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Book - 9659 Pg - 9013-9024
Gary W. Ott
Recorder, Salt Lake County, UT
BONNEVILLE SUPERIOR TITLE
BY: eCASH, DEPUTY - EF 12 P.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National
Association
Real Estate Group (AU #07572)
299 South Main Street
6th Floor
Salt Lake City, UT 84111

Attn: Lauri A. Parent
Loan No. 105847

ACCOMMODATION RECORDING ONLY.
BONNEVILLE SUPERIOR TITLE COMPANY MAKES NO
REPRESENTATION AS TO CONDITION OF TITLE,
NOR DOES IT ASSUME ANY RESPONSIBILITY
FOR VALIDITY, SUFFICIENCY OR EFFECTS
OF DOCUMENT

TAX ID 20-23-226-004

**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,
ESTOPPEL, ATTORNMENT AND NON-DISTURBANCE AGREEMENT
(Lease To Deed of Trust)**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST
IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN
THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,
ESTOPPEL, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement") is
made October 17, 2008, by and between West Valley City Marketplace, LLC, a Utah limited
liability company ("Owner"), Fifth Avenue Ventures Inc., a corporation ("Lessee") and Wells
Fargo Bank, National Association ("Lender").

RECITALS

- A. Pursuant to the terms and provisions of a lease dated July 23, 2008 ("Lease"), Owner, as "Lessor", granted to Lessee a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "Property").
- B. Owner has executed, or proposes to execute, a deed of trust with absolute assignment of leases and rents, security agreement and fixture filing ("Deed of Trust") securing, among other things, a promissory note ("Note") in the principal sum of One Million Six

Hundred Fifty Thousand and 00/100ths Dollars (\$1,650,000.00), dated October 17, 2008, in favor of Lender, which Note is payable with interest and upon the terms and conditions described therein ("Loan"). The Deed of Trust is to be recorded concurrently herewith.

- C. As a condition to making the Loan secured by the Deed of Trust, Lender requires that the Deed of Trust be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Lessee under the Lease and that the Lessee specifically and unconditionally subordinate the Lease to the lien of the Deed of Trust.
- D. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

- 1. **SUBORDINATION.** Owner and Lessee hereby agree that:
 - 1.1 **Prior Lien.** The Deed of Trust securing the Note in favor of Lender, and any modifications, renewals or extensions thereof (including, without limitation, any modifications, renewals or extensions with respect to any additional advances made subject to the Deed of Trust), shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
 - 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and
 - 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Deed of Trust or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part;

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- 1.5 **Waiver, Relinquishment and Subordination.** Lessee intentionally and unconditionally waives, relinquishes and subordinates all of Lessee's right, title and interest in and to the Property to the lien of the Deed of Trust and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.
2. **ASSIGNMENT.** Lessee acknowledges and consents to the assignment of the Lease by Lessor in favor of Lender.
3. **ESTOPPEL.** Lessee acknowledges and represents that:
- 3.1 **Lease Effective.** The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding and there have been no modifications or additions to the Lease, written or oral;
- 3.2 **No Default.** To the best of Lessee's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;
- 3.3 **Entire Agreement.** The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Property and Lessee claims no rights with respect to the Property other than as set forth in the Lease; and
- 3.4 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows: (if none, state "None")
_____.
4. **ADDITIONAL AGREEMENTS.** Lessee covenants and agrees that, during all such times as Lender is the Beneficiary under the Deed of Trust:
- 4.1 **Modification, Termination and Cancellation.** Lessee will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent and will not make any payment to Lessor in consideration of any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent;

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- 4.2 **Notice of Default.** Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Lessor; **provided, however,** that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;
- 4.3 **No Advance Rents.** Lessee will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease; and
- 4.4 **Assignment of Rents.** Upon receipt by Lessee of written notice from Lender that Lender has elected to terminate the license granted to Lessor to collect rents, as provided in the Deed of Trust, and directing the payment of rents by Lessee to Lender, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor is in default under the Loan and/or the Deed of Trust.
5. **ATTORNNMENT.** In the event of a foreclosure under the Deed of Trust, Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Deed of Trust) as follows:
- 5.1 **Payment of Rent.** Lessee shall pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Lessee shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Lessee hereby attorns to Lender as its landlord, such attornment to be effective and selfoperative without the execution of any further instrument immediately upon Lender succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee;
- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease, nor for the return of any sums which Lessee may have paid to Lessor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender; and

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- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations shall terminate as to Lender.
6. **NON-DISTURBANCE.** In the event of a foreclosure under the Deed of Trust, so long as there shall then exist no breach, default, or event of default on the part of Lessee under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; **provided, however,** that Lessee and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender: any option to purchase with respect to the Property; any right of first refusal with respect to the Property; any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Deed of Trust.
7. **MISCELLANEOUS.**
- 7.1 **Heirs, Successors, Assigns and Transferees.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto; and
- 7.2 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Lessee or Lender appearing below:

"OWNER": West Valley City Marketplace, LLC, a Utah limited liability company
1412 S. Legend Hills Drive, Suite 327
Clearfield, UT 84015
Attn: Spencer Wright

"LENDER": Wells Fargo Bank, National Association
Real Estate Group (AU #07572)
299 South Main Street
6th Floor
Salt Lake City, UT 84111

