

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHARMACANN PENN, LLC :  
1010 Lake Street, Second Floor : CIVIL ACTION  
Oak Park, IL 60301 :  
Plaintiff, : NO.  
v. :  
BV DEVELOPMENT SUPERSTITION :  
RR, LLC :  
3131 East Camelback Road #220 :  
Phoenix, AZ 85016; :  
FRANKLIN MILLS RESIDUAL :  
LIMITED PARTNERSHIP f/k/a :  
LIBERTY MILLS RESIDUAL :  
PARTNERSHIP :  
225 W. Washington St. :  
Indianapolis, IN 46204; :  
SIMON PROPERTY GROUP, INC. :  
225 W. Washington St. :  
Indianapolis, IN 46204; :  
FRANKLIN MILLS ASSOCIATES :  
LIMITED PARTNERSHIP f/k/a :  
LIBERTY MILLS LIMITED :  
PARTNERSHIP :  
225 W. Washington St. :  
Indianapolis, IN 46204; and :  
WESTERN FRANKLIN MILLS :  
CORPORATION :  
2001 Market Street, 5th Floor :  
Two Commerce Square :  
Philadelphia, PA 19103 :  
Defendants. :

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332(a), 1441(a), and 1446, Defendants Franklin Mills Residual Limited Partnership f/k/a Liberty Mills Residual Limited Partnership (“Franklin Mills Residual”),

Simon Property Group, Inc. (“Simon”), and Franklin Mills Associates Limited Partnership f/k/a Liberty

Mills Associates Limited Partnership (“Franklin Mills Associates”) respectfully petition this Court for removal of the above-captioned case from the Court of Common Pleas of Philadelphia County, Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania, and allege as follows:

1. Plaintiff PharmaCann Penn, LLC (“Plaintiff”), initiated an action against Defendants, in the Court of Common Pleas of Philadelphia County, Pennsylvania, Case No. 170902409, by filing a Complaint on or about September 20, 2017. A true and correct copy of the Complaint is attached hereto as Exhibit A.

2. Under 28 U.S.C. § 1441: “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

3. Under 28 U.S.C. § 1332, which provides for diversity jurisdiction, the “district courts shall have original jurisdiction of all civil actions, where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.” 28 U.S.C. § 1332(a)(1).

4. In this action, there is diversity of citizenship as the matter is between citizens of different States regarding the proper parties to this dispute.

5. Under 28 U.S.C. § 1332(c), a corporation is deemed a citizen of its state of incorporation as well as the state where it has its principal place of business.

6. As set forth in Plaintiff's Complaint, Plaintiff PharmaCann is a Limited Liability Company organized under the laws of the Commonwealth of Pennsylvania with its principal place of business at 1010 Lake Street, Second Floor, Oak Park, Illinois 60301. See Ex. A, Compl ¶ 1.

7. As set forth in Plaintiff's Complaint, Defendant BV Development Superstition RR, LLC ("BV") is a Limited Liability Company organized under the laws of the State of New Mexico with its principal place of business at 3131 East Camelback Road #220, Phoenix, Arizona 85016. See Ex. A, Compl ¶ 2.

8. Although incorrectly identified in the Complaint, as reflected in the Special Warranty Deed attached as Exhibit A to the Complaint (the "Special Warranty Deed"), Defendant Franklin Mills Residual is a Limited Partnership *organized under the laws of the District of Columbia* with its principal place of business at 225 W. Washington St., Indianapolis, IN 46204. See Ex. A, Compl., Exh. A thereto, Special Warranty Deed. Moreover, as reflected by the attached record from the Department of Consumer and Regulatory Affairs for the District of Columbia regarding Defendant Franklin Mills Residual, attached hereto as Exhibit B, Franklin Mills Residual remains a Limited Partnership *organized under the laws of the District of Columbia* with its principal place of business at 225 W. Washington St., Indianapolis, IN 46204. See Ex. B.<sup>1</sup> Additionally, as reflected in the attached Service of Process Transmittal regarding service of the Complaint, Franklin Mills Residual is a Limited Partnership *organized under the laws of the District of Columbia* with its principal place of business at 225 W. Washington St., Indianapolis, IN 46204. See Ex. C. Thus, notwithstanding Plaintiff's bare and patently incorrect allegations to the contrary, at all relevant times hereto, Franklin Mills Residual has been a Limited Partnership

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<sup>1</sup> "[A] a court can look to more than just the pleading allegations ... [for] a limited consideration of reliable evidence that the defendant may proffer to support the removal." In re Briscoe, 448 F.3d 201, 219 (3d Cir. 2006).

*organized under the laws of the District of Columbia* with its principal place of business at 225 W. Washington St., Indianapolis, IN 46204.

9. As set forth in Plaintiff's Complaint, Defendant Simon is a Corporation organized under the laws of the State of Delaware. See Ex. A, Compl ¶ 4. Simon maintains its principal place of business at 225 W. Washington St., Indianapolis, IN 46204.

