

WHEN RECORDED MAIL TO:

City Clerk  
City of Riverside  
City Hall, 3900 Main Street  
Riverside, CA 92522

DOC # 2001-464609

09/26/2001 08:00A Fee:30.00

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Recorded in Official Records  
County of Riverside

Gary L. Orso  
Assessor, County Clerk & Recorder



Project: Staples Development  
6280 Magnolia  
Magnolia & Merrill Avenues

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COVENANT AND AGREEMENT AND DECLARATION  
OF RESTRICTIONS TO EXERCISE PURCHASE OPTION



THIS COVENANT AND AGREEMENT is made and entered into this Day of August, 2001, by and between MAGNOLIA/MERRILL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY ("MAGNOLIA"), referred to as "Declarant" with reference to the following facts:

A. TOMMY V. THOMAS ("THOMAS") is the fee owner of the following described real property ("Parcel A") located in the City of Riverside, County of Riverside, State of California:

See Exhibit A, attached hereto and incorporated herein by this reference.

B. MAGNOLIA is the fee owner of the following described real property ("Parcel B") located in the City of Riverside, County of Riverside, State of California:

See Exhibit B, attached hereto and incorporated herein by this reference.

C. Parcel A and Parcel B ("Property") are located at the northeast corner of Magnolia Avenue and Merrill Avenue and have a street address of 6280 Magnolia Avenue. Parcel B originally consisted of three parcels and are the subject of a lot consolidation by the City of Riverside (Case LL-028-001) as a condition of approval for the Staples Project.

D. Declarant has entered into a Ground Lease dated September 30, 1961 (the "Ground Lease") with THOMAS as Lessor ("Lessor") and MAGNOLIA as Lessee ("Lessee"). A Memorandum of Lease covering the Ground Lease was recorded on October 20, 1961 as Instrument No. 90338 in Riverside County, California, covering the real property legally described as Parcel A.

E. Pursuant to that certain Amendment to Ground Lease (the "Third Amendment") entered into as of May 1, 1999 and recorded on May 6, 1999 as Instrument No. 99-195395 in Riverside County, California, Lessor granted to Lessee the option to purchase the Property from Lessor (the "Purchase Option") on the terms and conditions set forth in the Third Amendment.

NOW, THEREFORE, incorporating the above recitals, Declarant hereby declares that the Property is and hereafter shall be held, conveyed, transferred, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declaration, limitations, covenants, conditions, and restrictions, which are imposed as equitable servitudes pursuant to a general plan for the development of the Property for the purpose of complying with the requirements of the City of Riverside to consolidate all parcels of the Property, and the parties hereto mutually agree as follows:

1. Lessee to Exercise Purchase Option. For the purpose of satisfying a condition of approval imposed by the City of Riverside for the development of the Property for the Staples Project, as a condition to issuance of a building permit for an approximately 23,143 sq. Ft. Staples retail store at 6280 Magnolia Avenue under Case DR-054-801, Lessee covenants and agrees that the Purchase Option will be exercised on the earliest date on which the Purchase Option may be exercised, and Lessee shall acquire fee title to the Property pursuant to Lessee's exercise of the Purchase Option at the earliest practicable date.

2. Agreement to Consolidate the Property as One Parcel. Following Lessee's acquisition of fee title to Parcel A, Lessee agrees to proceed as then required by the condition of approval imposed by the City of Riverside for Case DR-054-801, to consolidate the Parcel A with Parcel B to create one single parcel.

3. Involuntary Sale or Transfer. Parcel A and Parcel B are currently being held as one parcel pursuant to a Covenant and Agreement and Declaration of Restrictions to Hold Property as One Parcel recorded concurrently herewith. In the event of any involuntary sale, lease or transfer of either Parcel A or Parcel B, one separately from the other, Declarants covenant and agree to provide immediate notice to the City of such sale or transfer and that any items, not then in compliance with the then applicable provisions of the Uniform Building Code ("UBC") shall be remedied and brought into compliance immediately and any interior alterations necessitated thereby will be made at that time, subject to the approval of the City's Building Official of the City of Riverside Planning Department.

4. Noncompliance. In the event of noncompliance, the City may take any and all enforcement actions provided for by the UBC, or of any other provision of the Riverside Municipal Code, or exercise any other remedy under the law to which the City may be entitled.

