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By STUCKI STEELE P&R ANDERSON LLC



RESTRICTIVE COVENANT AGREEMENT

This Restrictive Covenant Agreement (this "**Agreement**") is dated effective as of the 24th day of April, 2009 (the "**Effective Date**"), by and between Rhinehart Land Co., LLC, a Utah limited liability company ("**Rhinehart**"), on the one hand, and King Holdings, LC, a Utah limited liability company ("**King**"); GSSC 3, LC, a Utah limited liability company ("**GSSC3**"); and GSSC 4, LC, a Utah limited liability company ("**GSSC 4**" and together with King, GSSC3, and GSSC4, each, a "**Parcel Owner Entity**" and collectively, the "**Parcel Owner Entities**"), on the other hand. Rhinehart and each Parcel Owner Entity are sometimes referred to hereinafter, individually, as a "**Party**" and, collectively, as the "**Parties**".

RECITALS

WHEREAS, Rhinehart is the current owner of record of a certain parcel of real property located in Washington County, State of Utah, and more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "**Rhinehart Property**");

WHEREAS, Rhinehart acquired the Rhinehart Property pursuant to the terms and conditions of that certain Commercial Real Estate Purchase Contract, executed by and between Rhinehart, as purchaser, and GSSC 5, LC, a Utah limited liability company ("**GSSC5**"), as seller, and dated effective March 24, 2009 (the "**CREPC**"), the Closing of which occurred on the same date as that of the Effective Date of this Agreement;

WHEREAS, the Rhinehart Property is one of five (5) separate parcels of real property (each, a "**Property**" and collectively, the "**Properties**"), which collectively comprise a recorded commercial subdivision known as the Green Spring Shopping Center (the "**Shopping Center**"), and the Rhinehart Property is commonly referred to as "Parcel 5" of the Shopping Center;

WHEREAS, each of three (3) of the remaining four (4) Properties of the Shopping Center (excluding the Rhinehart Property) is separately and independently owned by a respective Parcel Owner Entity as follows: (1) King is the owner of record of that certain Property commonly referred to as "Parcel 1" of the Shopping Center ("**Parcel 1**"), which is described more particularly in **Exhibit "B"** attached hereto and by this reference made a part hereof; (2) GSSC3 is the owner of record of that certain Property commonly referred to as "Parcel 3" of the Shopping Center ("**Parcel 3**"), which is described more particularly in **Exhibit "C"** attached hereto and by this reference made a part hereof; and (3) GSSC4 is the owner of record of that certain Property commonly referred to as "Parcel 4" of the Shopping Center ("**Parcel 4**" and together with Parcel 1 and Parcel 3, each a "**Restricted Property**" and collectively, the "**Restricted Properties**"), which is described more particularly in **Exhibit "D"** attached hereto and by this reference made a part hereof ;

WHEREAS, Albertson's, Inc., a Delaware corporation ("**Albertson's**"), is the owner of record of the remaining Property of the Shopping Center (excluding the Rhinehart Property and the Restricted Properties), which is commonly referred to as "Parcel 2" of the Shopping Center

(the "**Albertson's Property**" or "**Parcel 2**"), and is more particularly described in **Exhibit "E"** attached hereto and by this reference made a part hereof;

WHEREAS, the Properties of the Shopping Center (consisting of the Restricted Properties (Parcels 1, 3, and 4), the Albertson's Property (Parcel 2), and the Rhinehart Property (Parcel 5)), are each subject to that certain Declaration of Restrictions and Grant of Easements dated November 18, 1995 and recorded on November 2, 1995 as Entry No. 00514397 in Book 948 at Pages 159-206, and amended as Entry No. 00568872 in Book 948 at Pages 822-834 of the Official Records of Washington County, State of Utah (the "**Declarations**");

WHEREAS, as an inducement to Rhinehart to acquire the Rhinehart Property, and as a condition precedent thereof, GSSC5 agreed in that certain Addendum No. 1 to the CREPC, dated March 24, 2009 (the "**Addendum**"), at Item #4, to "negotiate and execute an agreement to restrict the sale of fuel products on Parcels 1, 3 and 4 of the [] Shopping Center";