10. As set forth in Plaintiff's Complaint, Defendant Franklin Mills Associates is a Limited Liability Company organized under the laws of the District of Columbia. See Ex. A, Compl ¶ 5. Franklin Mills Associates maintains its principal place of business at 225 W. Washington St., Indianapolis, IN 46204.

11. As set forth in Plaintiff's Complaint, Defendant Western Franklin Mills Corporation ("Western") is a Corporation organized under the laws of the Commonwealth of Pennsylvania with an address of 2001 Market Street, 5<sup>th</sup> Floor, Two Commerce Square, Philadelphia, PA 19103. See Ex. A, Compl ¶ 6.

12. Defendant Western is not a proper party to this case, and has been fraudulently joined in this action solely to defeat federal court diversity jurisdiction. "The doctrine of fraudulent joinder represents an exception to the requirement that removal be predicated solely upon complete diversity." In re Briscoe, 448 F.3d 201, 215-16 (3d Cir. 2006). "In a suit with named defendants who are not of diverse citizenship from the plaintiff, the diverse defendant may still remove the action if it can establish that the non-diverse defendants were 'fraudulently' named or joined solely to defeat diversity jurisdiction." Id. at 216. "[J]oinder is fraudulent if there is no reasonable basis in fact or colorable ground supporting the claim against the joined defendant, or no real intention in good faith to prosecute the action against the defendant or seek a joint judgment." Id. (citing Abels v. State Farm Fire & Cas. Co., 770 F.2d 26, 32 (3d Cir. 1985)). "If the district court

determines that the joinder was ‘fraudulent’ in this sense, the court can disregard, for jurisdictional purposes, the citizenship of certain nondiverse defendants, assume jurisdiction over a case, dismiss the nondiverse defendants, and thereby retain jurisdiction.” Briscoe, 448 F.3d at 216. Because there is no reasonable basis in fact or colorable ground supporting the claims against Defendant Western in this action, it was therefore fraudulently joined, and its citizenship must be disregarded for diversity purposes.

13. The Complaint itself in its numbered paragraph allegations references Defendant Western only twice, and solely in the context of mentioning it is a nondiverse defendant. See Ex. A, Compl ¶ 6 (“Western is a Pennsylvania corporation with a registered address c/o CT Corporation System, 2001 Market Street, 5th Floor, Two Commerce Square, Philadelphia, Pennsylvania 19103. Western is the general partner of Franklin Mills Associates.”); See Ex. A, Compl ¶ 9 (“Western is a Pennsylvania corporation.”). No other allegations at all are asserted against Defendant Western in the Complaint. No allegations of any kind are asserted against Defendant Western that would establish it is a proper party to this action, or that there is any possible basis to maintain the claims asserted in this action against Defendant Western. In fact, the Special Warranty Deed , upon which Plaintiff has initiated the instant action, establishes beyond question that Defendant Western *has no interest in the property at issue or in the enforcement of the deed restrictions set forth within the Special Warranty Deed*. See Ex. A, Compl., Exhibit A thereto.

14. The Special Warranty Deed identifies only two parties to the sale of the property at issue, the Grantor, Defendant Franklin Mills Residual, and the Grantee, non-party Chi-Chi’s U.S.A., Inc. (“Chi-Chi’s”). See Ex. A, Compl., Exhibit A thereto. As set forth in the Complaint, Chi-Chi’s subsequently conveyed the property to Defendant BV on September 8, 2005. See Ex.

A, Compl ¶ 15. Plaintiff later purchased the property from Defendant BV on October 6, 2017. See Ex. D, 10/9/17 Change of Ownership Notice. The requested declaratory and equitable relief in this action arises solely from the Special Warranty Deed. Plaintiff intends to develop a “medical marijuana dispensary” on the property. See Ex. A, Compl. ¶ 17. Plaintiff seeks declaratory and equitable relief permitting it to engage in this venture notwithstanding the deed restrictions set forth in the Special Warranty Deed. Absent such relief, Plaintiff will be unable to develop the proposed medical marijuana dispensary since the plain language of the deed restrictions prevents such activities on the property. Id. at ¶ 19. Thus, the only proper Defendants in this action, are parties that have an ability to enforce the deed restrictions set forth in the Special Warranty Deed, including Defendant Franklin Mills Residual, i.e., the Grantor of the property in the Special Warranty Deed, which placed the deed restrictions at issue on the property. Defendant Western has *never* had any ownership interest in the property set forth in the Special Warranty Deed. In fact, even according to Plaintiff’s Complaint, Defendant Western never had any ownership interest in the property identified in the Special Warranty Deed. Defendant Western is identified in the Special Warranty Deed only as the *General Partner* of Defendant Franklin Mills Associates, which in turn is identified in the Special Warranty Deed only as the *General Partner* of Defendant Franklin Mills Residual, the Grantor of the property in the Special Warranty Deed. Accordingly, the Special Warranty Deed reflects that only the Grantor, Defendant Franklin Mills Residual, had any interest in the property being conveyed or in the enforcement of the deed restrictions set forth in the Special Warranty Deed.

