

UNOFFICIAL COPY



Doc#: 0835129071 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/16/2008 03:24 PM Pg: 1 of 10

1 Prepared by and, after recording, return to:

2
3 Andrew R. Cohen
4 Janin, Morgan and Brenner
5 220 Bush St., 17th floor
6 San Francisco, CA 94104
7 Telephone: (415) 981-0670
8 Facsimile: (415) 981-1264
9

Above Space for Recorder's Use Only

CONSENT TO RECIPROCAL EASEMENT AGREEMENT AND USE RESTRICTIONS

(POPLAR CREEK CROSSING SUBDIVISION
and
PRAIRIE STONE CROSSING)

26 THIS CONSENT TO RECIPROCAL EASEMENT AGREEMENT AND USE
27 RESTRICTIONS ("CONSENT") is made and entered into as of the 21st day of *September*
28 2008 (the "Effective Date," as defined herein), and is by and among W2001 VHE
29 REALTY, L.L.C., a Delaware limited liability company ("VHE"), UG PRAIRIE STONE,
30 LP, an Illinois limited partnership ("United"), and PETSMA^RT, INC., a Delaware
31 corporation ("PetSmart").

32 SECTION 1. RECITALS.

33 A. VHE is the sole owner of record of certain real property, consisting of
34 approximately 29.41 acres, and known as Lot 2 in Poplar Creek Crossing Subdivision ("Lot
35 2") which is more particularly described on Exhibit A attached hereto and which is
36 generally depicted on the plat of subdivision for Poplar Creek Crossing, a copy of which has
37 been recorded with the Office of the Cook County Recorder of Deeds as Document No.
38 0717922001 (the "Poplar Creek Plat").

39 B. United is the sole owner of record of certain real property, consisting of
40 approximately 7.82 acres, and known as Lot 6A of the Resubdivision of Lots 5 and 6 in
41 Sears Business Park ("Lot 6A") which is more particularly described on Exhibit B attached
42 hereto. Lot 6A is located immediately south of Lot 2.

10

UNOFFICIAL COPY

43 C. PetSmart is the tenant under that certain lease (the "*PetSmart Lease*")
 44 dated November 29, 2005 ("*Effective Date of PetSmart Lease*") between PetSmart and
 45 VHE as Landlord, pursuant to which PetSmart is leasing a portion of Lot 2 consisting of
 46 approximately 20,087 square feet and more particularly described in Fundamental Lease
 47 Provisions B of the PetSmart Lease (the "*PetSmart Premises*").

48 D. VHE and United entered into that certain Reciprocal Easement Agreement
 49 dated August 14, 2007 which was recorded on October 23, 2007 with the Office of the Cook
 50 County Recorder of Deeds as Document No. 0729615115, and re-recorded with
 51 large/oversize exhibits on October 29, 2007 as Document No. 0730215123 (the
 52 "*Agreement*"). Pursuant to and subject to the Agreement, VHE granted the United
 53 Easement and the Temporary United Easement to United allowing United to use portions
 54 of Lot 2 for the purposes stated in the Agreement. The Agreement provides that the United
 55 Easement and the Temporary United Easement will be effective only upon the consent of
 56 certain entities, including PetSmart.

57 E. Unless otherwise specifically provided for in this Consent, all capitalized
 58 terms used throughout this Consent shall have the same meaning as in the Agreement, if
 59 defined therein.

60 F. The parties hereto have a mutual desire to enter into this Consent to
 61 evidence PetSmart's consent to the United Easement and the Temporary United Easement
 62 and to evidence United's agreement that certain uses will be prohibited during certain
 63 times on Lot 6A.

64 SECTION 2. CONSENT.

65 PetSmart hereby consents to the Agreement, including the granting to United of the
 66 United Easement and the Temporary United Easement, as provided in Section 3.A. and
 67 Section 3.C. of the Agreement, and agrees to comply with the terms, conditions and
 68 restrictions of the Agreement.

69 SECTION 3. PROHIBITED AND EXCLUSIVE USES

70 United, for itself and its successors and assigns, hereby represents, warrants and
 71 agrees to the following restriction:

72
 73 A. While the PetSmart Lease remains in effect, including any renewal period(s)
 74 thereunder, the uses specified in Exhibit C ("*PetSmart Prohibited Uses*") are prohibited
 75 during the Term of the Lease in any portion of Lot 6A.