5. Notice to the Planning Director. The Planning Director of the City of Riverside shall be notified not less than thirty (30) days prior to the transfer of any interest in or to either parcel of the Property as described herein.



6. Successors. This Covenant and Agreement and Declaration of Restrictions to Exercise Purchase Option shall run with the land and shall be binding upon and inure to the benefit of Declarants, their heirs, successors, future owners, encumbrancers, and assigns with respect to the subject Property, without any rights herein being deemed personal to any of them.

7. Deemed Consent. Any person who now or hereafter owns or acquires any right, title or interest in or to any Parcel of the Property shall be deemed (a) to have consented and agreed to every covenant, condition and restriction contained herein whether or not any reference to this Covenant and Agreement is contained in the instrument by which such person acquired an interest in any parcel of the Property.

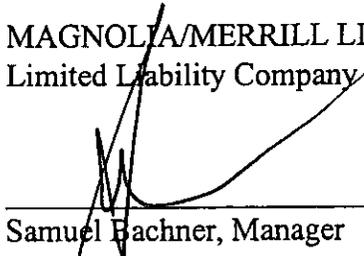
8. Consent of City Planning Director. This Covenant and Agreement and Declaration of Restrictions to Exercise Purchase Option shall not be modified, amended or terminated without the prior written consent of the Planning Director of the City of Riverside duly recorded.

9. Enforcement. The terms of this Covenant and Agreement may be enforced by the City or by any owner, lessee or tenant of any parcel of the Property. Should the City or any owner, lessee or tenant bring an action to enforce the terms of this Covenant and Agreement, the prevailing party shall be entitled to costs of suit, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Covenant and Agreement and Declaration of Restrictions to Exercise Purchase Option on the date first written above.

DECLARANT:

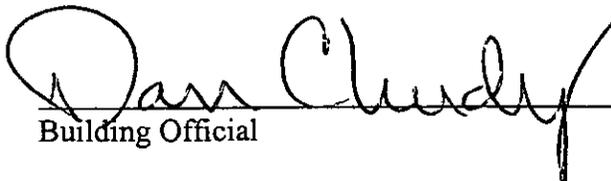
MAGNOLIA/MERRILL LLC, a California  
Limited Liability Company

  
\_\_\_\_\_  
Samuel Bachner, Manager

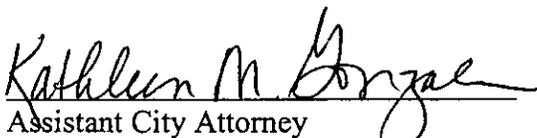
Approved as to Content:

  
\_\_\_\_\_  
Planning Department

Approved as to Content:

  
\_\_\_\_\_  
Building Official

Approved as to Form:

  
\_\_\_\_\_  
Assistant City Attorney

[COV01178901.KG]



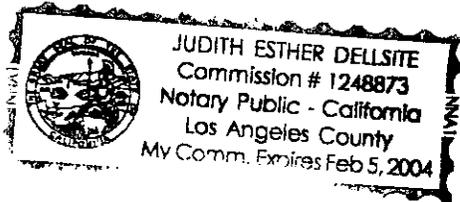
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State of California            )  
  )ss.  
County of Los Angeles        )

On September 17, 2001 before me, Judith Esther Dellsite, Notary Public, personally appeared Samuel Bachner, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



*Judith Esther Dellsite*



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EXHIBIT "A"

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF THE RIGHT OF WAY OF THE UNION PACIFIC RAILWAY COMPANY, AS NOW ESTABLISHED, WITH THE EASTERLY LINE OF MAGNOLIA AVENUE, AS NOW ESTABLISHED;

THENCE NORTH 89°26'30" EAST (recorded as North 89°14' East), 166 FEET, ON SAID SOUTH LINE TO THE POINT OF INTERSECTION OF THE WEST LINE OF THE EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 34, WITH THE SAID SOUTH LINE OF SAID RAILWAY RIGHT OF WAY;

THENCE SOUTH 0°01'15" EAST (recorded as South 0°07' East), 171.5 FEET, ON SAID WEST LINE OF SAID EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, TO A POINT WHERE THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF NEW YORK STREET, AS SHOWN ON A MAP FILE IN BOOK 9, PAGE 2 OF RECORD OF SURVEYS, RECORDS OF RIVERSIDE COUNTY CALIFORNIA, INTERSECTS SAID WEST LINE OF SAID EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION;