15. Separate and apart from the fact that Defendant Western had no interest in the property at issue or in enforcing the Special Warranty Deed (as discussed above), as of May 5, 1997, Defendant Western was no longer even the General Partner of Defendant Franklin Mills

Associates. See Ex. E, Certificate of Amendment of Registration. § 5 (“Western Franklin Mills Corp. is withdrawn as a General Partner.”). As such, since May 5, 1997, Defendant Western has had no connection whatsoever with Defendants Franklin Mills Associates, Franklin Mills Residual, Simon, or the property at issue in this lawsuit.

16. Defendant Western, therefore, has no conceivable standing or ability to seek enforcement of the deed restrictions set forth in the Special Warranty Deed. Accordingly, because Defendant Western has no interest whatsoever in the property at issue or in the enforcement of the deed restrictions set forth in the Special Warranty Deed forming the basis for this dispute, Defendant Western is not a proper party to this action. It has therefore been fraudulently joined solely to defeat federal court diversity jurisdiction. Its citizenship must consequently be overlooked for diversity purposes.

17. As to the amount in controversy in this action, it unquestionably exceeds the sum or value of \$75,000, exclusive of interest and costs. See 28 U.S.C. § 1446(c)(2)(A) (“the notice of removal may assert the amount in controversy if the initial pleading seeks... nonmonetary relief.”). “The mere fact that plaintiff is only seeking declaratory relief at this stage -- and not damages -- does not alter ... that the amount in controversy is satisfied.” Miller v. Liberty Mut. Group, 97 F. Supp. 2d 672, 675 (W.D. Pa. 2000). See also Jumara v. State Farm Ins. Co., 55 F.3d 873,877 (3d Cir. 1995) (Holding amount in controversy requirement “was satisfied despite the fact that the action did not itself seek monetary relief.”); Manze v. State Farm Insurance Co., 817 F.2d 1062, 1068 (3d Cir. 1987) (same). Plaintiff’s Complaint asserts claims exclusively for non-monetary relief, i.e., claims for a declaratory judgment (Count I) and quiet title (Count II). The requested relief relates to the Special Warranty Deed. Plaintiff, which recently purchased on October 6, 2017 the property identified in the Special Warranty Deed (see Ex. D, 10/9/17 Change

of Ownership Notice), intends to develop a “medical marijuana dispensary” on the property. See Ex. A, Compl. ¶ 17. Plaintiff seeks declaratory and equitable relief permitting it to engage in this venture notwithstanding the deed restrictions set forth in the Special Warranty Deed, as absent such relief, Plaintiff will be unable to do so since the plain language of the deed restrictions prevents such activities on the property. Id. at ¶ 19. As reflected in the Special Warranty Deed attached as Exhibit A to the Complaint, the property at issue was sold in October 1991 for \$560,000, and is thus valued well in excess of the \$75,000 minimum amount in controversy necessary to establish diversity jurisdiction. Additionally, upon information and belief, the value of the enterprise Plaintiff seeks to engage in on the property in question would be valued at well in excess of the \$75,000 minimum amount in controversy. Accordingly, the amount in controversy requirement is satisfied for diversity jurisdiction.

18. With regard to the timeliness of removal, Defendants Franklin Mills, Associates, Franklin Mills Residual, and Simon were served with the Complaint on September 27, 2017. Thus, this Notice of Removal is timely as it has been filed within 30 days of original service of process upon these Defendants of the Complaint initiating this action. See 28 U.S.C. § 1446(b).

19. Because the only proper parties to this action are citizens of different states, and because the amount in controversy exceeds \$75,000, federal diversity jurisdiction exists and removal of this action is appropriate under 28 U.S.C. § 1441(a).

20. In addition, judicial economy, fairness, and convenience to the parties will be served by removing this state action to federal court.

21. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of the Notice of Removal has been provided to Plaintiff and Defendant Western, and has been filed with the Court of Common Pleas of Philadelphia County, Pennsylvania.

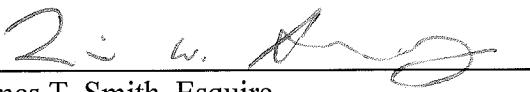


WHEREFORE, Defendants Franklin Mills Residual Limited Partnership f/k/a Liberty Mills Residual Limited Partnership, Simon Property Group, and Franklin Mills Associates Limited Partnership f/k/a Liberty Mills Associates Limited Partnership, respectfully request that the above-captioned action pending in the Court of Common Pleas of Philadelphia County, Pennsylvania, be removed to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

Dated: October 17, 2017

**BLANK ROME LLP**

By: 

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ATTORNEYS FOR PLAINTIFF  
PHARMACANN PENN, LLC

\_\_\_\_\_  
PHARMACANN PENN, LLC,  
  
Plaintiff,  
  
v.  
  
