

PREPARED BY AND WHEN
RECORDED RETURN TO:

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Parr, Waddoups, *et al.*
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MEMORANDUM OF TENANCY-IN-COMMON AGREEMENT
AND CERTAIN AGREEMENTS RE MAIN LOAN

[Highland Marketplace]

11-039-0017

11-039-0020

11-39-0038

11-39-0048

11-39-0053

THIS MEMORANDUM (this "Memorandum") is entered into as of the 3rd day of May, 2007, among the following (collectively, the "Owners"):

- (i) SOLANA BEACH HOLDINGS, L.C., a Utah limited liability company, whose address is 515 West Pickett Circle, Suite 400, Salt Lake City, Utah 84115;
- (ii) HIGH NOON, L.C., a Utah limited liability company, whose address is 515 West Pickett Circle, Suite 400, Salt Lake City, Utah 84115; and
- (iii) HIGHLAND MARKETPLACE, L.C., a Utah limited liability company, whose address is 515 West Pickett Circle, Suite 400, Salt Lake City, Utah 84115.

RECITALS

A. The Owners are the fee simple title owners, as tenants in common, of real property located in Utah County, Utah, and described as follows, together with all improvements on, and appurtenances belonging to, such real property (the "Property"):

Lots 1 through 11, inclusive, HIGHLAND MARKETPLACE SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder.

B. The Owners entered into a Tenancy-In-Common Agreement dated as of May 3, 2007 (the "TIC Agreement"), with respect to the Property.

C. On or about the date of this Memorandum, the Owners are entering into the loan documents (collectively, the "Main Loan Documents") described on the attached Schedule 1, incorporated by this reference, relating to a loan (the "Main Loan") in the original principal

First American Title

JB# 297584

amount of \$6,200,000, from CR V Main-Main, L.P. ("Main"), as lender, to the Owners, as borrowers.

D. The Owners desire to set forth in this Memorandum certain terms and provisions of the TIC Agreement (or summaries thereof), for notice and recording purposes, and make certain agreements to facilitate financing of the Property. This Memorandum has been entered into at the request of Main and as a condition precedent to the closing of the Main Loan.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Owners agree as follows:

1. Recitals Incorporated; Defined Terms. The Recitals set forth above are incorporated in this Memorandum by this reference. Capitalized terms that are used but not defined in this Memorandum shall have the respective meanings given to such terms in the TIC Agreement.

2. TIC Agreement. As set forth above, the Owners have entered into the TIC Agreement, which affects the Property and by its terms constitutes a covenant running with the land, benefiting and binding every person having any fee, leasehold, mortgage lien or other interest in any portion of the Property, as well as any owner of the Property whose title is acquired by foreclosure, deed in lieu of foreclosure or other means. This Memorandum only briefly summarizes some of the provisions of the TIC Agreement, and reference should be made to the TIC Agreement for the full text of all of the provisions of the TIC Agreement, which are incorporated in this Memorandum by this reference.

3. Main Mortgage.

- a. The Main Mortgage (as defined on the attached Schedule A) is a Mortgage, as described in the TIC Agreement, and the holder of the Main Mortgage is the holder of a Mortgage within the meaning of the TIC Agreement for all purposes.
- b. The lien of the Main Mortgage shall be prior and superior to the TIC Agreement, and the TIC Agreement shall be subordinate and subject to the Main Mortgage.
- c. The TIC Agreement shall have no further force or effect after any foreclosure or conveyance in lieu of foreclosure of the Main Mortgage.
- d. Paragraph 8 of the TIC Agreement is inapplicable to a mortgage, such as the Main Mortgage, that encumbers all interests of all of the Owners.

4. Waiver of Right of Partition. Title to the Property shall be maintained by the Owners as tenants-in-common. The transfer, pledge, encumbrance or other conveyance of any Undivided Interest or any part thereof shall be made in compliance with the terms of the Main Loan Documents and all applicable securities laws, and shall be made subject to the lien of the Main Mortgage (as defined on the attached Schedule A). No Owner or any of its successors in interest shall have the right, during the period the Main Loan remains unpaid or outstanding, to:

- a. have the Property partitioned, or to file a complaint or institute any proceeding at law or in equity to have the Property partitioned; or
- b. transfer any interest in the Property whether pursuant to the right of first offer described in Paragraph 9 of the TIC Agreement or the buy out described in Paragraph 12 of the TIC Agreement, or otherwise, unless such transfer is authorized or permitted by the Main Loan Documents or by Main in writing.

