

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

14-23-477-004

01459-32705

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ADAM GARDINER
Recorder, Salt Lake County, UT
STEWART TITLE INS AGCY OF UT
BY: eCASH, DEPUTY - EF 11 P.

AGREEMENT CONTAINING COVENANTS

THIS AGREEMENT CONTAINING COVENANTS ("Agreement") is dated as of May 25, 2018 ("Effective Date") by and between WEST VALLEY PAVILION, LLC, a Delaware limited liability company (with its successors and assigns, "Seller"), and AMERICAN UNITED FEDERAL CREDIT UNION (with its successors and assigns, "Buyer").

RECITALS

A. Seller and Buyer entered into that certain Purchase and Sale Agreement dated January 3, 2018 (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 First Amendment to Declaration of Easements and Conditions dated December 23, 2009 and recorded as Instrument No. 10865205, Second Amendment to Declaration of Easements and Conditions dated June 1, 2010 and recorded as Instrument No. 10964013, and Third Amendment to Declaration of Easements and Conditions recorded on or prior to the date hereof (collectively, the "Declaration"); various portions of the Shopping Center are encumbered by (i) Agreement Containing Covenants dated December 23, 2009 and recorded as Instrument Number 10866031, (ii) Agreement Containing Covenants dated June 15, 2012 and recorded as Instrument Number 11410948, (iii) Agreement Containing Covenants dated May 15, 2014 and recorded as Instrument Number 11850190, and (iv) Agreement Containing Covenants dated October 2, 2014 and recorded as Instrument Number 11924088. 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 constructed on Buyer's Property shall be a one-story building not exceeding a Floor Area (as defined in the Declaration) of 6,600 square feet, with a height not exceeding 21.6 feet to the parapet and 24 feet to the highest architectural feature (or such more restrictive limitations set forth in the Existing Agreements, if applicable), located within the building envelope depicted on Exhibit C. Buyer's Property shall contain not less than the number of parking spaces depicted on Buyer's Property on Exhibit C, but in no event less than the number of parking spaces required by all applicable governmental regulations for the improvements constructed on Buyer's Property. 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 the operation of a credit union, but following five (5) years' operation as a credit union Buyer's Property may be used for any other lawful retail purpose that 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 credit union.

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 credit union, no owner or future tenant or occupant of Seller's Retained Property shall be allowed to operate as a credit union. Such restriction shall not be applicable from and after closure of the building on Buyer's Property for the Closure Period or a change in use of the building on Buyer's Property for a use different than a credit union.

4. Construction on Buyer's Property. Following the commencement of construction on Buyer's Property, Buyer shall perform and complete (or cause to be performed and completed) such construction in a continuous and diligent manner, subject to delays due to 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).

5. Sign Rights. Buyer shall have the right to maximum exterior signage on the building on Buyer's Property consistent with the sign specifications approved for the Shopping Center by West Valley City. Notwithstanding any contrary term or provision of the Existing Agreements, Buyer shall have no rights to pylon or monument signage located on portions of the Shopping Center outside of Buyer's Property, and any such pylon or monument sign rights (including any pylon or monument sign rights under the Existing Agreements in favor of the Kornwasser Tract) are reserved by Seller.

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 not Buyer's Property and do not (i) materially adversely affect visibility to Buyer's building from 2700 South Street, (ii) materially adversely affect access to or from Buyer's Property, (iii) materially adversely affect 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:

American United Federal Credit Union
2687 West 7800 South
West Jordan, Utah 84088
Attn: Michelle Thorne

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.

8. 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.

9. 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.

10. 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.

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


AMERICAN UNITED FEDERAL CREDIT UNION

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 Usdan, Authorized Signatory

AMERICAN UNITED FEDERAL CREDIT
UNION

By: 
Name: Michelle Thorne
Title: President

ACKNOWLEDGMENT

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.

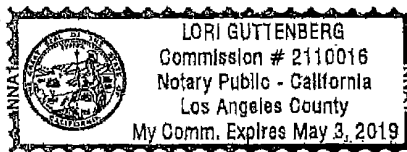
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On May 25, 2018, before me, Lori Guttenberg, Notary Public, personally appeared Steven Vidan, 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 (Seal)



ACKNOWLEDGMENT

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 Utah)
) ss.
COUNTY OF Salt Lake)

On May 29, 2018, before me, Jonathan Valenzuela, personally appeared Michelle Thorne, 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 JValenzuela (Seal)

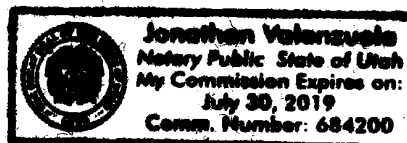


EXHIBIT A

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 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 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 101 AND 102 OF THE PAVILION OUTLOT SUBDIVISION (AMENDING LOT 3 & PORTIONS OF LOTS 5, 6, & 7 OF 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.

ALSO DESCRIBED AS:

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.

EXHIBIT C

SITE PLAN

