

From: [Michael J. Alti](#)
To: [Harper-Scott, Danielle](#)
Cc: ["Valorie Moser"](#)
Subject: [External] Opposition to Proposed Project Case No. PR-2021-000897
Date: Tuesday, March 8, 2022 2:34:41 PM
Attachments: [2002-261304 REC ALL.pdf](#)
[OEA-2002.cleaned.pdf](#)
[Property_2002-329729 DEG 06-14-2002.pdf](#)

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Click [here](#) if the original attachments are required (justification needed).

Dear Ms. Harper-Scott:

Thank you for calling me back this morning. Community Legal Advisors, Inc. represents the Orangecrest Hills Commercial Owners Association ("Association") which manages the common areas of the shopping center in which the proposed project at 19260 Van Buren Blvd. ("Parcel") is located. We understand that the applicant Costanzo Investments, LLC and the owner Kohl's Department Stores, Inc. seek to construct a new drive-thru restaurant within the parking areas located on the Parcel. However, the parking areas are defined as part of the Association's Common Area under a number of recorded covenants and agreements, including covenants required by the City. The proposed structure would violate these covenants and agreements, including well-established parking easements. We informed the owner of the Parcel (Kohl's) about this issue by letter dated January 14, 2019, and never received any response from them.

While we are still awaiting a copy of the City's files related to Case No. PM 30369 and we just requested a title report for the Parcel, I would like to briefly summarize two of the key covenants and agreements, copies of which are attached.

Covenant and Agreement Establishing Easements for Ingress, Egress, Parking and Utilities

This Covenant and Agreement was recorded on May 17, 2002 and encumbers Parcels 1 through 9 of PM 30369. The Parcel at 19260 Van Buren Blvd is Parcel 1 of that map. Please note the following:

- Recital 3 on the first page states, "As a condition to the approval by the City of Case No. PM 30369, Declarant is required to submit documentation prior to recordation of the final map for approval by the Planning and Legal Department of the City to assure mutual access for ingress, egress, parking and/or utilities across all parcels."
- Recital 4 on the top of the second page explains that the developer recorded the Covenant and Agreement to comply with the City's conditions.
- The definition of "Common Area" in Section 1 is "all the area of Parcels 1 through 9 of the Property other than building areas." This means the parking areas are part of the Common Area.
- Section 2 established nonexclusive easements for parking, ingress and egress over all the Common Area located within each parcel, including the parking areas.

- Section 3 is entitled “Barriers” and states, “No walls, fences or barriers of any kind shall be constructed, installed, erected or maintained on the Common Area, or any portion thereof, by Owner, tenant or person which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitations, of pedestrians and vehicular traffic...”
- Section 7 establishes that the covenants, including the easements, run with the land and are binding on all owners and their successors.
- Section 8 gives the City enforcement rights, and Section 9 requires approval by the City and Declarant in order to amend (note the Declarant Orangecrest Hills L.P. no longer has any interest in the shopping center – its successor would be the Association which now manages the common areas of the shopping center.)
- The Covenant and Agreement was signed by the Deputy City Attorney and the Planning Department.

In summary, the Covenant and Agreement was required by the City and established easements over the parking areas within the Parcel (19260 Van Buren Blvd.), and the proposed project would violate the Covenant and Agreement, including these established easements.

Operation and Easement Agreement

-

Around the same time the Covenant and Agreement was recorded, a separate Operation and Easement Agreement (“OEA”) was recorded which, among other things, established the Association as the party responsible for managing and maintain the common areas of the shopping center. The OEA is generally consistent with the Covenant and Agreement, and here are a few key provisions:

- Section 2.1 establishes non-exclusive easements for the passage and parking of vehicles over and across the parking and driveway areas of each parcel, including the Parcel at 19260 Van Buren Blvd. Notably, Section 13.1 states that “the easements referred to in Section 2.1 and 2.2 cannot be terminated without the written consent of the Planning Director of the City.” Section 12.3 also requires the consent of the affected property owners, which was never requested or received.
- Section 3.2 allows the construction of buildings only within the building areas shown on the Site Plan attached to the OEA. The proposed building would clearly violate that.
- Section 4.2 of the OEA requires that the parking area on the Parcel comply with the requirement to have 4.0 parking spaces for each 1000 SF of floor area.
- Section 4.5 provides that “No Party shall make changes to the improved Common Area on its Parcel without the approval of the Association.” Here, even though we sent Kohl’s a letter informing that about the requirement for Association consent 3 years ago, they ignored us and never submitted any type of request for Association approval.

In summary, the OEA prohibits construction of a new building in the parking area on the Parcel, which would impair well-established easement rights for the surrounding businesses.

Grant Deed. We also obtained a copy of the Grant Deed by which Kohl’s acquired the Parcel in 2002. A copy is attached. Please note that the second page of the Grant Deed specifically excepts all the easements for access, ingress, egress, maintenance, repair and other purposes as described in

the OEA.

In short, the proposed project would violate the above-referenced Covenant and Agreement as well as the OEA. It would interfere with well-established parking rights, including those easement rights specifically required to be established by the City pursuant to the conditions of approval for Case No. PM 30369. The Association absolutely opposes the proposed project for these and other reasons. We reserve the right to provide you additional comments as we receive and learn more information.

Thank you for your consideration.

Michael Alt, Esq.
Community Legal Advisors Inc.
310.613.8482
michael@attorneyforhoa.com

Community Legal Advisors provides general counsel and assessment collection services to community associations, subdivision and entitlement services to builders, and dispute resolution and advice to owners. You can learn more about us at www.attorneyforhoa.com.

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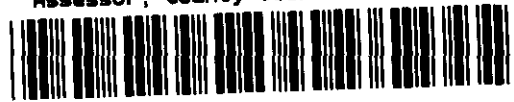
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County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder

WHEN RECORDED, MAIL TO:



CITY CLERK

City of Riverside

City Hall, 3900 Main Street

Riverside, California 92522

Project: Parcel Map 30369

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**COVENANT AND AGREEMENT ESTABLISHING EASEMENTS
FOR INGRESS, EGRESS, PARKING AND UTILITIES**

This Covenant and Agreement is made and entered into this 18th day of April, 2002, by ORANGECREST HILLS, L.P., a Washington limited partnership, hereinafter referred to as "**Declarant**," with reference to the following facts:

1. Declarant is the fee owner of the real property hereinafter referred to as Parcels 1 through 9 of Parcel Map 30369 located in the City of Riverside, County of Riverside, State of California, described as follows:

Parcels 1 through 9 of Parcel Map 30369 as shown by map on file in Book 201 of Parcel Maps at Pages 77 through 79 thereof, Records of Riverside County, California.

Parcels 1 through 9 are hereinafter collectively referred to as the "**Property**."

2. The Property consists of 25.09 acres located in the Orangecrest area, south and east of Bountiful Street, north of Van Buren Boulevard and west of Trautwein Road. An application has been filed with the City of Riverside ("**City**") as Case No. PM 30369 to subdivide one (1) parcel consisting of approximately 25.09 acres into nine (9) parcels, ranging in size from 0.984 acres to 7.721 acres for commercial purposes.

3. As a condition to the approval by the City of Case No. PM 30369, Declarant is required to submit documentation prior to recordation of the final map for approval by the Planning and Legal Departments of the City to assure mutual access for ingress, egress, parking and/or utilities across all parcels.

DESCRIPTION APPROVAL 5/1/02
by
C. L. R. Orso
SURVEYOR, CITY OF RIVERSIDE

4. Declarant intends by this document to comply with the conditions imposed by the City and to impose upon the Property mutually beneficial restrictions, conditions, covenants and agreements for the benefit of the Property and the improvements to be constructed thereon, and the future owners of all parcels of the Property, and for the same purpose to reserve and grant easements over portions of the Property.

NOW, THEREFORE, 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 declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Property for the purpose of enhancing and protecting the value and attractiveness of the Property, and each parcel thereof, in accordance with the plan for the improvement of the Property, and to comply with certain conditions imposed by the City for the approval of Parcel Map 30369 or portion thereof, and shall be binding and inure to the benefit of each successor and assignee in interest of each such party. Any conveyance, transfer, sale, assignment, lease or sublease made by Declarant of a parcel of the Property shall be and hereby is deemed to incorporate by reference all the provisions of this Covenant and Agreement including, but not limited to, all the covenants, conditions, restrictions, limitations, grants of easement, rights, rights-of-way equitable servitudes contained herein.

1. **Definitions.** In addition to the definitions hereinbefore set forth, the following words or phrases when used in the Covenant and Agreement (except when the context otherwise requires) shall have the following definitions:

(1) ***“Building Areas”*** shall mean those areas on each parcel of the Property upon which buildings are to be constructed or other structures placed pursuant to plans approved by the City and building permits issued therefor and shall include any landscaped areas.

(2) ***“Common Area”*** shall mean all the area of Parcels 1 through 9 of the Property other than building areas.

(3) ***“Owner”*** shall mean any person, whether an individual, corporation, association or otherwise, in which title to a parcel is vested, as shown by the official Records of Riverside County, California. Declarant, its successors or assigns shall have executed or caused to record in the Office of the County Recorder of Riverside County, California, an instrument of conveyance conveying the respective parcel. If more than one person is owner of a parcel, then all such persons shall be jointly and severally liable for all obligations herein of the Owner of a parcel.

(4) ***“Parcel”*** or ***“Parcels”*** shall mean the parcel or parcels of the Property hereinabove described.

2. **Establishment of Access, Parking and Utility Easements.**

(1) Declarant hereby establishes, grants and reserves nonexclusive easements for parking, vehicular and pedestrian ingress and egress and



underground utilities over, along, under and across the Common Areas of each Parcel of the Property (as said Parcel now exists or may hereinafter be reconfigured), designated as driveway and parking areas on the plans for the development of each Parcel of the Property as may be approved by the City, for the use and benefit of and as an easement appurtenant to the remaining Parcels (as said Parcels now exist or as hereinafter reconfigured).

(2) The nonexclusive easements herein established shall be and are for ingress, egress, and parking of motor vehicles and the installation, construction, maintenance, removal, replacement and use of driveways, parking lots and utilities, including, but not limited to, water drainage systems or structures, water lines, sewer lines, fire protection lines, telephone lines, electrical conduits or systems, gas lines and any other such utilities required for commercial uses, and all rights deemed reasonable and necessary therefore. All such systems, structures, lines, conduits and other utility instrumentalities shall be installed and maintained below the ground level or surface of the Property, except where the instrumentality of the particular utility involved is not amendable to be place underground (such as, but not limited to, transformers and risers).

(3) The easements hereinabove granted or established shall include all rights necessary and proper for the installation, construction, maintenance, repair, replacement and use of driveways, walkways and parking areas. The cost of repair and maintenance of the driveways, walkways and parking areas on Parcels 1 through 6 shall be borne by the Owners of Parcels 1 through 6. The cost of repair and maintenance of the driveways, walkways and parking areas on Parcels 8 and 9 shall be borne by the Owners of Parcels 8 and 9. The cost of repair and maintenance of the driveways, walkways and parking areas, if any, on Parcel 7 shall be borne by the Owners of Parcels 1 through 6 and 8 and 9.

(4) Parcels 1 through 7 shall continually operate as a single unified development. Parcels 8 and 9 shall continually operate as a single unified development.

(5) Those areas on each parcel of the Property designated as parking areas shall be in conformance with plans for the development of such parcel which have been or may be approved by the City and shall include the number of parking spaces required by the Riverside Municipal Code for all of the uses on such parcel.

(6) In the event Declarant shall sell, convey, lease or otherwise change the ownership of any of the Parcels of the Property, as such Parcel is conveyed, Declarant shall grant and reserve, as is appropriate, the easements established in this Paragraph 2.

3. **Barriers.** No walls, fences or barriers of any kind shall be constructed, installed, erected or maintained on the Common Area, or any portion thereof, by Owner, tenant or person which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitations, of pedestrians and vehicular traffic between the parcels, provided, however, reasonable traffic controls as may be necessary to guide and control the traffic may be installed so long as access driveways to the parking areas on the Property are not closed or blocked. The only exceptions to this provision



shall be for incidental encroachments upon the Common Area which may occur as a result of the use of ladders, scaffolding, barricades and similar facilities resulting in temporary obstruction of the Common Area, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction or maintenance work being expeditiously pursued.

4. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Area to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this document shall be strictly limited to and for the purpose herein expressed. The right of the public or any person to make use whatsoever of the Common Area of the Property, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is solely by permission, and subject to the control of the Owner(s). Notwithstanding any other provision herein to the contrary, Declarant may periodically restrict ingress and egress from the Common Area in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress or egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such time as to have minimum effect on the Owners, occupants and invitees of the Parcels of the Property.

5. **Non-Merger.** This Covenant and Agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership of the parcel described herein, or any parts thereof, is vested in one party or entity.

6. **Effect of Covenant and Agreement.** 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, restriction and easement contained herein; and (b) to have been granted and be subject to each of the applicable easements described in Paragraph 2 hereof, whether or not any reference to this Covenant and Agreement is contained in the instrument by which such person acquired an interest in the Property.

7. **Mutuality, Reciprocity, Run with Land.** All of the provisions contained herein are made for the direct, mutual and reciprocal benefit of all Parcels of the Property and create mutual, equitable servitude upon each Parcel as the servient tenement in favor of each other Parcel as the dominant tenement and create reciprocal rights obligations among the respective Owners of all Parcels, and privities of contract and estate among all grantees of the Parcels, their successors and assigns in interest. In addition, each of the provisions hereof shall operate as covenants running with the land for the benefit of the Property and each Parcel thereof and shall inure to the benefit of all Owners thereof, their successors and assigns in interest, and shall apply to and bind each successive Owner of each Parcel, their successors and assigns in interest.

8. **Enforcement.** The terms of this Covenant and Agreement may be enforced by the City, its successors or assigns, and by any Owner, lessee or tenant of the Parcels of the Property. Should the City or any Owner, lessee or tenant bring an action to enforce any of



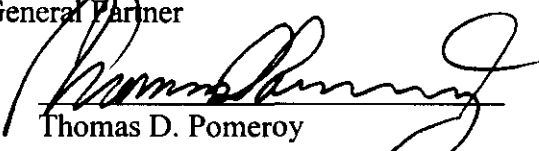
the terms of this Covenant and Agreement, the prevailing party shall be entitled to costs of suit including reasonable attorneys' fees.

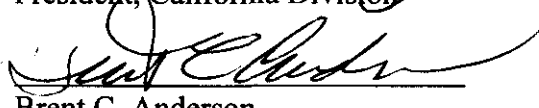
9. **Termination and Modification.** Subject to the prior written approval of the City and Declarant, any provision contained herein, may be terminated, modified or amended as to all of the Property or any portion thereof, upon the written consent of all the Owners of the Property. No such termination, modification or amendment shall be effective until there shall have been executed, acknowledged and recorded in the Office of the Recorder of Riverside County, California, an appropriate instrument evidencing the same including the consent thereto by the City, which City consent may be executed by the City Planning Director of the City of Riverside, California.

IN WITNESS WHEREOF, Declarant has caused this Covenant and Agreement to be duly executed the day and year first above written.

ORANGECREST HILLS, L.P., a Washington
limited partnership

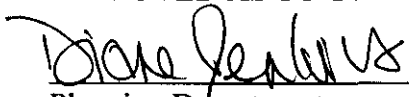
By: CSW Development & Construction
Company, a Washington corporation
Its General Partner

By: 
Thomas D. Pomeroy
President, California Division

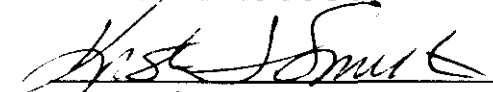
By: 
Brent C. Anderson
Senior Vice President Finance,
California Division

"Declarant"

APPROVED AS TO CONTENT:


Planning Department

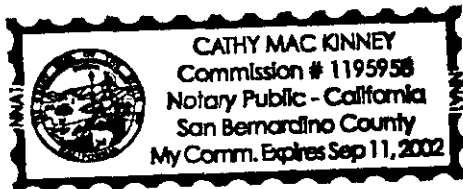
APPROVED AS TO FORM:


Deputy City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On April 22, 2002, before me, Cathy MacKinney, a Notary Public in and for the State, personally appeared Thomas D. Pomeroy and Brent C. Anderson, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entities upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



(SEAL)

Cathy MacKinney

Notary Public in and for the said State



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County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder



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BETWEEN

AND

ORANGECREST HILLS, L.P.

T
YS

Sarah J. Ryan
Law Department
Kohl's Department Stores, Inc.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051

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EXHIBITS

Exhibit A	-	Legal Description of the Kohl's Parcel
Exhibit B	-	Legal Description of the Developer Parcel
Exhibit C	-	Legal Description of the Outlot Parcels
Exhibit D	-	Submission Guidelines
Exhibit E	-	Design and Dimensions of Freestanding Signs
Exhibit F-1	-	Legal Description of Property Owned by the Association in Fee
Exhibit F-2	-	Depiction of Property Owned by the Association in Fee
Exhibit G-1	-	Legal Description of Association Property over which the Association shall have an Easement or License
Exhibit G-2	-	Depiction of Property over which the Association shall have an Easement or License
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Exhibit X	-	Site Plan



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OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the _____ day of June, 2002, by and between **KOHL'S DEPARTMENT STORES, INC.**, a Delaware corporation, having its principal place of business at N56 W17000 Ridgewood Drive, Menomonee Falls, Wisconsin ("Kohl's"), and **ORANGECREST HILLS, L.P.**, a Washington limited partnership, having its principal place of business at 181 Old Springs Road, Anaheim, California 92808 ("Developer").

WITNESSETH:

WHEREAS, Kohl's is the owner of a certain tract of land legally described in EXHIBIT A attached hereto and made a part hereof and identified as the "Kohl's Parcel" on the site plan attached hereto as EXHIBIT X and made a part hereof (the "SITE PLAN"); and

WHEREAS, Developer is the owner of a certain tract of land legally described in EXHIBIT B attached hereto and made a part hereof and identified as the "Developer Parcel" on the SITE PLAN; and

WHEREAS, Developer is also the owner of certain tracts of land legally described in EXHIBIT C attached hereto and made a part hereof and referred to herein as the "Outlot Parcels";

WHEREAS, Developer is also the owner of a certain tract of land legally described in EXHIBIT F-1 attached hereto and made a part hereof and identified as Parcel 7 on the SITE PLAN; and

WHEREAS, the Kohl's Parcel and the Outlot Parcels (collectively, the "Shopping Center") are contiguous and adjacent to each other as shown on the SITE PLAN; and

WHEREAS, the signatories hereto intend to develop and operate the Kohl's Parcel and the Outlot Parcels in conjunction with each other as integral parts of a retail shopping complex, and in order to effectuate the common use and operation thereof, they desire to enter into certain covenants and agreements, and to grant to each other certain reciprocal easements in, to, over and across their respective Parcels.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the parties' understanding, it is agreed as follows:



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ARTICLE 1

DEFINITIONS

1.1 **Anchor Occupant.** "Anchor Occupant" shall mean any Occupant which occupies more than sixty-five thousand (65,000) square feet of Floor Area within the Shopping Center.

1.2 **Added Territory.** "Added Territory" shall have the meaning given to such term in Section 12.11(b) hereof.

1.3 **Annexable Territory.** "Annexable Territory" means the parcels within the Developer Parcel described on EXHIBIT B.

1.4 **Approving Party.** "Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this OEA. There shall be one Approving Party representing the Outlot Parcels and one Approving Party representing the Kohl's Parcel. Developer shall be the initial Approving Party for the Outlot Parcels; Kohl's shall be the initial Approving Party for the Kohl's Parcel. Each Approving Party shall have the right to assign its position as Approving Party pursuant to Section 12.4.

1.5 **Articles.** "Articles" means the Articles of Incorporation of the Association to be filed in the office of the Secretary of State of the State of California as provided in Section 5.2 of this OEA, as such Articles may be amended from time to time.

1.6 **Association.** "Association" means the corporation formed pursuant to Section 5.2 of this OEA.

1.7 **Association Property.** "Association Property" means (i) the real property that the Association shall own in fee described on the attached EXHIBIT F-1 and depicted on the attached EXHIBIT F-2 and (ii) the real property over which the Association shall have an easement or license for maintenance or other purposes described on the attached EXHIBIT G-1 and depicted on the attached EXHIBIT G-2. Any real property fee title which is acquired by the Association shall be deemed Association Property subject to this OEA whether or not the instrument of conveyance so states.

1.8 **Board of Directors.** "Board" or "Board of Directors" means the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

1.9 **Building.** "Building" shall mean any enclosed structure placed, constructed or located on a Parcel, which for the purpose of this OEA shall include any appurtenant canopies, supports and other outward extensions.

1.10 **Building Area.** "Building Area" shall mean those areas of the Shopping Center which are designated as such on the SITE PLAN and within which Buildings may be constructed, placed or located.

1.11 **City.** "City" means the City of Riverside and any other local governmental entity now having or hereafter acquiring jurisdiction over any part of the Shopping Center.



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1.12 **Claims.** "Claims" shall mean claims, losses, liabilities, actions, proceedings, costs and expenses (including reasonable attorneys' fees, expert witness fees and costs of suit).

1.13 **Common Area.** "Common Area" shall mean all areas within the Shopping Center, exclusive of Buildings and Owner Maintenance Area. Any enclosed mall area which is intended for the common use of the Occupants and their Permittees shall also be included within the Common Area. Notwithstanding the foregoing, those portions of the Shopping Center which are designated as Association Property on the attached EXHIBIT F-1, EXHIBIT F-2, EXHIBIT G-1, and EXHIBIT G-2 shall constitute Association Property and not Common Area for purposes of this OEA. The Parties acknowledge that the real property designated on EXHIBIT F-1 is "mitigation area" and that all Parties and their Permittees shall be restricted from entering certain portions of the real property designated on EXHIBIT F-1.

1.14 **Constant Dollars.**

(a) "Constant Dollars" shall mean the present value of the dollars to which such phrase refers. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number.

(b) "Base Index Number" shall mean the level of the Index for the month during which this OEA is recorded.

(c) "Current Index Number" shall mean the level of the Index published most nearly prior to the date that the adjustment computation is being performed.

