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12/1/2017 1:41:00 PM \$29.00  
Book - 10625 Pg - 5116-5124  
ADAM GARDINER  
Recorder, Salt Lake County, UT  
BACKMAN TITLE SERVICES  
BY: eCASH, DEPUTY - EF 9 P.

When Recorded Return To:  
West Valley City  
Attn: Claudia Gillmor  
3600 So Constitution Blvd.  
West Valley City, UT. 84119-3720

Order No. 5-098409

AFFIDAVIT TERMINATING LEASEHOLD INTEREST

State of Utah )  
County of Salt Lake ) ss.  
)

I, Wayne T. Pyle, its Chief Executive Officer of Redevelopment Agency of West Valley City, a municipal corporation of the State of Utah,  
and  
I, Wayne T. Pyle, its City Manager, of the West Valley City, a municipal corporation of the State of Utah being first duly sworn, do hereby depose and say:

1. I have personal knowledge of the facts contained in this Affidavit and I am over the age of 18 years and I am of the beneficiary listed in the Deed of Trust described in paragraph 3 below.
2. This Affidavit concerns and affects certain real property ("Property") located at 2785 West 3500 South, West Valley City, UT. 84119, in Salt Lake County, State of Utah, more particularly described as follows:

See attached Exhibit "A" Legal Description.

3. Redevelopment Agency of West Valley City, a municipal corporation of the State of Utah, and West Valley City, a municipality corporation of the State of Utah owns the Property, wherein title was acquired by a Deed recorded on May 2, 2011, in the office of the Salt Lake County Recorders as Entry No. 11175815.
4. When Redevelopment Agency of West Valley City, a municipal corporation of the State of Utah, and West Valley City, a municipality corporation of the State of Utah took title to the Property, it was done so subject to a Lease ("Lease"). The Lease was disclosed by that certain Memorandum of Lease recorded on May 25, 1990 as Entry No. 4921425 and subsequent Commencement Agreement recorded on January 7<sup>th</sup>, 1991, as Entry No. 5009251 and that Assignment of Lease recorded on December 29, 2005, as Entry No. 9597152, in the office of the Salt Lake County Recorders.

Furthermore, pursuant to the terms of that "Right of Occupancy Agreement", Dated April 28<sup>th</sup>, 2017, Tru 2005 RE I, LLC, a Delaware limited liability company (Toys R Us), as Tenant, and West Valley City, a Utah municipal corporation, as landlord, mutually agreed that the City have full rights of occupancy subject to the terms and conditional contained in that document attached hereto

See that Document attached as Exhibit "B" Right of Occupancy Agreement.

Wherein, on or about March 1, 2017, the City filed a condemnation action against Toys R Us seeking to condemn Toys R Us' leasehold interest in the Leased Parcel, Case No. 170901350. At which time the City sought to acquire all of Toys R Us' interest in the Lease Parcel with intent to construct a new police headquarters and associated parking lot and other improvements, a portion of which is to be located on the Leased Parcel. On or about March 29, 2017 the City filed a motion for immediate Occupancy in the Condemnation Action seeking immediate occupancy of the Leases premises on or before May 29, 2017.

It is hereby agreed and that Tru 2005 RE I, LLC, a Delaware limited liability company (Toys R Us), tenants have vacated the property pursuant to those motions and agreements referenced herein and attached hereto therefore no longer have any interest in said property.

FURTHER, Affiant sayeth naught.  
Dated this 20<sup>th</sup> day of November, 2017.

Redevelopment Agency of West Valley City, a  
municipal corporation of the State of Utah

Wayne T. Pyle  
By: Wayne T. Pyle  
Its: Chief Executive Officer

The foregoing instrument was duly acknowledged, subscribed and sworn to before me this 20<sup>th</sup> day of, November, 2017, by Wayne T. Pyle, know to be the C.E.O. of Redevelopment Agency of West Valley City, a municipal corporation of the State of Utah.

Rachel White  
Notary Public  
My Commission Expires On: 4/15/2018  
Residing at: Salt Lake County

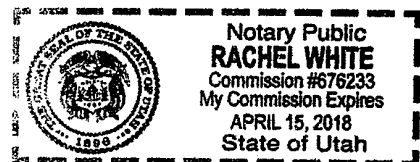


West Valley City, a municipal corporation of the  
State of Utah

Wayne T. Pyle  
By: Wayne T. Pyle  
Its: City Manager

The foregoing instrument was duly acknowledged, subscribed and sworn to before me this 20<sup>th</sup> day of, November, 2017, by Wayne T. Pyle, know to be the City Manager of West Valley City, a municipal corporation of the State of Utah.