WHEREAS, pursuant to the Addendum and in accordance with the terms and conditions of this Agreement, the Parcel Owner Entities have each agreed, as the respective owners of record of the Restricted Properties, to place certain restrictions relating to the establishment of a Fuel Business (as defined below in Section 1 hereof) on each of the Restricted Properties (Parcels 1, 3, and 4 of the Shopping Center) for the benefit of the Rhinehart Property;

WHEREAS, as an inducement to the Parcel Owner Entities to to grant the restrictions (described herein) on their respective Restricted Properties pursuant to this Agreement, and as a condition precedent thereof, Rhinehart has agreed to place certain restrictions on the Rhinehart Property, for the benefit of each Restricted Property, which limit Rhinehart's use of the Rhinehart Property to its current use as a Fuel Business, during the period of time this Agreement is in effect (and only during such period);

WHEREAS, because Albertson's, the current record owner of the Albertson's Property (Parcel 2), is not a party to this Agreement, the restrictions and covenants agreed upon by the Parcel Owner Entities which proscribe the establishment of a Fuel Business on any of the Restricted Properties, are not enforceable against the Albertson's Property nor otherwise binding upon Albertson's with respect to its interest in the Albertson's Property;

WHEREAS, the Parties to this Agreement desire, nevertheless, to provide to the Rhinehart Property all available protections within the Parties' abilities and control, to guard against the establishment of a Fuel Business on the Albertson's Property;

WHEREAS, although certain restrictions, covenants and conditions contained in Declarations establish, as a collective, obstacles and barriers to the building of a Fuel Business on any of the Properties of the Shopping Center (excepting the Rhinehart Property), the provisions of the Declarations expressly permit the amendment or modification of the Declarations' terms and conditions upon an affirmative vote of the owners possessing a certain aggregate percentage of the total acreage of the Shopping Center Properties, which vote, Rhinehart, by itself, would be powerless to object or oppose; and

WHEREAS, given Rhinehart's inability to prevent, by itself, an amendment or modification to the Declarations without the assistance or contribution of at least one or more of the Parcel Owner Entities, each Parcel Owner Entity is willing, pursuant to the terms and conditions of this Agreement, to collectively oppose, refuse and/or reject any and all requests or proposals that seek a change, amendment or modification to the Declarations which would by its terms or in effect, authorize, allow or in any way facilitate the establishment of a Fuel Business on the Albertson's Property.

NOW, THEREFORE, in consideration of the foregoing premises, the promises, covenants and undertakings of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

AGREEMENT

1. **Grant of Restrictive Covenants by Parcel Owner Entities.** As of the Effective Date of this Agreement, the Parcel Owner Entities, as the respective owners of record of the Restricted Properties, hereby cause the following restrictive covenants to apply, to the maximum extent permitted by applicable law, to each of Parcel 1, Parcel 3, and Parcel 4 of the Shopping Center, which together comprise the Restricted Properties, and are legally described on the attached **Exhibits "B", "C", and "D"**, respectively.

(a) ***Fuel Business Restriction.***

No building or other structure may be erected at any time on any portion of the Restricted Properties for use as a gas station, truck stop, a so-called "convenience" store or any other establishment which (i) sells, offers, provides or dispenses petroleum based products such as gasoline or diesel, compressed natural gas or any other type of fuel for use in motor vehicles; and/or (ii) offers, performs or provides any and all services related to or connected with the operation thereof (a "***Fuel Business***").

(b) ***Restriction Against Approval or Adoption of Changes to Declarations Inconsistent with Fuel Business Restriction.***

No request or proposal for a change, amendment, or modification to the Declarations which would, directly or indirectly, result in an easing or elimination of the obstacles and restrictions presently contained in the Declarations that either expressly or effectively relate to, or would otherwise facilitate, the construction or establishment of a Fuel Business on Parcel 2 or any other Property of the Shopping Center (excluding the Rhinehart Property (Parcel 5)).