(d) "Index" shall mean the Consumer Price Index for All Urban Wage Earners for the Los Angeles-Anaheim-Riverside Area (Base Year 1982-84) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or if publication of the Index is discontinued, a substitute index selected by the Approving Parties of comparable statistics computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.15 **Floor Area.** "Floor Area" shall mean the actual number of square feet of space contained on each floor within a Building, as measured from the exterior faces of the exterior walls or storefront and/or the centerline of any common walls, including mezzanine and basement space and including stairs, interior elevations, escalators, air conditioning and other interior equipment rooms; provided, however, that the following areas shall not be included in such calculations:

(a) loading docks and platforms, transformer vaults, utility and mechanical penthouses, and utility enclosures;

(b) mezzanine space and basement space which are not used for the display or sale of merchandise;

(c) space attributable to multi-deck, platform, rack and other multi-level systems used solely for the storage of merchandise to the extent located above the ground floor; and



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(d) the enclosed mall areas of the Shopping Center, if any, except for Floor Area occupied by kiosks.

Within thirty (30) days after written request from another Party therefor, a Party shall certify to the requesting Party the amount of Floor Area applicable to each Building on its Parcel. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of the survey to the other Parties for informational purposes only.

1.16 **Improvements.** "Improvements" means any improvements constructed or installed above or below ground within the exterior boundaries of the Shopping Center, including without limitation all Buildings, parking areas or loading areas, roadways, walkways, curbs, gutters, display areas, storage areas, fences, walls (including retaining walls), poles, signs (including any community monument signs), exterior lighting and lighting standards, exterior air conditioning equipment, hedges, berms, trash enclosures, the paint on all buildings, landscaping, trees, shrubs, courts, malls, plazas, fountains, stairways, ramps, utility lines, pipes and conduits, and any replacements, additions, repairs or alterations thereto of any kind whatsoever.

1.17 **Indemnify.** "Indemnify" shall mean indemnify, protect, hold harmless and defend with counsel designated by the insurer charged with the obligation to defend (or if no insurer is involved, with counsel reasonably acceptable to the Person being defended).

1.18 **Laws.** "Laws" shall mean and include all laws, rules, regulations, orders, ordinances, statutes and other requirements of all federal, state, county and municipal authorities having jurisdiction over the Shopping Center.

1.19 **Major Occupant.** "Major Occupant" shall mean any Occupant which occupies more than thirty thousand (30,000) square feet of Floor Area within the Shopping Center.

1.20 **Member, Membership.** "Member" means any Person holding a membership in the Association, as provided in this OEA. "Membership" shall mean the property, voting, and other rights and privileges of Members as provided in this OEA, together with the correlative duties and obligations contained in this OEA and the Articles and Bylaws of the Association.

1.21 **Mortgage.** "Mortgage" means any mortgage, indenture of mortgage, or deed of trust encumbering the interest, whether fee or leasehold, of a Party in a Parcel.

1.22 **Mortgagee.** "Mortgagee" means a mortgagee, or trustee and beneficiary under a Mortgage (as defined above), and to the extent applicable, a fee owner or lessor or sublessor of any Parcel which is the subject of a lease under which any Party becomes a lessee in a so-called "sale and leaseback" or "assignment and subleaseback" transaction.

1.23 **Occupant.** "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Shopping Center under an ownership right or any lease, sublease, license, concession or other similar agreement.

1.24 **Outdoor Area.** "Outdoor Area" shall refer to all portions of the Common Area or Association Property which is designated as "Outdoor Area" (i) on the SITE PLAN or (ii) with regard to Parcels 3, 4, and 5, in a deed whereby Developer originally conveys title to such Parcels 3, 4 and 5 to a Party (provided copies of the deed are supplied to all other Parties) or in some other recorded



instrument to which a Party and the Association are parties. Any instrument so designating an Outdoor Area shall identify the Parcel to which it is appurtenant.

1.25 **Outlot Parcels.** "Outlot Parcels" shall mean the portions of the Shopping Center legally described on EXHIBIT C attached hereto and made a part hereof and identified on the SITE PLAN as "Parcel 2", "Parcel 3", "Parcel 4", "Parcel 5" and "Parcel 6".

1.26 **Owner Maintenance Area.** "Owner Maintenance Area" shall refer to (a) all portions of the Common Area or Association Property improved from time to time as drive-through areas, truck wells, ramps, loading docks, grease traps, trash enclosures and landscaping appurtenant to a particular Building in the Shopping Center or designated for use by a particular Owner or Permittee, and (b) any portion of the Common Area or Association Property which is designated as "Owner Maintenance Area" (i) on the SITE PLAN or (ii) with regard to Parcels 3, 4, and 5, in a deed whereby Developer originally conveys title to such Parcels 3, 4 and 5 to a Party (provided copies of the deed are supplied to all other Parties) or in some other recorded instrument to which a Party and the Association are parties. Any instrument so designating an Owner Maintenance Area shall identify the Parcel to which it is appurtenant. Except as shown on the SITE PLAN, no Owner Maintenance Area shall be contained within the area designated as "Protected Area" on EXHIBIT H attached hereto and made a part hereof.

1.27 **Parcel.** "Parcel" shall mean that portion of the Shopping Center owned by a Party.

1.28 **Party.** "Party" shall mean each signatory hereto and their respective successors and assigns who become owners of any portion of the Shopping Center.

1.29 **Permittee.** "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Shopping Center; provided, however, persons engaged in civic, public or political activities within the Shopping Center, including but not limited to the following activities, shall not be considered to be Permittees:

- (a) exhibiting any placard, sign or notice;
- (b) distributing any circular, handbill, placard or booklet;
- (c) soliciting memberships or contributions for private, civic, public or charitable purposes;
- (d) parading, picketing or demonstrating; and
- (e) failing to follow rules or regulations established by the Parties relating to the use of the Shopping Center.

1.30 **Person.** "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.

1.31 **Proportionate Share.** "Proportionate Share" shall mean and refer to a percentage, related to ownership of a Parcel in the Shopping Center, determined by reference to the schedule set forth in Section 5.3(d).



1.32 **Restaurant.** "Restaurant" shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on-site or off-site consumption; provided, however, notwithstanding anything herein to the contrary, a supermarket, grocery store or similar operation shall not be deemed a Restaurant.

1.33 **Utility Lines.**

(a) "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including the drainage and storage of surface water, including without limitation storm sewer lines, sanitary sewer pipes, septic systems, water and gas mains, electric power lines, telephone lines, security systems, cable television and other utility lines.

(b) "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to both the Kohl's Parcel and the balance of the Shopping Center. The surface water collection, retention and distribution facilities shall be deemed to be a Common Utility Line.

(c) "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service exclusively to a Parcel or to any Improvements located on that Parcel. For the purpose of this OEA, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line.

ARTICLE 2

EASEMENTS

2.1 **Ingress, Egress and Parking.**

(a) During the term of this OEA each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive easement for the passage and parking of vehicles over and across the parking and driveway areas of each Party's Parcel, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveway, sidewalk and enclosed mall areas of each Party's Parcel, as the same may from time to time be constructed and maintained for such use.

(b) Each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive perpetual easement for the passage of vehicles over and across the access drives and service drives of each Party's Parcel, if any, which are designated on the SITE PLAN as "Perpetual Access".

(c) The easement rights granted under this Section 2.1 shall be subject to the following reservations as well as any other applicable provisions contained in this OEA:

(i) Each Party reserves the right to close off its portion of the Common Area for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone;



provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;

(ii) Each Party that has established a staging and/or storage area on its Parcel pursuant to Section 3.5 reserves the right to exclude and restrain persons from using the staging and/or storage area during the period of time it is used for such purposes;

(iii) Each Party reserves the right to close off any enclosed mall area on its Parcel during such periods of time that none of the Occupants of such Party's Parcel which open to the enclosed mall are open for business; and

(iv) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Common Area on its Parcel.

2.2 Utilities.

(a) Each Party hereby grants and conveys to each other Party non-exclusive perpetual easements in, to, over, under, along and across those portions of the Common Area (exclusive of any portion located within Building Areas and Owner Maintenance Areas) located on the grantor's Parcel necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Parcel, including but not limited to, sanitary sewers, storm drains, and water (fire and domestic), gas, electrical, telephone and communication lines.

(b) All Utility Lines shall be underground except:

(i) ground mounted electrical transformers;

(ii) above-ground surface water collection, retention and distribution facilities shown on the SITE PLAN;

(iii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;

(iv) as may be required by governmental agencies having jurisdiction over the Shopping Center;

(v) as may be required by the provider of such service; and

(vi) fire hydrants.

(c) At least twenty (20) days prior to any installation, maintenance, connection, repair, relocation or removal of utility lines located on another Party's Tract pursuant to the easement granted herein (except in an emergency, the work may be initiated with reasonable notice), the grantee shall first provide the grantor with a written statement describing the need for such work, shall identify the proposed location of the Utility Line the



nature of the service to be provided, the anticipated commencement and completion dates for the work and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 10.2.

(d) The initial location of any Utility Line shall be as shown on the utility plans for the Shopping Center approved by the City.

(e) Except as otherwise agreed to by the grantor and the grantee, any Party installing Separate Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area. In addition, the grantee of any Separate Utility Line shall indemnify the grantor from all Claims arising out of or resulting from the installation, maintenance and operation of the Utility Line. If the Parties elect to install Common Utility Lines, all repair, maintenance, replacement and other work thereon shall be performed by the Association as part of Common Area maintenance.

(f) The grantor shall have the right to relocate a Utility Line upon twenty (20) days' prior written notice, provided that such relocation:

(i) shall not be commenced during the months of October, November or December;

(ii) shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;

(iii) shall not reduce or unreasonably impair the usefulness or function of such Utility Line;

(iv) shall be performed without cost or expense to grantee;

(v) shall be completed using materials and design standards which equal or exceed those originally used; and

(vi) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey, shall be performed at the grantor's expense and shall be accomplished as soon as possible following completion of such relocation.

(g) Each Party hereby grants and conveys to each other Party owning an adjacent Parcel the perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the grantor's Parcel and over, upon and across Parcel 7, upon the following conditions and terms:



(i) The Common Area grades and the surface water drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the details approved by the Approving Parties; and

(ii) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area.

2.3 **Building Encroachments.**

(a) In order to accommodate any Building improvements which *inadvertently* may be constructed beyond a Parcel's boundary line, each Party grants to each Party owning an adjacent Parcel an easement, not to exceed a maximum lateral distance of six inches (6"), in, to, over, under and across that portion of the grantor's Parcel adjacent to such common boundary line for the maintenance and replacement of such encroaching Building Improvements.

(b) If a constructing Party (the "Constructing Party") determines that it is necessary to place underground piers, footings and/or foundations ("Subsurface Construction Elements") across the boundary line of its Parcel, the Constructing Party shall advise the Party owning the adjacent Parcel (the "Adjacent Party") of its construction requirement and shall provide plans and specifications relating thereto, including proposed construction techniques for the Subsurface Construction Elements. The Adjacent Party hereby grants and conveys to the Constructing Party for the benefit of its Parcel an easement, not to exceed a maximum lateral distance of five feet (5'), in, to, under and across that portion of the Adjacent Party's Parcel not theretofore occupied by any then existing structure, for the installation, maintenance and replacement of such Subsurface Construction Elements.

(c) The Adjacent Party reserves the right to require the Constructing Party to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Party the opportunity to use the same in connection with the construction of its Building improvements to the end that each Party shall be able to place its Building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Parties, each shall assume and pay its reasonable share of the cost and expense of the design and construction thereof. If any Building using a common Subsurface Construction Element is destroyed and not replaced or is removed, the common Subsurface Construction Element shall remain in place for the benefit of the other Building using the same.

(d) The foregoing easement grants shall not diminish or waive any right of a Party to recover damages resulting from the constructing Party's failure to construct its Building within its Parcel in the case of Section 2.3(a), or within the easement area limits in the case of Section 2.3(b). The easements in each instance shall:

(i) continue in effect for the term of this OEA and thereafter for so long as the Building using the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged or demolished); and



(ii) include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 3.6.

(e) With respect to Buildings constructed along the common boundary line between Parcels, nothing herein shall be deemed to create or establish:

(i) a "common" or "party" wall to be shared with the adjacent Building;
or

(ii) the right for a Building to receive support from or apply pressure to the adjacent Building.

2.4 Sign Easement. Kohl's hereby grants and conveys to Developer and the Association for its use and for the use of designated Occupants of the Outlot Parcels, a non-exclusive perpetual easement over, under, upon and across the Kohl's Parcel for the construction, reconstruction, replacement, operation, maintenance and repair of a sign structure, including the right and privilege to place thereon or affix thereto sign panels, located on that portion of the Kohl's Parcel identified on the SITE PLAN as "Major Monument Sign", together with reasonable access over, under, upon, through and across the Kohl's Parcel to install, replace, maintain, repair and operate a Separate Utility Line pursuant to the terms and conditions set forth in Section 2.2 in order to provide such sign structure and panels with power to illuminate the same. Except as otherwise provided in Section 9.1 of this OEA, Kohl's shall pay all costs and expenses with respect to the construction, maintenance and operation of the sign structure and panels. The foregoing easement, together with the rights included therewith, shall be for the benefit of and appurtenant to the Outlot Parcels and shall be binding on and burden the Kohl's Parcel.

2.5 Restriction. No Party shall grant any easement for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Parcel to governmental or quasi-governmental authorities or to public utilities.

2.6 Easement Over Developer Parcel. Developer hereby reserves for the benefit of the Developer Parcel nonexclusive easements of access, ingress, egress over the portions of Parcel 5 of the Outlot Parcels reasonably necessary for entry into the Developer Parcel from Trautwein Road.

2.7 Association Easements. Kohl's and Developer hereby reserve for the benefit of the Association nonexclusive easements of access, ingress, egress, maintenance, repair, use and enjoyment, in, to and over the Kohl's Parcel and the Outlot Parcels to the extent reasonably necessary for the performance by the Association of its duties, and the exercise of its rights, under this OEA.

2.8 Association Property Easements. Developer hereby reserves for the benefit of each Party nonexclusive easements of access, ingress, egress, maintenance, repair, use and enjoyment, in, to, and over the Association Property to the extent reasonably necessary for the performance by each Party of its duties and the exercise of its rights, under this OEA.

2.9 No Extinguishment due to Merger. The easements, rights and obligations contained in this OEA shall exist and continue notwithstanding that Developer or any other Party may own one or more Parcels now or in the future. Such easements shall not merge into the title.



ARTICLE 3

CONSTRUCTION OF BUILDINGS AND OUTSIDE SALES AREAS

3.1 General Requirements.

(a) All construction activities performed within the Shopping Center shall be performed in compliance with all applicable Laws. All construction shall use new materials, and shall be performed in a good, safe, workmanlike manner.

(b) No construction activities performed by a Party shall:

(i) cause any unreasonable increase in the cost of constructing improvements upon another Party's Parcel;

(ii) unreasonably interfere with construction work being performed on any other part of the Shopping Center;

(iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center by any other Party or its Permittees; or

(iv) cause any Building located on another Parcel to be in violation of any Law.

3.2 Permissible Building Areas.

(a) Although no Party shall have an obligation to commence construction of any Building on its Parcel, once construction of a Building has been commenced, such Building shall be completed. The following restrictions shall apply unless otherwise approved in writing by the Approving Parties, which approval may be granted or withheld in the sole and absolute discretion of the Approving Parties:

(i) Buildings may be constructed only within the Building Areas shown on the SITE PLAN;

(ii) if a Building Area has a maximum Floor Area designation on the SITE PLAN, such amount shall not be exceeded; and

(iii) one or more Buildings may be constructed within a Building Area.

(b) If a portion of any Building Area is at any time paved and used as Common Area, such portion may be subsequently used for building purposes provided that all parking requirements and other provisions relating to such Parcel are complied with. Likewise, such building may be subsequently razed and, until replaced, the area shall thereafter be deemed part of the Common Area, and shall be improved to the same standards as the other Common Area, either as automobile parking and drive area or as landscaped area.



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3.3 Building Height Restrictions.

(a) No Building shall exceed one story in height; provided, however, the foregoing restriction shall not prohibit the construction of mezzanines.

(b) No Building shall exceed the following height restrictions without the approval of the Approving Parties, which approval may be granted or withheld by the Approving Parties in their sole and absolute discretion:

(i) On the Kohl's Parcel - 35 feet

(ii) On the Outlot Parcels - 28 feet (except the architectural entry feature for any user of all or a portion of a Building may be up to 30 feet in height.

(c) The height of any Building shall be measured perpendicular from the finished floor elevation of the ground level of the Building to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such Building. Any Party shall have the right to install, maintain, repair, replace and remove Communications Equipment used in connection with the business being conducted by an Occupant on the top of the Building on its Parcel which may extend above the height limits established above; provided, however, such Communication Equipment shall be set back from the front of the Building to reduce visibility thereof by customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.

3.4 Architectural Theme.

(a) The Approving Parties have agreed upon an architecturally compatible theme for the exterior of all Buildings to be constructed, placed or located within the Shopping Center, and each Building located within the Shopping Center shall comply with such architectural theme and the architectural guidelines for the Shopping Center that are approved by the City. In order to insure compliance with such theme, each Party shall submit to the Association for approval detailed plans ("Plans") as required by EXHIBIT D attached hereto and made a part hereof covering the initial construction of each Building and any additions, remodeling, reconstruction or other alteration thereto which changes the exterior thereof. No material deviation shall be made from the approved Plans.

(b) If the Association should reject the Plans for not complying with the architectural theme, the submitting Party, and the Association shall mutually consult to establish approved Plans for the proposed work. The Association shall not arbitrarily or unreasonably withhold approval of the Plans or recommend changes if the Plans otherwise conform with the requirements hereof, nor shall it withhold approval of exterior remodeling or exterior reconstruction which does not either substantially enlarge an existing structure, or substantially change an existing structure. In no event shall the Association require any Party to use design standards superior to those used in the construction of existing Buildings.



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(c) Approval of Plans by the Association shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety of the Plans, nor shall such approval constitute a representation or warranty that the Plans comply with applicable Laws.

(d) Notwithstanding anything contained herein, the Association waives the requirement for the submission of Plans for the following:

(i) the Initial Building of an Anchor Occupant to be constructed within the Shopping Center if such Building reflects the typical retail store of the Anchor Occupant;

(ii) an exterior remodeling of the Building of an Anchor Occupant if the remodeling is part of a national or regional reimagining program being conducted by the Anchor Occupant or is intended to convert the exterior of the Building to the exterior of the Anchor Occupant's typical retail store; and

(iii) any expansion of the Building of an Anchor Occupant which consists of less than twenty thousand (20,000) square feet of additional Floor Area if the exterior finish of the expansion is generally consistent with that of the existing Building except to the extent otherwise permitted in Section 3.4(d)(ii).

3.5 Staging Areas.

(a) In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Party reserves the right to create a temporary staging and/or storage area in the Common Area or in the Building Area on its Parcel at such location as will not (i) unreasonably interfere with access between such Parcel and the other areas of the Shopping Center, (ii) obstruct the access drives and service drives, if any, which are designated on the SITE PLAN as "Perpetual Access", or (iii) obstruct any major access drive situated immediately in front of the Building Areas, except to extent otherwise approved by the Approving Parties. The staging and/or storage area shall not exceed twelve thousand (12,000) square feet in area unless otherwise shown on the SITE PLAN or otherwise approved by the Approving Parties.

(b) No Party's staging and/or storage area shall be located on the Kohl's Parcel without the prior written consent of Kohl's. Kohl's shall not locate any staging and/or storage area on the Developer Parcel or on any Outlot Parcel without the prior written consent of Developer.

(c) All laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Party's Parcel, unless use of such access points is not reasonably practicable.

(d) Upon completion of such work, the constructing Party shall restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work.



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3.6 License to use Common Areas.

(a) Each Party hereby irrevocably grants to each other Party and to its respective contractors, materialmen and laborers a temporary license during the term of this OEA for access and passage over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Parcel; provided, however, such license shall be in effect only during periods when actual construction and/or maintenance is being performed and such license shall not be used in a manner that will unreasonably interfere with the use and operation of the Common Area by others. Prior to using the license granted herein, the grantee shall endeavor to notify the grantor of the work to be performed.

(b) Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall complete such work as quickly as possible, and shall promptly clean the area and restore and/or repair the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

(c) If a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Parcel.

3.7 Side Yard Requirements. The Parties acknowledge that Kohl's initially proposes to construct on the Kohl's Parcel a Building which is classified as an "unlimited area" building under certain building codes (By way of explanation, but not limitation, an "unlimited area" building is designated II-N or V-N under the Uniform Building Code). No Building shall initially be placed or constructed on a Parcel in a manner which will, based on then existing governmental regulations, either preclude the construction of an "unlimited area" building within the Kohl's Parcel, or cause an existing "unlimited area" building thereon to no longer be in conformance with applicable building code requirements; provided, however, subsequent changes in governmental regulations shall not obligate a Party to modify or alter its existing Building.

3.8 Liens.

(a) If any mechanic's lien is filed against the Parcel of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed shall cause such lien to be discharged within fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien and shall indemnify the other Party and its Parcel against all Claims on account of such lien or claim of lien.

(b) Nothing herein shall prevent a Party permitting or causing such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence and in good faith. If such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs or other charges necessary to release such lien.



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(c) Notwithstanding the foregoing, upon request of the Party whose Parcel is subject to such lien, the Party permitting or causing such lien to be filed shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge, unless such Party delivers to the other an undertaking from a title insurance company to discharge the lien in accordance with Section 3.9(a).

ARTICLE 4

DEVELOPMENT OF COMMON AREA

4.1 **Common Area.** The Common Area shall be initially constructed as shown on the SITE PLAN; provided, however, no fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of (i) the limited curbing and other forms of traffic control depicted on the SITE PLAN and (ii) the permitted staging and/or storage areas. Contemporaneously with the construction of a Building upon its Parcel, the constructing Party shall cause the Common Area and Owner Maintenance Area on its Parcel to be substantially completed no later than the day on which the first Occupant of such Parcel opens for business with the public. Such work shall be done in a good and workmanlike manner and in accordance with good engineering standards.

4.2 **Parking Requirements.**

(a) The parking area on the Kohl's Parcel, on each separate Parcel comprising the Developer Parcel and on each of the Outlot Parcels shall contain sufficient uncovered ground level, parking spaces in order to comply with the following minimum requirements:

(i) four (4.0) parking spaces for each one thousand (1,000) square feet of Floor Area;

(ii) if a "quick service restaurant" use contains a drive-up unit (such as food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit.