76 B. While the PetSmart Lease remains in effect, and for a period of one (1) year
 77 thereafter, (i) no portion of Lot 6A will be used for the retail sale of (a) pets (including, but
 78 not limited to, fish, birds, reptiles, dogs, cats and other small animals), (b) pet food, pet
 79 accessories and other products relating to pets and animals, including equestrian products
 80 and apparel related thereto, (c) services related to pets and animals, such as grooming,
 81 boarding, pet day care, animal training and obedience classes, pet adoption and veterinary
 82 services ("*Retail Pet Sales and Services*"), and (ii) United will not enter into any lease or

UNOFFICIAL COPY

83 occupancy agreement for any portion of Lot 6A with any tenant or occupant which engages
84 in Retail Pet Sales and Services. The prohibition on Retail Pet Sales and Services shall not
85 apply (i) if PetSmart has no stores operating within the Chicago Metropolitan Area, or (ii)
86 to a "mainstream" grocery tenant operating in excess of 40,000 square feet of gross floor
87 area, or (iii) to the following if they become tenants or occupants of Lot 6A: Whole Foods,
88 Wild Oats, Fresh Foods, and Sprouts, if operating under the specific trade name set forth.

89

90 SECTION 4. COUNTERPART ORIGINALS.

91 This Consent may be executed in one or more counterparts. All such counterparts,
92 when taken together, shall comprise the fully executed Consent.

93

94 SECTION 5. PARTIES OF INTEREST.

95 Each party represents that this Consent is executed by its duly authorized
96 representative. The terms of this Consent shall be binding upon, and inure to the benefit
97 of, the parties to this Consent and their successors and assigns.

98

99

[SIGNATURES ON FOLLOWING PAGES]

UNOFFICIAL COPY

100

101 IN WITNESS WHEREOF, the parties hereto have caused this Consent to be
102 executed as of the Effective Date.

103

104 W2001 VHE REALTY, L.L.C., a
105 Delaware limited liability company

106
107 By: Stephen M. Lipscomb

ATTEST: [Signature]

108 Printed Name: Stephen M. Lipscomb
109 Assistant Vice President

110 Title: _____

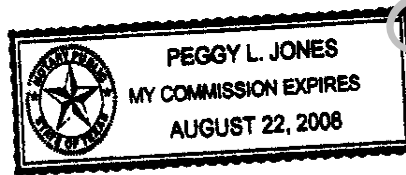
111
112

113 STATE OF Texas)
114) ss.
115 COUNTY OF Dallas

116 on August 14, 2008 before me, Peggy L. Jones personally
117 appeared Stephen M. Lipscomb personally known to me or proved to me on
118 the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
119 within instrument and acknowledged to me that he/she/they executed the same in
120 his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the
121 instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed
122 the instrument.

123
124 [Signature]
125 Signature of Notary

Witness my hand and official seal.



127

UNOFFICIAL COPY

128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143

UG Prairie Stone, LP, an Illinois limited partnership
By: UG Properties, LLC, a California limited liability company
Its: General Partner

By: WL & Associates Realty Advisors, LLC, a
California limited liability company
Its: Managing Member

By: [Signature]
John Walsey,
Managing Member

ATTEST: [Signature]
Emily Neely

Property of Cook County Notary Public's Office

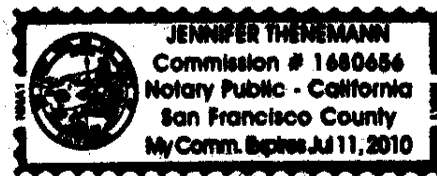
144

145 STATE OF California)
146) ss.
147 COUNTY OF San Francisco)

148 On August 18, 2008 before me, Jennifer Thenemann personally
149 appeared John Walsey personally known to me or proved to me on
150 the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
151 within instrument and acknowledged to me that he/she/they executed the same in
152 his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the
153 instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed
154 the instrument.

