

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

West Valley Pavilion, LLC
5670 Wilshire Boulevard, Suite 1250
Los Angeles, California 90036
Attn.: Steven Usdan

11924088
10/3/2014 11:30:00 AM \$42.00
Book - 10265 Pg - 2123-2138
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 16 P.

NCS- 679582
14-23-417-008

AGREEMENT CONTAINING COVENANTS

THIS AGREEMENT CONTAINING COVENANTS ("Agreement") is dated as of October 2nd, 2014 ("Effective Date") by and between WEST VALLEY PAVILION, LLC, a Delaware limited liability company (with its successors and assigns, "Seller"), and HZ PROPS UT, LLC, a Utah limited liability company (with its successors and assigns, "Buyer").

RECITALS

A. Seller and Buyer entered into that certain Purchase and Sale Agreement dated July 17, 2014 (as amended, the "Purchase Agreement"), pursuant to which as of the Effective Date Seller is conveying to Buyer certain real property described on Exhibit A attached hereto ("Buyer's Property") which is part of an integrated retail development referred to herein as the Shopping Center (defined below).

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

C. The Shopping Center is encumbered by Declaration of Easements and Conditions dated August 7, 2008, and recorded as Instrument No. 10494814, as amended by that certain First Amendment to Declaration of Easements and Conditions dated December 23, 2009, and recorded as Instrument No. 10865205 and that certain Second Amendment to Declaration of Easements and Conditions dated June 1, 2010, and recorded as Instrument No. 10964013 (collectively, the "Declaration"); various portions of the Shopping Center are encumbered by (i) that certain Agreement Containing Covenants dated December 23, 2009, and recorded as Instrument Number 10866031, (ii) that certain Agreement Containing Covenants dated June 15, 2012, and recorded as Instrument Number 11410948; and (iii) that certain Agreement Containing Covenants dated May 15, 2014, recorded as Instrument Number 11850190 (the "Peterson ACC"). The Declaration and all of the foregoing documents referenced in this paragraph are collectively referred to as the "Existing Agreements." The "Shopping Center" means the entire real property encumbered by the Declaration.

D. The Existing Agreements address shared access and parking easements, utility easements, signage rights, development parameters, common area maintenance, use restrictions and other matters related to the use and operation of the Shopping Center. Buyer is purchasing Buyer's Property subject to the Existing Agreements.

E. Seller and Buyer desire to enter into this Agreement for the purpose of the confirmation of certain additional 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. Development of Buyer's Property. Buyer's Property shall be developed in accordance with the site plan attached to this Agreement as Exhibit C (the "Site Plan"), and there shall be no improvements or alterations to Buyer's Property that are in conflict with the Site Plan without the consent of the owner of Seller's Retained Property. The building now or hereafter located on Buyer's Property shall be a one-story building not exceeding a Floor Area (as defined in the Declaration) of 3,355 square feet, with a height not exceeding 21.6 feet to the parapet and 24 feet to the highest architectural feature (which foregoing maximum Floor Area and height parameters Seller represents are in compliance with the maximum Floor Area and height parameters for such building contained within the Existing Agreements), located within the building envelope depicted on Exhibit C. Buyer's Property shall contain not less than the number of parking spaces depicted on Exhibit C and in no event less than the number of parking spaces required by all applicable governmental regulations for a fast food restaurant with drive through lane (taking cross-parking rights in the Existing Agreements into account). The parking spaces located on Buyer's Property shall comply with the standard/compact/handicapped/non-reserved space requirements consistent with applicable law, the Existing Agreements and Exhibit C, and no material changes shall be made to the parking and drive aisles on Buyer's Property without the consent of the owner of Seller's Retained Property, which consent may be withheld for good faith business purposes. The building and other improvements constructed on Buyer's Property must be architecturally compatible with the other buildings constructed in the Shopping Center.