(b) The foregoing requirements, together with the parking requirements imposed under all applicable Laws, shall be satisfied throughout the term of this OEA for each Parcel and for each of the Outlot Parcels, except to the extent otherwise indicated on the SITE PLAN. Except to the extent otherwise indicated on the SITE PLAN, (i) all parking spaces shall be at approximately a 90° angle to the spine and initially shall be not less than nine and one-half feet (9.5') in width, and (ii) the distance between rows of parking stalls initially shall be at least sixty-five feet (65'), measured from spine to spine.

(c) If a condemnation of part of a Parcel or sale or transfer in lieu thereof reduces the number of usable parking spaces below that which is required herein, the Party whose Parcel is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground level parking spaces in order to comply with the parking requirements set forth in this OEA. If such compliance is not possible, such Party shall not be deemed in default hereunder, but such Party shall not be permitted to expand the amount of Floor Area located upon its Parcel. If such Floor



Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirement is satisfied.

4.3 **Lighting Requirements.** The lighting system shall be designed in accordance with photometric plans approved by the Approving Parties to produce a minimum maintained lighting intensity measured at grade at all points in the Common Area of at least the following:

- (a) 1.0 footcandle at the extreme edge of the parking or driveway areas;
- (b) 5.0 footcandles in the driveway areas immediately in front of the entrance to any Building; and
- (c) 2.0 footcandles in the balance of the parking and driveway areas.

Each Party shall control the lighting system located on its Parcel. The type and design of the Common Area light standards shall be approved by the Approving Parties.

4.4 **Slope, Pavement Materials and Utility Line Depth.**

(a) The slope in the driveway areas shall not exceed a maximum of four percent (4%), nor be less than a minimum of one percent (1%). The slope in the parking areas shall not exceed a maximum of four percent (4%), nor be less than a minimum of one percent (1%).

(b) All sidewalks and pedestrian aisles shall be comprised of concrete or other materials approved by City; the automobile parking areas, drives, and access roads shall be designed in conformity with the recommendations of a registered soils engineer approved by the Approving Parties which shall require the installation of a suitable base and the surfacing with an asphaltic concrete or concrete wearing material.

(c) Utility Lines that are placed underground shall be at depths designated by the entity supplying the particular utility service.

4.5 **Common Area Modifications.**

(a) No Party shall make changes to the improved Common Area on its Parcel without the approval of the Association.

(b) The provisions of this Section 4.5 do not apply to any changes, modifications or alterations of Common Area located within Building Areas or Owner Maintenance Areas which result from or arise out of the construction, expansion or maintenance of Buildings or Owner Maintenance Areas.



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ARTICLE 5

COMMON AREA AND ASSOCIATION PROPERTY MAINTENANCE AND REPAIR

5.1 Common Area and Association Property Maintenance Standards.

(a) The parties shall maintain, repair and replace, at the Parties' sole cost and expense, the Common Area until the Initial Turnover Date. As used in this OEA, the term "Initial Turnover Date" with respect to a particular Parcel shall mean the date on which all of the Common Area Improvements for that Parcel (except for any such Improvements which would be located on portions of such Parcels which are to be improved with a Building or Owner Maintenance Area under plans on file with the City) have been substantially completed in accordance with plans approved by the City (as evidenced by a certificate ("Initial Turnover Certificate") of Developer's landscape architect, civil engineer or project architect, as applicable, furnished by Developer to the Association). Except as otherwise provided in Article 5, after the Initial Turnover Date (with respect to the Common Area which is the subject of the Initial Turnover Certificate) and as of the date of acquiring an interest either by fee ownership or easement or license by the Association (with respect to the Association Property), the Association, (i) shall operate the Common Area located on the Parcel which is the subject of the Initial Turnover Certificate and the Association Property and keep it in good condition and repair, clean, free of rubbish and other hazards to persons using such area, properly lighted, and landscaped, and (ii) may take such security measures as it deems reasonably appropriate to keep the Common Area located on such Parcel and Association Property reasonably secure. The Association's operation, maintenance and repair obligations hereunder shall include, without limitation, all of those tasks for which the Association shall be entitled to reimbursement pursuant to Section 5.1(b) below. The Association shall have the right to select from time to time a professional manager (which may be Developer or some unrelated party) to operate and maintain the Common Area and Association Property, provided that such selection will not diminish the Association's obligations to maintain and operate the Common Area and Association Property. Each Party shall pay its respective Proportionate Share of the Common Area Maintenance Costs. Nothing herein shall prevent any Party from requiring Permittees of its Building to pay such Party's Proportionate Share of Common Area Maintenance Costs in accordance with standards which are more rigorous or stringent than the terms of this Article 5. The unimproved Common Area and Association Property shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area and Association Property shall be comparable to the standard of maintenance followed in other first-class retail developments of comparable size in the metropolitan area in which the Shopping Center is located; notwithstanding the foregoing, however, the Common Area and Association Property shall be operated, maintained and repaired in compliance with all applicable Laws and with the provisions of this OEA. All Common Area and Association Property Improvements shall be repaired or replaced with materials of a quality which is at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integration of the Shopping Center as a whole.



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(b) The Association shall be entitled to reimbursement from the Parties in the manner described in Section 5.5 for all of the costs and expenses incurred by the Association in performing its operation, maintenance, and repair obligations in accordance with this Article 5. The maintenance and repair obligation shall include, but shall not be limited to, the following:

(i) *Drive and Parking Areas.* Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacing base, skin patching, resealing and resurfacing (for the purpose of this section, an overlay of the drives and parking areas shall be considered to be a maintenance item).

(ii) *Debris and Refuse.* Periodically removing of all papers, debris, filth, refuse, ice and snow, including periodic vacuuming and broom sweeping to the extent necessary to keep the Common Area and Association Property in a first-class, clean and orderly condition. All sweeping shall be performed at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees. Snow shall be plowed as soon as a two-inch accumulation occurs and replowed as necessary to maintain less than a two-inch accumulation at all times; upon cessation of the snowfall, the Common Area and Association Property shall be plowed to the paved surface.

(iii) *Non-Occupant Signs and Markers.* Maintaining, cleaning, repairing and replacing directional, stop and handicapped parking signs and markers; restriping of parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian crosswalks.

(iv) *Lighting.* Maintaining, cleaning, repairing and replacing Common Area and Association Property lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers. Exterior Building or Owner Maintenance Area lighting, including any associated with a canopy or other architectural features forming a part of such Building, shall not be considered to be a Common Area Improvement, but instead the maintenance and replacement of such fixtures, and the cost of illumination, shall be the obligation of the Party upon whose Parcel such fixtures are located.

(v) *Landscaping.* Maintaining and replacing all landscape plantings, trees and shrubs, including those adjacent to the exterior walls of Buildings unless included in Owner Maintenance Area, in an attractive and thriving condition, trimmed and weed free. Maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings unless included in Owner Maintenance Area. Modifying irrigation system to satisfy governmental water allocation or emergency requirements. If landscaping additions/modifications are required as a result of a Building addition, expansion or remodel, or if perimeter landscaping around a Building is damaged by reason of the Occupant of the Building failing to operate its landscape irrigation system, then the installation, replacement and maintenance of such landscaping shall be performed solely by such Occupant and shall not be included within the maintenance of the Common Area.



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(vi) *Common Utility Lines.* Maintaining, cleaning, replacing and repairing any and all Common Utility Lines.

(vii) *Obstructions.* Keeping the Common Area and Association Property free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this OEA.

(viii) *Sidewalks.* Maintaining, cleaning, repairing and replacing all sidewalks, including those adjacent and contiguous to Buildings located within the Shopping Center unless included in Owner Maintenance Area. Sidewalks shall be cleaned at least monthly and shall be swept at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area.

(ix) *Supervisory Personnel.* Providing professional supervisory personnel for the Common Area and Association Property, if reasonably required.

(x) Premiums on casualty and public liability insurance for the Common Area and Association Property and Improvements located thereon, in the amounts and types set forth in Article 10 below, and payment of any deductible amount in the event of a claim ("Common Property Insurance Premiums"). All Parties (and Mortgagees, if requested) shall be named as additional insureds on such public liability policies. The proceeds of all casualty insurance policies shall be used to repair and restore the Common Area and Association Property. The cost of repairing any damage to the Common Area and Association Property caused by an event not insured against will be a Common Area Maintenance Cost. The Association is only authorized to obtain or maintain insurance on Improvements located on Common Area or Association Property.

(xi) All general maintenance and repairs, whether required by law or otherwise, including, without limitation, painting, and cleaning.

(xii) Maintenance, repair, and replacement as required, of the Common Area and Association Property, including parking area.

(xiii) Subject to Article 9, the maintenance, repair, and replacement as required, of the Shopping Center identification signs (if any), tenant directory signs (if any), and sprinkler systems.

(xiv) Storage space for maintenance equipment for the Common Area and Association Property.

(xv) Expenses reasonably incurred for personnel exclusively serving the Shopping Center to implement such services as are provided by the Association including, without limitation, payroll, payroll taxes and health and workers' compensation insurance premiums.

(xvi) All costs associated with providing security service or personnel (to the extent deemed necessary or appropriate by the Association) and maintaining and repairing, as necessary, any fire protection systems, security alarm systems, storm



drainage systems, electrical systems, and any other utility systems serving the Common Area and Association Property.

(xvii) Any taxes (other than real property taxes payable by the Parties on their respective Parcels) applicable to provide the aforementioned services rendered in connection with the Common Area and Association Property.

(xviii) Any public utility or governmental charges, surcharges, and any other costs levied, assessed, or imposed pursuant to laws, statutes, regulations, codes and ordinances promulgated by any governmental or quasi-governmental authority in connection with the use of the Common Area and Association Property.

(xix) Necessary tools and supplies.

(xx) Depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); provided, however, that if the Association depreciates any particular machine or piece of equipment or establishes reserves in anticipation of the replacement thereof, the aggregate amount of such depreciation and reserves with respect to such particular machine or piece of equipment shall be applied by the Association against the cost of replacing such machine or piece of equipment, at such time such machine or piece of equipment is replaced.

(xxi) The uninsured or underinsured portion of the cost of any restoration, repair, or rebuilding work required to be undertaken by the Association pursuant to Article 5.8 in the event of any damage or destruction to the Common Area and Association Property.

(xxii) Other costs and fees identified in this OEA as Common Area Maintenance Costs.

(xxiii) Reasonable reserves.

(xxiv) An allowance for professional property management consistent with other shopping centers in the Riverside area.

(xxv) Maintenance of Parcel 7 in a manner consistent with comparable facilities in the Shopping Center.

Notwithstanding anything contained herein to the contrary, each Party shall maintain and repair in a clean, safe and sightly condition, at its sole cost, any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area located on its Parcel as part of Owner Maintenance Area.

5.2 Owners Association.

(a) Organization of Association. The Association shall be incorporated under the name of ORANGECREST HILLS COMMERCIAL OWNERS ASSOCIATION, as a corporation not for profit under the Nonprofit Mutual Benefit Corporation Law of the State of California.



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(b) **Duties and Powers.** The duties and powers of the Association are those set forth in this OEA, the Articles, and the Bylaws, together with the general and implied powers of a nonprofit mutual benefit corporation, generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper, in operating, managing and maintaining the Common Area and Association Property, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and in this OEA.

(c) **Membership.** After the Association is incorporated, every Party shall automatically become a Member of the Association and shall remain a Member until such time as his ownership of said Parcel ceases, at which time such membership in the Association shall automatically cease. Memberships in the Association shall not be assignable, except to the Person to whom title to a Parcel has been transferred, and every Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of a Parcel. Ownership of a Parcel shall be the sole qualification for Membership in the Association. Nothing in this Section shall be construed to limit the designation rights of a Party under Section 1.28 above.

(d) **Transfer.** The Association Membership held by any Party shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Party's Parcel, and then only to the purchaser or Mortgagee of such Parcel. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. If the Party fails or refuses to transfer the Membership registered in his name to the purchaser of such Parcel upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer has been presented to the Board and the other Parties, the purchaser shall not be entitled to vote at meetings of the Association. The Association may levy a reasonable transfer fee against a new Party and such Party's Parcel (which fee shall be added to the Proportionate Share of the Common Area Maintenance Costs (defined below) chargeable to such new Party) to reimburse the Association for the administrative costs associated with transferring the Membership to the new Party on the records of the Association.

(e) **Voting Rights.** Each Member of the Association shall be entitled to a number of votes equal to one vote for each one tenth of one percent (.1%) of such Member's Proportionate Share. For example, if a Party's Proportionate Share is 16.8%, such Party shall be entitled to 168 votes. All voting rights shall be subject to this OEA, the Articles and the Bylaws. When more than one Person has an ownership interest in a Parcel such Persons shall be considered co-Parties and all such co-Parties shall be Members and may attend any meetings of the Association. Unless the Board receives a written objection from a co-Party, it shall be presumed that a voting co-Party is acting with the consent of all co-Parties. No votes shall be cast for a Parcel owned by co-Parties where a majority-in-interest of said co-Parties who are present in person or by proxy cannot agree on a vote or other action. All nonvoting co-Parties shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Parcel and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein, or in the Bylaws, shall be deemed to be binding on all Parties and co-Parties and their successors and assigns.



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5.3 Common Area Maintenance Costs.

(a) The Association shall expend only such funds as are reasonably necessary for the operation, maintenance, repair and insurance of the Common Area and Association Property (other than any enclosed mall areas of the Shopping Center or Outdoor Areas) and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred.

(b) For the purpose of this OEA, Common Area Maintenance Costs shall only include such costs and expenses, as determined in accordance with generally accepted accounting principles, which are reasonably incurred by the Association in performing the duties imposed on the Association under this OEA and specifically shall not include the following:

(i) any charge for electricity to a Party that separately pays the electrical costs for lighting the Common Area on its Parcel;

(ii) any costs to clean up or repair the Common Area resulting from promotional activities or from construction, maintenance or replacement of Buildings or Owner Maintenance Areas;

(iii) real property taxes and assessments except those imposed on the Association Property described in EXHIBIT F-1 and identified on the SITE PLAN as "Parcel 7"; and

(iv) entertainment, transportation, meals and lodging of anyone.

(c) If any Association personnel perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(d) Each Party's initial Proportionate Share based on Floor Area of the Building on a particular Parcel shall be as follows:

- | | | |
|-------|---------------|-------|
| (i) | Kohl's Parcel | 67.8% |
| (ii) | Parcel 2 | 2.4% |
| (iii) | Parcel 3 | 2.5% |
| (iv) | Parcel 4 | 11.1% |
| (v) | Parcel 5 | 5.3% |
| (vi) | Parcel 6 | 10.9% |

The above percentages reflect a reduction of 1% for Parcel 2 since it maintains its own pavement area. If Parcel 2 ceases to maintain its own pavement area, then the Proportionate Shares shall be as follows:

- (vii) Kohl's Parcel 67.1%





(viii)	Parcel 2	3.4%
(ix)	Parcel 3	2.4%
(x)	Parcel 4	11.1%
(xi)	Parcel 5	5.2%
(xii)	Parcel 6	10.8%

Additionally, the Parties agree that in no event shall each Party's Proportionate Share be less than as follows:

(xiii)	Kohl's Parcel	57.0%
(xiv)	Parcel 2	1.9%
(xv)	Parcel 3	1.1%
(xvi)	Parcel 4	9.4%
(xvii)	Parcel 5	4.4%
(xviii)	Parcel 6	9.1%

(e) If an existing Parcel is divided, the Party causing such division shall prorate the allocation attributable to the existing Parcel between the newly created Parcels, file a recorded declaration confirming such allocation and deliver a copy of such declaration to the Association and each other Party. If any of the Annexable Territory becomes Added Territory pursuant to Section 12.11, the allocation above shall be recalculated to account for the Added Territory.

5.4 Common Area Maintenance Budget.

(a) The Association shall prepare annually and submit to each Party a detailed budget setting forth the anticipated Common Area Maintenance Costs for the upcoming calendar year (the "Annual Operating Budget"). Except as otherwise expressly provided in this OEA, all Common Area Maintenance Costs shall be borne by all Parties in proportion to their respective Proportionate Shares. The Association shall use commercially reasonable efforts to have the first Annual Operating Budget for the Shopping Center prepared and submitted to the Parties prior to the opening of the Shopping Center, which Budget shall cover the period from the opening of the Center through the end of the calendar year in which the opening of the Shopping Center occurs. Thereafter, the Association shall prepare and submit to the Parties a proposed Annual Operating Budget prior to the end of November of each calendar year, which budget shall cover the twelve (12) month period commencing on January 1 of the following year.

(b) If no response is received from a Party, the Annual Operating Budget shall be deemed to be approved by that Party. If a Party reasonably objects to the cost of any item in the Annual Operating Budget within thirty (30) days of receipt thereof ("Disputed Cost"), such Party shall state its objections in writing for each Disputed Cost and, if the

amount is the source of the objection, shall propose a reasonable alternative amount for such Disputed Cost accompanied by a bid or proposal from a responsible alternate source for the item. All items in the Annual Operating Budget not properly objected to in writing shall be deemed approved. It shall be unreasonable for a Party to object to any items in the Annual Operating Budget over which the Association has no control such as real property taxes or utility rates. Pending resolution of the Disputed Cost, the amount for such item in the Annual Operating Budget in question shall be applicable to, and payable by (as to its share), that Party. Upon resolution of the Disputed Cost, and if an adjustment is required, the Board shall recalculate the Annual Operating Budget and amounts payable by the Parties and advise the Parties of any resulting changes.

(c) If any Party or Parties objects to the cost of any item in the Annual Operating Budget in accordance with the preceding paragraph (collectively, the "Objecting Parties"), the Board shall schedule a meeting to discuss the matters to which the Objecting Parties object with the Objecting Parties. The Board shall notify the Objecting Parties of the date, time and location of the meeting not fewer than fifteen (15) days prior to the date of the meeting. If an Objecting Party does not appear at the meeting, the Annual Operating Budget shall be deemed approved by that Objecting Party. If no agreement is reached between the Board and the Objecting Parties at the meeting, the matter shall be submitted to the Judicial Arbitration and Mediation Service of Riverside County ("JAMS") for arbitration which shall be final and binding. The Board and Objecting Owners may submit only written declarations under penalty of perjury to JAMS, discussing the Disputed Cost or Costs. If JAMS is for any reason unavailable for resolution of a Disputed Cost, an alternative dispute resolution service shall be selected by agreement between the Board and affected Objecting Parties. If they do not agree, the matter shall be determined under the rules for commercial arbitration of the American Arbitration Association. All fees of the dispute resolution service shall be paid by the non-prevailing party unless otherwise determined by the applicable dispute resolution service. Costs incurred by the Board in responding to Disputed Costs shall be included in Common Area Maintenance Costs.

(d) The Association shall operate, maintain, and repair the Common Area and Association Property in accordance with the approved Annual Operating Budget and shall not (without the prior approval of a majority of the voting power of the Members) include as Common Area Maintenance Costs, any costs or charges which are not included in the approved Annual Operating Budget; provided, however, that the Association shall have the right to include, as a part of the Common Area Maintenance Costs, charges associated with any emergency repairs or maintenance to the Common Area and Association Property which are necessary to prevent injury or damage to persons or property ("Emergency Expenses"). The Association shall, however, use reasonable efforts to inform all Parties of such emergency repairs or maintenance.

5.5 Payment of Common Area Maintenance Costs.

(a) Commencing on the first day of the calendar month following the opening of the Center and thereafter on the first day of each calendar month during the term of this OEA, each Party shall pay to the Association one-twelfth (1/12th) of such Party's Proportionate Share of the approved Annual Operating Budget for the current year. Payments for any partial month shall be a prorated portion of the normal monthly payment, based on the actual days in such month. The Association shall, from time to time, but not more often than once every three (3) months and not less often than once every twelve (12) months, send each Party a written statement itemizing in detail (including such backup



material and cost breakdowns as may be reasonably requested by any Party) the Common Area Maintenance Costs actually expended by the Association for the period covered by the statement, including any expenses which are in excess of those shown on the approved Annual Operating Budget (a "Common Expense Statement"). If any Party shall have paid more than its Proportionate Share of the Common Area Maintenance Costs actually incurred during the period in question, the Association shall promptly refund the amount of such excess to the Party. If any Party shall have paid less than its Proportionate Share of said Common Area Maintenance Costs during said period, such Party shall promptly pay to the Association the amount of such deficiency. Any Party may object to any cost or expense shown on any such Common Expense Statement (but only to the extent that the item of cost or expense objected to was not included as a part of the approved Annual Operating Budget, or separately approved by the Board of Directors as an Emergency Expense) by giving written notice of such objection to the Association, which written notice shall set forth in reasonable detail the grounds for the Party's objections (a "Disputing Party"). Notwithstanding a Party's objection, each Party shall promptly pay all nondisputed amounts. In addition, a Party may, but shall not be obligated to, pay its Proportionate Share of the Common Area Maintenance Costs to which such Party objects, which payment shall be deemed to be made under protest. The Association and any Disputing Party shall thereafter enter into good faith discussions reasonably calculated to settle all disputes relating to charges shown on the Common Expense Statement; provided, however, that the decision of the majority of the Board of Directors with respect to such disputed charge shall be binding on all Parties. Upon the final resolution of any such dispute, the Association or the Disputing Party, as the case may be, shall promptly pay the amount owing by the one to the other, together with interest thereon from the date of payment by such Party to the date of reimbursement by the Association (in the case of payment owed to a Disputing Party), or from the date which is ten (10) days after the Common Expense Statement is delivered to the Disputing Party by the Association to the date of payment by such Party (in the case of payment owed to the Association). Such payments shall bear interest at the rate of interest set forth in Section 11.3 hereof (the "Default Rate").

(b) Any amount owed to the Association hereunder which is more than ten (10) days past due shall bear interest at the Default Rate from the due date until paid. Any such penalties or interest paid by such delinquent Party shall be placed in a fund established and controlled by the Association to be utilized by the Association to pay for unrecovered costs associated with the operation of the Common Area and Association Property in accordance with this OEA. Each Party acknowledges that the late payment of any amounts owed the Association pursuant to this OEA will cause the Association to incur certain costs and expenses not otherwise contemplated, the exact amount of such costs being extremely difficult and impractical to ascertain. Such costs and expenses include, without limitation, administrative and collection costs, processing and accounting expenses and other costs and expenses necessary and incidental thereto, such that the interest represents a reasonable estimate of such costs and expenses and is fair compensation to the Association for its loss suffered by such nonpayment. The interest provisions contained herein are in addition to and do not diminish or represent a substitute for any or all of the Association's other rights to enforce the provisions of this OEA.