BV DEVELOPMENT SUPERSTITION RR, LLC,  
et al.,  
  
Defendants.  
\_\_\_\_\_

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
COMMERCE PROGRAM

SEPTEMBER TERM, 2017  
NO. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND QUIET TITLE RELIEF**

Plaintiff, PharmaCann Penn, LLC, a Pennsylvania limited liability company ("PharmaCann"), through its undersigned counsel, Fox Rothschild LLP, by way of Complaint for Declaratory and Quiet Title Relief against defendants, BV Development Superstition RR, LLC, a New Mexico limited liability company ("BV"), Franklin Mills Residual Limited Partnership f/k/a Liberty Mills Residual Limited Partnership, a Pennsylvania limited partnership ("Franklin Mills"), Simon Property Group, Inc., a Delaware corporation ("Simon"), Franklin Mills Associates Limited Partnership f/k/a Liberty Mills Associates Limited Partnership, a District of Columbia limited partnership ("Franklin Mills Associates"), and Western Franklin Mills Corporation, general partner of Franklin Mills Associates Limited Partnership, a Pennsylvania corporation ("Western"), avers the following:

**The Parties**

1. PharmaCann is a Pennsylvania limited liability company with its principal place of business located at 1010 Lake Street, Second Floor, Oak Park, Illinois 60301. PharmaCann applied for and received a medical marijuana dispensary permit in Pennsylvania on June 29, 2017.

2. BV is a New Mexico limited liability company with its principal place of business located at 3131 East Camelback Road #220, Phoenix, Arizona 85016.

3. Franklin Mills is a Pennsylvania limited liability company with a registered address c/o CT Corporation System, 2001 Market Street, 5<sup>th</sup> Floor, Two Commerce Square, Philadelphia, Pennsylvania 19103.

4. Simon is a Delaware corporation with a registered address c/o CT Corporation System, 2001 Market Street, 5<sup>th</sup> Floor, Two Commerce Square, Philadelphia, Pennsylvania 19103. Simon owns and/or manages the Philadelphia Mills shopping complex.

5. Franklin Mills Associates is a District of Columbia limited liability company with a registered address c/o CT Corporation System, 2001 Market Street, 5<sup>th</sup> Floor, Two Commerce Square, Philadelphia, Pennsylvania 19103. Franklin Mills Associates is the general partner of Franklin Mills.

6. Western is a Pennsylvania corporation with a registered address c/o CT Corporation System, 2001 Market Street, 5<sup>th</sup> Floor, Two Commerce Square, Philadelphia, Pennsylvania 19103. Western is the general partner of Franklin Mills Associates.

#### Jurisdiction and Venue

7. Jurisdiction and venue are proper in the Court of Common Pleas of Philadelphia County as this matter relates to real property located in Philadelphia, Pennsylvania.

8. Further, PharmaCann and Franklin Mills are Pennsylvania limited liability companies.

9. Western is a Pennsylvania corporation.

10. All of the defendants regularly conduct business in the Commonwealth of Pennsylvania ("Commonwealth" or "Pennsylvania").

**Factual Background**

**A. History of the Property at Issue**

11. The real property at issue in this matter, 599 Franklin Mills Circle, Philadelphia, Pennsylvania 19154 (the "Property"), is part of the Franklin Mills shopping complex, which now is known as Philadelphia Mills ("Philadelphia Mills").

12. Simon owns Philadelphia Mills, and Simon owns and/or manages other real property that is part of the Philadelphia Mills shopping complex.

13. As part of the development of Philadelphia Mills in 1991, Franklin Mills conveyed the Property by purchase to Chi-Chi's USA, Inc. ("Chi-Chi's"). See Special Warranty Deed attached hereto as Exhibit "A".

14. During the time of the sale to Chi-Chi's, the Property was subject to certain Deed Restrictions and other covenants contained in the Special Warranty Deed – all largely because the Property was part of and subject to the overall development of Philadelphia Mills. Id.

15. In 2005, Chi-Chi's conveyed its interest in the Property to BV by Quitclaim Deed dated September 8, 2005 and recorded on October 11, 2005. See Deed into BV attached hereto as Exhibit "B".

16. On March 17, 2017, twenty-six (26) years after the creation of the Special Warranty Deed, BV entered into a Purchase and Sale Agreement with PharmaCann to acquire the Property.

17. PharmaCann, as part of its formal application to the Commonwealth of Pennsylvania's Department of Health for a medical marijuana dispensary permit, identified the Property as its principal dispensary location, and the Commonwealth issued PharmaCann a permit based upon that location. Moreover, the City of Philadelphia approved PharmaCann's

request for a zoning permit to operate a medical marijuana dispensary at the Property. See Approved Zoning Permit Statements attached hereto as Exhibit "C".

18. As obligated, BV properly provided Franklin Mills with a Right of First Refusal to repurchase the Property before selling the Property to PharmaCann. On March 29, 2017, consistent with the restrictions contained in the Special Warranty Deed, Franklin Mills waived its right to repurchase the Property by electing not to exercise its Right of First Refusal to repurchase the Property. See March 29, 2017 letter attached hereto as Exhibit "D".