2. Use of Buyer's Property. Buyer's Property (including the improvements located thereon) shall initially be used for restaurant purposes, but, following five (5) years' operation as a restaurant, may be used for any other lawful retail or restaurant purpose which does not violate applicable laws. Notwithstanding the foregoing, Buyer's Property shall not be used in any manner in violation of the Existing Agreements or Future Use Restrictions (as defined below). "Future Use Restrictions" means all future exclusive use rights or restrictions granted to any buyer, tenants or occupants of Seller's Retained Property after the Effective Date of this Agreement and as to which such future exclusive use right or restriction has been recorded or disclosed in writing to Buyer prior to the date of the commencement of the conflicting use on Buyer's Property; provided,

however, that in no event shall Buyer's Property be restricted from the operation of a fast food restaurant for the sale of chicken or chicken related items.

3. Exclusive Use Rights in Favor of Buyer's Property. For so long as the building on Buyer's Property is open and operating as a fast food restaurant whose primary sales item (defined as more than twenty-five percent (25%) of gross sales) is the sale of chicken or chicken related items, no owner, tenant or occupant of Seller's Retained Property shall be allowed to operate as a freestanding fast food restaurant with drive-thru, whose primary sales item (defined as more than twenty-five percent (25%) of gross sales) is the sale of chicken or chicken related items.

4. Construction, Opening and Continued Operation of Business on Buyer's Property. Buyer shall construct (or cause to be constructed) the restaurant building on Buyer's Property and open such restaurant (or cause such restaurant to be opened) for business within twelve (12) months after receipt of all necessary permits and licenses for the construction of such restaurant building (the "Opening Period"); provided, however, if Buyer fails to file for such permits and licenses in a timely manner and thereafter diligently pursue receipt of such permits and licenses, then the Opening Period shall be twelve (12) months after the date that Buyer would have reasonably expected to have received such permits and approvals if Buyer had filed for such permits and licenses in a timely manner and thereafter diligently pursued receipt of such permits and licenses; provided, further, however, that the Opening Period shall be extended for any delays in the completion of the construction of the restaurant building on Buyer's Property caused by Seller or Force Majeure Events. "Force Majeure Events" means fire, flood, hurricane, tornado, earthquake, lightning or other casualty, strike, lockout, inability to procure materials, riot, insurrection or war, or other cause beyond Buyer's reasonable control (other than lack of funds). If Buyer fails to construct the restaurant building on Buyer's Property and open for business within the Opening Period (as such Opening Period may be extended as provided above), then the owner of Seller's Retained Property shall have the right to re-purchase Buyer's Property (and all improvements located thereon) at a purchase price equal to the Purchase Price for Buyer's Property set forth in the Purchase Agreement plus the unamortized improvement costs incurred by Buyer for the construction of improvements on Buyer's Property (but, if the restaurant building is not completed and opened for business, then for purposes of determining the Re-Purchase Price, such costs shall not exceed the fair market value of the restaurant building improvements as, and to the extent, completed by Buyer), which costs shall be amortized on a straight-line basis over the useful life of such improvements (the "Re-Purchase Price"). If after once opening for business to the public the restaurant building on Buyer's Property is closed for more than six (6) consecutive months (excluding any reasonable period required to restore casualty damage and excluding any temporary closure for not longer than 60 days for renovation or remodeling), then the owner of Seller's Retained Property shall have the right to re-purchase Buyer's Property (and all improvements located thereon) at the Re-Purchase Price.

5. Monument Sign Rights. The monument sign on Buyer's Property in the location depicted on Exhibit D as the "2700 South Sign" is referred to herein as the "2700

South Sign” and the monument sign outside of Buyer’s Property in the location depicted on Exhibit D as the “5600 West Sign” is referred to herein as the “5600 West Sign”.

