

MJT: 28704
APN: 14-23-477-002

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

West Valley Pavilion, LLC
145 South Fairfax Avenue, Suite 401
Los Angeles, California 90036
Attn.: Steven Usdan

11410948
6/15/2012 11:24:00 AM \$41.00
Book - 10026 Pg - 5591-5604
Gary W. Ott
Recorder, Salt Lake County, UT
METRO NATIONAL TITLE
BY: eCASH, DEPUTY - EF 14 P.

AGREEMENT CONTAINING COVENANTS

THIS AGREEMENT CONTAINING COVENANTS ("Agreement") is dated as of June 15, 2012 ("Effective Date") by and between WEST VALLEY PAVILION, LLC, a Delaware limited liability company (with its successors and assigns, "Seller"), and WVP RETAIL CENTER, LLC, a Delaware limited liability company (with its successors and assigns, "Buyer").

RECITALS

A. Seller and Buyer's predecessor-in-interest, Martin Colombatto, entered into that certain Real Estate Purchase and Sale Agreement dated April 9, 2012 (as amended, the "Purchase Agreement"), pursuant to which Seller is conveying to Buyer certain real property described on Exhibit A attached hereto ("Buyer's Property").

B. Buyer's Property is part of a retail center that is encumbered by that certain Declaration of Easements and Conditions dated August 7, 2008 and recorded in the Official Records of Salt Lake County, Utah on August 7, 2008 as Instrument No. 10494814, as amended by First Amendment to Declaration of Easements and Conditions dated December 23, 2009 and Second Amendment to Declaration of Easements and Conditions dated May, 2010 (collectively, the "Declaration"). Buyer is purchasing Buyer's Property subject to the Declaration. The real property encumbered by the Declaration is referred to herein as the "Shopping Center." All initial capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings given such terms in the Declaration.

C. Seller is retaining ownership of certain portions of the Shopping Center described on Exhibit B attached hereto ("Seller's Retained Property").

D. Seller and Buyer desire to enter into this Agreement for the purpose of the confirmation of certain matters pertaining to the ownership, improvement and operation of Buyer's Property and Seller's Retained Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Exclusive Use Rights in Favor of Buyer's Property. Seller's Retained Property shall be bound by and used in a manner that does not conflict with or violate the exclusive use rights and restrictions that are set forth on Exhibit C attached to this Agreement ("Buyer Exclusives"), to the same extent that Seller's Retained Property is bound by such Buyer Exclusives under the applicable leases in effect for Buyer's Property as of the Effective Date.

2. Exclusive Use Rights in Favor of Seller's Retained Property. Buyer's Property shall be bound by and used in a manner that does not conflict with or violate the exclusive use rights and restrictions that are set forth on Exhibit D attached to this Agreement ("Seller Exclusives"), to the same extent that Buyer's Property is bound by such Seller Exclusives under the applicable leases in effect for Seller's Retained Property as of the Effective Date.

3. Monument Sign Easement in Favor of Seller's Retained Property. Buyer hereby grants to Seller an exclusive easement for the benefit of Seller's Retained Property for access to and from, and for the construction, use, maintenance, repair and replacement of, the Kornwasser Tract Monument Sign referenced in Section 5.3(a)(iii) of the Declaration to be constructed on Buyer's Property. Buyer shall have no rights to use such Kornwasser Tract Monument Sign. Notwithstanding any contrary provision of the Declaration, Seller shall have the right to construct such Kornwasser Tract Monument Sign in the approximate location shown on Exhibit E attached to this Agreement. The Kornwasser Tract Monument Sign referenced in this Section 3 is intended for use by the occupants of Seller's Retained Property.

4. Center Sign Rights in Favor of Buyer's Property. Buyer shall have the right for the benefit of Buyer's Property to use for the Occupants of Buyer's Property four (4) of the six (6) two-sided sign panels on the Center Sign referenced in Section 5.3(a)(i) of the Declaration located along 5600 West Street on the WinCo Tract under the Declaration (excluding the top sign panel used by WinCo or its successor (the "Major Sign Panel")). The four (4) sign panels that Buyer has the right to use on such Center Sign shall be the four (4) outside sign panels (i.e., the two most easterly and two most westerly sign panels located below the Major Sign Panel, with Seller retaining the right to use for Seller's Retained Property the two interior sign panels located below the Major Sign Panel. Buyer's rights under this Section 4 shall be subject to the terms and provisions of the Declaration. Buyer shall be responsible at Buyer's sole cost and expense for the maintenance, repair and replacement in a first class condition and appearance of the individual signs on the sign panels that Buyer has the right to use under this Section 4. Notwithstanding the Declaration, Buyer shall reimburse Seller within thirty (30) days after written request from Seller for a pro rata share of the operation, maintenance, repair and replacement costs of the Center Sign referenced in this Section 4 that are the responsibility of the owner of the Kornwasser Tract under the Declaration. Such pro rata share be a fraction the numerator of which is the total fascia area of the four (4) sign panels that Buyer has the right to use on the Center Sign under this Section 4 and the denominator of which is the total fascia area of all six (6) sign panels on the

Center Sign (excluding the Major Sign Panel). Notwithstanding any contrary provision of the Declaration, except for Buyer's rights expressly set forth in this Section 4, none of the rights under the Declaration in favor of the Kornwasser Tract with respect to the Center Signs or the Kornwasser Tract Monument Signs shall be transferred to, or run in favor or inure to the benefit of, Buyer or Buyer's Property, and Seller reserves all of such rights on an exclusive basis for the benefit of Seller's Retained Property.