THENCE SOUTH 89°24' WEST (recorded as South 89°11' West), 53.35 FEET, ON SAID EASTERLY PROLONGATION OF SAID NORTHERLY LINE OF NEW YORK STREET, TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 0°01'15" WEST (recorded as North 0°07' West), 56.3 FEET;

THENCE SOUTH 89°24' WEST (recorded as South 89°11' West), 173.59 FEET, TO A POINT IN THE EASTERLY LINE OF MAGNOLIA AVENUE;

THENCE SOUTH 27°46'30 WEST (recorded as South 27°36' West), 64 FEET ON THE SAID EASTERLY LINE OF MAGNOLIA AVENUE, TO THE POINT OF INTERSECTION OF SAID EASTERLY LINE OF MAGNOLIA AVENUE WITH THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF NEW YORK STREET;

THENCE NORTH 89°24' EAST (recorded as North 89°11' East), 203.35 FEET ON SAID EASTERLY PROLONGATION OF SAID NORTHERLY LINE OF NEW YORK STREET, TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF RIVERSIDE IN GRANT OF EASEMENT DOCUMENT RECORDED MAY 1, 2001, PER DOCUMENT NO. 2001-186720 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY.

DESCRIPTION APPROVAL B 120101

*[Signature]*  
SURVEYOR, CITY OF RIVERSIDE by \_\_\_\_\_



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EXHIBIT "B"

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, BEING BOUNDED AS FOLLOWS:

BOUNDED ON THE EAST BY THE WESTERLY LINE OF THAT CERTAIN ALLEY 20 FEET IN WIDTH, AS SHOWN BY RECORD OF SURVEY ON FILE IN BOOK 36, PAGE 57 OF RECORD OF SURVEYS, RECORDS OF SAID RIVERSIDE COUNTY;

BOUNDED ON THE NORTH BY THE SOUTHERLY LINE OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY AS SHOWN BY SAID RECORD OF SURVEY;

BOUNDED ON THE WEST BY THE SOUTHEASTERLY LINE OF MAGNOLIA AVENUE AS SHOWN BY SAID RECORD OF SURVEY;

BOUNDED ON THE SOUTH BY THE NORTHERLY LINE OF MERRILL AVENUE AS SHOWN BY SAID RECORD OF SURVEY;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF RIVERSIDE IN GRANT OF EASEMENT DOCUMENT RECORDED MAY 1, 2001, PER DOCUMENT NO. 2001-186720 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY;

ALSO EXCEPTING THEREFROM THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 34, AS DESCRIBED IN DOCUMENT RECORDED AUGUST 31, 2000, PER DOCUMENT NO. 2000-341355 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, AND BEING DESCRIBED IN SAID DOCUMENT AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF THE RIGHT OF WAY OF THE UNION PACIFIC RAILWAY COMPANY, AS NOW ESTABLISHED, WITH THE EASTERLY LINE OF MAGNOLIA AVENUE, AS NOW ESTABLISHED;

THENCE NORTH 89°26'30" EAST (recorded North 89°14' East), 166 FEET, ON SAID SOUTH LINE TO THE POINT OF INTERSECTION OF THE WEST LINE OF THE EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 34, WITH THE SAID SOUTH LINE OF SAID RAILWAY RIGHT OF WAY;

THENCE SOUTH 0°01'15" EAST (recorded as South 0°07' East), 171.5 FEET, ON SAID WEST LINE OF SAID EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, TO A POINT WHERE THE

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EASTERLY PROLONGATION OF THE NORTHERLY LINE OF NEW YORK STREET, AS SHOWN ON A MAP FILE IN BOOK 9, PAGE 2 OF RECORD OF SURVEYS, RECORDS OF RIVERSIDE COUNTY CALIFORNIA, INTERSECTS SAID WEST LINE OF SAID EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION;

THENCE SOUTH 89°24' WEST (recorded as South 89°11' West), 53.35 FEET, ON SAID EASTERLY PROLONGATION OF SAID NORTHERLY LINE OF NEW YORK STREET, TO THE TRUE POINT OF BEGINNING;