2. **Grant of Restrictive Covenant by Rhinehart.** As of the Effective Date of this Agreement, Rhinehart, as the owner of record of the Rhinehart Property, hereby causes the following restrictive covenant to apply, to the maximum extent permitted by applicable law, to Rhinehart Property, which is legally described on the attached **Exhibit "A"**:

Restriction of Use Other Than as a Fuel Business.

All buildings and other structures presently existing or hereafter erected at any time on any portion of the Rhinehart Property shall be used exclusively as a Fuel Business (as such term is defined above in Section 1 of this Agreement) and for any and all other uses incidental to or connected with the operation of the same.

3. Right to Remove Restrictive Covenant on Rhinehart Property.

Notwithstanding anything contained in this Agreement to the contrary, Rhinehart (and any future owner of the Rhinehart Property) shall have the option and right, at its sole and absolute discretion, without assigning any reason therefor, to remove, at any time, the restrictive covenant granted by Rhinehart pursuant to Section 2 hereof, which restricts the use of the Rhinehart Property to its current use as a Fuel Business (the "***Restriction Removal Right***"). As provided below in Section 8 hereof, this Agreement shall terminate upon the effective exercise of the Restriction Removal Right. In order for an election to exercise the Restriction Removal Right to be effective, Rhinehart (or the future owner of the Rhinehart Property making such election) shall: (i) deliver to each Parcel Owner Entity (or each of the then-current owners of the Restricted Properties) written notice (the "***Restriction Removal Notice***") of each of the following: (a) its intention to discontinue the use of the Rhinehart Property as a Fuel Business, (b) its election to exercise the Restriction Removal Right, and (c) the automatic termination of this Agreement resulting from the exercise of the Restriction Removal Right, pursuant to Section 8 hereof; and then (ii) record the Restriction Removal Notice in the Official Records of Washington County, State of Utah, on each of the Restricted Properties and the Rhinehart Property. Upon the effective exercise of the Restriction Removal Right made in accordance with requirements set forth herein, Rhinehart (or the then-current owner of the Rhinehart Property) shall possess the right to use the Rhinehart Property for any use of its choice which is permitted under the terms and conditions of the Declarations and established and operated in accordance therewith. Nothing contained in this Section 3 or in any other Section of this Agreement shall be read to grant to any Parcel Owner Entity (or future owner of a Restricted Property) an option or right similar to the Restriction Removal Right provided hereunder, or, in the absence of a termination of this Agreement satisfying the terms and conditions contained in Section 8 hereof, to otherwise authorize the removal, at any time, of any restrictive covenant placed upon each of the Restricted Properties pursuant to the grant of such covenants by the Parcel Owner Entities, as contained in Section 1 above.

4. Restrictive Covenants to Run with the Land. The Parties hereby acknowledge, agree and declare that the restrictions, covenants, rights and provisions contained in this Agreement: (i) are made for the benefit of each Party in whose favor such are imposed and/or granted and for the purpose of protecting the value and desirability of that Party's Property; (ii) with respect to such granted by the Parcel Owner Entities, shall create a servitude in favor of the Rhinehart Property upon each of the Restricted Properties, which shall be held, sold and conveyed subject thereto; (iii) with respect to such granted by Rhinehart, shall create a servitude in favor of each Restricted Property upon the Rhinehart Property, which shall be held, sold and conveyed subject thereto; (iv) shall constitute covenants running with the land of the Rhinehart

Property and each of the Restricted Properties; (v) shall bind or inure to the benefit of each Party and every other person having any right, title or interest (fee, leasehold, or otherwise) in any portion of the Rhinehart Property or the Restricted Properties, respectively, at any time or from time to time, to the extent that such portion is bound by or benefited by the provisions of this Agreement; (vi) shall inure to the benefit and be binding upon the Parties of this Agreement, their legal representatives, successors, successors-in-title, heirs, executors, administrators, tenants, and assigns; and (vii) shall provide no right or benefit to any other third party not identified herein.