The provisions of this Paragraph shall not be affected by any termination of the TIC Agreement.

5. Waiver of Certain Rights. In connection with the exercise of any rights or remedies pursuant to the Main Loan Documents or available under applicable law, each of the Owners hereby waives (a) all rights to marshalling of assets or requiring a sale in inverse order of alienation with respect to the Property, and (b) all guaranty and suretyship rights, if any, that might otherwise exist in connection with the Main Loan.

6. Modification. The Owners shall not modify or amend the TIC Agreement or this Memorandum without the prior written consent of Main unless and until the Main Loan has been satisfied in full, unless the prior written consent of Main is first received.

7. General Provisions. This Memorandum shall inure to the benefit of, and be binding on, the Owners and their respective successors and assigns. This Memorandum shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. This Memorandum may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document. Each individual executing this Memorandum represents and warrants that such individual has been duly authorized to execute and deliver this Memorandum in the capacity and for the entity set forth where such individual signs.

THE OWNERS have executed this Memorandum on the respective dates set forth below, to be effective as of the date first set forth above.

SOLANA BEACH:

SOLANA BEACH HOLDINGS, L.C.,
a Utah limited liability company

By Thomas A. Hulbert
Thomas A. Hulbert
Manager

Date 9-4-07

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

The foregoing instrument was acknowledged before me this 4th day of September, 2007, by Thomas A. Hulbert, the Manager of Solana Beach Holdings, L.C.



Jennifer Berriochoa
Notary Public

My Commission Expires:

4-13-09

Residing at:

Salt Lake City, UT

HIGH NOON:

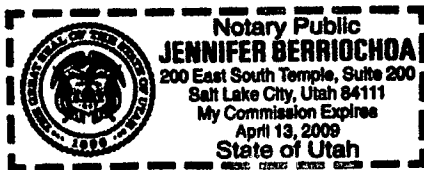
HIGH NOON, L.C.,
a Utah limited liability company

By *Bret B. Fox*
Bret B. Fox
Manager

Date 9-4-07

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

The foregoing instrument was acknowledged before me this 4th day of September 2007, by Bret B. Fox, the Manager of High Noon, L.C.



Jennifer Berriochoa
Notary Public

My Commission Expires:
4-13-09

Residing at:
Salt Lake City, UT

HIGHLAND MARKETPLACE:

HIGHLAND MARKETPLACE, L.C.,
a Utah limited liability company,
by its Manager:

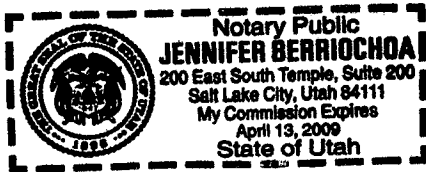
TFP SERVICE COMPANY,
a Utah corporation

By Thomas A. Hulbert
Thomas A. Hulbert
President

Date 9-4-07

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

The foregoing instrument was acknowledged before me this 4th day of September 2007, by Thomas A. Hulbert, the President of TFP Service Company, the Manager of Highland Marketplace, L.C.



Jennifer Berriochoa
Notary Public

My Commission Expires:

4-13-09

Residing at:

Salt Lake City, UT

SCHEDULE 1

to

MEMORANDUM OF TENANCY-IN-COMMON AGREEMENT
AND CERTAIN AGREEMENTS RE MAIN LOAN

MAIN LOAN DOCUMENTS

The Main Loan Documents referred to in the foregoing instrument are described as follows:

1. Loan Agreement entered into between the Owners and Main;
2. Promissory Note executed by the Owners in favor of Main;
3. Construction Deed of Trust executed by the Owners in favor of Main (the "Main Mortgage");
4. Environmental and Hazardous Substances Indemnity Agreement executed by the Owners, among others, in favor of Main; and
5. Profit Participation Contingent Payment Agreement executed by the Owners in favor of Main.