5.1 2700 South Sign. The owner of “Buyer’s Property” (as defined in the Peterson ACC) under the Peterson ACC has certain rights to use a sign panel on the 2700 South Sign in accordance with the terms and provisions of the Peterson ACC. Buyer shall have the right for the benefit of Buyer’s Property as defined in this Agreement to use one (1) sign panel on the 2700 South Sign to display the trade name of the occupant of Buyer’s Property (“Buyer’s 2700 South Sign Panel”). Buyer’s 2700 South Sign Panel shall be the middle sign panel in the top row of sign panels directly below the WinCo Foods sign panel on the 2700 South Sign as hatched on Exhibit E. Use of the remaining sign panels on the 2700 South Sign are hereby reserved by Seller for the benefit of Seller’s Retained Property or for the benefit of such other portions of the Shopping Center as to which Seller may hereafter grant sign panel rights on the 2700 South Sign. Seller hereby reserves an easement for the benefit of Seller’s Retained Property (and other portions of the Shopping Center, if and to the extent rights with respect to the 2700 South Sign are hereafter granted by Seller) for access to and from, and for the construction, use, maintenance, repair and replacement of, the 2700 South Sign. Buyer shall be responsible, at Buyer’s sole cost and expense, for the installation, maintenance, repair and replacement of Buyer’s 2700 South Sign Panel in a first-class condition and appearance. Notwithstanding the Existing Agreements, 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 2700 South Sign (excluding maintenance, repair or replacement costs of individual sign panels). Such pro rata share shall be a fraction the numerator of which is the total fascia area of Buyer’s 2700 South Sign Panel and the denominator of which is the total fascia area of all of the sign panels on the 2700 South Sign. If Buyer fails to reimburse Seller as required under the immediately preceding sentence and does not cure the delinquency within thirty (30) days after written notice from Seller, then Seller shall have the right to remove Buyer’s 2700 South Sign Panel at Buyer’s sole cost and expense.

5.2 5600 West Sign. Buyer shall have the right for the benefit of Buyer’s Property under this Agreement to use one (1) sign panel on the 5600 West Sign to display the trade name of the occupant of Buyer’s Property (“Buyer’s 5600 West Sign Panel”). Buyer’s 5600 West Sign Panel shall be the middle sign panel in the top row of sign panels directly below WinCo Foods sign panel on the 5600 West Sign as hatched on Exhibit E. Buyer shall be responsible, at Buyer’s sole cost and expense, for the installation, maintenance, repair and replacement of Buyer’s 5600 West Sign Panel in a first-class condition and appearance. Notwithstanding the Existing Agreements, 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 5600 West Sign (excluding maintenance, repair or replacement costs of individual sign panels). Such pro rata share shall be a fraction the numerator of which is the total fascia area of Buyer’s 5600 West Sign Panel and the denominator of which is the total fascia area of all of the sign panels on the 5600 West Sign. If Buyer fails to reimburse Seller as required under the immediately preceding sentence and does not cure the delinquency within thirty

(30) days after written notice from Seller, then Seller shall have the right to remove Buyer's 5600 West Sign Panel at Buyer's sole cost and expense.

5.3 Additional Monument Sign on Buyer's Property. Buyer, at its sole cost and expense, shall have the right to construct an additional monument sign on Buyer's Property for Buyer's sole use, provided that such additional monument sign does not reduce or affect the visibility of the 2700 South Sign or reduce or affect any signage rights for the remainder of the Shopping Center.

5.4 No Other Monument or Pylon Sign Rights. Notwithstanding any contrary provision of the Existing Agreements, except for Buyer's rights expressly set forth above in this Section 5, none of the rights under the Existing Agreements in favor of the Kornwasser Tract (including Buyer's Property) with respect to any monument or pylon signage described in the Existing Agreements shall be transferred to, or run in favor or inure to the benefit of, Buyer or Buyer's Property. Seller hereby reserves all of such rights.

6. 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 Existing Agreements and/or to obtain waivers from parties under the Existing Agreements, and such amendments, modifications and waivers shall be binding upon Buyer's Property as long as such amendments, modifications or waivers pertain only to portions of the Shopping Center outside of Buyer's Property and (i) do not pertain to Buyer's Property, (ii) modify the sign rights of Buyer set forth in Section 5 of this Agreement (iii) does not negatively impact visibility to Buyer's building from 5600 West, (iv) does not negatively impact access to or from Buyer's Property, (v) does not negatively impact parking on Buyer's Property or (vi) any other rights of Buyer as an owner under the Existing Agreements.

7. 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
5670 Wilshire Boulevard, Suite 1250
Los Angeles, California 90036
Attn.: Steven Usdan

If to Buyer:

HZ PROPS UT, LLC
4415 State Highway 6
Sugar Land, Texas 77478
Attn.: Amin Dhanani

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 7.