(c) Within three(3) years after receipt of any Common Expense Statement, any Party may, at its own expense, audit such statement. If it shall be determined as a result of such audit that the Party has paid more than the amount required pursuant to this OEA, then such overpayment shall be promptly refunded to such Party. In addition, if the Common Expense Statement required such Party to pay more than three percent (3%) over



the amount that such Party should have paid (as determined by the approved audit), then the Association shall pay all of the auditing Party's reasonable costs and expenses connected with such audit.

(d) In addition to its obligation to pay its Proportionate Share of the Common Area Maintenance Costs in the manner described in this Section, each Party shall also be responsible for paying any charges which would otherwise be Common Area Maintenance Costs, but which result from, or which are directly attributable to, the actions, inactions, activities, or business operations of such Party or such Party's Permittee and not from normal wear and tear of the Common Area and Association Property as a result of normal usage. Each Party shall also be responsible for paying any costs incurred by the Association for corrective action taken on account of the breach by such Party of such Party's obligations under this OEA, including without limitation such Party's obligations under Articles 5 and 10. All amounts payable by a particular Party pursuant to this Section are herein referred to as "Special Assessments" and such amounts shall not be included in the total of the Common Area Maintenance Costs for which each Party is proportionately responsible. Instead, all such Special Assessments shall be paid to the Association directly by the responsible Party, or by a Party's Permittee on behalf of the responsible Party within twenty (20) days of receiving a bill therefor. The amount of the Special Assessment shall be equal to the cost incurred by the Association for corrective action and any reasonable fines or penalties assessed by the Association pursuant to this OEA or the Bylaws of the Association. The Board of Directors of the Association shall, in the exercise of their reasonable judgment, be charged with imposing Special Assessments and in setting the amounts thereof. The decision of a majority of the Board of Directors with respect to any issue or matter relating to the imposition of a Special Assessment shall be binding on all parties.

(e) If the Association fails to adequately and properly maintain the Common Area and Association Property, each Party shall have the right to enforce such obligations through all available methods, including arbitration or the judicial process.

5.6 Outdoor Area.

(a) Each owner of any Parcel to which an Outdoor Area is appurtenant, (ii) the occupants of the Building located on such Parcel, and (iii) their respective agents, employees and invitees are sometimes referred to herein individually as a "Designated User" and collectively as "Designated Users." The Designated Users with respect to any Parcel shall have the exclusive use of the Outdoor Area appurtenant to such Parcel. Such Outdoor Area shall only be used in conjunction with, and as a part of, the business operated in the Building located on such Parcel.

(b) The owner of a Parcel to which an Outdoor Area is appurtenant shall pay the costs and expenses of maintenance, repairs, utilities and premiums on casualty and public liability insurance for such Outdoor Area. Said costs shall not be included in Common Area Maintenance Costs. The fact that an Outdoor Area is appurtenant to a particular Parcel shall not increase or decrease the Proportionate Share attributable to such Parcel.

(c) The owner of a Parcel to which an Outdoor Area is appurtenant shall indemnify, defend and hold each Party and the Association harmless from and against all claims, expenses, liabilities, losses, damages and costs (including without limitation



reasonable attorneys' fees) arising out of or resulting from the use of such Outdoor Area by such Party and other Designated Users of such Outdoor Area.

(d) The owner of a Parcel to which an Outdoor Area is appurtenant shall satisfy all Governmental Requirements relating to such Outdoor Area and the use of it.

(e) The owner of a Parcel to which an Outdoor Area is appurtenant may at any time terminate the designation of such Outdoor Area. Such termination shall be effective upon: (i) recordation in the Official Records of Riverside County of a document reflecting such termination, and (ii) restoration of such Outdoor Area at the sole cost of such Party to a condition reasonably consistent with other improvements in the Common Area and in accordance with plans and specifications approved by Developer and the Association (as applicable) pursuant to this OEA.

(f) For the purpose of this OEA, all obligations imposed hereunder upon a Party with respect to the Building on such Party's Parcel shall extend as well to the Outdoor Area appurtenant to such Party's Parcel, if any, for so long as said area is designated as an Outdoor Area in accordance with this OEA.

5.7 Damage to the Common Area. In the event of any damage or destruction to the Common Area and Association Property, whether insured or uninsured, the Association shall restore, repair or rebuild such Common Area and Association Property with all due diligence to, as nearly as possible, at least as good a condition as it was in immediately prior to such damage or destruction. All such construction shall be accomplished in accordance with the requirements of Article 3 of this OEA and such other provisions of this OEA as may be applicable. The uninsured or underinsured portion of the cost of such restoration, repair, and rebuilding shall be treated as a Common Area Maintenance Cost in the manner described in Article 5 of this OEA, with each Party being responsible for its Proportionate Share of all such unreimbursed restoration costs.

ARTICLE 6

MAINTENANCE OF BUILDINGS, OWNER MAINTENANCE AREAS AND UTILITY LINES

6.1 Building Improvements and Owner Maintenance Areas.

(a) After completion of construction, each Party shall maintain and keep the exterior portion of the Buildings and Owner Maintenance Areas, if any, located on its Parcel in first-class condition and state of repair, in compliance with all applicable Laws, and in compliance with the provisions of this OEA, including the architectural theme. Each Party shall store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area (except that trash cans for use by customers, visitors and invitees located in the Common Area, Owner Maintenance Area and Association Property may be readily visible), and to arrange for regular removal of such trash or garbage.

(b) If any of the Buildings or Owner Maintenance Areas are damaged by fire or other casualty (whether insured or not), the Party upon whose Parcel such Building or Owner Maintenance Area is located shall, subject to governmental regulations and/or insurance adjustment delays, promptly remove the debris resulting from such event and



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provide a slightly barrier, and within a reasonable time thereafter shall perform one of the following alternatives:

(i) such Party shall repair or restore the Building and/or Owner Maintenance Area so damaged to a complete unit, such repair or restoration to be performed in accordance with all applicable provisions of this OEA;

(ii) such Party shall erect another Building and/or Owner Maintenance Area in such location, such construction to be performed in accordance with all applicable provisions of this OEA; or

(iii) such Party shall demolish the damaged portion and/or the balance of such Building and/or Owner Maintenance Area and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be Common Area until a replacement Building and/or Owner Maintenance Area is erected.

Within ninety (90) days from the date of the casualty, such Party shall give notice to each other Party of which alternative it elects.

(c) During any period of rebuilding, repairing, replacement or reconstruction of a Building, the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Party upon whose Parcel such Building is located shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Party requesting the same.

6.2 Utility Lines.

(a) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Separate Utility Lines used by such Party regardless of where located unless the provider of the utility service or a public or quasi-public authority has agreed to maintain such Utility Lines. Any maintenance, replacement and/or repair of nondedicated Utility Lines located on another Party's Parcel shall be performed only after twenty (20) days notice to the grantor (except in an emergency the work may be initiated with reasonable notice), after normal business hours whenever possible, and in such a manner as to cause as little disturbance in the use of the grantor's Parcel as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work shall promptly pay all costs and expenses associated therewith, diligently complete such work as quickly as possible and promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) Common Utility Lines shall be maintained, repaired and/or replaced as part of the Common Area pursuant to Article 5.



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ARTICLE 7

USE OF THE SHOPPING CENTER

7.1 Permitted Uses.

(a) The Shopping Center shall be used only for retail sales, offices, Restaurants or other commercial purposes. No use shall be permitted in the Shopping Center which 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 without the prior written consent of the Approving Parties (which consent may be granted or withheld in the sole and absolute discretion of the Approving Parties):

(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 (except that this provision shall not prohibit normal cooking odors which are associated with a first-class Restaurant operation);

(ii) Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;

(iii) Any "second hand" store or "surplus" store, thrift shop or other business principally engaged in the sale of used merchandise except within any Added Territory;

(iv) Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);

(v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any Building and any enclosed recycling facility);

(vi) Any fire sale, going out of business sale (except a sale not to exceed 90 days which meets the requirements of Laws governing closing out and relocation sales which at the time of this OEA includes Chapter 5.12 of the Riverside County Code), bankruptcy sale (unless pursuant to a court order) or auction house operation;

(vii) Any central laundry, central dry cleaning plant or laundromat (except that this provision shall not prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in first-class shopping centers);

(viii) Any service station or automobile, truck, trailer or recreational vehicles sales, leasing, display, body shop or repair operation (except that this provision shall not prohibit the sale of gasoline or other fuels from fuel service islands on Outlot 2);

(ix) Any bowling alley or skating rink, except within any Added Territory;



(x) Any movie theater, night club or live performance theater, except within any Added Territory; provided the Parties agree to cooperate with each other if it becomes necessary to maintain reasonable levels of safety, to direct traffic from any movie theater or live performance theater located within any Added Territory through the most direct route to and from Bountiful Street and/or Trautwein Road;

(xi) Any living quarters, sleeping apartments or lodging rooms;

(xii) Any veterinary hospital or animal raising facility (except that this prohibition shall not prohibit pet shops or pet supply superstores and veterinary services which are incidental thereto) and shall not prohibit any veterinary services, not to include boarding except for overnight indoor boarding, within any Added Territory;

(xiii) Any mortuary, funeral home or crematory;

(xiv) Any adult book store, adult video store, adult movie theater or other establishment selling, renting or exhibiting pornographic materials or drug-related paraphernalia (except that this provision shall not prohibit the operation of a bookstore or video store which carries a broad inventory of books or videos and other materials directed towards the interest of the general public [as opposed to specific segment thereof]);

(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 fifty percent (50%) of the gross revenues of such business;

(xvi) Any health spa, fitness center or athletic facility which occupies more than five thousand (5,000) square feet of Floor Area except that this provision shall not apply to any Added Territory;

(xvii) Any flea market, swap meet, amusement or video arcade, pool or billiard hall, car wash, tattoo parlor or dance hall (except that this provision shall not prohibit a Restaurant from including three [3] or fewer video games as an incidental use to its operations or a Restaurant located within any Added Territory from including any number of video games so long as its primary use is not a video arcade);

(xviii) Any training or educational facility in excess of two thousand (2000) square feet, 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 (except that this provision shall not prohibit on-site employee training [whether for employment at the Shopping Center or at another business location of such Occupant] by an Occupant incidental to the conduct of its business at the Shopping Center and this provision shall not apply to any Added Territory);

(xix) Any church, school, day care center or related religious or educational facility or religious reading room (except that this provision shall not apply to Developer's Parcel);



(xx) Any massage parlor (except that this provision shall not prohibit massages in connection with a beauty salon, health club or athletic facility); and

(xxi) Any casino or other gambling facility or operation, including but not limited to, off-track or sports betting parlors, table games such as black-jack or poker, slot machines, video gambling machines and similar devices, and bingo halls (except that this provision shall not prohibit government sponsored gambling activities or charitable gambling activities if such activities are incidental to the business operation being conducted by the Occupant).

(b) "Retail Office" shall mean an office which provides services directly to consumers (i.e., financial institutions, automated teller machines, real estate agencies, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics). Without the prior written consent of the Approving Parties (which consent may be granted or withheld in the sole and absolute discretion of the Approving Parties), the following restrictions shall apply:

(i) the only offices which may be permitted within the Outlot Parcels are Retail Offices;

(ii) no Retail Office Occupant shall occupy more than six thousand (6,000) square feet of Floor Area except within any Added Territory.

The incidental use of office space used by an Occupant for administrative purposes shall not be considered office use for the purpose of this Section 7.1(b);

(c) The following use and occupancy restrictions shall be applicable to the Developer Parcel and the Outlot Parcels:

(i) No Restaurant shall be located thereon within 250 feet of the Building Area located on the Kohl's Parcel;

(ii) No retail operation in which more than twenty percent (20%) of the Occupants' sales (based on dollar value) is derived from the sale of clothing commonly referred to as closeouts, manufacturer's overruns, other retailer's returned or excess inventory, manufacturer's seconds, or imperfect merchandise shall be permitted; and

(iii) No traditional department store containing more than fifty thousand (50,000) square feet of Floor Area that uses ten thousand (10,000) or more square feet of Floor Area in the aggregate for the sale of Brand Name Products (as hereinafter defined) shall be located thereon. As used herein, the term "Brand Name Products" shall mean products that are sold under any of the following brands: Adidas, Arrow, Champion, Columbia Sportswear, Dockers, Haggar, Healthtex, Jockey, Lee, Levi's, Nike, Norton, Pfaltzgraff, Reebok, Russell Athletic, Sag Harbor, Speedo, Union Bay, Villager or Warner's. One-half of the aisle space adjacent to any shelving or display case used for the retail display of Brand Name Products shall be included in calculating Floor Area for purposes of this subsection. This provision does not apply to discount department stores such as Target, K-Mart, Wal-Mart and the like. The restrictive covenant contained in this subsection shall terminate in the event that a department store operating under the trade name "Kohl's" (or such other



trade name(s) as Kohl's may operate its department store operations) is not operated on the Kohl's Parcel for a continuous period of six (6) months at any time after the date on which a retail business first opens for business to the public on the Kohl's Parcel; provided, however, such six (6) month period shall be extended for an additional six (6) month period if such failure to operate a department store on the Kohl's Parcel is (a) the result of a casualty or condemnation of the Kohl's Parcel, (b) the result of the remodeling or reconstruction of the Building on the Kohl's Parcel or (c) caused by reason of an excusable delay set forth in Section 12.10 hereof.

(d) This OEA is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Shopping Center or on any Parcel.

(e) The use restrictions set forth in this Section 7.1 shall not apply to the Annexable Territory unless and until Developer records a Notice of Addition (defined in Section 12.11 below).

7.2 Use of Common Area.

(a) No merchandise, equipment or services, including, but not limited to, vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored on the sidewalks in front of or alongside the Buildings or within the remainder of the Common Area including any Outdoor Area without the prior written approval of the Approving Parties, which approval may be granted or withheld in their sole and absolute discretion; provided, however, that the foregoing prohibition shall not be applicable to the following:

(i) sidewalk/promotional sales not to exceed four (4) times per calendar year, each time not to exceed two (2) weeks in length;

(ii) any recycling center required by law, the location of which shall be subject to the approval of the Approving Parties; and

(iii) any Restaurant seating contained within an Outdoor Area.

(b) Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area; for the purposes of this provision, a tax assessment or other form of charge applicable to parking spaces or parking lots may be deemed by the Approving Parties to be an imposition required by law.

(c) Each Party shall use its commercially reasonable efforts to cause the employees of the Occupants of its Parcel to park their vehicles only on such Parcel.

(d) The name "Kohl's" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Parcel or any of the Outlot Parcels.

7.3 Hazardous Materials. No Party shall use or permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in its Parcel, or the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws (as hereinafter defined). Each Party shall Indemnify the other Parties from and against all Claims, including, but not limited to, costs of



investigation, litigation and remedial response arising out of any Hazardous Materials used or permitted to be used by such Party, whether or not in the ordinary course of business. "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. "Environmental Laws" shall mean all Laws which relate to or deal with human health or the environment, all as may be amended from time to time.

ARTICLE 8

COMMON AREA LIGHTING

8.1 **Common Area Lighting.** After completion of the Common Area lighting system on its Parcel, each Party shall keep its Parcel fully illuminated each day from dusk to at least 11:00 p.m. unless the Approving Parties agree upon a different time. Each Party shall keep any exterior Building security lights, plus each of the lights located on the light standards located adjacent to any main access drive or entry into the Shopping Center, illuminated from dusk until dawn. During the term of this OEA, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcel. The Association shall maintain adequate lighting of the drive aisles and as needed for safety twenty-four (24) hours per day.

8.2 After Hours Lighting.

(a) Each Party ("Requesting Party") shall have the right, at any time to require another Party ("Requested Party") to keep its Common Area lights operating beyond the hours set forth in Section 8.1 provided that the Requesting Party notifies the Requested Party of such request not less than five (5) days in advance. The Requesting Party shall state the period during which it wishes the lights to be kept operating and shall pay to the Requested Party a prepayment deposit as follows:

(i) If the period is less than thirty (30) days, then the deposit shall be equal to the reasonable cost for such additional operation (including electrical power, bulbs and manpower), as estimated by the Requested Party; or

(ii) If the period is greater than or equal to thirty (30) days, then the deposit shall be equal to the reasonable cost for such additional operation (including electrical power, bulbs and manpower) for thirty (30) days, as estimated by the Requested Party. If the period is greater than thirty (30) days, then the Requesting Party shall renew such prepayment at the end of each thirty (30) day period.

(b) The Requesting Party shall pay the cost to the Requested Party of electrical power to provide such extra-hours illumination, and the prepayment shall be applied to such obligation as incurred. If the Requesting Party is of the opinion that the deposits required by the Requested Party exceed such costs, the Parties shall attempt to agree to the cost of such electrical power and if they cannot do so, then the amount the Requesting Party is obligated to pay shall be determined from the power costs as estimated by the electrical utility company furnishing such power, or if the utility fails to do so, by a reputable engineer.

(c) Upon the failure of a Requesting Party to pay the aforesaid amount or renew a deposit as required hereby, the Requested Party shall have the right to discontinue such



additional lighting and to exercise other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours may be made from time to time.

8.3 Secondary Wiring System.

(a) As an alternative to the process of lighting another Party's Parcel as set forth in Section 8.2, the Requesting Party may install a secondary wiring system from the Requesting Party's Parcel to the light standards on the Requested Party's Parcel which will permit all or a portion of the lighting on the Requested Party's Parcel to be operated contemporaneously with the lighting on the Requesting Party's Parcel. All costs and expenses associated with the installation, maintenance, replacement, and operation of such secondary wiring, including the cost of energy to light any portion of the Requested Party's Parcel, shall be assumed and promptly paid by the Requesting Party.

(b) The Requesting Party shall submit to the Requested Party appropriate plans and specifications for the installation of the secondary wiring system. The Requested Party shall have thirty (30) days to approve or disapprove of such submission, which approval shall not be unreasonably withheld. If the Requested Party does not disapprove of the submission within the thirty (30) day period, approval shall be deemed to have been given; if disapproval is given, the Requesting Party shall revise the submission to accommodate the reasonable objections of the Requested Party and then may resubmit such plans and specifications to the Requested Party for its approval.

ARTICLE 9

OCCUPANT SIGNS

9.1 Freestanding Signs.

(a) No freestanding sign shall be permitted within the Shopping Center unless constructed in areas designated on the SITE PLAN, and only one such sign may be located in each designated area. The freestanding signs at the Shopping Center shall be used as follows:

(i) "Major Monument Sign" may be used to identify the name of the Shopping Center, not more than one (1) Occupant of the Kohl's Parcel and not more than two (2) Occupants of the Developer Parcel and/or Outlot Parcels; provided, however, no sign may be used to identify an Occupant of the Developer Parcel until Developer records a Notice of Addition for the particular Parcel occupied by such Occupant; and

(ii) "Minor Monument Sign" may be used to identify Occupants of the Developer Parcel and/or Outlot Parcels.

(b) The designation of a freestanding sign location on a Parcel shall in no way obligate the benefitting Party(ies) to construct such freestanding sign. However, if a freestanding sign is constructed, the benefitting Party(ies) shall be responsible for the sign's operation and maintenance on a first-class basis, and each Party having a sign panel



thereon shall maintain and illuminate such panel at its expense. The design and size of all freestanding signs, including the panel inserts, shall comply with the City guidelines for the Shopping Center.

(c) The design and dimensions of each approved freestanding sign is set forth in EXHIBIT E attached hereto and made a part hereof.

9.2 Building Signs.

(a) Except as provided in Section 9.2(c) below, each Occupant may have only one (1) identification sign placed on the exterior of the Building it occupies; provided, however, that if such Occupant is located at the corner of a Building, then such Occupant may have an identification sign on each side of such corner. The restrictions set forth in this Section 9.2(a) shall not apply to Major Occupants, and each Major Occupant may have more than one identification sign placed on the exterior of the Building it occupies.

(b) No Occupant Identification sign attached to the exterior of a Building shall be:

(i) placed on canopy roofs extending above the Building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy or top of the wall upon which it is mounted;

(ii) placed at any angle to the Building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk;

(iii) painted on the surface of any Building; or

(iv) placed within one hundred feet (100') of any Building on the Kohl's Parcel without the prior written approval of the Approving Party for the Kohl's Parcel.

(c) No Occupant shall have more than two exterior signs which identify leased departments and/or concessionaires operating under the Occupant's business or trade name, or identify specific brands or products for sale or services offered within a business establishment; provided, however, the foregoing restriction shall not apply to Anchor Occupants.

9.3 Sign Restrictions.

(a) No exterior identification signs shall be permitted within the Shopping Center except as expressly permitted in this Article 9.

(b) No Occupant identification sign attached to the exterior of Building nor any freestanding sign shall consist of:

(i) flashing, moving or audible signs except that in the case of a bank, a moving sign that shows the Dow Jones Industrial Average, time and temperature, and similar information customarily shown on first-class bank signs may be used;

(ii) signs employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers; provided, however, exposed raceways shall



be permitted if (A) the primary purpose of the raceways are to limit damage to the Buildings to which the raceways are attached and (B) the raceways do not draw undue attention when viewed from the Common Area; or

(iii) paper or cardboard signs, temporary signs (exclusive of contractor signs), stickers or decals; provided, however, the foregoing shall not prohibit (A) the placement at the entrance of each Occupant's space of a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar information, or (B) "For Sale" signs, "For Lease" signs, "Coming Soon" signs and "Grand Opening" signs placed within the Shopping Center for a period of time not to exceed ninety (90) days per instance.

(c) Notwithstanding anything contained herein to the contrary, each Party shall be permitted to place the following signs within the Common Area located on its Parcel:

- (i) directional signs or informational signs such as "Handicapped Parking";
- (ii) temporary signs displaying leasing information; and
- (iii) one (1) temporary sign each identifying the contractor working on a construction job and the lender financing a construction project.

ARTICLE 10

INSURANCE

10.1 Common Area Insurance.

(a) During the period in which the Association is maintaining the Common Area, the Association shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance covering the Common Area of the Shopping Center with a combined single limit of liability of not less than Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage arising out of any one occurrence; each Party shall be an "additional insured" under such policy. The insurance maintained by the Association shall be primary insurance and not contributory with the insurance maintained by the Parties pursuant to Section 10.2, or any other insurance maintained by the Parties. The liability limits of the liability insurance required pursuant to this Section shall be subject to periodic increases, as agreed and determined by the Board of Directors based on relevant factors including, without limitation, increased liability awards and the advice of professional insurance advisors.