Rachel White  
Notary Public  
My Commission Expires On: 4/15/2018  
Residing at: Salt Lake County



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Phase 1:

A parcel of land situate in the Northwest  $\frac{1}{4}$  of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah. The boundaries of which are described as follows:

Beginning in the Easterly right of way line of Market Street (2820 West) said point is 591.98 feet South 89 deg. 53'20" West along the section line and 182.99 feet South 00 deg. 00'20" West from the North quarter corner of said Section 33 (Note: Basis of bearing is South 89 deg. 53'20" West along the Northerly section line from the found monuments representing the North quarter corner and the Northwest corner of said Section 33); and running thence North 89 deg. 53'20" East 119.96 feet; thence South 00 deg. 00'41" West 15.96 feet; thence North 89 deg. 53'20" East 142.00 feet; thence South 00 deg. 00'41" West 29.05 feet; thence North 89 deg. 53'20" East 264.36 feet to the Westerly right of way line of Constitution Boulevard (2700 West); thence along said Westerly right of way line the following five (5) courses: 1) South 00 deg. 00'55" East 11.32 feet; 2) South 12 deg. 43'07" West 55.67 feet, 3) South 01 deg. 30'40" West 95.47 feet, 4) South 00 deg. 04'46" West 101.79 feet to the beginning of a non-tangent 16.00 foot radius curve to the right and 5) Southeasterly along the arc of said curve 15.20 feet through a central angle of 54 deg. 24'50" (Note: chord for said curve bears South 44 deg. 36'52" East for a distance of 14.63 feet); thence South 89 deg. 53'20" West 222.78 feet; thence North 00 deg. 00'41" East 25.30 feet; thence South 89 deg. 53'20" West 285.93 feet to said Easterly right of way line of Market Street (2820 West); thence along said Easterly right of way line the following three (3) courses: 1) North 00 deg. 00'20" East 34.42 feet to the beginning of a non-tangent 466.66 foot radius curve to the right, 2) Northerly along the arc of said curve 110.42 feet through a central angle of 13 deg. 33'30" (Note: Chord for said curve bears North 06 deg. 46'24" West for a distance of 110.17 feet, and 3) North 00 deg. 00'20" East 149.12 feet to the point of beginning.

Parcel No.: 15-33-129-021, 15-33-129-053, 15-33-129-061 and 15-33-129-052

EXHIBIT "B"

RIGHT OF OCCUPANCY AGREEMENT

THIS RIGHT OF OCCUPANCY AGREEMENT (this "Agreement"), is made effective as of the 23 day of April, 2017 (the "Effective Date"), by and among TRU 2005 RE I, LLC, a Delaware limited liability company ("Toys R Us"), and WEST VALLEY CITY, a Utah municipal corporation (the "City"). Toys R Us and the City are sometimes individually referred to hereinafter as "Party" and collectively as "Parties".

RECITALS

A. Pursuant to that certain Lease dated May 17, 1990, as amended from time to time (the "Lease"), by and between Toys R Us, as Tenant, and Heartland West Valley Commercial Limited Partners, as Landlord, Toys R Us possesses a leasehold interest in that certain parcel of real property (the "Leased Parcel") located in Salt Lake County, State of Utah as more particularly described in Exhibit "A" attached hereto and by this reference made a part of this Agreement.

B. The City acquired all right, title and interest to the Lease Parcel on March 21, 2017, pursuant to a Special Warranty Deed filed in the records of Salt Lake County, Utah, on April 3, 2017, as Document No. 12507741. The City is now the Landlord under the Lease.

C. On or about March 1, 2017, the City filed a condemnation action against Toys R Us seeking to condemn Toys R Us' leasehold interest in the Leased Parcel, which action is now pending before the Third Judicial District Court (Salt Lake County, Utah), Case No. 170901350 (the "Condemnation Action").

D. The City seeks to acquire all of Toys R Us' interest in the Leased Parcel to construct a new police headquarters and associated parking and other improvements (the "Project"), a portion of which is to be located on the Leased Parcel.