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.

10. Seller's Representations. Seller represents and warrants to Buyer that it has obtained all necessary approvals required by the Existing Agreements, as applicable, for Buyer to purchase the Buyer's Property, and that Buyer's construction of a restaurant building and operation of a fast-food restaurant does not violate any of the Existing

Agreements. Seller shall indemnify, defend and hold harmless Buyer from any and all claims by any owner or occupant within the Shopping Center with regard to Buyer's purchase and use of the Buyer's Property as specified in this Agreement.

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
Steven Usdan, Authorized Signatory

HZ PROPS UT, LLC, a Utah limited
liability company

By: _____
Amin Dhanani, Manager

Agreements. Seller shall indemnify, defend and hold harmless Buyer from any and all claims by any owner or occupant within the Shopping Center with regard to Buyer's purchase and use of the Buyer's Property as specified in this Agreement.

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

HZ PROPS UT, LLC, a Utah limited
liability company

By: 
Amin Dhanani, Manager

STATE OF CALIFORNIA)

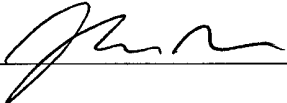
COUNTY OF Los Angeles)

On October 1, 2014, before me, Jocelyn Maynes, Notary Public,
personally appeared Steven Usdan

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 _____)

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 _____)

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 TEXAS)
)
COUNTY OF Ft. Bend)

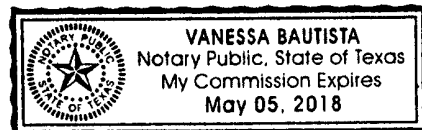
On October 1, 2014, before me, Vanessa Bautista, Notary Public,
personally appeared Amin Dhanani

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 Vanessa Bautista



(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:

ADJUSTED LOT 5

A PART OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 1 SOUTH, RANGE 2 WEST, OF THE SALT LAKE BASE AND MERIDIAN. BEGINNING AT THE SOUTHEAST CORNER OF LOT 4 OF WEST VALLEY PAVILION SUBDIVISION, ALSO BEING ON THE NORTH RIGHT-OF-WAY LINE OF PARKWAY BOULEVARD, SAID POINT BEING LOCATED NORTH 00°28'08" EAST 54.24 FEET AND SOUTH 90°00'00" WEST 474.16 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 23; THENCE ALONG THE EASTERLY LINE OF SAID LOT 4 THE FOLLOWING THREE (3) COURSES; (1) THENCE NORTH 00°14'08" EAST 59.90 FEET; (2) THENCE NORTH 89°45'52" WEST 34.45 FEET; (3) THENCE NORTH 00°14'08" EAST 163.15 FEET; THENCE SOUTH 89°45'52" EAST 185.17 FEET; THENCE SOUTH 00°35'52" EAST 208.01 FEET TO SAID NORTH RIGHT-OF-WAY LINE; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES; (1) THENCE SOUTH 89°24'40" WEST 34.66 FEET; (2) THENCE SOUTH 38°53'18" WEST 15.99 FEET; (3) THENCE SOUTH 89°08'42" WEST 109.13 FEET TO THE POINT OF BEGINNING.

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:

ADJUSTED LOT 3

A PART OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 1 SOUTH, RANGE 2 WEST, OF THE SALT LAKE BASE AND MERIDIAN. BEGINNING AT THE NORTHEAST CORNER OF LOT 4 OF WEST VALLEY PAVILION SUBDIVISION SAID POINT BEING LOCATED NORTH 00°28'08" EAST 237.86 FEET AND SOUTH 90°00'00" WEST 509.36 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 23; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 4 THE FOLLOWING THREE (3) COURSES; (1) THENCE NORTH 89°45'52" WEST 66.02 FEET; (2) THENCE SOUTH 00°14'08" WEST 24.03 FEET; (3) THENCE NORTH 89°45'52" WEST 147.37 FEET TO THE EAST RIGHT-OF-WAY LINE OF ANNA CAROLINE DRIVE; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES; (1) THENCE NORTH 00°09'38" EAST 62.30 FEET; (2) THENCE TO THE RIGHT ALONG THE ARC OF A 782.00 FOOT RADIUS CURVE (CHORD BEARS NORTH 06°23'38" EAST 169.81 FEET); THENCE SOUTH 77°22'23" EAST 91.30 FEET; THENCE NORTH 89°58'55" EAST 287.51 FEET; THENCE SOUTH 00°14'08" WEST 121.63 FEET; THENCE SOUTH 89°31'52" EAST 34.69 FEET; THENCE SOUTH 00°35'52" EAST 235.01 FEET TO THE NORTH RIGHT-OF-WAY LINE OF PARKWAY BOULEVARD; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE SOUTH 89°24'40" WEST 31.34 FEET; THENCE NORTH 00°35'52" WEST 208.01 FEET; THENCE NORTH 89°45'52" WEST 185.17 FEET; THENCE SOUTH 00°14'08" WEST 39.57 FEET TO THE POINT OF BEGINNING.

LOT 4

LOT 4 OF THE WEST VALLEY PAVILION SUBDIVISION IN THE CITY OF WEST VALLEY, COUNTY OF SALT LAKE, STATE OF UTAH, PER THE OFFICIAL PLAT THEROF RECORDED IN THE SALT LAKE COUNTY RECORDER.