19. In its March 29, 2017 letter, and again in a letter dated August 23, 2017, however, Franklin Mills advised BV that it believed that the sale of the Property for a medical marijuana dispensary was "strictly prohibited" by the "Prohibited Uses" in the Deed Restrictions contained in the Special Warranty Deed and threatened to take action to enforce the Deed Restriction if the sale of the Property closed. Id.; see also August 23, 2017 letter attached hereto as Exhibit "E".

20. The Deed Restrictions contained in the Special Warranty Deed do not prohibit, in any way, a medical marijuana dispensary because medical marijuana dispensaries – subject to statutory restrictions and regulations imposed by statute – are (a) neither "unlawful" in Pennsylvania, (b) nor "drug stores," under existing Pennsylvania law.

**B. Pennsylvania enacts Medical Marijuana Legislation with Strict Regulations.**

21. The Medical Marijuana Act, 35 P.S. §10231.101 *et seq.* (the "Act") was signed into law on April 17, 2016 by Governor Wolf after deliberation and passage by both houses of the Pennsylvania Legislature.

22. The Act in Pennsylvania expressly authorizes the use of medical marijuana in Pennsylvania for seventeen (17) discrete and defined serious medical conditions (such as cancer, HIV/AIDS and ALS).

23. In the Commonwealth, the proposed uses and application of medical marijuana are extremely limited.

24. The regulations promulgated under the Act have stringent requirements for potential growers/processors and dispensaries. See 28 Pa. Code §1141 *et seq.*

25. For example, the Act authorizes up to only fifty (50) medical marijuana dispensaries to be divided among six (6) defined geographic regions throughout the Commonwealth.

26. Applications for licenses were due by March 20, 2017, and the Pennsylvania Department of Health awarded dispensary licenses on June 29, 2017.

27. Pursuant to the Act and the applicable regulations, dispensaries must be operational within six (6) months of the Commonwealth issuing the requisite licenses. See 28 Pa. Code §1141.42.

**C. PharmaCann Applies for a License to be a Medical Marijuana Dispensary.**

28. PharmaCann submitted its formal application to become a medical marijuana dispensary to the Commonwealth on March 20, 2017.

29. As part of its application, PharmaCann identified the Property as the location for its primary dispensary.

30. On June 29, 2017, the Commonwealth issued PharmaCann a dispensary permit.

31. As a result of the permit issued by the Commonwealth, PharmaCann's dispensary must be operational by no later than December 29, 2017.

32. Similarly, the Philadelphia Zoning Code has zoned the Property for a medical marijuana facility.

33. On July 28, 2017, PharmaCann received a Zoning/Use Registration Permit to use the Property as a medical marijuana dispensary. See Zoning/Use Registration Permit (Exhibit "C").

34. PharmaCann is ready, willing and able to close on the Property with BV and to comply with the Act and all Commonwealth regulations for its medical marijuana dispensary.

**D. Franklin Mills Impedes PharmaCann's Ability to Open its Proposed Location.**

35. Franklin Mills has unnecessarily impeded PharmaCann's ability to close on the Property and to develop its medical marijuana dispensary consistent with the relevant provisions of the Act and the accompanying regulations.

36. There is no basis for Franklin Mills to object and/or to impede the closing on the sale of the Property.

37. First, contrary to what Franklin Mills has asserted, operation of PharmaCann's proposed medical marijuana dispensary pursuant to the Act is not "unlawful".

38. On the contrary, the Commonwealth granted PharmaCann a licensed permit because PharmaCann has complied fully with the Act and all accompanying regulations and because PharmaCann has the resources and ability to operate a medical marijuana dispensary in conformity with Pennsylvania law.

39. Further, medical marijuana dispensaries – subject entirely to the Act and the accompanying regulations – are expressly lawful in Pennsylvania, and Pennsylvania law governs exclusively the operations, permitting and licensure of medical marijuana dispensaries.

40. Second, medical marijuana dispensaries are not "drug stores" as Franklin Mills suggests.

41. Medical marijuana dispensaries are not open to the public (only patients with Commonwealth-issued medical marijuana identification cards have access), and they do not sell prescription drugs and devices, health and beauty aids or other related items.

42. Medical marijuana is a drug but not in the ordinary and customary meaning intended in the name “drug store” because it is neither a prescription drug nor an “over the counter” pharmaceutical or nutraceutical.

43. Indeed, medical marijuana dispensaries dispense only limited forms of smokeless medical marijuana (*i.e.*, vape, oils, tinctures and creams) to appropriately certified individuals suffering from at least one of seventeen (17) defined serious medical conditions, who have received a written recommendation from a properly certified physician, and all of which are subject to stringent regulations and continuous oversight by the Commonwealth’s Department of Health.

44. Because of Franklin Mills’ untenable and insupportable position on these purported “Prohibited Uses” in the Deced Restrictions, PharmaCann must seek appropriate declaratory and quiet title relief so that PharmaCann can properly open its dispensary and provide aid and comfort to the seriously ill patients that the Commonwealth intended to care for by the passage of the Act.

45. Because of the timing of the six (6) month requirement to become operational, PharmaCann must seek declaratory and quiet title relief on an expedited basis.