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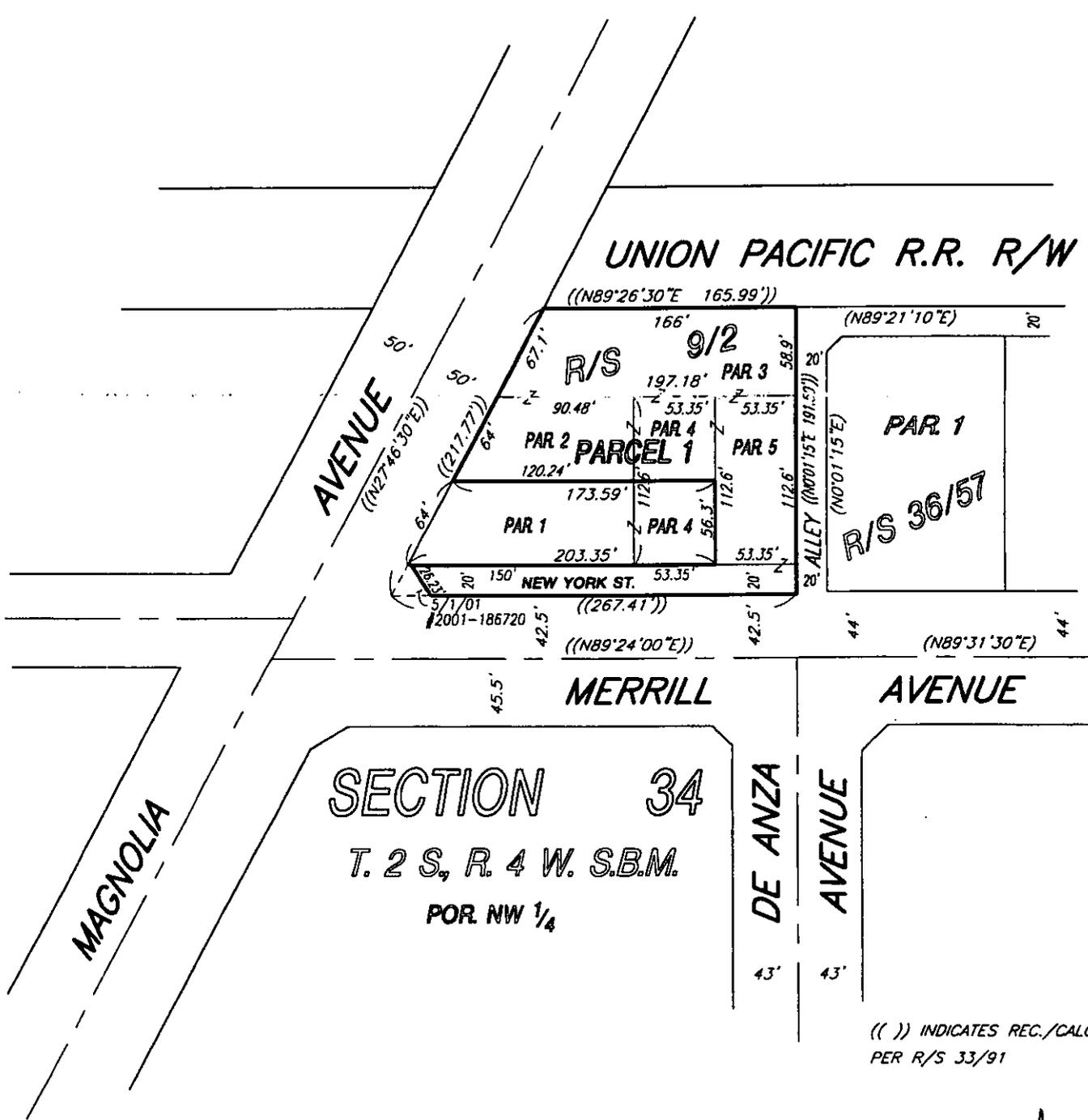
THENCE NORTH 89°24' EAST (recorded as North 89°11' East), 203.35 FEET ON SAID EASTERLY PROLONGATION OF SAID NORTHERLY LINE OF NEW YORK STREET, TO THE POINT OF BEGINNING.

DESCRIPTION APPROVAL B 120101

K. Street by —  
SURVEYOR, CITY OF RIVERSIDE



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THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

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STAPLES - MAGNOLIA & MERRILL - LOT LINE ADJUSTMENT

DRAWN BY: SJS

NOT TO SCALE

C/A 730