



ENT 89337:2017 PG 1 of 11
JEFFERY SMITH
UTAH COUNTY RECORDER
2017 Sep 12 1:36 pm FEE 30.00 BY CS
RECORDED FOR STEWART, JAU HWA

Recording Requested By
And When Recorded Mail To:

Family Center Orem Shopping Center, LLC
5670 Wilshire Boulevard, Suite 1250
Los Angeles, California 90036
Attn.: Steven Usdan

Above Space for Recorder's Use Only

RECIPROCAL ACCESS AND RIGHT OF FIRST NEGOTIATION

This Reciprocal Access and Right of First Negotiation Agreement dated as of September 8, 2017 ("Agreement") is entered into between BRENKEN PROPERTIES LLC, a Utah limited liability company (with its successors and assigns as fee owner of the Brenken Property, "Brenken Owner"), and FAMILY CENTER OREM SHOPPING CENTER, LLC, a Delaware limited liability company (with its successors and assigns as fee owner of the FCOSC Property, "FCOSC Owner"). Brenken Owner and FCOSC Owner are sometimes individually or collectively referred to herein as an "Owner" or "Owners".

RECITALS

A. Brenken Owner is the owner of fee title to that certain real property constituting approximately 1.96 acres located at 160 East University Parkway, Orem, Utah 84058 and more particularly described in Exhibit A attached to this Agreement (the "Brenken Property").

B. FCOSC Owner is the owner of fee title to that certain real property constituting approximately 7.59 acres located at 130 East University Parkway, Orem, Utah 84058 and more particularly described in Exhibit B attached to this Agreement (the "FCOSC Property"). The Brenken Property and the FCOSC Property are sometimes individually or collectively referred to herein as a "Property" or the "Properties".

C. Utah Transit Authority ("UTA") has initiated condemnation proceedings pursuant to which UTA is condemning a strip of land along the eastern boundary of the Brenken Property that previously provided access from the Brenken Property to 200 East Street (the "Condemnation").

D. In connection with the Condemnation, Brenken Owner has requested FCOSC Owner to grant certain access rights between the Brenken Property and the FCOSC Property. FCOSC Owner is willing to agree to such access rights on a reciprocal basis in accordance with and subject to the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms and provisions of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Brenken Owner and FCOSC Owner agree as follows:

1. Reciprocal Access and Driveway Easement. Each Owner grants to the other Owner an appurtenant, perpetual, reciprocal easement for vehicular and pedestrian access between and over each Owner's Property as more specifically described herein. The access between each Owner's Property shall be through the new drive aisle access points to be constructed, as shown on Exhibit C attached to this Agreement (the "Access Points"). The Brenken Owner's access easement over the FCOSC Owner's Property shall be over the drive aisles located on the FCOSC Property required for access between the Access Points and 200 East Street and University Parkway. FCOSC Owner shall have the right to modify or relocate the drive aisles located on the FCOSC Property from time to time provided that (a) continuous and uninterrupted access between 200 East Street and the Access Point located on the southern boundary of the Brenken Property is maintained; and (b) continuous and uninterrupted access between University Parkway and the Access Point on the west boundary of the Brenken Property is maintained. The FCOSC Owner's access easement over the Brenken Property shall be over the drive aisles located on the Brenken Property. Brenken Owner shall have the right to modify or relocate the drive aisles located on the Brenken Property from time to time provided that continuous and uninterrupted access over the Brenken Property between the Access Points is maintained. The easements granted herein shall be for the use of each Owner and the customers, suppliers, tenants, service providers, guests and invitees of such grantee Owner's Property. No Owner may impair the flow of traffic over and across the drive aisles described above. For avoidance of doubt, the drive aisles shall at all times be sufficient to allow the free flow of commercial delivery vehicles to access the other Owner's Property; provided, however, that Brenken Owner hereby acknowledges that the drive aisles located on the FCOSC Property as of the date of this Agreement satisfy such requirement. Each Owner shall have the right to temporarily close the drive aisles located on such Owner's Property for construction, maintenance or other temporary purposes as long as uninterrupted access to at least one of 200 East Street or University Parkway is maintained.