46. PharmaCann is entitled to a declaration by this Court that its operation of a medical marijuana dispensary is mandated and regulated by Pennsylvania law and is not “unlawful” for purposes of an outdated deced restriction.



47. PharmaCann is also entitled to a declaration by this Court that its operation of a medical marijuana dispensary, without any evidence of regulatory non-compliance, is consistent with the Act and the accompanying regulations and, thus, is lawful and permissible.

48. PharmaCann is further entitled to a declaration by this Court that its operation of a medical marijuana dispensary is not a “drug store” as defined in the Deed Restrictions because “drug stores” are entirely separate entities.

49. Alternatively, PharmaCann is entitled to quiet title relief invalidating and striking the Deed Restriction prohibiting a “drug store” because that restriction is outdated, unnecessary and no longer a substantial benefit to anyone associated with Philadelphia Mills, let alone the prior owner/tenant, Phar-Mor, a licensed pharmacy and drug store, for whom this restriction was created and that is now no longer in business.

50. There are no other parties, who have an interest in this declaratory and/or quiet title Complaint, other than the parties to this action.

**COUNT I**  
**ACTION FOR DECLARATORY JUDGMENT**

51. PharmaCann hereby incorporates by referenced paragraphs 1 through 50, inclusive of its Complaint as if the same were set forth in full herein.

52. PharmaCann is entitled to a declaratory judgment and related relief consistent with 42 Pa.C.S.A. §7531 *et seq.* (2017).

53. Pursuant to 42 Pa.C.S.A. §7533, “[a]ny person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.” Id.

54. PharmCann has a legitimate need for declaratory relief, as there is a genuine justiciable controversy.

55. Franklin Mills opposes BV's proposed sale of the Property to PharmaCann based upon the "Prohibited Uses" in the Deed Restrictions contained in the Special Warranty Deed.

56. The Pennsylvania Rules of Civil Procedure permit complaints for declaratory judgment, such as PharmaCann's Complaint in this matter, under these circumstances.

57. Pursuant to Pa. R. Civ. P. 1601(a), PharmaCann respectfully requests for this Court to determine as a matter of law that the operation of medical marijuana dispensary is not "unlawful" as defined in the "Prohibited Uses" of the Deed Restrictions contained in the Special Warranty Deed.

58. Pursuant to Pa. R. Civ. P. 1601(a), PharmaCann respectfully requests for this Court to determine as a matter of law that the operation of medical marijuana dispensary is lawful assuming that PharmaCann complies fully with the Act and all related regulations, as well as Philadelphia's zoning requirements.

59. Pursuant to Pa. R. Civ. P. 1601(a), PharmaCann respectfully requests for this Court to determine as a matter of law that the operation of medical marijuana dispensary is not considered to be a "drug store" as defined in the "Prohibited Uses" of the Deed Restrictions contained in the Special Warranty Deed.

60. PharmaCann seeks such declaratory relief on an expedited basis.

WHEREFORE, plaintiff, PharmaCann Penn, LLC, respectfully requests that this Court enter judgment in its favor and against defendants, BV Development Superstition RR, LLC, Franklin Mills Residual Limited Partnership, Simon Property Group, Inc., Franklin Mills Associates Limited Partnership and Western Franklin Mills Corporation, and enter an Order:

- (a.) declaring that the operation of medical marijuana dispensary in conformity with Pennsylvania law is not “unlawful” as defined in the “Prohibited Uses” of the Deed Restrictions contained in the Special Warranty Deed;
- (b.) declaring that the operation of medical marijuana dispensary is lawful assuming that PharmaCann complies fully with the Act and all related regulations;
- (c.) declaring that that the operation of medical marijuana dispensary is not considered to be a “drug store” as defined in the “Prohibited Uses” of the Deed Restrictions contained in the Special Warranty Deed; and
- (d.) granting such other relief as the Court deems appropriate.

**COUNT II**  
**ACTION FOR QUIET TITLE RELIEF**

61. PharmaCann hereby incorporates by referenced paragraphs 1 through 60, inclusive of its Complaint as if the same were set forth in full herein.

62. Alternatively, PharmaCann is entitled to quiet title relief consistent with Pennsylvania Rule of Civil Procedure 1066 *et seq.*

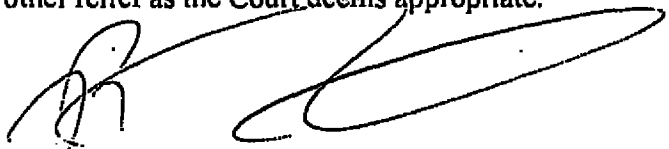
63. The “drug store” Deed Restriction is outdated, unnecessary and no longer a substantial benefit to anyone associated with Philadelphia Mills, let alone the prior owner/tenant, Phar-Mor, for whom this restriction was created and which is now no longer in business.

64. Pursuant to Pennsylvania Rule of Civil Procedure 1066(b)(2), PharmaCann respectfully requests that this Court invalidate the limitation on a “drug store” as a “Prohibited Use” as contained in the Deed Restrictions in the Special Warranty Deed.