5. **Rule Against Perpetuities.** To the extent, and only to the extent, that the rights, covenants and restrictions contained in this Agreement are determined to be subject to the rule against perpetuities, or to the operation of any rule relative to restraints on alienation and the limitation thereof, or to any other rule limiting the enforceability or validity of the restrictions herein granted, such rights, covenants and restrictions shall be of force and effect only during the maximum period during which any such rules would not render the same invalid or unenforceable. Where the lives of persons are the measuring standard for the application of such rules, such lives shall be of the individuals signing this Agreement and their spouses, and the issue of such persons living at the Effective Date of this Agreement. Consistent therewith, as of the date of this Agreement, to the extent that rights, covenants and restrictions in this Agreement should be determined to be subject to any such rules, the same shall be of force and effect only during the period which ends 21 years (or such longer period as may hereafter be allowed by law) following the last to die of those persons referred to above and this issue now living of such persons, and thereafter, shall be of no further force and effect.

6. **Covenant to Record Agreement.** The Parties hereby covenant and agree to record this Agreement in the Official Records of Washington County, State of Utah, against each of the following Properties, which are owned, respectively, by the Parties and are subject and subordinate to this Agreement: (i) Parcel 1, (ii) Parcel 3, (iii) Parcel 4 and (iv) the Rhinehart Property (Parcel 5) of the Shopping Center.

7. **Remedies for Breach.** If any Party having the benefit or burden of this Agreement shall fail to comply with or violate any of the provisions of this Agreement, then any other Party entitled to the benefit of such provision may institute such actions or proceedings as may be appropriate and permissible, including actions and proceedings to compel specific performance and to seek injunctive relief, including recovery of damages, expenses and costs.

8. **Termination.** This Agreement and the restrictive covenants imposed upon the Parties' respective Properties pursuant hereto shall terminate in the event and immediately upon the occurrence of any of the following, and only upon the occurrence of such: (i) a Fuel Business is established on the Albertson's Property; (ii) Rhinehart (or any future owner of the Rhinehart Property) exercises the Restriction Removal Right in accordance with terms of Section 3 hereof, whereupon the use of the Rhinehart Property as a Fuel Business is discontinued; and/or (iii) Rhinehart (or any future owner of the Rhinehart Property) otherwise ceases to use the Rhinehart Property for purposes of a Fuel Business, which cessation shall be conclusively presumed to have occurred when no amount of fuel of any type or form is offered and/or sold on the

Rhinehart Property for a period of at least six (6) consecutive months; *provided, however*, that such period shall be exclusive of any and all periods of time, regardless of duration, during which the suspension or discontinuance of fuel sales on the Rhinehart Property is the result of, or connected with, the renovation, remodeling, replacement, expansion or other type of construction of a building, structure, storage tank or other improvement on the Rhinehart Property for use in connection with the continued operation of a Fuel Business thereon. Notwithstanding the foregoing, in the absence of a termination of this Agreement authorized by this Section 8 (which satisfies the terms hereof), during the period of time this Agreement is in effect, nothing contained in this Section 8 or elsewhere in this Agreement shall be construed to limit, modify, or otherwise permit a use contradictory to, the restrictive covenants imposed pursuant to Section 1 and Section 2 of this Agreement upon the Restricted Properties and the Rhinehart Property, respectively.

9. **Miscellaneous.** The following additional terms and conditions are hereby agreed to by the Parties:

(a) The failure of any current or future owner of the Properties benefited by the restrictions granted hereunder to insist upon strict performance of any of the terms or conditions of this Agreement shall not be deemed a waiver of any rights or remedies which such owner may have hereunder or at law or in equity and shall not be deemed a waiver of any subsequent breach or default of any such terms or conditions.

(b) This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah.

(c) This Agreement may not be altered, modified, revoked or amended without the express written consent of the then-owner of the Properties benefited by the restrictions granted hereunder, which signed written consent shall be recorded in the Official Records of Washington County, State of Utah.

(d) This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original. Subject to the terms hereof, this Agreement shall not become effective until one or more counterparts have been signed by each Party hereto and delivered to the other Parties.