5. Modifications of Declaration. Seller shall have the right as owner of Seller's Retained Property, without the consent, approval or joinder of or by Buyer; to amend or modify the Declaration with WinCo, and/or to obtain waivers from WinCo with respect to the Declaration, and such amendments, modifications and waivers shall be binding upon Buyer's Property as long as such amendments, modifications or waivers pertain only to Seller's Retained Property or the WinCo Tract and do not pertain to Buyer's Property or modify the sign rights of Buyer set forth in Section 4 of this Agreement.

6. Notices. All notices required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such notice is (a) delivered to the party intended, (b) delivered to the then designated address of the party intended, (c) rejected at the then designated address of the party intended, provided such notice was sent prepaid, or (d) the date of receipt (as confirmed by the carrier's records) at the then designated address of the party intended if sent by nationally recognized overnight courier with delivery instructions for "next business day" service, or by United States certified mail, return receipt requested, postage prepaid and addressed to the then designated address of the party intended. The initial addresses of the parties shall be:

If to Seller:

West Valley Pavilion, LLC
145 South Fairfax Avenue, Suite 401
Los Angeles, California 90036
Attn.: Steven Usdan

If to Buyer:

WVP Retail Center, LLC
4130 Calle Isabella
San Clemente, California 92672
Attn.: Martin Colombatto

Each party shall have the right to change its address for notices to any other address within the United States of America upon written notice to the other party in accordance with this Section 6.

7. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

8. Run With the Land. The terms, provisions, agreements, covenants, conditions and restrictions set forth in this Agreement shall be equitable servitudes, and shall run in favor and be enforceable for the benefit of, and shall be binding upon and enforceable against, each party's property and each of their respective successors and assigns as owner of such property. The liability of each party under this Agreement shall be limited to its period of ownership of the legal parcel of property that is the subject of such liability, provided that no sale or transfer shall relieve a party of liability for any act, omission or breach arising or occurring during such period of ownership.

9. Miscellaneous. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah, and venue and jurisdiction for any legal action regarding this Agreement shall lie in Salt Lake County, Utah. This Agreement may not be amended or modified except in writing executed by the party against whom such amendment or modification is being charged. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements between the parties with respect thereto, whether oral or written, including without limitation, the Purchase Agreement. No delay or omission in exercising any right or in enforcing any provision of this Agreement shall constitute a waiver of such right or provision. In the event of a dispute or litigation between the parties with respect to the interpretation or enforcement of this Agreement, the prevailing party in such dispute shall be entitled to reimbursement from the non-prevailing party of its reasonable out-of-pocket attorneys' fees and costs incurred in connection with such dispute or litigation, including costs and expenses incurred in connection with the enforcement, perfection or collection of any judgment. If any provision of this Agreement is invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating the remaining portions of such provision or the remaining provisions of this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

WEST VALLEY PAVILION, LLC, a
Delaware limited liability company

By: West Valley Pavilion Managing
Member, LLC, a Delaware limited
liability company, its managing
member

By: 
Steven Usdan, Authorized Signatory

~~WVP RETAIL CENTER, LLC, a Delaware
limited liability company~~


~~By: _____
Name: _____
Title: _____~~

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

~~WEST VALLEY PAVILION, LLC, a
Delaware limited liability company~~


~~By: West Valley Pavilion Managing
Member, LLC, a Delaware limited
liability company, its managing
member~~

~~By:~~

~~
Steven Usden, Authorized Signatory~~

WVP RETAIL CENTER, LLC, a Delaware
limited liability company

By:


Name: Martin Colombatto
Title: MANAGER

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

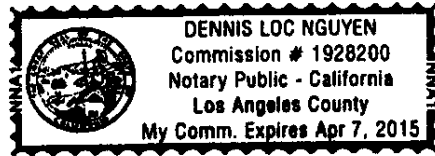
On June 13, 2012, before me, Dennis L. Nguyen, Notary Public,
personally appeared Steven Usdan

who proved to me on the basis of satisfactory evidence to be the person(s) whose name
is 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 on the instrument, the person(s) or the entity(ies) 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 Dennis L. Nguyen



(This area for official notarial seal)

~~STATE OF CALIFORNIA)
)
COUNTY OF _____)~~

~~On _____, 20____, before me, _____, Notary Public,
personally appeared _____~~

~~who proved to me on the basis of satisfactory evidence to be the person(s) whose name
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 on the instrument, the person(s) or the entity(ies) 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 _____~~