Attn: Erik Bengtzen
Loan No. 105847

"LESSEE": Fifth Avenue Ventures Inc., a corporation
334 J Street
Salt Lake City, UT 84103
Attn: Glenn Hick S

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement; and

- 7.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument; and
- 7.4 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others; and
- 7.5 **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

INCORPORATION. Exhibit A attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

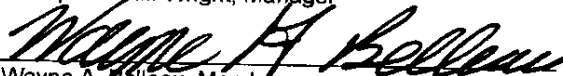
IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

"OWNER"

West Valley City Marketplace, LLC, a Utah limited liability company


By: Millcreek Partners LLC, a Utah limited liability company, Member

By: 
Spencer A. Wright, Manager

By: 
Wayne A. Belleau, Member

"LENDER"

Wells Fargo Bank, National Association

By: 
Erik Bengtzen, Vice President

"LESSEE"

Fifth Avenue Ventures Inc., a corporation

By: _____

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

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"OWNER"

West Valley City Marketplace, LLC, a Utah limited liability company

By: Millcreek Partners LLC, a Utah limited liability company,
Member

By: _____
Spencer H. Wright, Manager

By: _____
Wayne A. Belleau, Member

"LENDER"

Wells Fargo Bank, National Association

By: _____
Erik Bengtzen, Vice President

"LESSEE"

Fifth Avenue Ventures Inc., a corporation

By: Glenn Beck 11/13/08

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

DESCRIPTION OF PROPERTY

EXHIBIT A to Subordination Agreement; Acknowledgment of Lease Assignment, Estoppel, Attornment and Non-Disturbance Agreement dated as of October 17, 2008, executed by West Valley City Marketplace, LLC, a Utah limited liability company, as "Owner", Fifth Avenue Ventures Inc., a corporation, as "Lessee", and Wells Fargo Bank, National Association, as "Lender".

All the certain real property located in the County of Salt Lake , State of Utah, described as follows:

PARCEL 1:

Lot 4, WEST VALLEY COMMERCIAL RETAIL CENTER SUBDIVISION, according to the Official Plat thereof as recorded in the Office of the Salt Lake County Recorder, State of Utah.

PARCEL 1A:

Together with a Non-Exclusive Easment for pedestrian and vehicular ingress and egress over and across a portion of Lot 1, West Valley Commercial Retail Center Subdivision, as set forth in that certain Access Easement, recorded August 10, 2007 as Entry No. 10190760, Salt Lake County, according to the terms and conditions therein.

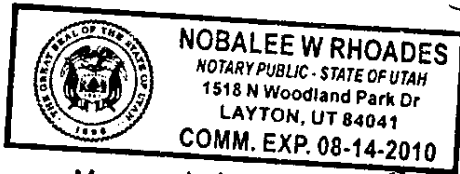
APN: 20-23-226-004

STATE OF UTAH

SS.

COUNTY OF Davis

The foregoing instrument was acknowledged before me this 21 day of October, 2008, by Spencer H. Wright, as Manager of Millcreek Partners LLC, which is member of West Valley City Marketplace, LLC, a Utah Limited Liability Company.



Nobalee W. Rhoades
NOTARY PUBLIC
residing at Layton, Ut.

My commission expires: 8-14-10.

STATE OF UTAH

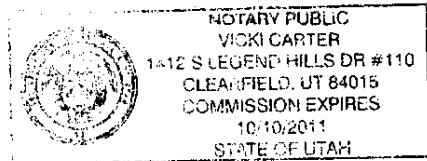
SS.

COUNTY OF Davis

The foregoing instrument was acknowledged before me this 22nd day of October, 2008, by Wayne Belleau, as member of Millcreek Partners LLC, a Utah Limited Liability Company.

Walter Carter
NOTARY PUBLIC
residing at CHd, UT

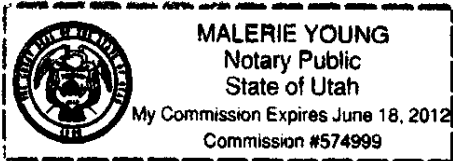
My commission expires: 10/10/11



STATE OF UTAH

COUNTY OF Salt Lake SS.

The foregoing instrument was acknowledged before me this 20th day of October, 2008, by ERIN BENGTSON as VP of Wells Fargo Bank, a NATIONAL ASSOCIATION.



Malerie Young
NOTARY PUBLIC
residing at Salt Lake City

My commission expires: JUNE 18, 2012

STATE OF UTAH

COUNTY OF _____ SS.

The foregoing instrument was acknowledged before me this _____ day of _____, by _____, as _____ of _____, a _____.

NOTARY PUBLIC
residing at _____

My commission expires: _____

STATE OF UTAH

SS.

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, by _____, as _____ of _____, a _____.

NOTARY PUBLIC
residing at _____

My commission expires: _____

STATE OF UTAH

SS.

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 13 day of NOVEMBER, 2008, by GLEN EDWARD HICKS, as PRESIDENT of FIFTH AVENUE VENTURES, INC, a CORPORATION.

Melinda J Klinger
NOTARY PUBLIC
residing at SALT LAKE CITY

My commission expires: AUGUST 21 2010