2. Construction of Access Points. Brenken Owner shall be responsible for the construction of the Access Points and all work related thereto as shown on Exhibit C pursuant to plans and specifications to be approved in writing by FCOSC Owner. Brenken Owner shall have the right to have UTA (or its designee) prepare such plans and specifications and to perform the construction. FCOSC Owner shall bear no expense in connection with the design, permitting or construction of the Access Points. FCOSC Owner hereby grants to Brenken Owner a temporary construction license as is reasonably necessary for the construction of the Access Points and acknowledges that UTA and its contractors, as Brenken Owner designees, will be permitted to use such construction license. Brenken Owner will notify FCOSC Owner regarding the timing of the construction of the Access Points. FCOSC Owner shall have the right to reasonably approve the construction schedule and work plan for the construction of the Access Points to the extent that such construction affects use of the drive aisles and parking located on the FCOSC Property. Brenken Owner shall promptly repair and restore (or cause to be repaired and restored) any asphalt, curbing or other improvements located on the Properties that are damaged or otherwise affected by the construction of the Access Points. Brenken Owner shall maintain (or cause to be maintained) insurance relating to the construction work reasonably acceptable to FCOSC Owner. Brenken Owner shall indemnify, defend and hold FCOSC Owner, and its affiliates, tenants, employees and agents harmless from and against all claims, causes of action, liabilities, damages, costs or expenses (including reasonable attorneys' fees) incurred by or brought against such indemnified parties in connection with or related to the construction of the

Access Points. Brenken Owner shall perform (or cause to be performed) its obligations under this paragraph at its sole cost and expense, and FCOSC Owner shall bear no cost or expense in connection with the construction of the Access Points.

3. Maintenance and Repair. Following the completion of the construction of the Access Points, each Owner shall be responsible for the maintenance and repair of the drive aisles on its own Property in accordance with a maintenance standard at least commensurate with the maintenance standard for the drive aisles located on the Property as of the date of this Agreement.

4. Reciprocal Easement and Operation Agreement. The parties acknowledge that the FCOSC Property is encumbered by that certain Reciprocal Easement and Operation Agreement dated as of April 26, 1991 between R.C. Willey Home Furnishings, a Utah corporation, University Square Associates, a Utah limited partnership, and TOYS "R" Us, Inc., a Delaware corporation, and recorded on April 30, 1991 at Entry 15743, Book 2785, Page 702 in the official records of Utah County, Utah (the "Original REA"), as amended by First Amendment to Reciprocal Easement and Operation Agreement dated October 22, 1991 and recorded on August 7, 1992 at Entry 39973, Book 2978, Page 920 and re-recorded on August 21, 1992 at Entry 42918, Book 2986, Page 801 (the "First REA Amendment"), and Second Amendment to Reciprocal Easement and Operation Agreement dated June 15, 2017 and recorded on June 15, 2017 at Entry 57752 (the "Second REA Amendment"), pertaining to the FCOSC Property and other property located adjacent to or in the vicinity of the FCOSC Property and more particularly described therein (the "Existing REA Properties"). The Original REA, as amended by the First REA Amendment and Second REA Amendment, is referred to herein as the "Existing REA"). This Agreement does not incorporate the Brenken Property into the Existing REA, but Brenken Owner acknowledges the existence of the Existing REA. The other owners of the Existing REA Properties have consented to the access easements granted herein pursuant to the Second REA Amendment. Brenken Owner agrees that the access rights between and among the Existing REA Properties under the Existing REA will not constitute an overburdening of the access easement granted in favor of the FCOSC Property under this Agreement.

5. Right of First Negotiation. As material consideration for the execution of this Agreement by FCOSC Owner, Brenken Owner hereby grants to Family Center Orem Shopping Center, LLC, a Delaware limited liability company, or its affiliate, including CCA Acquisition Company, LLC (collectively, "FCOSC") (but not any unrelated third party to which ownership of the FCOSC Property is conveyed) a right of first negotiation to purchase the Brenken Property. Such right of first negotiation shall be for a term of twenty (20) years after the date of this Agreement. For purposes of clarification, the right of first negotiation shall survive for the 20-year period after the date of this Agreement even if Family Center Orem Shopping Center, LLC or its affiliate no longer continues to own the FCOSC Property. FCOSC shall have no right to assign the right of first negotiation to any unrelated third party, including without limitation, any unrelated third party purchaser of the FCOSC Property.

If Brenken Owner desires to sell or transfer the Brenken Property (or any portion thereof), then prior to any such sale or transfer, Brenken Owner shall first notify FCOSC in writing and enter into good faith negotiations with FCOSC to sell the Brenken Property to