~~(This area for official notarial seal)~~

~~STATE OF CALIFORNIA)~~

~~COUNTY OF Los Angeles)~~

~~On June 13, 2012, before me, Dennis L. Nguyen, Notary Public,
personally appeared Steven Uselan~~

~~who proved to me on the basis of satisfactory evidence to be the person(s) whose name
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 on the instrument, the person(s) or the entity(ies) 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 Dennis L. Nguyen~~



(This area for official notarial seal)

STATE OF CALIFORNIA)

COUNTY OF Orange)

On June 14, 2012, before me, Bonnie Coelho, Notary Public,
personally appeared Martin Joseph Colombaro

who proved to me on the basis of satisfactory evidence to be the person(s) whose name
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 on the instrument, the person(s) or the entity(ies) 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 Bonnie Coelho



(This area for official notarial seal)

EXHIBIT A

LEGAL DESCRIPTION OF BUYER'S PROPERTY

That certain real property situated in the City of West Valley, County of Salt Lake, State of Utah more particularly described as follows:

Lot 2 of West Valley Pavilion, according to the official plat thereof, recorded in the office of the Salt Lake County Recorder.

EXHIBIT B

LEGAL DESCRIPTION OF SELLER'S RETAINED PROPERTY

That certain real property situated in the City of West Valley, County of Salt Lake, State of Utah more particularly described as follows:

Lots 3 and 4 of West Valley Pavilion, according to the official plat thereof, recorded in the office of the Salt Lake County Recorder.

and

THOSE PORTIONS OF LOTS 5, 6, AND 7 OF THE WEST VALLEY PAVILION SUBDIVISION IN THE CITY OF WEST VALLEY, COUNTY OF SALT LAKE, STATE OF UTAH, PER THE OFFICIAL PLAT THEROF, DESCRIBED IN WHOLE AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID LOT 6; THENCE SOUTH 89°58'55" WEST 32.60 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00°14'08" WEST 121.63 FEET;
THENCE SOUTH 89°31'52" EAST 34.69 FEET;
THENCE SOUTH 00°35'52" EAST 235.00 FEET;
THENCE SOUTH 89°24'40" WEST 66.00 FEET;
THENCE SOUTH 38°53'19" WEST 15.99 FEET;
THENCE SOUTH 89°08'42" WEST 109.12 FEET;
THENCE NORTH 00°14'08" EAST 59.90 FEET;
THENCE NORTH 89°45'52" WEST 34.45 FEET;
THENCE NORTH 00°14'03" EAST 193.06 FEET;
THENCE SOUTH 89°45'52" EAST 107.03 FEET;
THENCE NORTH 00°14'08" EAST 118.97 FEET;
THENCE NORTH 89°58'55" EAST 74.39 FEET TO THE TRUE POINT OF BEGINNING;

and

THAT PORTION OF LOT 6 OF THE WEST VALLEY PAVILION SUBDIVISION IN THE CITY OF WEST VALLEY, COUNTY OF SALT LAKE, STATE OF UTAH, PER THE OFFICIAL PLAT THEROF, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID LOT 6; THENCE SOUTH 89°58'55" WEST 32.60 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89°58'55" EAST 275.19 FEET;
THENCE SOUTH 00°27'59" WEST 123.96 FEET;
THENCE NORTH 89°31'52" WEST 274.69 FEET;

THENCE NORTH 00°14'08" EAST 121.63 FEET TO THE TRUE POINT OF
BEGINNING.

EXHIBIT C

BUYER'S EXCLUSIVES

Dickey's

The operation of a fast casual or take out restaurant engaged primarily in the sale of, or specializing in the sale of, barbeque food similar the barbeque food offered on tenant's menu as of the date of the execution of any letter of intent or written proposal (or lease or purchase agreement, if a lease or purchase agreement is not preceded by a letter of intent or written proposal) for such occupant. Notwithstanding anything to the contrary contained herein, the foregoing restriction shall not be applicable to any full-service, sit-down restaurant (i.e., excluding a "fast casual" restaurant). For purposes hereof, "primarily" shall mean that more than twenty-five percent (25%) of the occupant's gross sales from its space in the Shopping Center are derived from the sale of barbeque food described above.

Great Clips

The primary purpose of the operation of a haircutting salon. Notwithstanding anything to the contrary contained herein, the foregoing restriction shall not be applicable to (a) a full-service hair salon, or (ii) a children's themed salon.

Mattress Firm

The primary use for the sale of mattresses and/or waterbeds. For purposes hereof, a use shall be deemed a "primary use" if such tenant derives more than fifteen percent (15%) of its gross sales from such items.

Professional Dental Services

The primary purpose of general dentistry and children's dentistry.

EXHIBIT D

SELLER'S EXCLUSIVES

Flower Patch

The primary purpose of the sale of fresh cut flowers, excluding any incidental use that constitutes not more than ten percent (10%) of the gross revenue derived from the occupant's business in its premises.

EXHIBIT E

LOCATION OF KORNWASSER TRACT MONUMENT SIGN