E. On or about March 29, 2017, the City filed a Motion for Immediate Occupancy (the "Motion") in the Condemnation Action seeking immediate occupancy of the Leased Premises on or before May 29, 2017 (the "Right of Occupancy"), which Motion is now pending before the Court.

F. The Parties are agreeable to the Right of Occupancy subject to the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Termination of Lease. Effective May 29, 2017, the Lease will be terminated as a result of the Condemnation Action. The Parties agree that, after termination, the Lease shall be

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of no further force or effect, and that the Parties are relieved of all liability thereunder except for matters specifically provided to survive termination of the Lease, including the provisions of Article XIII. With the exception of the payment of rent for the month of May, 2017, the Lease shall remain in full force and effect up to and including May 29, 2017. The City agrees that Toys R Us may continue to occupy the Leased Parcel without the payment of rent for the month of May, 2017 (but Toys R Us shall be responsible for the payment of all utilities) for the continued operation of its business until 11:59 pm on May 29, 2017 (the "Removal Date"). Toys R Us agrees that it will vacate the Leased Premises by 11:59 on May 29, 2017, and that it will have no right to access or possess the Leased Premises or any part of the Leased Premises after 11:59 pm on May 29, 2017.

2. **Early Occupancy.** The Parties agree that commencing on the Effective Date and continuing until the Removal Date, Toys R Us shall have full access to and occupancy of the Leased Parcel, and may continue to own, operate, and maintain the existing commercial building (the "Building"), loading area, compactor and transformer pads associated with the Building (collectively with the Building, the "Improvements") located on the Leased Parcel. Toys R Us agrees that from the Effective Date until the Removal Date, unless otherwise agreed to by the Parties, the City shall be allowed to access and enter the Leased Parcel, outside of the hours of 10:00 am through 9:00 pm, for the purpose of conducting such work as reasonably necessary to plan for and design the Project, which work shall be completed at the City's sole cost and expense; provided, however, (i) the City, its employees, contractors, sub-contractors, consultants, agents, or representatives (the "City's Agents") shall not unreasonably interfere with, interrupt or disturb Toys R Us' ability to maintain the Leased Parcel or operate its business from the Leased Parcel and (ii) the City provides Toys R Us with at least twenty-four (24) hour's prior notice of its intent to enter in the Building. Requests to access the building shall be coordinated with:

Rob Kwiatkowski  
(973) 617-5779  
[Robert.Kwiatkowski@toysrus.com](mailto:Robert.Kwiatkowski@toysrus.com)

The Parties further agree that after the Removal Date, the City shall be able to enter upon and occupy the Leased Parcel, including the Building, to the exclusion of Toys R Us for the purpose of commencing the Project. The City assumes all responsibility for the acts of itself and the City's Agents in exercising its rights under this provision and the City agrees to indemnify and hold Toys R Us harmless from any damages resulting therefrom as provided for in Section 4.

3. **Compensation for Early Occupancy.** Upon execution of this Agreement, and as consideration for Toys R Us granting the Right of Occupancy, the City shall pay Toys R Us the following two payments:

"City's Appraised Value Payment"	\$520,000.00
"Accommodation Fee"	\$50,000.00

The Accommodation Fee shall be fully earned by Toys R Us and nonrefundable upon payment unless Toys R Us fails to vacate the Leased Premises on or before 11:59 pm on May 29, 2017.

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The City's Appraised Value Payment is the City's appraised value of Toys R Us' interest in the Leased Parcel. The amount of the City's Appraised Value Payment paid to Toys R Us under this Agreement shall be deducted from any final settlement between the Parties or from the final non-appealable judgment amount awarded in the Condemnation Action for the value of Toys R Us' interest in the Leased Parcel (the "Final Leasehold Interest Value"). The "Final Payment" shall be calculated as follows:

Final Leasehold Interest Value	\$ _____
Less: City's Appraised Value Payment	<u>(\$520,000.00)</u>
Final Payment	\$ _____

If the Final Payment amount is positive, the City shall promptly pay the amount of the Final Payment to Toys R Us together with interest at an annual rate of 8% on the additional amount paid, calculated from March 9, 2017, the date on which Toys R Us accepted service of the summons and complaint in the Condemnation Action. The monetary sum paid to Toys R Us pursuant to this Agreement is for the purposes of this Agreement only, and shall not be admissible as evidence in any subsequent determination of value of the Leased Parcel or of Toys R Us' rights, title and interest therein. The City's payment to Toys R Us provided for in this Section 3 shall not constitute a waiver or abrogation of Toys R Us' right to compensation for the acquisition by the City of its interest in the Leased Parcel.

