

From: [Michael Gonzales](#)
To: [Harper-Scott, Danielle](#)
Cc: [Norton, Brian](#); [Brenes, Patricia](#); [Chris Costanzo](#); [Todd Whitman](#)
Subject: [External] Panera Bread
Date: Friday, April 1, 2022 2:06:04 PM
Attachments: [2002 Easement Covenant.cleaned.pdf](#)
[11_8_2001 Conditions.pdf](#)
[Original Covenant.pdf](#)
[Grant Deed Kohl's Parcel.pdf](#)
[Orangecrest COA Articles 1.14.2003.pdf](#)
[Orangecrest SOI.pdf](#)
[7_9_2004 Conditions.cleaned.pdf](#)
[Parcels 89 2005 Grant Deed.pdf](#)
[Amended Covenant.cleaned.pdf](#)

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Danielle,

Thanks for the time and opportunity to discuss the Panera Bread project with you. As discussed during our call, it is clear that a modification of a condition of approval to Parcel Map No. 30369 ("Map") to allow drive-thru uses only requires City approval. First, the drive thru restriction originates from a condition imposed by and for the benefit of the City in the Map's conditions of approval, which requires a covenant be recorded that (among others) restricts drive thrus on several parcels, including Parcel 1 (Kohl's parcel). Nothing in the drive thru restriction condition indicates that it is for the benefit of the applicant (who owned all 9 parcels in the Center at that time) or the Association (defined below), which wasn't formed yet.

Second, the Original Covenant (defined below) subsequently recorded by the applicant in order to satisfy the above condition reaffirms that the restriction is for the benefit of the City, as it allocates enforcement rights to the City and expressly provides the City with the right to release one or more parcels from such restrictions (covenant shall remain "in effect until such time as released by the City Planning Director of the City of Riverside, California, by a writing duly recorded"). Noticeably absent are any rights provided to the declarant or its successors in interest (compare 2002 Covenant and Agreement Establishing Easements for Ingress and Egress, Parking and Utilities). By its plain terms, it is for the benefit of the City alone and can be enforced or waived at the City's pleasure.

Given the above, the City is empowered with the right to modify the condition and to release Parcel 1 from the drive thru restriction. Importantly, this is exactly what the City did in 2004 and 2005 for Parcels 8 and 9. There, the City modified the condition to remove the drive thru restriction from Parcels 8 and 9 for a drive thru restaurant, and allowed the owner of those two parcels to amend the Original Covenant to remove such restriction from these parcels without any approvals from the Association or any other parcel owner. The City Planning Director and City Attorney were signatories to this amendment as to both form (Attorney) and content (Planning Director).

We see no meaningful distinction between the 2004/2005 modification of both the condition of approval and the Original Covenant (i.e., the Amended Covenant) and the circumstances here – let alone one that would require or allow for a different outcome or approach to our application.

History of Map Approval and the Original Covenant

The City of Riverside approved the Map on November 8, 2001. The Map proposed a total of 9 parcels. As a condition of approval, the City required, in pertinent part, the recording of a covenant “prohibiting automobile-oriented uses, including drive-thru restaurant...on those properties currently shown as parcels 1, 4, 5, 8, and 9 of the map.” (See condition of approval 2.a, attached). On May 17, 2002, such restrictive use covenant (“Original Covenant”) was recorded by Orangecrest Hills, L.P., a Washington Limited Partnership (“OHLP”), restricting amongst other things, drive-thru uses on the aforementioned parcels. OHLP and the City are the only parties to the Original Covenant, which is attached, and OHLP was the owner of Parcels 1 to 9 when the Original Covenant was recorded.

Kohl’s Purchase of Parcel 1, Creation of Association and Subsequent Amendment of Original Covenant

Subsequent to the Original Covenant’s recordation, Kohl’s purchased Parcel 1 from OHLP on or about June 13, 2002 (grant deed attached). Pursuant to the attached Articles of Incorporation, the Orangecrest Hills Commercial Owner’s Association (“Association”) was created on January 14, 2003. According to the Secretary of State’s website and confirmed by the Attached Statement of Information, the Association is active. On July 9, 2004, the City approved a modification of the Map’s conditions of approval relating to the prohibition of drive-thru facilities (Case P04-0601, page 61-3, attached) to allow drive-thru facilities on Parcels 8 and 9. OHLP was owner of Parcels 8 and 9 at the time of approval. The approval’s revised conditions of approval required recording of a revised covenant. On or about June 6, 2005 OHLP conveyed Parcel 8 and 9’s title to HEC-Orangecrest, LLC (“HECOLLC”) (grant deed attached). On June 15, 2005, HECOLLC recorded an amendment to the Original Covenant (“Amended Covenant”) to implement the City’s revised conditions of approval and to allow drive-thru facilities on Parcels 8 and 9. HECOLLC and the City are the only parties to the Amended Covenant, a copy of which is attached. When the condition was modified and the Amended Covenant was executed and recorded, Kohl’s owned Parcel 1 and the Association was already in existence. Additionally, as set forth in the table below, OHLP had already transferred title to parcels 2, 3, 4, 5, 6, and 7 prior to the City’s approval of the modified condition and recordation of the Amended Covenant (we can provide copies of the relevant grant deeds upon request). No additional owner’s approval of, consent to or signature on the Amended Covenant was required.

| Parcels/APNs | Transfer Date | Buyer |
|-----------------|----------------|------------|
| 2 (284-020-012) | July 2, 2003 | Chevron |
| 3 (284-020-013) | March 14, 2003 | Jay Harvey |
| | | |

| | | |
|------------------|------------------|----------------------------|
| 4 (284-020-014) | October 14, 2003 | Riverside Drug Store Group |
| 5 (284-020-015) | August 29, 2003 | Terry Fries |
| 6 284-020-016 | July 24, 2002 | AMB |
| 7 | March 19, 2003 | Association |

Original and Amended Covenant Expressly State City Can Release the Use Restriction

Both the Original Covenant and the Amended Covenant expressly state that these documents were recorded to satisfy the City's condition of approval. Section 4 of both documents also state that the covenant remains "in effect until such time as released by the City Planning Director of the City of Riverside, California, by a writing duly recorded." As noted above the only other signatories to the Original Covenant and the Amended Covenant are the City Planning Director and the City Attorney. Accordingly, based on the language of the Original Covenant and Amended Covenant and the City's previous approval of the Amended Covenant in 2005, the only signatures needed to allow drive-thru uses on Parcel 1 are Kohl's, the City Planning Director and the City Attorney.

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