155 Witness my hand and official seal.

156 [Signature]
157 Signature of Notary



UNOFFICIAL COPY

158 PETSMART, INC.,
159 a Delaware corporation

160
161 By: *[Signature]*

ATTEST: *[Signature]*
Michele Baldwin

162 Printed Name: Joseph B. Conn

163
164 Title: Vice President + Associate General Counsel


165

166 STATE OF)
167) ss.
168 COUNTY OF)

169 On September 24, 2008 before me, Kerri Mahan personally
170 appeared Joseph B. Conn personally known to me or proved to me on
171 the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
172 within instrument and acknowledged to me that he/she/they executed the same in
173 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
174 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
175 the instrument.

176 Witness my hand and official seal.

177 *[Signature]*
178 Signature of Notary
179

 **KERRI MAHAN**
Notary Public—Arizona
Maricopa County
Expires on 05/15/2012

5042156_v2

UNOFFICIAL COPY

100

EXHIBIT A

101

LEGAL DESCRIPTION OF LOT 2

102 Lot 2 in Poplar Creek Crossing Subdivision, being a subdivision of part of the southeast
103 quarter of the northwest quarter and part of the northeast quarter of the southwest quarter,
104 all in Section 33, Township 42 North, Range 9, East of the Third Principal Meridian, in
105 Cook County, Illinois, according to the plat thereof recorded as Document Number
106 0717922001, with the Cook County Recorder of Deeds.

107

01-33-301-001-0000

108

01-33-301-006-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION OF LOT 6A

LOT 6A IN FINAL PLAT OF RESUBDIVISION OF LOTS 5 AND 6 IN SEARS BUSINESS PARK AMENDED PLAT OF SUBDIVISION, BEING A RESUBDIVISION OF PART OF SECTIONS 32 AND 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 20, 2001 AS DOCUMENT NUMBER 0010323867, IN COOK COUNTY, ILLINOIS.

01-33-301-008-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

PETSMART PROHIBITED USES

1. **Prohibited Uses.** The following uses (collectively referred to as "Prohibited Uses" and individually as a "Prohibited Use") are prohibited during the Term of the Lease in any portion of the Shopping Center: No use shall be permitted in the Shopping Center that is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted: (i) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center; (ii) an operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation (iii) any "second hand" store, "surplus" store, or pawn shop (other than Gamestop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations); (iv) any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance; (v) any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building; (vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (vii) any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located; (viii) any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation or a gas station or other business dispensing petroleum products; (ix) any bowling alley or skating rink; (x) any movie theater or live performance theater; (xi) any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms; (xii) any mortuary or funeral home; (xiii) any establishment selling or exhibiting "obscene" material; (xiv) any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; (xv) any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business provided, however, that this restriction will not prohibit the operation of a brew pub type establishment, e.g. Gordon Biersch, Rock Bottom Brewery, Granite City Brewery or another similar establishment; (xvi) any health spa, fitness center or workout facility except that one such workout facility of no more than 5,000 square feet of Floor Area, such as a Curves, shall be permitted but shall not be within three hundred feet (300') of the Premises; any massage parlors or similar establishments; (xvii) any flea market, amusement or video arcade, pool or billiard hall, or dance hall (provided that first class family entertainment centers that have amusement

UNOFFICIAL COPY

or video arcade machines and pool or billiard tables incidental to their operations, such as an ESPN Zone or a Dave and Buster's as currently operated, shall be permitted); (xviii) any car wash; (xix) any church or training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center or to learning centers such as Huntington Learning Center, Sylvan Learning Center or similar operations provided no such learning center shall exceed 2,000 square feet of Floor Area; (xix) any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. In addition, the following uses must first be approved in writing by Tenant: drive-throughs; children's recreational, educational or day-care facility; restaurants occupying more than twenty-five hundred (2,500) square feet of Gross Floor Area within three hundred feet (300') of the Premises; offices; professional uses; and schools of any nature except in conjunction with animal training or obedience training classes associated with Tenant's Primary Business. As used herein, "school" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers. It is the intent of this Section that the Shopping Center shall be devoted to high quality retail uses and that the parking and the other common facilities shall not be burdened by either excessive or protracted use.

County Clerk's Office