(e) Each of the Parties hereby represents and warrants that it does not need to obtain the consent of any other party in order to execute this Amendment.

(f) If a suit or action is instituted to enforce a right guaranteed in this Agreement, the prevailing Party shall be entitled to, in addition to the statutory costs and disbursements, a reasonable attorney's fee to be fixed by the trial and appellate courts respectively.

(g) The Parties agree that if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, so long as this Agreement continues to reflect the intent of the parties.

(h) The headings and captions used in this Agreement are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Agreement, nor affect the meaning or interpretation thereof.

(i) Notices or other communications hereunder shall be in writing and shall be sent by certified mail, return receipt requested, a national overnight courier company, or personal delivery. A notice shall be deemed given upon receipt or refusal to accept delivery. Each Party may change from time to time their respective address for notice hereunder by like notice to the other Party. The notice addresses of the Parties are as follows:

Rhinehart: Rhinehart Land Co., LLC
c/o Rhinehart Oil Co., Inc.
P.O. Box 418
American Fork, UT 84003

King: King Holdings, LC
c/o Robert Barlow
2530 N. County Rd. 800
Nauvoo, IL 62354

GSSC3: GSSC 3, LC
c/o John Barlow
7303 Starboard St
Carlsbad, CA 92011

GSSC4: GSSC 4, LC
c/o John Barlow
7303 Starboard St
Carlsbad, CA 92011

(j) This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof.

[Remainder of Page Intentionally Left Blank; Signature Page(s) to Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date first written above.

RHINEHART

RHINEHART LAND CO., LLC, a Utah limited liability company

By Stan Jardine
Name: Stan Jardine
Title: Manager

KING

KING HOLDINGS, LC, a Utah limited liability company

By John H. Barlow
Name: John H. Barlow
Title: Manager/Member

GSSC 3

GSSC 3, LC, a Utah limited liability company

By John H. Barlow
Name: John H. Barlow
Title: Manager/Member

GSSC 4

GSSC 4, LC, a Utah limited liability company

By John H. Barlow
Name: John H. Barlow
Title: Manager/Member

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) ss

On the 6th day of May, 2009, personally appeared before me JOHN H. BARLOW, AS MANAGER/MEMBER OF KING HOLDINGS, LC, A UTAH LIMITED LIABILITY COMPANY, OF GSSC 3, LC, A UTAH LIMITED LIABILITY COMPANY, AND OF GSSC 4, LC, A UTAH LIMITED LIABILITY COMPANY, the signer of the within instrument, who duly acknowledged to me that he executed the same, for and in behalf of said limited liability companies.

Grace Howard
Notary Public



EXHIBIT "A"

Legal Description of Parcel 5 (the Rhinehart Property)

Lot 5, Albertson's Center No. 1, a commercial subdivision, located in Washington City, Utah, according to the official plat thereof, on file in the office of the Washington County Recorder, Washington County, State of Utah.

EXHIBIT "B"

Legal Description of Parcel 1

Lot 1, Albertson's Center No. 1, a commercial subdivision, located in Washington City, Utah, according to the official plat thereof, on file in the office of the Washington County Recorder, Washington County, State of Utah.

EXHIBIT "C"

Legal Description of Parcel 3

Lot 3, Albertson's Center No. 1, a commercial subdivision, located in Washington City, Utah, according to the official plat thereof, on file in the office of the Washington County Recorder, Washington County, State of Utah.

EXHIBIT "D"

Legal Description of Parcel 4

Lot 6, Albertson's Center No. 1, a commercial subdivision, located in Washington City, Utah, according to the official plat thereof, on file in the office of the Washington County Recorder, Washington County, State of Utah.

EXHIBIT "E"

Legal Description of Parcel 2 (the Albertson's Property)

Lots 2-A and 2-B, Albertson's Center No. 1, a commercial subdivision, located in Washington City, Utah, according to the official plat thereof, on file in the office of the Washington County Recorder, Washington County, State of Utah.