FCOSC upon such terms as are mutually agreeable to FCOSC and Brenken Owner (“Offer Notice”). During the period commencing on the date of the delivery of the Offer Notice and continuing for thirty (30) days thereafter (the “Exclusivity Period”), Brenken Owner shall not enter into negotiations with or entertain offers from third parties for the purchase and sale of the Brenken Property, but shall negotiate exclusively with FCOSC regarding the purchase and sale of the Brenken Property. If FCOSC and Brenken Owner have not entered into a binding written contract for the purchase and sale of the Brenken Property or otherwise mutually agreed to extend the period of exclusive negotiations by the end of the Exclusivity Period, then Brenken Owner shall be free to sell the Brenken Property to third parties upon such terms as are acceptable to Brenken Owner provided that the terms of such sale are not more favorable to the buyer than the most favorable terms offered to FCOSC during the Exclusivity Period. If Brenken Owner does not sell the Brenken Property to a third party within one hundred fifty (150) days of the delivery of the Offer Notice, then Brenken Owner shall again comply with the terms and provisions of this Section 5 prior to any subsequent sale of the Brenken Property to a third party. Upon the completion of the sale of the Brenken Property to an unrelated third party in compliance with the terms and provisions of this Section 5, the terms and provisions of this Section 5 shall terminate. This Section 5 will not apply to any transfer by descent or devise following the death of any individual with an ownership interest in Brenken Owner or to transfers by and among Brenken Owner or any affiliate of Brenken Owner, or any family member of any individual owning an interest in Brenken Owner, including for estate planning purposes; provided, however, that the provisions of this Section 5 shall remain binding upon any such transferee and its heirs, successors and assigns until the consummation of a sale of the Brenken Property to an unrelated third party purchaser in compliance with the terms and provisions of this Section 5. FCOSC’s notice address is the address set forth in the recording caption on page 1 of this Agreement or such other notice address as to which FCOSC informs Brenken Owner in writing. Brenken Owner’s notice address is Brenken Properties, LLC, 1929 South 180 West, Orem, Utah 84058, Attn: Taig Stewart, or such other notice address as to which Brenken Owner notifies FCOSC in writing.

6. Binding Effect. The covenants, terms and provisions of this Agreement are intended to run with the land and burden and benefit each Property, as applicable. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, executors, administrators, successors and assigns.

7. Attorneys’ Fees. If any litigation or arbitration arises out of this Agreement, the prevailing party shall be entitled to receive from the losing party an amount equal to the prevailing party’s attorneys’ fees and costs incurred in such litigation or arbitration, including, without limitation, costs of perfecting, enforcing and collecting any judgment.

8. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the state in which the Properties are located.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which when taken together shall be deemed to be one and the same instrument.

10. Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, understandings, and agreements of any

nature whatsoever with respect to the subject matter hereof. This Agreement may not be modified other than by an agreement in writing. The captions included in this Agreement are for convenience only and in no way define, describe or limit the scope or intent of the terms of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

BRENKEN PROPERTIES LLC,
a Utah limited liability company

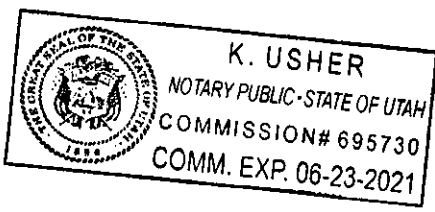
By: [Signature]
Name: MANAGER
Its: TAIG STEWART / JAU HWA STEWART

State of Utah)
County of Utah)

On this 12th day of September, 2017, personally appeared before me Taig Stewart and Jau Hwa Stewart whose identity is personally known to me or proven on the basis of satisfactory evidence to be the person whose names ^{are} subscribed to this instrument, and acknowledged that he ~~or she~~ ^{they} signed this instrument as the Managing Members of such entity, by authority duly granted by such entity.

[Signature]
Notary Public

My commissions expires: 6-23-2021

Seal: 

FAMILY CENTER OREM SHOPPING CENTER,
LLC, a Delaware limited liability company

By: CCA Acquisition Company, LLC,
a California limited liability company,
manager

By: *Steven H. Usdan*
Steven H. Usdan, managing member

State of _____)
 §
County of _____)

On this _____ day of _____, 2017, personally appeared before me
_____, whose identity is personally known to me or proven
on the basis of satisfactory evidence to be the person whose name is subscribed to this
instrument, and acknowledged that he or she signed this instrument as the
_____ of such entity, by authority duly granted by such entity.

Notary Public

My commissions expires: _____

Seal:

*See attached
CA Certificate*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Los Angeles)

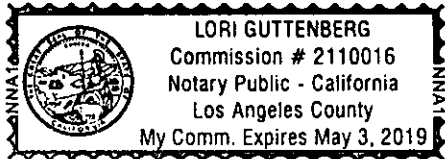
On September 11, 2017 before me, Lori Guttenberg, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Steven H. Usdan
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Lori Guttenberg
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

EXHIBIT A

LEGAL DESCRIPTION OF BRENKEN PROPERTY

Lot 1, University Parkway Subdivision, according to the official plat thereof on file and of record in the office of the Utah County recorder.

EXHIBIT B

LEGAL DESCRIPTION OF FCOSC PROPERTY

Lot 1, University Square Plat "C", according to the official plat thereof on file and of record in the office of the Utah County recorder.

EXHIBIT C - LOCATION OF ACCESS POINTS

