignment, then the defaulting party or the party not prevailing in such dispute shall pay any and all reasonable costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Assignment shall be recoverable separately from and in addition to any other amount included in such judgment and such attorneys' fees obligation is intended to be

severable from the other provisions of this Assignment and to survive and not be merged into any such judgment.

8. Additional Instruments. Assignor hereby covenants that Assignor will, at any time and from time to time, upon written request therefor, execute, acknowledge and deliver to Assignee any new or confirmatory instruments and perform such further acts, which Assignee may reasonably request in order to fully assign, transfer to and vest in Assignee, and to protect Assignee's right, title and interest in and to the Development Agreement.

9. Successors. This Assignment shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon Assignor and its successors and assigns.

10. Capacity. Each individual executing this Assignment on behalf of Assignor, Assignee and Summit County represents and warrants that he or she has full power, capacity and authority to act on behalf of and legally bind Assignor, Assignee and Summit County to this Assignment and the terms contained herein.

11. Governing Law. This Assignment shall be governed by the laws of the State of Utah.

12. Counterparts. This Assignment may be executed in any number of counterparts, provided each of the Parties executes at least one counterpart; each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one and the same instrument.

13. Limitation of Liability. Any obligation or liability whatsoever of Assignee to Assignor which may arise at any time under this Assignment shall not be personally binding upon, nor, except as permitted by the Utah Revised Uniform Limited Liability Company Act or under applicable Utah or federal law pertaining to fraudulent transfers, shall Assignor resort for the enforcement thereof against the directors, partners, managers, officers, employees or agents of Assignee.


(Remainder of page intentionally blank - signatures on following pages)

IN WITNESS WHEREOF, the undersigned have executed this Assignment on the date and at the place set forth opposite their respective signatures below.

"ASSIGNOR"

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 6983

ACKNOWLEDGEMENT OF ASSIGNOR

STATE OF UTAH

COUNTY OF SALT LAKE

) ss.

On December 4th, 2018, before me, Wendy V. Tuckett, Notary Public, personally appeared Brian W. Gochnow, 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 personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

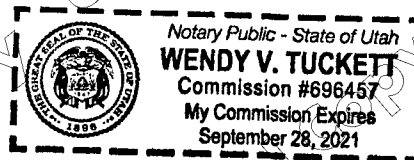
WITNESS my hand and official seal.

Wendy V. Tuckett

Notary Public

My Commission Expires:

September 28, 2021



"ASSIGNEE"

PARK CITY JUNCTION LLC,
a Utah limited liability company

By: DPRE GP PARK CITY, LLC,
a Utah limited liability company, its manager

By: JR MILLER CAPITAL II LC,
a Utah limited liability company, its manager

By: 
Lane L. Critchfield, Manager

ACKNOWLEDGEMENT OF ASSIGNEE

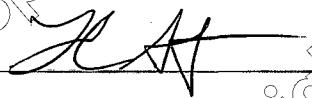
STATE OF Utah)

COUNTY OF Salt Lake)

ss.

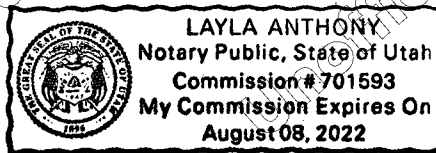
On December 12, 2018, before me, Layla Anthony, Notary Public, personally appeared Lane L. Critchfield, a manager of JR MILLER CAPITAL II LC, a Utah limited liability company which is the manager of DPRE GP PARK CITY, LLC, a Utah limited liability company which is the manager of PARK CITY JUNCTION LLC, a Utah limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public

My Commission Expires:



UNOFFICIAL COPY

CONSENT OF SUMMIT COUNTY

Summit County, a political subdivision of the State of Utah (“**Summit County**”) hereby approves of and consents to the foregoing Assignment and Assumption of Development Agreement. Such approval and consent are for the benefit of and may be relied upon by Assignee and any third persons or entities who have or may after-acquire a material interest in the Property. Summit County further acknowledges and agrees that the foregoing assignment and assumption shall operate to release Assignor from all liability and obligations under the Development Agreement from and after the Transfer Date. Summit County, with full knowledge that Assignee is relying upon the truth, accuracy and completeness of the statements made by Summit County below, certifies that:

(a) The Development Agreement is in full force and effect.


(b) Neither Assignor nor Summit County is in breach of, or in default under the Development Agreement, and Summit County knows of no event or condition which, with the passage of time or the giving of notice or both, would constitute such a breach or default by Assignor or Summit County under the Development Agreement.

(c) Summit County has not commenced any action or proceeding, or given any notice, with respect to a breach or default by Assignor, or a termination of, the Development Agreement.

(d) No amounts are due and owing or are currently payable by Assignor pursuant to the Development Agreement except current charges which will be prorated by Assignor and Assignee pursuant to the PSA.

DATED: December 6, 2018

SUMMIT COUNTY,
a political subdivision of the State of Utah

By: 
Name: Thomas C. Fisher
Its: County Manager

12/6/18

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 402, 403, AND 404, PARK CITY TECH CENTER LOT 4 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SUMMIT COUNTY RECORDERS OFFICE

LOT 5B, PARK CITY TECH CENTER LOT 5 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SUMMIT COUNTY RECORDERS OFFICE

PCTC-402-AM; PCTC-403-AM; PCTC-404-AM; PCTC-5B-AM