EXHIBIT C

SITE PLAN

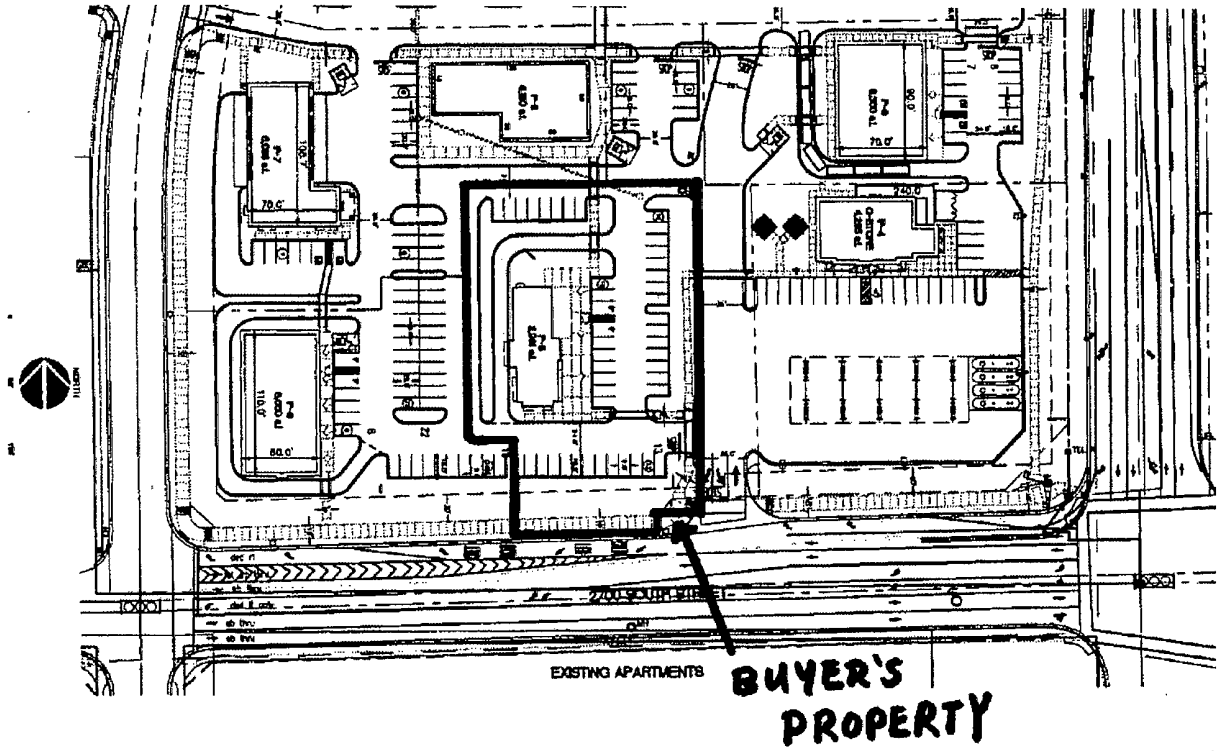


EXHIBIT D

MONUMENT SIGNAGE

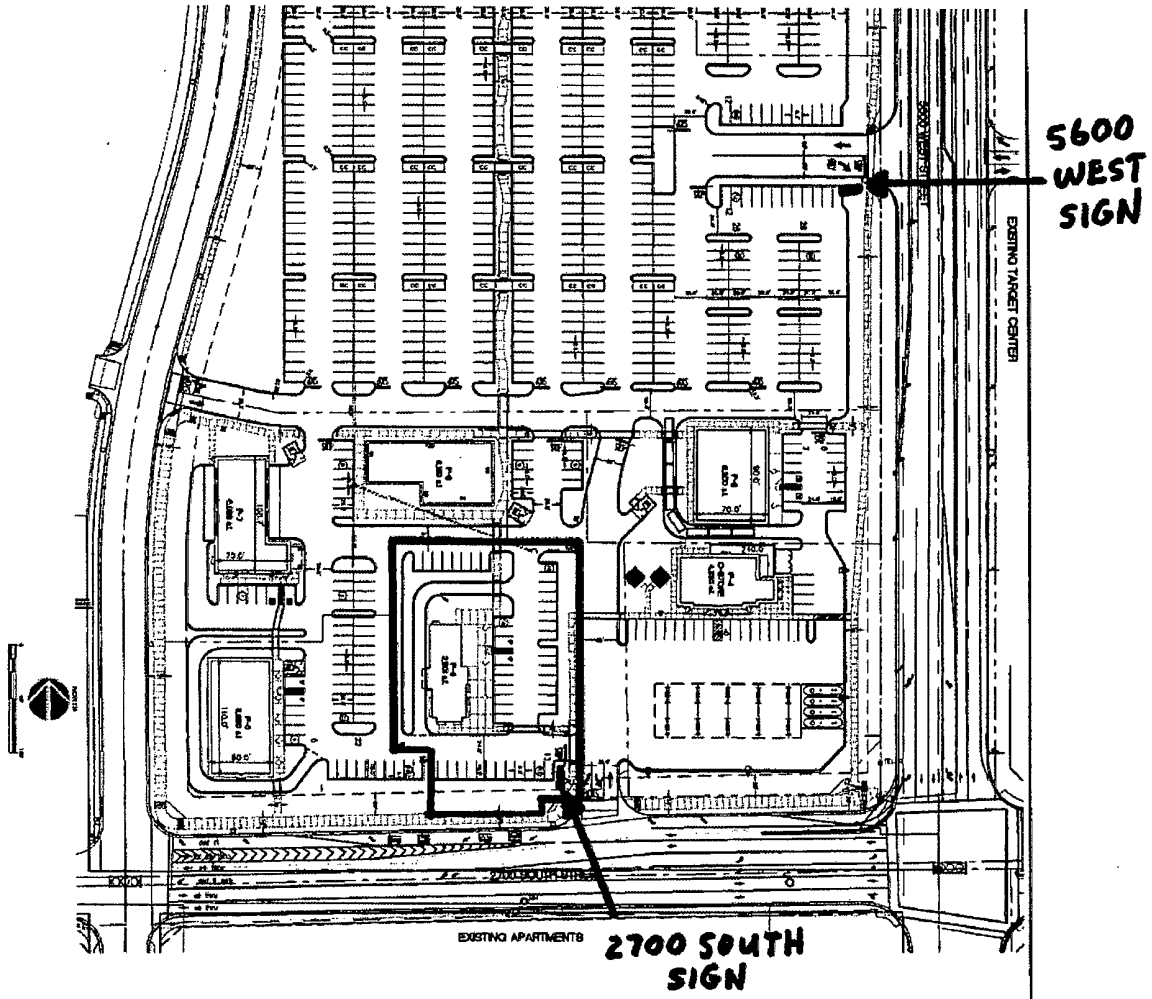


EXHIBIT E

SIGN PANEL LOCATIONS