4. **Indemnification.** The City shall indemnify, defend, protect and hold Toys R Us harmless from and against any and all liens, claims, losses, liabilities, damages, costs, expenses, causes of action and expenses (including reasonable attorneys' fees and court costs) caused by inspections, tests, studies and/or other investigations of the Leased Parcel by the City and/or the City's Agents that occur after the Effective Date and prior to 11:59 pm on May 29, 2017; provided, however, such indemnity obligations shall not be applicable to the City's mere discovery of an adverse physical condition or matter on the Leased Parcel. This obligation shall survive termination of this Agreement.

5. **Withdrawal of Motion; Waiver of Defenses.** Immediately upon execution of this Agreement, the City shall withdraw its pending Motion. By executing this Agreement, Toys R Us agrees to and hereby waives and abandons all defenses to the City's eventual acquisition of Toys R Us' property rights and interests in the Leased Parcel pursuant to the Condemnation Action, except a claim for a greater amount of compensation. Notwithstanding anything else in this Agreement to the contrary, the forgoing waiver and abandonment by Toys R Us shall not include any rights Toys R Us may assert under the Lease, including the provisions of Article XIII thereof. By executing this Agreement, the City does not admit or agree that Toys R Us has any such rights and specifically denies that the Lease is being terminated pursuant to Article XIII or any other provision of the Lease.

6. **Extension of Time to Answer; Agreement to Mediate.** The Parties agree that this Agreement is granted without prejudice to the rights of Toys R Us to contest the amount of compensation to be paid to Toys R Us for its property interests in the Leased Parcel. To facilitate the Parties' attempt to reach a satisfactory settlement and agreement, the City hereby agrees to give Toys R Us an open-ended extension to submit a response to the City's filed Complaint in

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the Condemnation Action. The City can terminate the open-ended extension at any time in its absolute discretion by giving at least fourteen days' prior written notice. The Parties further agree to continue to participate, in good faith, in settlement negotiations of the Condemnation Action and to attempt to resolve the same through mediation with the Utah Office of the Property Rights Ombudsman.

7. Utah Governmental Immunity Act. The City hereby acknowledges and agrees that its rights and obligations under this Agreement are considered to be contractual for the purposes of the Utah Governmental Immunity Act.

8. Run with the Land. The provisions of this Agreement shall run with the land and shall be binding on successors and assigns. The City has the right to record a notice of this Agreement with the Salt Lake County Recorder.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts when taken together shall constitute but one Agreement. PDF and electronic copies shall be accepted as originals.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**TRU 2005 RE I, LLC, as Tenant and condemnee:**

*David P. Picot*  
By: David P. Picot

Title: Senior Vice President-Property Development

**WEST VALLEY CITY as Landlord and condemnor:**

*JEB*  
By: CITY ATTORNEY  
Title:

ATTEST:

*Neubale Comas*  
City Recorder





EXHIBIT "A"

LEGAL DESCRIPTION OF THE LEASED PARCEL

A part of the Northwest Quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the East line of Market Street being 592.00 feet South 89°53'20" West along the Section line and 273.95 feet South 0°00'20" West from the Northeast corner of said Northwest Quarter of Section 33; running thence North 89°53'20" East 541.97 feet; thence South 0°00'44" East 46.05 feet; thence North 89°53'20" East 17.00 feet to the West line of 2700 West Street, said West line being 33.00 feet Westerly of and parallel to the East line of said Northwest Quarter of Section 33; thence South 0°00'44" West 181.25 feet along said West line; thence South 89°53'20" West 260.00 feet; thence North 0°00'44" East 25.30 feet; thence South 89°53'20" West 276.24 feet to the East line of Market Street at a point in a curve in which the radius point bears North 72°03'36" East; thence along the Easterly line of Market Street as follows: Northwesterly along the arc of a 466.66 foot radius curve to the right 146.16 feet (long Chord bears North 8°58'02" West 145.57 feet, Central Angle equals 17°56'44") and North 0°00'20" East 58.17 feet to the point of beginning. Contains 2.700 Acres.

Less and except that portion taken by paragraph 2 of that certain Final Judgement and Order of Condemnation recorded August 7, 2013 as Entry No. 11700067, in Book 10166 at page 7971 of official records.

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