(b) The Association shall, in the reasonable discretion of the Board of Directors, from and after the date of recordation of the first grant deed by which Developer conveys a Parcel to a third Person, maintain standard form fire insurance with such extended coverage endorsements as are commonly written in California (with construction endorsements when appropriate, but excluding earthquake coverage), written by one or more insurance companies with a Best's rating of at least A+, X, covering all Improvements in the Common Area and Association Property, which insurance shall be in an amount not less than one



hundred percent (100%) of the actual replacement cost thereof (excluding foundation and excavation costs).

10.2 Commercial General Liability Insurance.

(a) Except to the extent coverage is provided by the insurance required to be maintained under Section 10.1, each Party (as to its Parcel only) shall maintain or cause to be maintained in full force and effect commercial general liability insurance with a combined single limit of liability of not less than Three Million Dollars (\$3,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Parcel. Except for claims arising in connection with the Common Area and Association Property, such insurance shall be primary and not in excess of or contributory with other insurance carried by other Parties pursuant to this OEA.

(b) Each Party shall indemnify each other Party from and against all Claims asserted or incurred in connection with or arising from or as a result of the death of or injury to any Person or loss or damage to the property of any Person which shall occur on the Parcel owned by the indemnifying Party, except to the extent such claims are caused by the negligence or the willful act or omission of the indemnified Person or its agents or employees. Each Person seeking indemnification hereunder shall look first to the insurance coverage provided for in Section 10.1, and to exhaust all limits thereof before making any claim under the insurance carried by a Party hereunder, other than to preserve rights to make a claim under the insurance carried by a Party hereunder if the coverage under Section 10.1 is inadequate.

10.3 Insurance During Construction.

(a) Prior to commencing any construction activities within the Shopping Center, each Party and the Association shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

(i) Workers' compensation and employer's liability insurance:

(A) Worker's compensation insurance as required by any applicable law or regulation.

(B) Employer's liability insurance in the amount of \$300,000 each accident for bodily injury, \$500,000 policy limit for bodily injury by disease and \$300,000 each employee for bodily injury by disease.

(ii) Commercial general liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

(A) Required coverages:

(1) Premises and Operations;

(2) Products and Completed Operations;



(3) Contractual Liability, insuring the indemnity obligations assumed by the contractor under the contract documents;

(4) Broad Form Property Damage (including Completed Operations);

(5) Explosion, Collapse and Underground ("XCU") Hazards; and

(6) Personal Injury Liability.

(B) Minimum limits of liability:

(1) \$1,000,000 each occurrence (for bodily injury and property damage);

(2) \$1,000,000 for Personal Injury Liability;

(3) \$2,000,000 aggregate for Products and Completed Operations (which shall be maintained for a two (2) year period following final completion of the work); and

(4) \$2,000,000 general aggregate applying separately to this project.

(iii) Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles with limits of liability which shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined.

(b) If the construction activity involves the use of another Party's Parcel, then the owner of such Parcel shall be an additional insured and such insurance shall provide that the same shall not be cancelled, or reduced in amount or coverage below the requirements of this OEA, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is cancelled or expires, then the constructing Party shall immediately stop all work on or use of the other Party's Parcel until either the required insurance is reinstated or replacement insurance obtained.

(c) Each Party shall Indemnify each other Party from and against all Claims, including liens, and from any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through or under any of them, or claims covered by the release set forth in Section 10.4.

10.4 Casualty Loss Insurance.

(a) Effective upon the commencement of construction of any Building on its Parcel and so long as such Building exists, each Party shall carry, or cause to be carried,



casualty insurance with "extended" or "all-risk" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations or excavations). At a minimum, the insurance coverage required by this Section 10.4(a) shall extend to loss or damage by fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage.

(b) Each Party and the Association (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type generally covered by the insurance required to be maintained under Section 10.4(a), irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required to be carried or actually carried, including any deductible or self insurance reserve. Each Party shall use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given.

(c) To the full extent permitted by law, each Party ("Indemnitor") shall Indemnify each other Party ("Indemnitee") from and against all Claims asserted by or through any Permittees of the Indemnitor's Parcel for any loss or damage to the property of such Permittee located upon the Indemnitor's Parcel, which loss or damage is of the type generally covered by the insurance required to be maintained under Section 10.4(a), irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

10.5 Insurance Policy Requirements.

(a) All insurance coverage required by this Article 10 shall be provided under one or more of the following:

- (i) an individual policy covering this location;
- (ii) a blanket policy which includes other liabilities, properties and locations of such Person; provided, however, that if a blanket commercial general liability insurance policy contains a general policy aggregate of less than Ten Million Dollars (\$10,000,000) in Constant Dollars, then the insuring Person shall also maintain excess liability coverage necessary to establish a total liability insurance limit of Ten Million Dollars (\$10,000,000) in Constant Dollars;
- (iii) a plan of self-insurance, provided that any Person so self-insuring notifies the other Parties of its intent to self-insure and shall upon request deliver to such other Parties each calendar year a copy of its annual report or Form 10-K that is audited by an independent certified public accountant which discloses that such Person has One Hundred Million Dollars (\$100,000,000) in Constant Dollars or more of net current assets;
- (iv) a plan of self-insurance maintained by such Person's parent company provided that the parent company complies with the requirements of (iii) above and guarantees such Person's insurance obligations under this OEA; or



(v) a combination of any of the foregoing insurance programs.

(b) All insurance provided under Section 10.5(a)(i) or Section 10.5(a)(ii) shall be procured from companies authorized to issue such insurance in the state in which the Shopping Center is located and shall be rated by Best's Insurance Reports not less than A-/X. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Person, such Person shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Fifty Thousand Dollars (\$50,000.00) in Constant Dollars unless such Person complies with the requirements regarding self-insurance pursuant to Section 10.5(a)(iii) or Section 10.5(a)(iv). Each Party and the Association shall furnish to any Party requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, evidencing that the insurance required to be carried by such Person is in full force and effect.

(c) The following shall apply to the insurance required pursuant to Section 10.1 and Section 10.2:

(i) the insurance policy may not be canceled or materially reduced in amount or coverage below the requirements of this OEA, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured;

(ii) the insurance shall provide for severability of interests;

(iii) the insurance shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; and

(iv) the insurance shall provide for contractual liability coverage with respect to the indemnity obligations set forth in this OEA.

ARTICLE 11

DEFAULT

11.1 **Default.** The occurrence of any one or more of the following events shall constitute a material default and breach of this OEA by the non-performing Party (the "Defaulting Party"):

(a) The failure to make any payment required to be made under this OEA within ten (10) days after the Defaulting Party has received notice of its failure to make such payment on or before the due date therefor; or

(b) The failure to observe or perform any of the covenants, conditions or obligations of this OEA, other than as described in (a) above, within thirty (30) days after the issuance of a notice by another Party (the Non-Defaulting Party) specifying the nature of the default claimed; provided, however, if such matter is not susceptible of being cured within thirty (30) days, the cure period shall be extended for a reasonable period of time provided that the Defaulting Party commences the cure within said thirty (30) day period and thereafter diligently prosecutes the cure to completion.



Each Party shall be responsible for the default of its Occupants.

11.2 Right to Cure.

(a) With respect to any default under Section 11.1, any Non-Defaulting Party, including the Association, shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, if an event that would become a default under Section 11.1(b) with the passage of time shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such event prior to the passage of the time period set forth in Section 11.1(b).

(b) If any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made.

(c) To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Parcel of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party.

11.3 Interest. Any time a Party or the Association shall not pay any sum payable hereunder to another within five (5) days of the due date, such delinquent Party or the Association shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of (i) three percent (3%) per annum plus the prime rate of interest from time to time published by *The Wall Street Journal* (or that of another publication or of financial institution selected by the Approving Parties if *The Wall Street Journal* shall cease to publish a prime rate) or (ii) the highest rate permitted by law to be paid on such type of obligation.

11.4 Lien Rights.

(a) Costs and expenses accruing and/or assessed pursuant to Section 11.2 shall be secured by and constitute a lien against the Defaulting Party's Parcel. The lien shall attach and take effect only upon recordation of a claim of lien in the official real estate records of the County of the State in which the Shopping Center is located by the Party making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as the Non-Defaulting Party;
- (iii) An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed;
- (iv) A description of the Parcel against which the lien is claimed;



(v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and

(vi) A statement that the lien is claimed pursuant to the provisions of this OEA, reciting the date of recordation and the recorded document number (or book and page) hereof.

(b) The claim of lien shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed pursuant to Section 12.1. The Notice of Lien in favor of the Association must be signed by the President of the Association. The lien so claimed may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located. The lien shall be subject and subordinate to any Mortgage which is of record on or before the date on which the claim of lien is placed of record. If a Mortgagee or other purchaser of a Parcel obtains title pursuant to a judicial or nonjudicial foreclosure of the Mortgage, such Person, his successors and assigns, shall not be liable for the Proportionate Share of the Common Area Maintenance Costs chargeable to such Parcel which became due prior to the acquisition of title to such Parcel by such Person. Such unpaid share of Common Area Maintenance Costs shall be deemed to be Common Area Maintenance Costs collectible from all of the Parcels including the Parcel belonging to such Person, his successors or assigns.

11.5 Costs of Enforcement. If any party brings an action at law or in equity to enforce or interpret this OEA, the prevailing party in such action shall be entitled to recover reasonable attorney's fees and court costs and expert witness fees for all stages of litigation, including, but not limited to, appellate proceedings, in addition to any other remedy granted.

11.6 Remedies Cumulative.

(a) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person violating or attempting to violate or default upon any of the provisions contained in this OEA, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate.

(b) All of the remedies permitted or available to a Party under this OEA or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(c) In all situations arising out of this OEA, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this OEA.

(d) No breach of this OEA shall (i) entitle any Party to cancel, rescind or otherwise terminate this OEA, or (ii) defeat or render invalid the lien of any mortgage or trust

deed made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

11.7 No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default under this OEA shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this OEA.

11.8 Foreclosure Sale. A sale to foreclose a lien hereunder may be conducted by the Party filing a claim of lien, the Board of Directors, its attorneys or other Persons authorized by the Board in accordance with the provisions of Sections 2924, 2924a, 2924b, 2924c and 2924f of the Civil Code of the State of California, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, and the Party filing a claim of lien shall have the power to bid on the Parcel at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association, the Party filing a claim of lien, or the purchaser at the sale to secure occupancy of the delinquent Party's Parcel, and the delinquent Party shall be required to pay the reasonable rental value of such Parcel during any period of continued occupancy by the delinquent Party or any persons claiming under the delinquent Party.

11.9 Curing of Default. Upon cure of any default for which a claim of lien was filed, the Association or the Party filing the claim of lien (as applicable) shall record an appropriate Release of Lien in the Riverside County Recorder's Office upon payment by the delinquent Party of a reasonable fee to be determined by the Board to cover the cost of preparing and recording such release. A certificate executed and acknowledged by the Party filing the claim of lien or (with respect to a claim of lien filed by the Association) by any two (2) members of the Board stating the indebtedness secured by the liens upon any Parcel created hereunder in favor of the filing Party or the Association shall be conclusive upon the Association and the Parties as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Party upon request at a reasonable fee determined by the Board.



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ARTICLE 12

MISCELLANEOUS

12.1 Notices.

(a) All notices, demands, statements and requests (collectively, "notices") required or permitted to be given under this OEA must be in writing and shall be delivered by one of the following methods of delivery:

(i) personal service, in which event the notice shall be deemed to have been given upon actual receipt or on the date of first attempted delivery as shown on the return receipt, if delivery is refused;

(ii) Federal Express, Airborne Express or another nationally recognized overnight courier service, in which event the notice shall be deemed to have been given upon actual receipt, or on the date of first attempted delivery as shown on the return receipt, if delivery is refused;

(iii) United States registered or certified mail, postage prepaid and return receipt requested, in which event the notice shall be deemed to have been given three (3) business days after the notice is deposited with the United States Postal Service; or

(iv) facsimile transmission, in which event the notice shall be deemed to have been given upon confirmation of the facsimile transmission provided that the original counterpart of the notice is sent by (i), (ii) or (iii) above on the same day.

Notwithstanding the foregoing, a notice sent by first class mail shall be effective and deemed to have been given on the date received by the Person to whom it was sent.

(b) The initial addresses of the Parties shall be:

Kohl's: Kohl's Department Stores, Inc.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051
Attention: Chairman
Fax: (262) 703-7274

with a copy to: Kohl's Department Stores, Inc.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051
Attention: Law Department
Fax: (262) 703-7274

Developer: Orangecrest Hills, L.P.
181 Old Springs Road
Anaheim, California 92808
Attention: Mary Rauschenburg
Fax: (714) 279-6559



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With a copy to: Orangecrest Hills, L.P.
181 Old Springs Road
Anaheim, California 92808
Attention: William Holzwarth, Esq.
Fax: (714) 279-6556

And with a copy to: Dzida, Carey & Steinman
2 Park Plaza, Suite 1140
Irvine, California 92614
Attention: Diane P. Carey, Esq.
Fax: (949) 399-0361

Association: As from time to time designated.

(c) Each Person shall have the right from time to time to change its address for notice purposes to any other address within the United States of America upon at least ten (10) days prior written notice to the other Parties and to the Association in accordance with the provisions of this Section 12.1. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice hereunder.

12.2 Estoppel Certificate.

(a) Each Party and the Association shall, upon the written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or the Association, issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(i) whether it knows of any default under this OEA by the requesting Person, and if there are known defaults, specifying the nature thereof;

(ii) whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;

(iii) whether this OEA is in full force and effect; and

(iv) such other matters as are reasonably requested by the requesting Party.

(b) An estoppel certificate issued pursuant to this Section 12.2 shall bar the Person issuing such certificate from asserting any claim that is based upon facts contrary to those asserted in the estoppel certificate to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value who has acted in reasonable reliance upon the estoppel certificate without knowledge of facts to the contrary of those contained therein.

(c) Notwithstanding anything to the contrary contained in this OEA or otherwise, the Person issuing an estoppel certificate shall in no event be subject to damages arising out of the negligent or inadvertent failure of such Person to disclose correct and/or relevant information in the estoppel certificate, nor shall such Person be barred from requesting an audit or an adjustment of Common Area Maintenance Costs for any year it is entitled to do



so or from challenging acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

12.3 Modification of OEA. This OEA may be modified or amended by, and only by, a written agreement signed by all of the then current Approving Parties and shall be effective only when recorded in the official real estate records of the county and state where the Shopping Center is located; provided, however, no such amendment, (i) which has any material impact upon the location of the Building to be constructed on a Parcel or the ability to conduct business on a Parcel, (ii) which materially reduces the number of parking spaces located on or immediately adjacent to such Parcel, (iii) which increases the Proportionate Share attributable to a Parcel, (iv) which materially increases the obligations, costs or expenses for which a Party will be responsible under this OEA, (v) which extinguishes any Common Area or Association Property easement benefitting such Parcel, or (vi) which materially and adversely impairs a Party's intended development or use of such Party's Parcel as contemplated under land use entitlements approved by the City, shall be effective unless signed by the affected Party. No consent to the amendment of this OEA shall ever be required of any Occupant or Person other than the Parties. Each Party may consider, approve or disapprove any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness.

Notwithstanding the above, to accommodate the development plans for individual Parcels, Developer, as to Parcels 3, 4 and 5 and Kohl's as to the Kohl's Parcel shall have the right to unilaterally amend the SITE PLAN to revise the Building Area to reflect the actual initial placement of the Buildings on those Parcels; provided, however, any such amendment of the SITE PLAN shall not reduce the overall parking in the Shopping Center, change the locations of the drive aisles, change the Protected Areas indicated on EXHIBIT H or change the Association Property. If such an amendment is desired by Developer or Kohl's, Developer or Kohl's, as the case may be, shall provide the other Parties with the revised SITE PLAN for informational purposes prior to the erection of any Building in the revised Building Area. The unilateral right to amend the SITE PLAN contained in this paragraph shall expire on the date which is five (5) years after the date of this OEA.

12.4 Approval Rights.

(a) Whenever the consent or approval ("approval") of the Approving Parties is required under this OEA, the following shall apply:

- (i) unanimous approval of the Approving Parties must be given;
- (ii) each Approving Party shall have absolute discretion to make the decisions on behalf of the entire real estate represented by such position even if the Approving Party then owns less than all of such real estate;
- (iii) If this OEA provides that an Approving Party may grant or withhold its approval in its sole and absolute discretion, the approval may be unreasonably withheld or conditioned and the Approving Party shall not be obligated to state the reasons for withholding its approval;
- (iv) If this OEA does not expressly provide that an Approving Party may grant or withhold its approval in its sole and absolute discretion, the Approving Party shall not unreasonably withhold or condition its approval, and disapproval shall be in writing and the reasons therefor shall be clearly stated;



(v) the sole remedy of the Person seeking the approval if such approval is unreasonably withheld shall be an action for specific performance and the Approving Parties shall not be liable to such Person for damages; and

(vi) no exercise of any approval right shall subject an Approving Party to liability for breach of any covenant of good faith and fair dealing otherwise implied by law to be part of this OEA.

(b) Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this OEA shall be given by the Person to whom directed within thirty (30) days of receipt of such request. If a response is not given in writing within the required time period, the requested Party shall be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval.

(c) The holder of the Approving Party position shall have the right to assign such position to any other Party owning a Parcel within the Outlot Parcels or the Kohl's Parcel, as the case may be. If an Approving Party fails to assign its Approving Party position at the time of the transfer of the last Parcel owned by such Approving Party, then such Approving Party position shall automatically be deemed assigned to the Party acquiring the last Parcel owned by the transferring Approving Party.

12.5 Taxes and Assessments.

(a) Each Party shall pay, or cause to be paid, prior to delinquency, all taxes and assessments with respect to its Parcel, the Building and other improvements located thereon, and any personal property owned or leased by such Party in the Shopping Center; provided, however, if the taxes or assessments or any part thereof may be paid in installments, the Party responsible therefor may pay each such installment as and when the same becomes due and payable. Nothing contained in this section shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to its Parcel in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

(b) If a tax parcel covers more than a single Parcel, each Party owning a Parcel within the larger tax parcel shall be responsible for the payment of its proportionate share of the tax bills for the larger tax parcel on or before the due date therefor. Each Party's proportionate share of the tax bill for the larger tax parcel shall be determined by dividing the square footage of the portion of such Party's Parcel within the larger tax Parcel by the square footage of the larger tax parcel; provided, however, if Buildings have been constructed on the larger tax parcel, the taxes assessed upon the Buildings shall be allocated on the basis of the Floor Area of such Buildings. At the request of any Party owning a Parcel within the larger tax parcel, the Parties owning Parcels within the larger tax Parcel shall petition the appropriate governmental authority to create separate tax parcels for each of the Parcels affected thereby.

12.6 Condemnation. If any portion of the Shopping Center shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Party owning the land or the



Improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes Improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned Improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this OEA, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this OEA which does not reduce or diminish the amount paid to the Party owning the land or the Improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this OEA shall expire or terminate based solely upon such taking. In the event of a partial taking, the affected Party shall, without contribution from any other Party, restore the Improvements located on the Common Area portion of the Party's Parcel to, as nearly as possible, the condition existing prior to the taking and any portion of any condemnation award necessary therefor shall be applied for such purpose. If the affected Party can demonstrate to the reasonable satisfaction of the Association that the cost of the restoration work required pursuant to this Section is in excess of the condemnation award received by the affected Party, such excess portion of the cost of the restoration work shall be treated as a Common Area Maintenance Cost in the manner described in Article 5 hereof.

12.7 Construction and Interpretation.

(a) The terms of this OEA and all easements granted hereunder shall constitute covenants running with the land and shall bind, and shall inure to the benefit of, the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. This OEA is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

(b) This OEA and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this OEA and Exhibits hereto.

(c) This OEA has been fully negotiated at arms length between the signatories hereto, after advice by counsel and other representatives chosen by such signatories. The signatories are fully informed with respect to the terms and provisions of this OEA, and no particular signatory shall be deemed the scrivener of this OEA. Based on the foregoing, the provisions of this OEA hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(d) Whenever required by the context of this OEA, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.



(e) The captions preceding the text of each article and section of this OEA are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this OEA. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this OEA.

(f) Invalidity of any of the provisions contained in this OEA, or invalidity of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

(g) No Occupant or Person other than the Parties shall have the right to enforce any of the provisions of this OEA except that an Anchor Occupant shall have the right to enforce the provisions of this OEA against the Parties, even if such Anchor Occupant is not a Party, if such Anchor Occupant's lease gives the Anchor Occupant the authority to do so.

(h) This OEA may be executed in several counterparts, each of which shall be deemed an original. The signatures to this OEA may be executed and notarized on separate pages, and when attached to this OEA shall constitute one complete document.

12.8 Negation of Partnership. None of the terms or provisions of this OEA shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

12.9 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

12.10 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this OEA.

12.11 Annexation of Additional Property.

Any portion of the Annexable Territory may be annexed to the Shopping Center and such additional real property may become subject to this OEA by any of the following methods:

(a) **Additions by Developer.** So long as Developer is a Party, Developer or its successors or assigns shall have the right from time to time to add the Annexable Territory, or any portion or portions of it (including any Common Areas located on the Annexable



Territory), to the Shopping Center and to bring such Added Territory within the general plan and scheme of this OEA without the approval of any other Party. Such annexation shall be accomplished by recordation of a notice of addition of territory and supplemental OEA ("Notice of Addition") executed and acknowledged by Developer and (if different from Developer) the owner of such Added Territory.

(b) **Rights and Obligations-Added Territory.** Upon recordation of a Notice of Addition containing the provisions as set forth in this Section, except as otherwise provided in this OEA, all provisions contained in this OEA shall apply to the real property described in such Notice of Addition (the "Added Territory") in the same manner as if it were originally covered by this OEA and the Added Territory shall be deemed part of the Shopping Center for all purposes of this OEA. Thereafter, the rights, powers and responsibilities of the Parties with respect to the Added Territory shall be the same as with respect to the property originally covered by this OEA, and the rights, powers and responsibilities of the Parties and Permittees of the Added Territory, as well as within the property originally subject to this OEA, shall be the same as if the Added Territory were originally covered by this OEA. From and after the first day of the month following the recordation of any such Notice of Addition, the Party owning any Parcel in the Added Territory shall share in the payment of Common Area Maintenance Costs as provided in this OEA. Upon recordation of any Notice of Addition, the Proportionate Shares of all Parties shall be adjusted so that the Proportionate Share of each Party shall be the fraction the numerator of which is the gross area of such Party's Parcel and the denominator of which is the gross area of all land in the Shopping Center.