65. Pursuant to Pennsylvania Rule of Civil Procedure 1066(b)(2), PharmaCann respectfully requests that this Court strike the limitation on a “drug store” as a “Prohibited Use” as contained in the Deed Restrictions in the Special Warranty Deed.

WHEREFORE, plaintiff, PharmaCann Penn, LLC, respectfully requests that this Court enter judgment in its favor and against defendants, BV Development Superstition RR, LLC, Franklin Mills Residual Limited Partnership, Simon Property Group, Inc., Franklin Mills Associates Limited Partnership and Western Franklin Mills Corporation, and enter an Order:

- (a) invalidating as a "Prohibited Use" the "drug store" Deed Restriction contained in the Special Warranty Deed;
- (b) striking the "drug store" limitation as a "Prohibited Use" as contained in the Deed Restrictions in the Special Warranty Deed;
- (c) permitting PharmaCann to record with the Philadelphia Department of Records a copy of any Order quieting title in its favor; and
- (d) granting such other relief as the Court deems appropriate.



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**Attorneys for Plaintiff,  
PHARMACANN PENN, LLC**

Dated: September 20, 2017

D 1981 252

PROHIBITED USES

1. Any use which emits or results in an obnoxious odor, noise or sound which may constitute a public or private nuisance, provided this provision shall not prohibit an outdoor paging system (audible only on the Property), nor shall it prohibit the reasonable emanation of cooking odors from any restaurants;
2. Any use which is physically damaging to other portions of the Development or which creates dangerous hazards;
3. Any assembly or manufacturing operation which would be permitted only in a heavy manufacturing or industrial zone or any distillation, refining, smelting, industrial, agricultural, drilling or mining operation;
4. Any trailer court, mobile home park, junk yard, stock yard or animal raising operation (other than pet shops and veterinarians), except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance;
5. Any dump or disposal, or any operation for the incineration or reduction of garbage or refuse, unless the same is intended solely for the handling or reducing of waste produced within the Property by occupants thereof conducting permitted uses, if handled in a reasonably clean and sanitary manner;
6. Any operation primarily used as a warehouse;
7. Any central laundry, dry cleaning plant, or laundromat provided this restriction shall not apply to any facility providing on-site service oriented to pick-up and delivery by the ultimate consumer, including nominal supporting facilities;
8. Any mortuary;
9. Any establishment selling or exhibiting pornographic material (provided that this restriction shall not restrict the showing of motion pictures which are not inconsistent with the use and operation of the Development as a family-oriented shopping center);
10. Any flea market;

SCHEDULE 1 TO EXHIBIT C

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11. Any activity or use which is unlawful or conflicts with or violates the Development Agreement;
12. Any night club, discotheque or dance hall;
13. Any lot for the sale of new or used motor vehicles;
14. Any motor vehicle repair or service shop, or any car
15. Any pool or billiard hall;
16. Supermarket (i.e., a store used for the sale and display of food, produce, household paper products, kitchen accessories (e.g., aluminum foil, trash bags, etc.), and/or other such similar items);
17. Drug store (i.e., a store used for the sale and display of drugs, pharmaceutical, health and beauty aids, and/or other such similar items);
18. Any toy store which contains more than Eight Thousand Six Hundred (8,600) square feet of Gross Floor Area (as defined in the Master Declaration);
19. Linen store (i.e., a store used for the sale and display of sheets, blankets, towels, curtains, drapes, window treatments, and/or other such similar items);
20. Store used for the sale and display of clothing and/or accessories;
21. Bowling alley, ice skating or roller skating rink miniature golf course, or other similar sports, recreation and/or entertainment facility;
22. Video, pinball and/or amusement arcade, or other similar entertainment facility;
23. Any electronics store (i.e., a store used for the sale and display of audio equipment (e.g., stereos, compact disc players, radios, etc.), video equipment (e.g., televisions, video cassette recorders, video cameras, etc.), computers, computer games, and/or other such similar items), and/or accessories for any of the foregoing) which contains more than Eight Thousand Six Hundred (8,600) square feet of Gross Floor Area (as defined in the Master Declaration);
24. Any home improvement store (i.e., a store used for the sale and display of home improvement items such as paint, wallpaper, lumber, kitchen cabinets, bathroom cabinets, plumbing fixtures and materials, garden tools, and/or other such similar items) which contains more than Eight Thousand

0: 1901 286

Six Hundred (8,600) square feet of Gross Floor Area (as defined in the Master Declaration);

25. Nursery;
26. Any hardware store which contains more than Eight Thousand Six Hundred (8,600) square feet of Gross Floor Area (as defined in the Master Declaration);
27. Motion Picture theater(s); or
28. Sporting goods, recreational goods and equipment.