(c) **Notice of Addition of Territory.** The Notice of Addition for any addition under Section 12.11 shall be signed by Developer and (if different from Developer) the owner of such Added Territory. In no event, however, shall such Notice of Addition revoke, modify or add to the covenants, conditions, restrictions, reservations of easements or equitable servitudes established by this OEA as the same shall pertain to the real property originally covered by this OEA.

12.12. **Association Property.** No later than December 31, 2002, Developer shall convey to the Association the Association Property in fee and such conveyances shall be accepted by the Association as Association Property.

12.13 **Governing Laws.** This OEA shall be construed in accordance with the laws of California.

ARTICLE 13

TERM

13.1 **Term of this OEA.** This OEA shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2050; provided, however, that the easements referred to in Sections 2.1 and 2.2 cannot be terminated without the written consent of the Planning Director of the City and other easements in Article 2 which are specified as being perpetual or as continuing beyond the term of this OEA shall continue in full force and effect as provided therein. Upon termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this OEA, except as the same relate to the easements mentioned above, shall terminate and have no further force or effect; provided,

however, that the termination of this OEA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this OEA prior to the date of such termination.

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IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

ATTEST:

KOHL'S DEPARTMENT STORES, INC.,
a Delaware corporation

By: [Signature]
Name: Richard D. Schepp
Title: Secretary

By: [Signature]
Name: Patrick E. Peery
Title: Senior Vice President of Real Estate

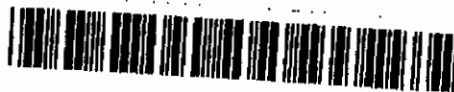
STATE OF WISCONSIN)
)
COUNTY OF WAUKESHA) SS.

I, Kristine E. Thimmesch, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Patrick E. Peery and Richard D. Schepp, personally known to me to be the Senior Vice President of Real Estate and Secretary of KOHL'S DEPARTMENT STORES, INC., a Delaware corporation, whose names are subscribed to the within instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument of writing as such officers, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 13th day of June, 2002.

[Signature]
Notary Public

My Commission Expires: 7-6-2008



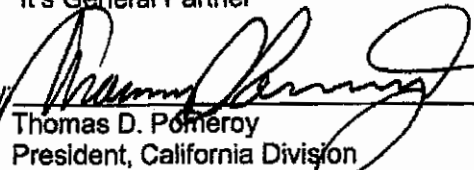
2002-329730
08/14/2002 08:08A
56 of 71

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IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

ORANGECREST HILLS, L.P.,
a Washington limited partnership

By: CSW Development & Construction
Company, a Washington corporation,
It's General Partner

By: 
Thomas D. Pomeroy
President, California Division

By: 
Brent C. Anderson
Senior Vice President Finance,
California Division

STATE OF)
COUNTY OF) **SS.**

I, _____, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY that Thomas D. Pomeroy and Brent C. Anderson, personally known to me
to be the President and Senior Vice President Finance, California Division of
_____, a _____, whose names are
subscribed to the within instrument, appeared before me this day in person and acknowledged that
they signed and delivered said instrument of writing as such President and Senior Vice President
Finance, California Division, as their free and voluntary act and as the free and voluntary act and
deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this ____ day of June, 2002.

Notary Public

My Commission Expires: _____



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66/14/2002 08:08A
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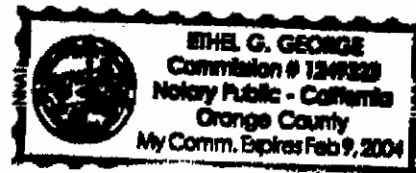
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On June 13, 2002, before me, Ethel G. George, a Notary Public, personally appeared **THOMAS D. POMEROY** and **BRENT C. ANDERSON**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Ethel G. George

(SEAL)



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06/14/2002 08:08A
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Under the provisions of Government Code 27361.7 I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: Ethel G. George
Commission #: 1249323
Place of Execution: ORANGE
Date Commission Expires: FEB. 9 2004

Date: JUN 14 2002
Signature: [Handwritten Signature]



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EXHIBIT A

LEGAL DESCRIPTION OF THE KOHL'S TRACT

(Parcel 1 - 7.721 acres)

The land is situated in the State of California, County of Riverside, City of Riverside, and is described as follows:

Parcel 1 of Parcel Map No. 30369 on file in Book 201, Pages 78 and 79 of Parcel Maps, records of Riverside County, California.

Excepting therefrom 51 percent of the oil, gas, hydrocarbon and mineral substances underlying said land below 500 feet from the surface of the same, without the right of surface entry as reserved by Mary H. Trautwein, et al, in deed recorded April 29, 1963 as Instrument No. 42998 of Official Records of Riverside County, California.



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EXHIBIT B

LEGAL DESCRIPTION OF THE DEVELOPER TRACT

(Parcels 8 and 9 - 6.14 acres)

The land is situated in the State of California, County of Riverside, City of Riverside, and is described as follows:

Parcels 8 and 9 of Parcel Map No. 30369 on file in Book 201, Pages 78 and 79 of Parcel Maps, records of Riverside County, California.

Excepting therefrom 51 percent of the oil, gas, hydrocarbon and mineral substances underlying said land below 500 feet from the surface of the same, without the right of surface entry as reserved by Mary H. Trautwein, et al, in deed recorded April 29, 1963 as Instrument No. 42998 of Official Records of Riverside County, California.



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EXHIBIT C

LEGAL DESCRIPTION OF THE OUTLOT TRACTS

(Parcels 2 through 6 - 6.39 acres)

The land is situated in the State of California, County of Riverside, City of Riverside, and is described as follows:

Parcels 2 through 6, inclusive, of Parcel Map No. 30369 on file in Book 201, Pages 78 and 79 of Parcel Maps, records of Riverside County, California.

Excepting therefrom 51 percent of the oil, gas, hydrocarbon and mineral substances underlying said land below 500 feet from the surface of the same, without the right of surface entry as reserved by Mary H. Trautwein, et al, in deed recorded April 29, 1963 as Instrument No. 42998 of Official Records of Riverside County, California.



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06/14/2002 08:00A
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EXHIBIT D

SUBMISSION GUIDELINES

1. During the conceptual design phase, the constructing Party shall submit to the other Parties the following:
 - A. Site Design Documents to Indicate the Following:
 - Parking configurations and car parking count
 - Typical bay width and stall dimensions
 - Drive widths
 - Setbacks
 - Curb cuts
 - Spot elevations or rough contours
 - Rough landscape scope
 - Lighting pole locations
 - Preliminary utility strategies
 - B. Building Design Single Line Plans to Indicate the Following:
 - Exterior wall configuration
 - Doors and storefront extent
 - Canopies and overhangs
 - Probable column locations at exterior and abutting our building on interior
 - C. Exterior Elevation Drawings to Indicate the Following:
 - Opaque wall areas with doors and store fronts
2. After approval has been granted of a Party's conceptual design phase submitted in accordance with the guidelines specified in 1 above, the constructing Party shall submit final design phase plans to the other Parties as follows:
 - A. Site Design Documents Delineating Information Outlined in the Concept Phase with the Following Added Detail:
 - Refined grading plans
 - Selected lighting fixtures and resultant lighting levels in foot candles
 - Landscaping showing generic planting materials and locations
 - Proposed paving section designs and location
 - Utility layouts including hydrants and sizes proposed
 - Proposed details for curbs, site structures, manholes, etc.
 - Proposed site signage designs and locations
 - B. Building Design Plans Delineating Information Outlined in the Concept Phase with the Following Added Detail:
 - Exterior wall thicknesses
 - Structural columns or bearing walls at building exterior and proposed foundation design at adjoining wall between abutting buildings
 - Where common footings are to be shared, provide wall or column load information for design of such footings
 - Proposed roof plan showing slopes and location of penthouses or other major mechanical equipment

- References of key flashing details of roof to adjoining building
- C. Exterior Elevation Drawings Delineating Information Outlined in the Concept Phase with the Following Added Detail:
- Proposed building sign standards
 - Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the elevations)
 - Proposed large scale details of key section conditions to show exterior design intent
 - Major penthouses or rooftop equipment profiles
 - Features such as special masonry patterns, bands or special materials and textures
 - Rain leaders or scuppers
 - Wall sections at various exterior locations, including at the demising wall to the adjoining building with key vertical dimensioning

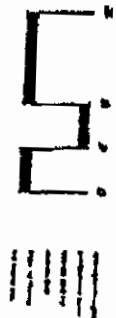
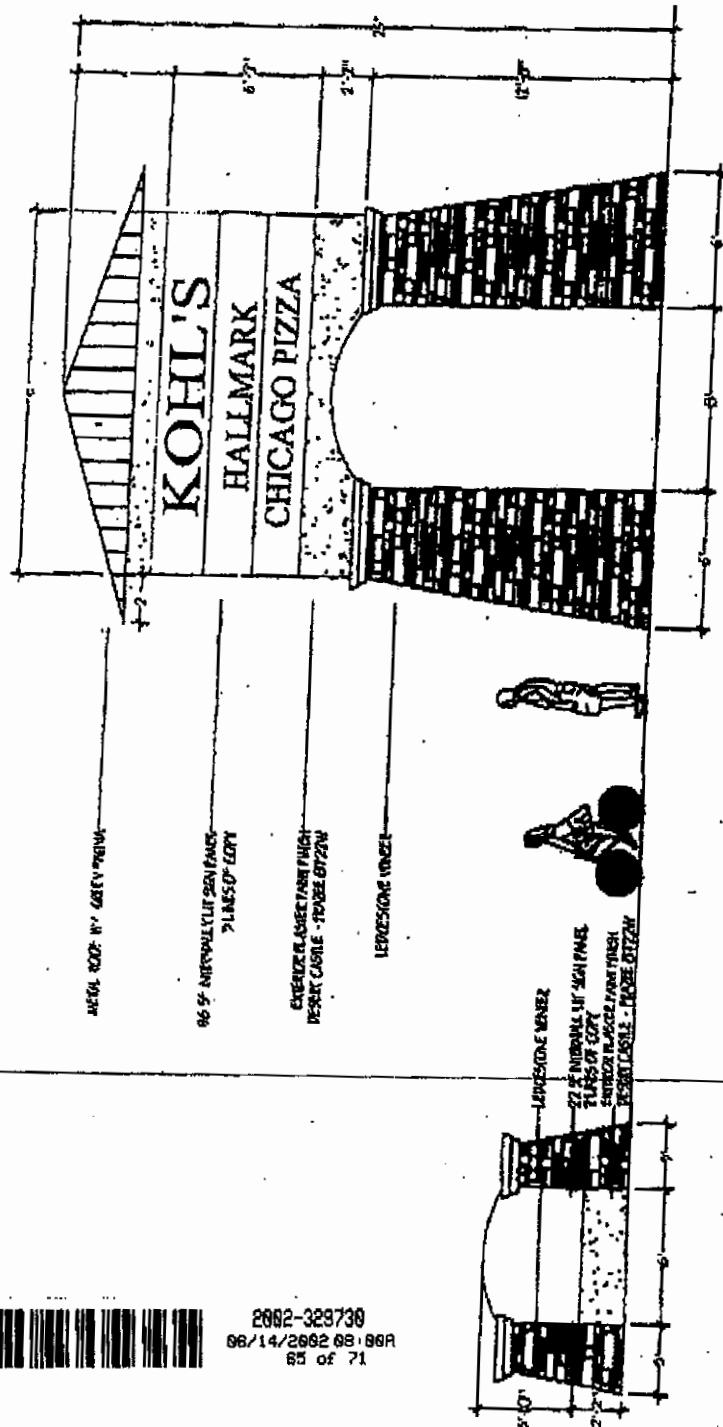


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Exhibit E

Design and Dimensions of Freestanding Signs

Freestanding signs excludes separate gas station and fast food signage as may be approved by the City of Riverside. Those signs shall be maintained solely by applicable parcel owners.



DRAFT
PRIMARY AND SECONDARY SIGNAGE CONCEPTS
ORANGE CREST COMMUNITY CENTER
CITY OF RIVERSIDE
OR AS OTHERWISE APPROVED BY
THE CITY OF RIVERSIDE



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EXHIBIT F-1

**LEGAL DESCRIPTION OF PROPERTY
OWNED BY THE ASSOCIATION IN FEE**

(Parcel 7 - 2.832 acres)

The land is situated in the State of California, County of Riverside, City of Riverside, and is described as follows:

Parcel 7 of Parcel Map No. 30369 on file in Book 201, Pages 78 and 79 of Parcel Maps, records of Riverside County, California.

Excepting therefrom 51 percent of the oil, gas, hydrocarbon and mineral substances underlying said land below 500 feet from the surface of the same, without the right of surface entry as reserved by Mary H. Trautwein, et al, in deed recorded April 29, 1963 as Instrument No. 42998 of Official Records of Riverside County, California.



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66/14/2002 08:08A
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EXHIBIT F-2

DEPICTION OF PROPERTY OWNED BY THE ASSOCIATION IN FEE

46

SITE PLAN FOR BUILDING
PARCEL MAP NO. 30369

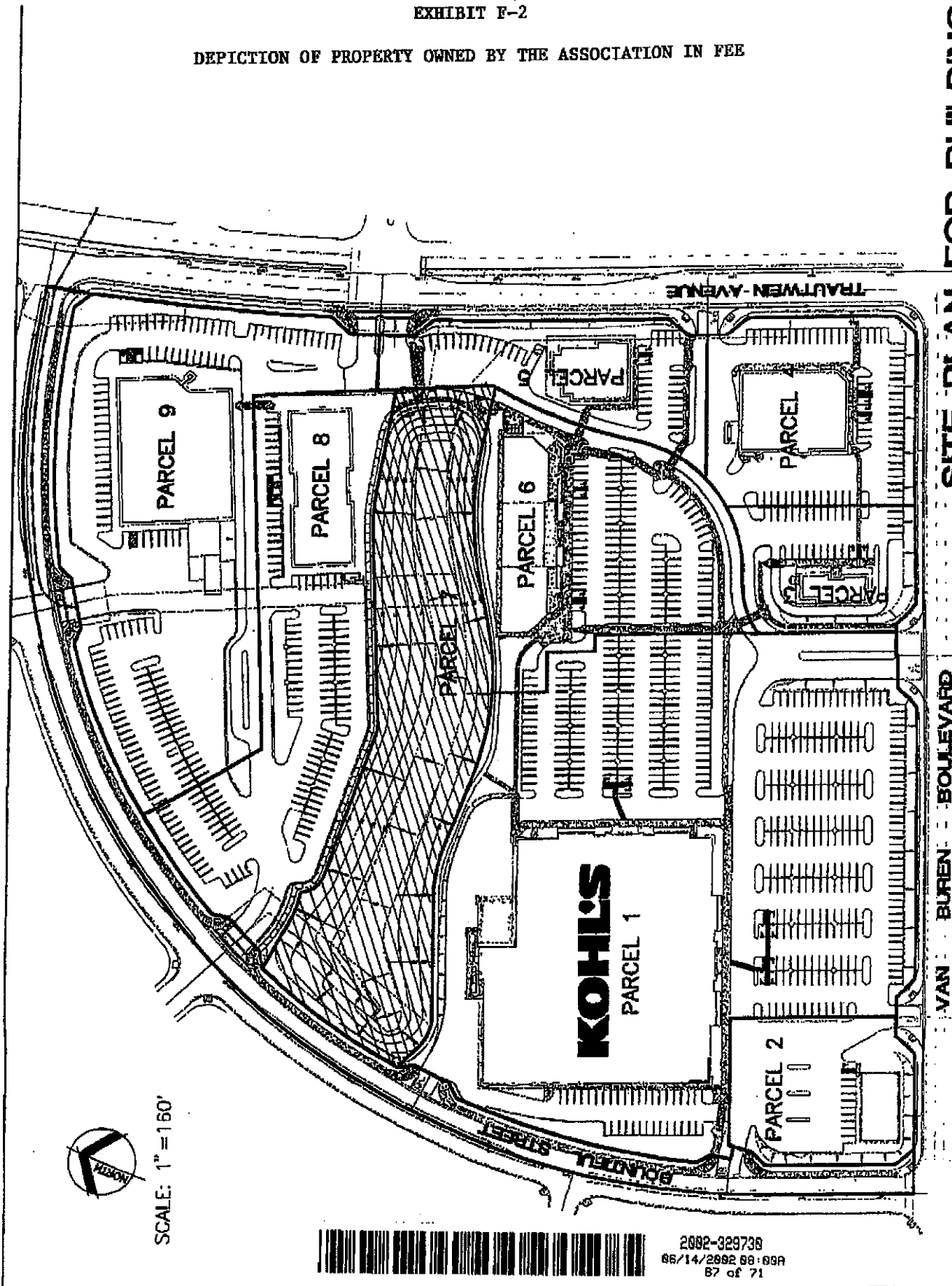


EXHIBIT G-1

**LEGAL DESCRIPTION OF ASSOCIATION PROPERTY OVER WHICH
THE ASSOCIATION SHALL HAVE AN EASEMENT OR LICENSE**

Around the perimeter of the Shopping Center, approximately 8-1/2 feet into the right of way on Bountiful Street, approximately 3-1/2 feet into the right of way on Van Buren Boulevard, and approximately 7-1/2 feet into the right of way on Trautwein Avenue.

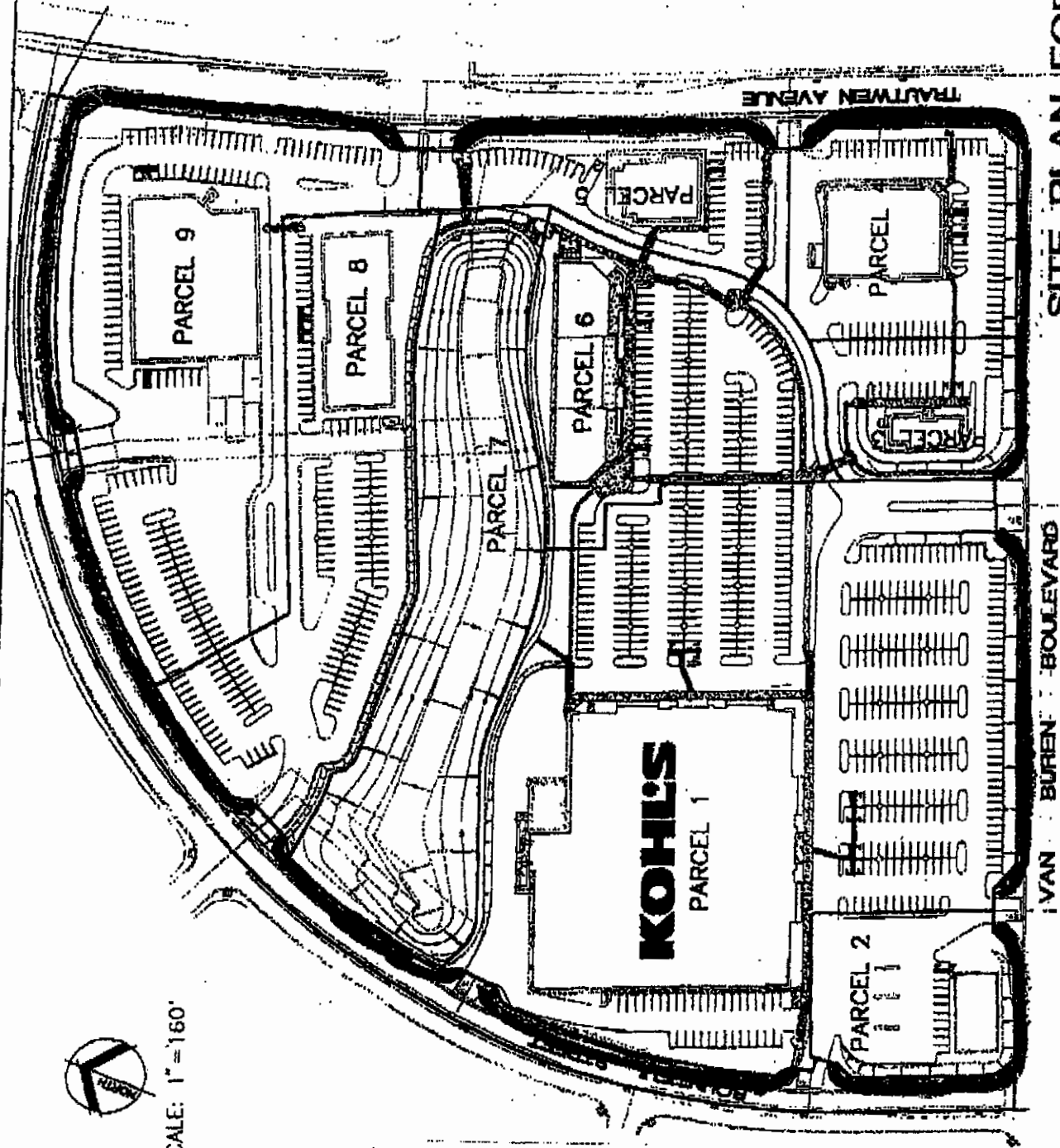


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Exhibit G-2

Depiction of Association Property over which
the Association shall have an Easement or License

SITE PLAN FOR BUILDING
PARCEL MAP NO. 30369



SCALE: 1" = 160'



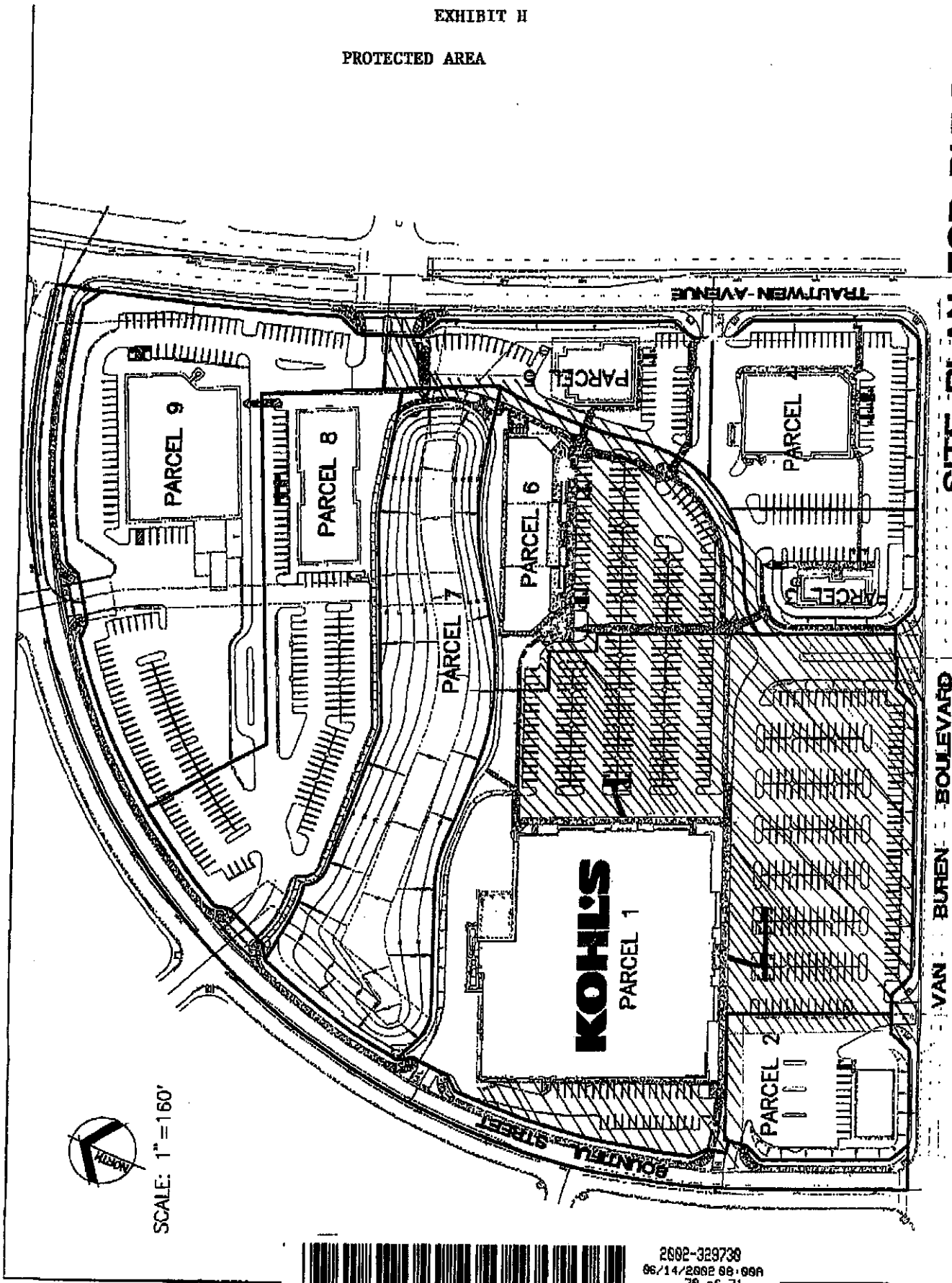
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69 of 71

Description: Riverside, CA Document-Year.DocID 2002.329730 Page: 69 of 71
Order: 6546 Comment:

EXHIBIT H

PROTECTED AREA

SITE PLAN FOR BUILDING
PARCEL MAP NO. 30369



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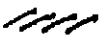
Description: Riverside, CA Document-Year.DocID 2002.329730 Page: 70 of 71

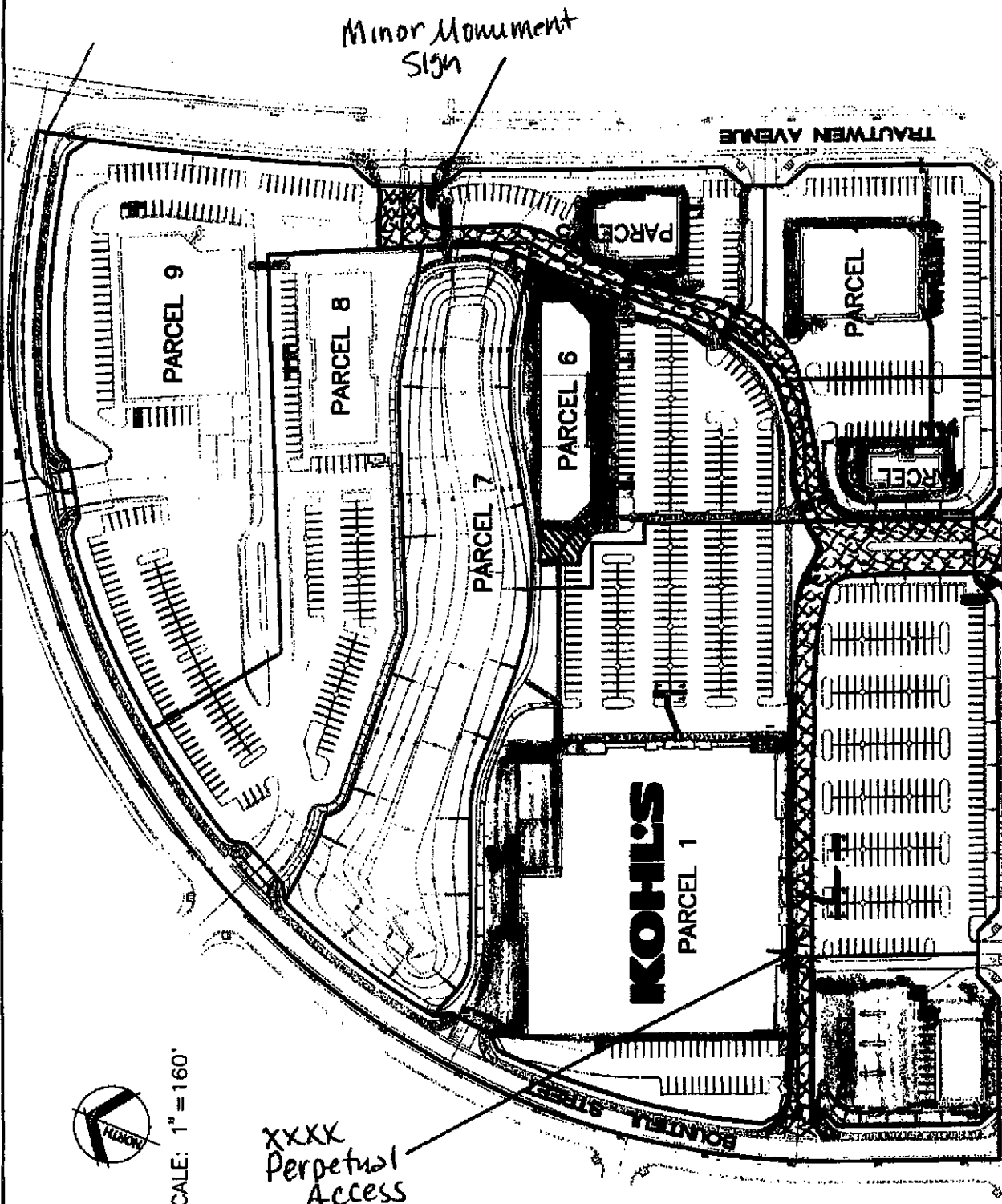
Order: 6546 Comment:

EXHIBIT X

SITE PLAN

 Owner maintenance area

 Outdoor Area



SITE PLAN FOR BUILDING
PARCEL MAP NO. 30369



SCALE: 1" = 160'



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05/14/2002 08:00A
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Recording Requested By
First American Title Company

DOC # 2002-329729

05/14/2002 08:00A Fee:42.00

Page 1 of 8 Doc T Tax Paid

Recorded in Official Records

County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder



RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

FIRST AMERICAN TITLE
INSURANCE COMPANY
3625 14th Street
Riverside, California 92502
Attn: Debbie Bellinger

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(Space Above for Recorder's Use)

MAIL TAX STATEMENTS TO:

Kohl's Department Stores, Inc.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051
Attention: Chairman

THE UNDERSIGNED DECLARES
DOCUMENTARY TRANSFER TAX OF

PURSUANT TO REVENUE AND TAXATION CODE 11932
\$ _____

COMPUTED ON THE FULL VALUE OF THE
PROPERTY CONVEYED

CITY OF RIVERSIDE

A.P. No.: _____

TRA-009-071

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, ORANGECREST HILLS, L.P., a Washington limited partnership ("Grantor"), hereby grants subject to certain express conditions stated herein to KOHL'S DEPARTMENT STORES, INC., a Delaware corporation ("Grantee"), real property ("Property") in the City and County of Riverside, California, described as follows:

PARCEL ONE:

Parcel 1 of Parcel Map No. 30369 on file in Book 201, Pages 78 and 79 of Parcel Maps, records of Riverside County, California.

Excepting therefrom 51 percent of the oil, gas, hydrocarbon and mineral substances underlying said land below 500 feet from the surface of the same, without the right of surface entry as reserved by Mary H. Trautwein, et al, in deed recorded April 29, 1963 as Instrument No. 42998 of Official Records of Riverside County, California.

EXCEPTING AND RESERVING UNTO GRANTOR, its successors or assigns, together with the right to grant and transfer all or a portion of the same, as follows:

- a. All previously unreserved minerals, oil, gas, petroleum, and other hydrocarbon substances in or under or which may be produced from said Property which underlies a plane parallel to and five hundred feet (500') below the present surface of said Property for the purpose of prospecting for, the exploration, development, production, extraction and taking of said minerals, oil, gas, petroleum, and other hydrocarbon substances from said Property but without the right to enter upon the surface or any portion thereof above said plane parallel to and five hundred feet (500') below the present surface of the said Property for any purpose whatsoever.
- b. Easements for access, ingress, egress, maintenance, repair and for other purposes all as described in the Operation and Easement Agreement to be recorded in Official Records of Riverside County, California immediately following this Grant Deed (the "OEA").

PARCEL TWO:

Nonexclusive easements for access, ingress, egress, maintenance, repair and for other purposes, all as described in the OEA.

SUBJECT TO:

1. Nondelinquent general, special and supplemental real property taxes and assessments which are a lien not yet payable.
2. Covenants, conditions, restrictions, easements, reservations, rights, rights-of-way and other matters of record or discoverable by inspection or survey, including without limitation the OEA.

3. The following covenants, conditions and restrictions:

3.1. Covenants Appurtenant. The covenants, conditions and restrictions contained in this Grant Deed are made for the benefit of Grantor and the real property owned by Grantor located near the Property and described on Exhibit "1" (the "Benefited Properties") attached hereto and incorporated herein by this reference, and impose a burden on the Property, and upon Grantee, its lessees, mortgagees, successors and assigns. Grantee, by acceptance and recordation of this Grant Deed, expressly accepts, covenants and agrees, on behalf of itself, its lessees, mortgagees, successors and assigns, to be bound by, and to assume performance of, all of the provisions and requirements set forth in this Grant Deed and the OEA to be performed by Grantee, all of which provisions and requirements are acknowledged to be reasonable. Every person or entity which now or hereafter acquires any right, title, estate or interest in the Property shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein and the OEA to be performed by Grantee, whether or not reference to these restrictions is contained in the instrument by which such person or entity acquired an interest in the Property. All such covenants, conditions and restrictions shall run with the land; shall be binding upon and inure to the benefit of Grantor,



Grantee and any person or entity having or acquiring any interest in any portion of the Property and the Benefited Properties; shall be binding upon and inure to the benefit of the Property and the Benefited Properties, any portion thereof or interest therein.

3.2. Mortgagees. A breach of any of the covenants, conditions or restrictions herein shall not defeat nor render invalid the lien or charge of any mortgage or deed of trust made in good faith and for value covering the Property or any part thereof; however, such covenants, conditions and restrictions shall be binding upon and effective against any new owner of the Property, or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

3.3. Severability. Invalidation of any provision contained herein by judgment of court or otherwise shall in no way affect any of the other provisions, which shall remain in full force and effect.

ENFORCEMENT

Grantor shall have the right to enforce the covenants, conditions and restrictions contained in this Grant Deed notwithstanding any transfer of the Benefited Properties or any portion thereof.

[SIGNATURES ON FOLLOWING PAGE]

2002.

ORANGECREST HILLS, L.P., a Washington limited partnership

By: CSW Development & Construction
Company, a Washington corporation
Its General Partner

By:

Thomas D. Pomeroy
President, California Division

By:

Brent C. Anderson
Senior Vice President Finance,
California Division

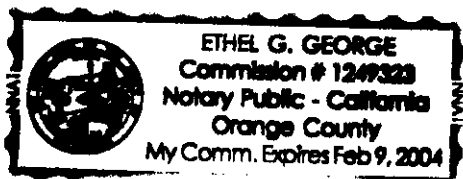
“Grantor”

STATE OF CALIFORNIA)
 ORANGE) ss.
COUNTY OF LOS ANGELES)

On June 13, 2002, before me, Ethel G. George,
personally appeared THOMAS D. POMEROY and BRENT C. ANDERSON,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to
me that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and
that by (his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

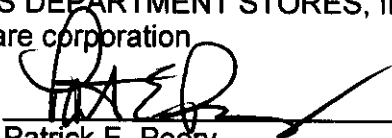


Ethel A. George
Notary Public in and for said State



GRANTEE HEREBY ACCEPTS THIS GRANT DEED.

KOHL'S DEPARTMENT STORES, INC., a
Delaware corporation

By: 

Patrick E. Peery

Its: Senior Vice President of Real Estate

"Grantee"

STATE OF WISCONSIN

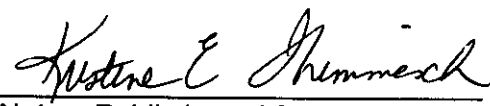
COUNTY OF WAUKESHA

)
) ss.
)



On June 11th, 2002 before me, Kristine E. Thimmesh,
personally appeared PATRICK E. PEERY, 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) (she) executed the same in (his) (her) authorized
capacity, and that by (his) (her) 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.


Notary Public in and for said State
My Commission expires 7-6-2003

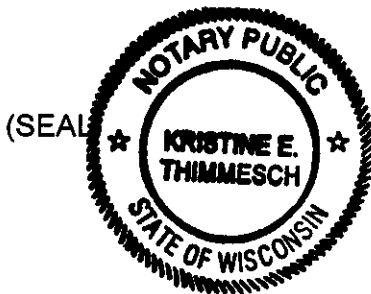


EXHIBIT 1
LEGAL DESCRIPTION OF BENEFITED PROPERTIES

All that certain real property located in the City and County of Riverside, State of California, described as follows:

Parcels 2 through 7, inclusive, of Parcel Map No. 30369 on file in Book 201, Pages 78 and 79 of Parcel Maps, records of Riverside County, California.

Excepting therefrom 51 percent of the oil, gas, hydrocarbon and mineral substances underlying said land below 500 feet from the surface of the same, without the right of surface entry as reserved by Mary H. Trautwein, et al, in deed recorded April 29, 1963 as Instrument No. 42998 of Official Records of Riverside County, California.



From: [Todd Whitman](#)
To: [Harper-Scott, Danielle](#)
Cc: [Chris Costanzo](#)
Subject: [External] Response to Opposition to Proposed Project Case No. PR-2021-000897
Date: Tuesday, March 15, 2022 4:16:05 PM
Attachments: [OEA 2nd Amendment \(Orangecrest Doc#2022-0101105\) rec3.1.22.pdf](#)

Dear Ms. Harper-Scott:

My law firm represents Costanzo Investments, LLC. I write in response to Michael Alti's March 8, 2002, e-mail to you on behalf of the Orangecrest Hills Commercial Owners Association ("Association") in which he sets forth various objections to the proposed construction of a new drive-thru restaurant within the parking areas of the parcel located at 19260 Van Buren Blvd, which is part of a larger shopping center.

Mr. Alti's objections are premised upon perceived restrictions set forth in certain recorded documents, each of which is addressed below.

The OEA

Much of Mr. Alti's objection hinges on purported violations of the OEA. As a threshold matter, these objections are now moot. When Mr. Alti sent his e-mail on March 8, 2022, he was presumably unaware that on March 1, 2022, Kohl's Department Stores, Inc. ("Kohl's") and Walrivers, LLC ("Walrivers") recorded a Second Amendment of Operation and Easement Agreement (the "Second Amendment"), a copy of which is provided with this e-mail. The Second Amendment amends pertinent provisions of the OEA, including many provisions cited by Mr. Alti in opposition to the proposed project, to allow for the proposed project.

The authority for recording the Second Amendment can be found in Section 12.3 of the OEA, which provides that the OEA may be amended by a written agreement signed by all of the then current Approving Parties, who are currently Kohl's and Walrivers (Owner of the Walgreen's parcel).

Based upon the Second Amendment to OEA, the proposed development is allowed under the OEA. . Costanzo Investments, LLC and Kohl's recognize that the right to amend the OEA is not absolute, and that Section 12.3 of the OEA provides certain protections that cannot be amended without receiving approvals from certain parcel owners that are deemed to be an "affected Party". Such designation arises if an amendment does any of the following with respect to that Party's parcel: :

- i) has any material impact upon the location of the Building to be constructed on a Parcel or the ability to conduct business on a Parcel; or
- ii) materially reduces the number of parking spaces located on or immediately adjacent to such Parcel; or
- iii) increases the Proportionate Share attributable to a Parcel; or
- iv) materially increases the obligations, costs or expenses for which a Party will be responsible under the OEA; or
- v) extinguishes any Common Area or Association Property easement benefitting such Parcel, or
- vi) materially and adversely impairs a Party's intended development or use of such Party's

Parcel as contemplated under land use entitlements approved by the City

In this case, however, the Amendment does not implicate any of the above six exceptions with respect to any other parcel in the Center, and therefore does not need any approvals beyond the Approving Parties and provided for in the Amendment. I also note, that while the Owners have an easement for parking, such easement (like the other Common Area easements) is general in nature. Indeed, Section 12.3 even contemplates that there can be a reduction in parking, as it allows for an amendment that reduces parking so long as it does not materially reduce the number of parking spaces located on or immediately adjacent to a particular Owner's parcel. As such, it is clear the easements set forth in the OEA were not intended to be absolute.

The Covenant and Agreement Establishing Easements for Ingress, Egress, Parking and Utilities

Costanzo Investments and Kohl's do not dispute that the Covenant was required by the City. However, the proposed construction is consistent with the intent and language of the Covenant. Notably, the Covenant does not restrict the ability to modify Common Area. The proposed construction will not prevent or impair the use or exercise of any of the easements set forth in the Covenant, which are general in nature. The Owners' easement rights will not be impaired as they will all continue to have mutual access for ingress, egress, parking and/or utilities across all parcels. I also note that the Association takes the position that it has succeeded to the interest of Declarant. We disagree and believe that Walrivers, as the successor Approving Party to Declarant, has succeeded to such interest.

Grant Deed

Given the Second Amendment to the OEA, any exceptions in the Grant Deed that pertain to the OEA are no longer applicable.

In summary, given the recording of the Second Amendment, the proposed project is consistent with the OEA as well as the Covenant and Agreement. The Second Amendment does not violate any of the exceptions set forth in Section 12.3 of the OEA, and all Owners will continue to have all of their respective easement rights that include mutual access for ingress, egress, parking and/or utilities across all parcels.

We appreciate your attention to this matter and are available to answer any further questions you may have regarding the proposed project.

Regards,

Todd Whitman

Todd Whitman, Esq.
Karavas Kiely Schloss & Whitman LLP
11400 W. Olympic Blvd., Suite 1480
Los Angeles, CA 90064

Direct Dial: 310.203.2689
Cell: 310.594.1474
twhitman@kkslawyers.com
www.kkslawyers.com

From: Harper-Scott, Danielle <DHarper-Scott@riversideca.gov>
Date: Wednesday, March 9, 2022 at 9:23 AM
To: Chris Costanzo <ccostanzo@costanzoinv.com>
Subject: FW: [External] Opposition to Proposed Project Case No. PR-2021-000897

Hi Chris –
Please see the opposition letter below.

Sincerely,
Danielle

Danielle Harper-Scott
City of Riverside
Community & Economic Development, Planning Division
Main: 951-826-5371
Direct: 951-826-5933
RiversideCA.gov

From: Michael J. Alti <michael@attorneyforhoa.com>
Sent: Tuesday, March 8, 2022 2:34 PM
To: Harper-Scott, Danielle <DHarper-Scott@riversideca.gov>
Cc: 'Valorie Moser' <valorie@attorneyforhoa.com>
Subject: [External] Opposition to Proposed Project Case No. PR-2021-000897

This email's attachments were cleaned of potential threats by The City of Riverside's Security Gateway.
Click [here](#) if the original attachments are required (justification needed).

Dear Ms. Harper-Scott:

Thank you for calling me back this morning. Community Legal Advisors, Inc. represents the Orangecrest Hills Commercial Owners Association ("Association") which manages the common areas of the shopping center in which the proposed project at 19260 Van Buren Blvd. ("Parcel") is located. We understand that the applicant Costanzo Investments, LLC and the owner Kohl's Department Stores, Inc. seek to construct a new drive-thru restaurant within the parking areas located on the Parcel. However, the parking areas are defined as part of the Association's Common Area under a

number of recorded covenants and agreements, including covenants required by the City. The proposed structure would violate these covenants and agreements, including well-established parking easements. We informed the owner of the Parcel (Kohl's) about this issue by letter dated January 14, 2019, and never received any response from them.

While we are still awaiting a copy of the City's files related to Case No. PM 30369 and we just requested a title report for the Parcel, I would like to briefly summarize two of the key covenants and agreements, copies of which are attached.

Covenant and Agreement Establishing Easements for Ingress, Egress, Parking and Utilities

This Covenant and Agreement was recorded on May 17, 2002 and encumbers Parcels 1 through 9 of PM 30369. The Parcel at 19260 Van Buren Blvd is Parcel 1 of that map. Please note the following:

- Recital 3 on the first page states, "As a condition to the approval by the City of Case No. PM 30369, Declarant is required to submit documentation prior to recordation of the final map for approval by the Planning and Legal Department of the City to assure mutual access for ingress, egress, parking and/or utilities across all parcels."
- Recital 4 on the top of the second page explains that the developer recorded the Covenant and Agreement to comply with the City's conditions.
- The definition of "Common Area" in Section 1 is "all the area of Parcels 1 through 9 of the Property other than building areas." This means the parking areas are part of the Common Area.
- Section 2 established nonexclusive easements for parking, ingress and egress over all the Common Area located within each parcel, including the parking areas.
- Section 3 is entitled "Barriers" and states, "No walls, fences or barriers of any kind shall be constructed, installed, erected or maintained on the Common Area, or any portion thereof, by Owner, tenant or person which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitations, of pedestrians and vehicular traffic..."
- Section 7 establishes that the covenants, including the easements, run with the land and are binding on all owners and their successors.
- Section 8 gives the City enforcement rights, and Section 9 requires approval by the City and Declarant in order to amend (note the Declarant Orangecrest Hills L.P. no longer has any interest in the shopping center – its successor would be the Association which now manages the common areas of the shopping center.)
- The Covenant and Agreement was signed by the Deputy City Attorney and the Planning Department.