PERFORMED  
October 17, 1991 12:31pm

Franklin Mills Residual Limited Partnership

March 23, 2017

Via: Federal Express and Email

Chi-Chi's U.S.A., INC.  
Plainview Triad East  
10200 Linn Station Road  
P.O. Box 32338  
Louisville, Kentucky 40232-2338  
ATTN: Legal Department

TradeCo, LLC  
4155 E Camelback Rd.  
Suite E-100  
Phoenix, AZ 85018  
ATTN: Eric Rand Sanchez

Re: Response to Notice for Right of First Refusal  
855 Franklin Mills Circle, Philadelphia, Pennsylvania (Former Chi-Chi's Restaurant)

Dear Sir or Madam,

This letter is in response to your notice (the "Offer Notice") dated March 20, 2017 addressed to Franklin Mills Residual Limited Partnership.

Regarding the proposed transfer of the subject property as outlined in the Offer Notice and pursuant to a Right of First Refusal as provided in the Deed Restrictions to the Special Warranty Deed ("Deed Restrictions") from Franklin Mills Residual Limited Partnership as Grantor ("Developer") to Chi-Chi's U.S.A., Inc. as Grantee (predecessor-in-interest to DV Development Superstition RR, LLC, the "Current Owner") dated October 18, 1991, Developer has elected not to exercise its Right of First Refusal as contained in said Deed Restrictions as to the proposed transfer addressed in the Offer Notice. Developer's election not to exercise is only in relation to the proposed transfer addressed in the Offer Notice and Developer specifically retains all other rights pertaining to the property, including any right of first refusal for any future transfers of the property and right of first refusal should the terms (including desired selling price) as stated in the Offer Notice be modified.

Also, let this letter serve as notification that the intended use of the parcel by PharmaCann Penn, LLC, the prospective purchaser per the Purchase and Sale Agreement dated March 17, 2017, is not a Permitted Use or an approved Proposed Use pursuant to the Deed Restrictions. A medical marijuana dispensary is strictly prohibited in accordance with the Deed Restrictions to the Special Warranty Deed.

Upon Closing, please provide the contact information for the transferee, as well as a copy of the Deed of the transaction.

Cordially,

Sundash Shah  
Senior Vice President  
Simon Property Group

Philadelphia Mills  
1455 Franklin Mills Circle, Philadelphia, PA 19154



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

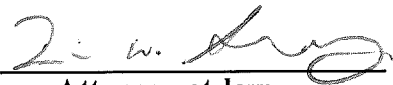
**CASE MANAGEMENT TRACK DESIGNATION FORM**

PHARMACANN PENN, LLC	:	CIVIL ACTION
	:	
v.	:	
	:	
BV DEVELOPMENT SUPERSTITION	:	NO.
RR, LLC et al.	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( x )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

<u>October 17, 2017</u>		Defendants Franklin Mills Residual Limited Partnership, Simon Property Group, Inc., and Franklin Mills Associates Limited Partnership
<b>Date</b>	<b>Attorney-at-law</b>	<b>Attorney for</b>
<u>(215) 569-5473</u>	<u>(215) 832-5473</u>	<u>Schlossberg@blankrome.com</u>
<b>Telephone</b>	<b>FAX Number</b>	<b>E-Mail Address</b>

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PHARMACANN PENN, LLC

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert S. Tintner, Joshua Horn, Fox Rothschild LLP, 2000 Market Street, 20th Floor, Philadelphia, PA 19103-3291 Tel: 215-299-2766

DEFENDANTS

BY DEVELOPMENT SUPERSTITION RR, LLC; FRANKLIN MILLS RESIDUAL LIMITED PARTNERSHIP; SIMON PROPERTY GROUP, INC.; FRANKLIN MILLS ASSOCIATES LIMITED PARTNERSHIP et a

County of Residence of First Listed Defendant Phoenix, Arizona (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) James T. Smith, Evan H. Lechtman, Lewis W. Schlossberg Blank Rome LLP, One Logan Sq. 130 N. 18th Street Philadelphia, PA 19103 Tel: 215-569-5473

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1332(a), 1441(a), 1446
Brief description of cause: Complaint for Declaratory Judgment and Quiet Title

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/17/2017 SIGNATURE OF ATTORNEY OF RECORD Lewis W. Schlossberg (Pa. Id. #: 91773)

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.**

Address of Plaintiff: 1010 Lake Street, Second Floor, Oak Park, Illinois 60301

Address of Defendant: 225 W. Washington St., Indianapolis, IN 46204

Place of Accident, Incident or Transaction: Philadelphia, Pennsylvania  
*(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
 (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities? Yes  No

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
 Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
 Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
 Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
 Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases  
 (Please specify) \_\_\_\_\_

B. Diversity Jurisdiction Cases:

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases

(Please specify) Complaint for Declaratory Judgment and Quiet Title

**ARBITRATION CERTIFICATION**

*(Check Appropriate Category)*

I, Lewis W. Schlossberg, counsel of record do hereby certify:  
 Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
 Relief other than monetary damages is sought.

DATE: October 17, 2017 Lewis W. Schlossberg 91773  
 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: October 17, 2017 Lewis W. Schlossberg 91773  
 Attorney-at-Law Attorney I.D.#