In summary, the Covenant and Agreement was required by the City and established easements over the parking areas within the Parcel (19260 Van Buren Blvd.), and the proposed project would violate the Covenant and Agreement, including these established easements.

Operation and Easement Agreement

Around the same time the Covenant and Agreement was recorded, a separate Operation and

Easement Agreement (“OEA”) was recorded which, among other things, established the Association as the party responsible for managing and maintain the common areas of the shopping center. The OEA is generally consistent with the Covenant and Agreement, and here are a few key provisions:

- Section 2.1 establishes non-exclusive easements for the passage and parking of vehicles over and across the parking and driveway areas of each parcel, including the Parcel at 19260 Van Buren Blvd. Notably, Section 13.1 states that “the easements referred to in Section 2.1 and 2.2 cannot be terminated without the written consent of the Planning Director of the City.” Section 12.3 also requires the consent of the affected property owners, which was never requested or received.
- Section 3.2 allows the construction of buildings only within the building areas shown on the Site Plan attached to the OEA. The proposed building would clearly violate that.
- Section 4.2 of the OEA requires that the parking area on the Parcel comply with the requirement to have 4.0 parking spaces for each 1000 SF of floor area.
- Section 4.5 provides that “No Party shall make changes to the improved Common Area on its Parcel without the approval of the Association.” Here, even though we sent Kohl’s a letter informing that about the requirement for Association consent 3 years ago, they ignored us and never submitted any type of request for Association approval.

In summary, the OEA prohibits construction of a new building in the parking area on the Parcel, which would impair well-established easement rights for the surrounding businesses.

Grant Deed. We also obtained a copy of the Grant Deed by which Kohl’s acquired the Parcel in 2002. A copy is attached. Please note that the second page of the Grant Deed specifically excepts all the easements for access, ingress, egress, maintenance, repair and other purposes as described in the OEA.

In short, the proposed project would violate the above-referenced Covenant and Agreement as well as the OEA. It would interfere with well-established parking rights, including those easement rights specifically required to be established by the City pursuant to the conditions of approval for Case No. PM 30369. The Association absolutely opposes the proposed project for these and other reasons. We reserve the right to provide you additional comments as we receive and learn more information.

Thank you for your consideration.

Michael Altj, Esq.
Community Legal Advisors Inc.
310.613.8482
michael@attorneyforhoa.com

Community Legal Advisors provides general counsel and assessment collection services to community associations, subdivision and entitlement services to builders, and dispute resolution and advice to owners. You can learn more about us at www.attorneyforhoa.com.

Keep Riverside healthy: Maintain healthy diet and exercise, wash your hands, and get vaccinated. [RiversideCA.gov/COVID-19](https://www.riversideca.gov/COVID-19)

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RECORDING REQUESTED BY
FIRST AMERICAN TITLE CO.
NATIONAL COMMERCIAL SERVICES

NCS- 038546

RECORDING REQUESTED BY
AND WHEN RECORDED TO:

Costanzo Investments, LLC
17 Corporate Plaza Drive, Suite 250
Newport Beach, CA 92660

DOC # 2022-0101105

03/01/2022 01:46 PM Fees: \$125.00

Page 1 of 13

Recorded in Official Records

County of Riverside

Peter Aldana

Assessor-County Clerk-Recorder

**This document was electronically submitted
to the County of Riverside for recording**
Received by: LISA #580

(Space Above For Recorder's Use Only)

SECOND AMENDMENT OF OPERATION AND EASEMENT AGREEMENT

THIS SECOND AMENDMENT OF OPERATION AND EASEMENT AGREEMENT ("Second Amendment") is made this 28th day of April, 2021, by KOHL'S DEPARTMENT STORES, INC., a Delaware corporation ("Kohl's"), and Walrivers, LLC, a California limited liability company ("Walrivers").

RECITALS

A. Kohl's and Orangecrest Hills, L.P., a Washington limited partnership ("Orangecrest") executed that certain Operation and Easement Agreement which was recorded on June 14, 2002 as Document No. 329730 in the Official Records of Riverside County, California (the "Original OEA"). Kohl's, Orangecrest and certain other parties executed that certain First Amendment of Operation and Easement Agreement which was recorded on February 11, 2004 as Document No. 2004-0097417 in the Official Records of Riverside County, California (the "First Amendment", and, together with the Original OEA, the "OEA").

B. Section 12.3 of the OEA provides that the OEA may be amended by a written agreement signed by all of the then current Approving Parties. Kohl's and Walrivers, as successor-in-interest to Orangecrest (an initial Approving Party), are all of the current Approving Parties under the OEA.

D. Kohl's intends to subdivide, or to cause the subdivision of, and desires to convey that portion of the Kohl's Parcel more particularly described on Exhibit 1 (as modified as necessary for approval by the City of Riverside) and depicted on Exhibit 3 attached hereto (the "Subdivision Parcel") for the development, construction, and operation of Restaurant(s) and/or other retail uses as may be permitted by the OEA.

E. In connection with the subdivision, conveyance and development of the Subdivision Parcel, the Approving Parties now desire to amend the OEA in accordance with the terms and conditions of this Second Amendment.

THIS INSTRUMENT FILED FOR RECORD BY
FIRST AMERICAN TITLE AS AN ACCOMMODATION
ONLY IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION
OR TO ITS EFFECT UPON THE TITLE

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Approving Parties hereby agree as follows:

1. Definitions. Except as expressly provided in this Second Amendment, the capitalized terms in this Second Amendment shall have the meanings given such terms in the OEA.

2. Kohl's Parcel and Subdivision Parcel. The Parties acknowledge that Kohl's has the right (but not the obligation) to subdivide its parcel under the OEA, and it shall be deemed to have such right regardless of whether it previously existed. Kohl's shall cause the recordation of a subdivision plat, survey, or such other depiction legally sufficient to cause the legal subdivision of the Subdivision Parcel (the "Plat") from Kohl's Parcel. From and after the recordation of the Plat, the following shall apply: (i) certain real property described on Exhibit 2 attached hereto and incorporated herein by this reference (as modified as necessary for approval by the City of Riverside) shall be referred to as the "Kohl's Parcel" and all references in the OEA to the "Kohl's Parcel" shall be limited to that certain real property described on Exhibit 2; (ii) except as otherwise provided for herein, the Subdivision Parcel shall be deemed an Outlot Parcel for purposes of the OEA; and (iii) the "Kohl's Parcel" depicted on the SITE PLAN shall be amended by the Site Plan attached hereto as Exhibit 3. Notwithstanding the foregoing, Kohl's Parcel and the Subdivision Parcel shall be maintained under the OEA as one Parcel until such time as Kohl's conveys the entire fee estate in the Subdivision Parcel to a third party purchaser (a "Conveyance"). Notwithstanding that the Subdivision Parcel after the Conveyance, shall be deemed an Outlot Parcel under the OEA as amended herein, the easements and rights identified in Section 2.4 of the OEA and Section 9.1(a)(i) of the OEA shall not be for the benefit of, nor be appurtenant to, the Subdivision Parcel and shall not bind the Kohl's Parcel (after the Conveyance) with respect to the Subdivision Parcel and the Subdivision Parcel shall have no rights with respect to the same.

3. Development of the Subdivision Parcel. From and after the recordation of the Plat and the occurrence of a Conveyance, the following shall apply:

(A) Building Area; Common Area. Notwithstanding anything to the contrary contained in the OEA, including, without limitation, Sections 1.26, 3.2, 4.1, and 4.5, and Exhibit H, an Owner or Occupant of the Subdivision Parcel shall have the right to construct and/or locate (or relocate) a Building and related Improvements (including, without limitation, any Outdoor Area, service area such as a drive-thru [i.e., a drive-up unit and related space for stacking automobiles] and Common Area Improvements) anywhere within the Subdivision Parcel (and Common Area Improvements in areas on Kohl's Parcel immediately adjacent to the Subdivision Parcel to the extent necessary to allow for the development of the Subdivision Parcel) with the prior approval of Kohl's and the City, and without the need for any further approvals under the OEA unless required by Laws, provided that (i) such Building shall contain a Floor Area no greater than 5,000 square feet, (ii) no such Building or related Improvements shall obstruct the access drives and service drives which are designated on the SITE PLAN as "Perpetual Access", (iii) the Building shall have no more than one (1) appurtenant drive-thru, which drive-thru shall comply with Section 4.2 of the OEA, and (iv) such Building and related Improvements shall be located in compliance with all Laws and used for retail and/or Restaurant uses.

(B) Parking. Provided the parking ratio on each of the Subdivision Parcel and the new Kohl's Parcel shall be approved by Kohl's and the City, then such parking ratio on the new Kohl's Parcel may deviate from the minimum requirement set forth in Section 4.2(a)(ii), provided, however, the parking ratio shall be no lower than 3.4 parking spaces for each one thousand (1,000) square feet.

(C) Architectural Theme; Plans. Notwithstanding anything to the contrary contained in Section 3.4 of the OEA, the Plans for the Building and Improvements located on the Subdivision Parcel shall be deemed in compliance with the architectural theme and guidelines of the Shopping Center upon receipt of approval of such Plans by Kohl's and the City, without the need for any further approvals under the OEA.

(D) Permitted Uses. Section 7.1(c)(i) of the OEA is amended to provide that a restaurant may be located on the Subdivision Parcel within 250 feet of the Building Area located on the Kohl's Tract upon the prior written approval of Kohl's.

4. Freestanding Signs. Notwithstanding anything contained in Section 8.1(a) of the OEA to the contrary, the OEA is hereby amended to provide that an Owner or Occupant of the Subdivision Parcel and subject to City approval, may place a monument sign on the Kohl's Parcel in the area identified on the Site Plan attached hereto as Exhibit 3 (as "Subdivision Parcel Monument Sign") and which sign may only identify Occupants of the Subdivision Parcel. The Subdivision Parcel Monument Sign shall be constructed, installed, operated, maintained, repaired and replaced by the Owner of the Subdivision Parcel in accordance with the OEA and subject to such other requirements as Kohl's may deem necessary and/or appropriate, in its reasonable discretion. The installation of the Subdivision Parcel Monument Sign on the Kohl's Parcel shall be in addition to any right of Kohl's with respect to any Major Monument Sign on the Kohl's Parcel.

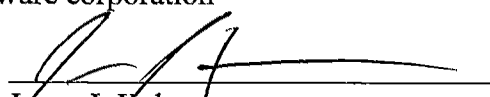
5. Full Force and Effect. Except as expressly set forth herein, the OEA shall remain in full force and effect in accordance with its terms. If there is any conflict between the Agreement and this Second Amendment, this Second Amendment shall control.

6. Counterparts; Deemed Approval. This Second Amendment may be signed by the parties in two or more counterparts which, when taken together, shall constitute one and the same instrument.

[signatures appear on the following page]

IN WITNESS WHEREOF, the Kohl's and Walrivers, as the Approving Parties, have executed and/or approved this Amendment as of the date first written above.

KOHL'S, INC.,
a Delaware corporation

By: 
Name: Jason J. Kelroy
Its: General Counsel & Secretary

WALRIVERS, LLC,
a California limited liability company

SIGNED IN COUNTERPART

By: _____
Name: _____
Its: _____

State of Wisconsin)

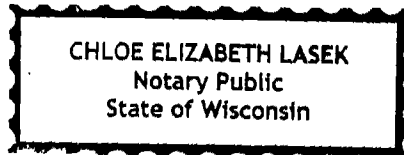
County of Waukesha)

On April 28, 2021 before me, Chloe Elizabeth Lasek, a Notary Public in and for said County and State, personally appeared Jason J. Kelroy, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Wisconsin that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Chloe Elizabeth Lasek (Seal)



State of California)

County of _____)

On _____ before me, _____, a Notary Public in and for said County and State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

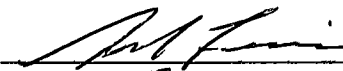
IN WITNESS WHEREOF, the Kohl's and Walrivers, as the Approving Parties, have executed and/or approved this Amendment as of the date first written above.

KOHL'S DEPARTMENT STORES, INC.,
a Delaware corporation

SIGNED IN COUNTERPART

By: _____
Name: _____
Its: _____

WALRIVERS, LLC,
a California limited liability company

By: 
Name: Sol FEINER
Its: MANAGER

State of California)

County of _____)

On _____ before me, _____, a Notary Public in and for said County and State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)

County of _____)

On _____ before me, _____, a Notary Public in and for said County and State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

SEE
ATCH

Y S.

ILLEGIBLE NOTARY SEAL CERTIFICATION

(Government Code 27361.7)

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary : _____YOSEF Y. SHAGALOV_____

Commission Number : _____2302393_____

Vendor Number : _____NNA1_____

County/State where
Bond is filed : _____Los Angeles, CA_____

Commission Exp. Date : _____Sep 17, 2023_____

Executed in the City of _____Irvine_____, State of California

eRecording Partners Network

_____3/1/2022_____
Date

By: _____*Eric Pham*_____
Signature of Declarant

_____Eric Pham_____
Type or Print Name

Exhibit 1**Legal Description of Subdivision Parcel**

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 30369 ON FILE IN BOOK 201 PAGES 77 AND 79 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 1; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 1, NORTH 76°53'06" EAST (RECORD - NORTH 76°53'43" EAST) 187.58 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE, NORTH 13°08'33" WEST 14.80 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 13°08'33" WEST 183.38 FEET; THENCE NORTH 76°51'27" EAST 170.53 FEET; THENCE SOUTH 60°24'39" EAST 27.86 FEET; THENCE SOUTH 13°08'33" EAST 122.93 FEET; THENCE SOUTH 35°02'06" WEST 62.29 FEET; THENCE SOUTH 76°51'27" WEST 144.57 FEET TO THE **TRUE POINT OF BEGINNING**.

EXCEPTING THEREFROM 51 PERCENT OF THE OIL, GAS, HYDROCARBON AND MINERAL SUBSTANCES UNDERLYING SAID LAND BELOW 500 FEET FROM THE SURFACE OF THE SAME, WITHOUT THE RIGHT OF SURFACE ENTRY AS RESERVED BY MARY H. TRAUTWEIN, ET AL, IN DEED RECORDED APRIL 29, 1963 AS INSTRUMENT NO. 42998 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING AND RESERVING UNTO GRANTOR, ITS SUCCESSORS OR ASSIGNS TOGETHER WITH THE RIGHT TO GRANT AND TRANSFER ALL OR A PORTION OF THE SAME, AS FOLLOWS:

ALL PREVIOUSLY UNRESERVED MINERALS, OIL, GAS, PETROLEUM, AND OTHER HYDROCARBON SUBSTANCES IN OR UNDER OR WHICH MAY BE PRODUCED FROM SAID PROPERTY WHICH UNDERLIES A PLANE PARALLEL TO AND FIVE HUNDRED FEET (500') BELOW THE PRESENT SURFACE OF SAID PROPERTY FOR THE PURPOSE OF PROSPECTING FOR, THE EXPLORATION, DEVELOPMENT, PRODUCTION, EXTRACTION AND TAKING OF SAID MINERALS, OIL, GAS, PETROLEUM, AND OTHER HYDROCARBON SUBSTANCES FROM SAID PROPERTY BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OR ANY PORTION THEREOF ABOVE SAID PLANE PARALLEL TO AND FIVE HUNDRED FEET (500') BELOW THE PRESENT SURFACE OF THE SAID PROPERTY FOR ANY PURPOSE WHATSOEVER.

Exhibit 2**Legal Description of Kohl's Parcel**

PARCEL 1 OF PARCEL MAP NO. 30369 ON FILE IN BOOK 201 PAGES 77 AND 79 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION OF PARCEL 1 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 1; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 1, NORTH 76°53'06" EAST (RECORD - NORTH 76°53'43" EAST) 187.58 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE, NORTH 13°08'33" WEST 14.80 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE NORTH 13°08'33" WEST 183.38 FEET; THENCE NORTH 76°51'27" EAST 170.53 FEET; THENCE SOUTH 60°24'39" EAST 27.86 FEET; THENCE SOUTH 13°08'33" EAST 122.93 FEET; THENCE SOUTH 35°02'06" WEST 62.29 FEET; THENCE SOUTH 76°51'27" WEST 144.57 FEET TO THE **TRUE POINT OF BEGINNING**.

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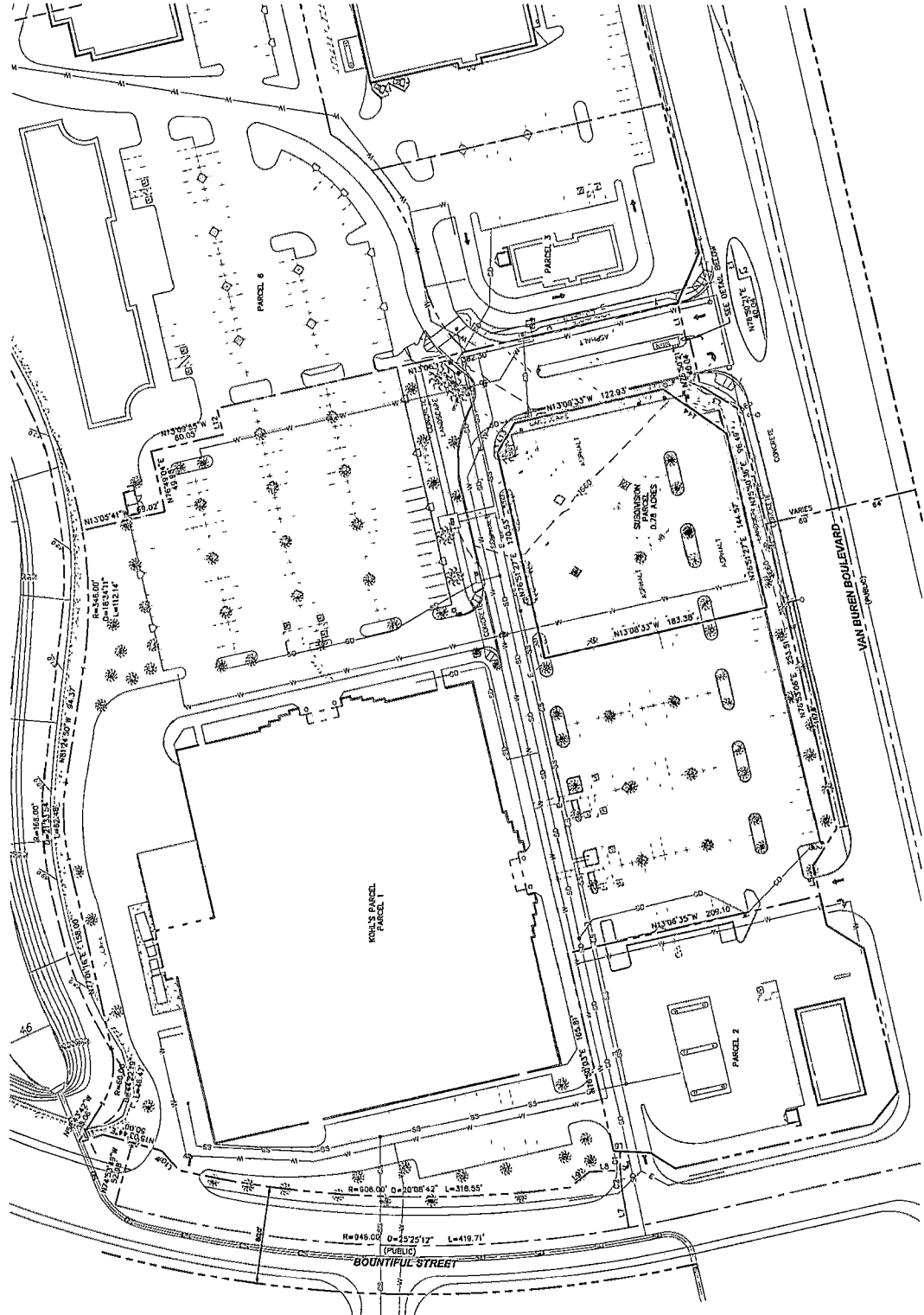
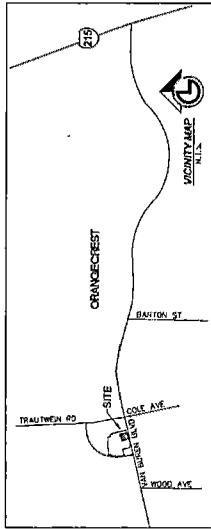
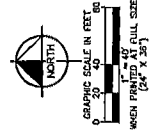
Exhibit 3

Site Plan

[following page]

LINE DATA		
NO.	BEARING	DISTANCE
L1	N76°58'20"E	30.13
L2	N161°2'42"W	2.47
L3	N31°2'20"E	24.93
L4	N57°58'52"W	35.40
L5	N76°57'01"E	25.02
L6	N02°27'05"E	5.46
L7	N78°40'58"E	26.10
L8	N02°41'33"W	25.00
L9	N39°27'19"W	20.00
L10	N49°19'30"E	21.37
L11	N19°04'57"W	21.16
L12	N76°52'24"E	21.93
L13	N80°24'30"W	27.88
L14	N33°02'00"E	32.29

CURVE DATA		
NO.	RADIUS	DELTA
C1	160.00'	05°37'05"
C2	160.00'	07°37'42"



SCALE (H): 1"=40' SCALE (V): 1"=4' DESIGNED BY: DRAWN BY: CHECKED BY: DATE:	Kimley»Horn Engineering, Planning, and Environmental Consultants 755 The City Drive, Suite 200 Orange, California 92668 (714) 939-1030	<table border="1"> <tr> <th>NO.</th> <th>REVISION</th> <th>BY</th> <th>DATE</th> <th>APP.</th> </tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </table>	NO.	REVISION	BY	DATE	APP.																					PROJECT NO. PROJ. DRAWING NAME SHEET 3
NO.	REVISION	BY	DATE	APP.																								