

7961502

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

HUPRICH & KRASNOVE, LLP  
Torrance Executive Plaza West  
3838 Carson Street, Suite 210  
Torrance, California 90503  
Attention: Edward Krasnove, Esq.

7961502  
07/31/2001 12:51 PM 34.00  
Book - 8484 Pg - 3583-3595  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
METRO NATIONAL TITLE  
BY: RDJ, DEPUTY - WI 13 P.

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**RESTRICTIVE USE AND OPENING AGREEMENT**

**THIS RESTRICTIVE USE AND OPENING AGREEMENT** (this "Agreement") is entered into as of the 31<sup>st</sup> day of July, 2001, by and between **LOWE'S HIW, INC.**, a Washington corporation ("Lowe's") and **JORDAN LANDING, L.L.C.**, a Delaware limited liability company ("Landing") (individually, a "Party" and collectively, the "Parties").

**RECITALS**

WHEREAS, Lowe's is the fee owner of certain real property located in the City of West Jordan, Utah and described in Exhibit "A" attached hereto and made a part hereof and shown on the Site Plan attached hereto as Exhibit "B" and made a part hereof (the "Lowe's Property").

WHEREAS, Landing is the fee owner of certain property located in West Jordan, Utah and described in Exhibit "C" attached hereto and made a part hereof and shown on the Site Plan attached hereto as Exhibit "B" and made a part hereof (the "Landing Property").

WHEREAS, Lowe's has developed or will develop the Lowe's Property as a retail home improvement center and Landing has developed or will develop the Landing Property as a retail shopping center known as "Jordan Landing Plaza".

WHEREAS, Lowe's and Landing desire to enter into certain agreements regarding the operation and use of their respective properties as hereinafter set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landing and Lowe's agree as follows:

**AGREEMENT**

1. Lowe's Opening Covenant. Lowe's agrees to open a Lowe's Home Improvement Center with related improvements under the trade name "Lowe's Home Improvement Warehouse" on the Lowe's Property for at least one (1) day not later than July 31, 2002, subject

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to force majeure delays (the "Opening Covenant"). Notwithstanding the foregoing, nothing herein shall be construed to obligate Lowe's to continuously operate or operate for a specific period of time a Lowe's building supply or home improvement retail warehouse on its property or to prevent Lowe's from closing its business on the Lowe's Property.

2. Landing Restrictive Use Covenant. If Lowe's complies with each of the provisions of the Opening Covenant, no portion of the Landing Property may be used for the following purposes (provided that such restrictions shall only apply to the Landing Property for a period of time not to exceed two (2) years after the Lowe's Property is no longer operating as a retail and/or warehouse home improvement center, home improvement service center, lumber yard or building materials supply center) (the "Restrictive Use Covenant"):

- (a) A hardware store containing more than 5,000 square feet of useable floor area.
- (b) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and other stores or centers similar to those operated by Lowe's, Home Depot, Villager's Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Home Base, Menard's, Sears Hardware, Sutherlands, Orchard Supply, Expo Design Centers, Great Indoors and Payless Cashways.

The Restrictive Use Covenant shall not apply to any store located on the Landing Property whose primary business is home furnishings (including without limitation a Lamps Plus store) as opposed to home improvement. Notwithstanding anything to the contrary set forth above, Lowe's acknowledges that the Restrictive Use Covenant is subject to the rights of the existing tenants of the Landing Property set forth below (the "Existing Tenants") in the premises they currently occupy, and Lowe's agrees that the rights of the Existing Tenants in the premises they currently occupy shall be exceptions to the Restrictive Use Covenant, provided that Landing shall not amend the use provisions of the leases with the Existing Tenants to permit a violation of the Restrictive Use Covenant.

Existing Tenants on the Landing Property consist of the following: Bath & Body Works' Carl's Jr. Restaurant, Advantage Wireless, The Tasty Marble Ice Cream Co., Deseret Book Company, Sampan Chinese Cuisine, Famous Footwear, Franklin Covey, Gasoline Alley, International House of Pancakes, Pretzel Maker/Mrs. Fields, Merle Norman Cosmetics, Harmon Management Corporation, Texaco, OfficeMax, Old Navy, Payless ShoeSource, Animal Attic, Rubio's Baja Grill, Ruby Tuesday, Quizno's Subs, Chili's Southwest Grill, The Mattress Firm, Dress Barn, Tinseltown (Cinemark Theater), Verizon Wireless, Juice Tree, New York Café & Deli, GNC (General Nutrition Corporation), Great Clips, Studio Tannin and Pizzeria Pomordora.

3. Building Orientation. Landing agrees that if either of the buildings identified as Building B and Building C on the Site Plan is developed as a fitness center, health club, spa, theater, bowling alley, bar or discotheque, then all customer entrances and exits in Building B or C shall be oriented to the north.

4. Run with the Land. The agreements made herein shall run with the Lowe's Property and the Landing Property, be appurtenant to and be for the benefit of, the parties, their successors and assigns, and for the benefit of the Lowe's Property and the Landing Property. The terms of this Agreement shall apply to and be binding upon the parties hereto and their respective administrators, successors and assigns.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6. Recordation. This Agreement shall be recorded in the office of the recorder of the Salt Lake County Recorder's Office.

7. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter hereof.

8. Attorneys Fees. If any legal action or proceeding arising out of relating to this Agreement is brought by any party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses that may be incurred in any action or proceeding by the prevailing party.

9. Amendment. This Agreement may be amended by written agreement of amendment executed by all parties, but not otherwise.

10. Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

11. Counterparts. This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one and the same instrument.

[signatures commence on following page]

IN WITNESS WHEREOF, the Landing and Lowe's have executed this Agreement as of the day and year first above written.

**JORDAN LANDING, L.L.C.,**  
a Delaware limited liability company

By: JL Project, LLC,  
a Utah limited liability company  
Manager of Jordan Landing, L.L.C.

By: Russell W. Grosse Development Co.,  
Inc., a California corporation  
Manager of JL Project, LLC

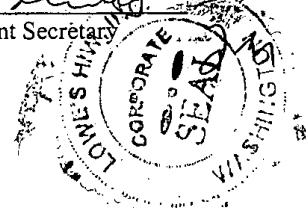
By: \_\_\_\_\_  
Russell W. Grosse, CEO

ATTEST:

**LOWE'S HIW, INC.,**  
a Washington corporation

By: David E. Shelton  
David E. Shelton, Senior Vice President *KDE*

By: Kevin D. Bennett  
Kevin D. Bennett, Assistant Secretary



ACKNOWLEDGEMENTS

STATE OF )  
 ) SS  
COUNTY OF )

On \_\_\_\_\_, 2001 before me, a notary public in and for said state, personally appeared, \_\_\_\_\_ 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 the capacity(ies) indicated at the signature point.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_  
Notary Public

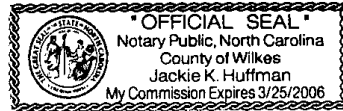
My Commission Expires: \_\_\_\_\_ (Seal)

STATE OF )  
 ) SS  
COUNTY OF )

On July 30, 2001 before me, a notary public in and for said state, personally appeared, David E. Shelton and Kevin D. Bennett 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 the capacity(ies) indicated at the signature point.

WITNESS my hand and official seal.

Signature: Jackie K. Huffman  
Notary Public



My Commission Expires: \_\_\_\_\_ (Seal)

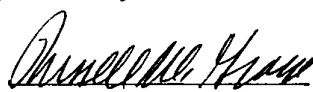
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IN WITNESS WHEREOF, the Landing and Lowe's have executed this Agreement as of the day and year first above written.

**JORDAN LANDING, L.L.C.,**  
a Delaware limited liability company

By: JL Project, LLC,  
a Utah limited liability company  
Manager of Jordan Landing, L.L.C.

By: Russell W. Grosse Development Co.,  
Inc., a California corporation  
Manager of JL Project, LLC

By:   
Russell W. Grosse, CEO

ATTEST:

**LOWE'S HIW, INC.,**  
a Washington corporation

By: \_\_\_\_\_  
David E. Shelton, Senior Vice President

By: \_\_\_\_\_  
Kevin D. Bennett, Assistant Secretary


CONSENT OF LIENHOLDER

The undersigned is the lender ("Lender") under those certain loans ("Loans") to Jordan Landing, L.L.C., a Delaware limited liability company, evidenced by a Construction Loan Trust Deed recorded in the Official Records of the Salt Lake County Recorder's Office on January 14, 1999, in Book 8228, Page 2858, as Entry No. 7222224, a Trust Deed recorded in the Official Records of the Salt Lake County Recorder's Office on July 6, 1999, in Book 8292, Page 2790, as Entry No. 7405858, and a Construction Loan Deed of Trust recorded in the Official Records of the Salt Lake County Recorder's Office on June 15, 2000, in Book 8368, Page 7613, as Entry No. 7661162. Lender, hereby consents to the foregoing Restrictive Use and Opening Agreement (the "Agreement") and consents to the subordination of the Loans to the Agreement. The undersigned further agrees that the Agreement shall be binding upon Lender, as well as all of its successors and assignees, and any purchaser at any trustee's or foreclosure sale which may hereafter occur with respect to the lien held by Lender pursuant to the Loans.

Dated this 31 day of July, 2001.

LENDER:

ZIONS FIRST NATIONAL BANK,  
a national banking association

By:   
Name: David W. Spickman  
Title: Vice President

ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF SAN DIEGO )

On July 27<sup>th</sup>, 2001 before me, a notary public in and for said state, personally appeared Russell W. Grosse personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in the capacity indicated at the signature point.

WITNESS my hand and official seal.

Signature: Joan E. Hendrick  
Notary Public



My Commission Expires: March 8, 2002 (Seal)



ACKNOWLEDGEMENTS

STATE OF )  
 ) SS  
COUNTY OF )

On \_\_\_\_\_, 2001 before me, a notary public in and for said state, personally appeared, \_\_\_\_\_ 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 the capacity(ies) indicated at the signature point.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_ (Seal)

STATE OF )  
 ) SS  
COUNTY OF )

On July 31, 2001 before me, a notary public in and for said state, personally appeared, Dave Tackma 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 the capacity(ies) indicated at the signature point.

WITNESS my hand and official seal.

Signature: [Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_ (Seal)



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**EXHIBIT A**

**LEGAL DESCRIPTION OF LOWE'S PROPERTY**

Lot 4 of the Amendment to Jordan Landing II Final Plat filed in the Official Records of the Salt Lake County Recorder's Office on June 29, 2001, at Book 2001P, Page 192, as Entry No. 7936063.

21.1A.700.002

**EXHIBIT B**

**SITE PLAN**

[attached]

# JORDAN LANDING PLAZA



S-24-01  
SCALE: 1" = 100'

JORDAN LANDING LLC PARCEL  
LOWE'S PARCEL

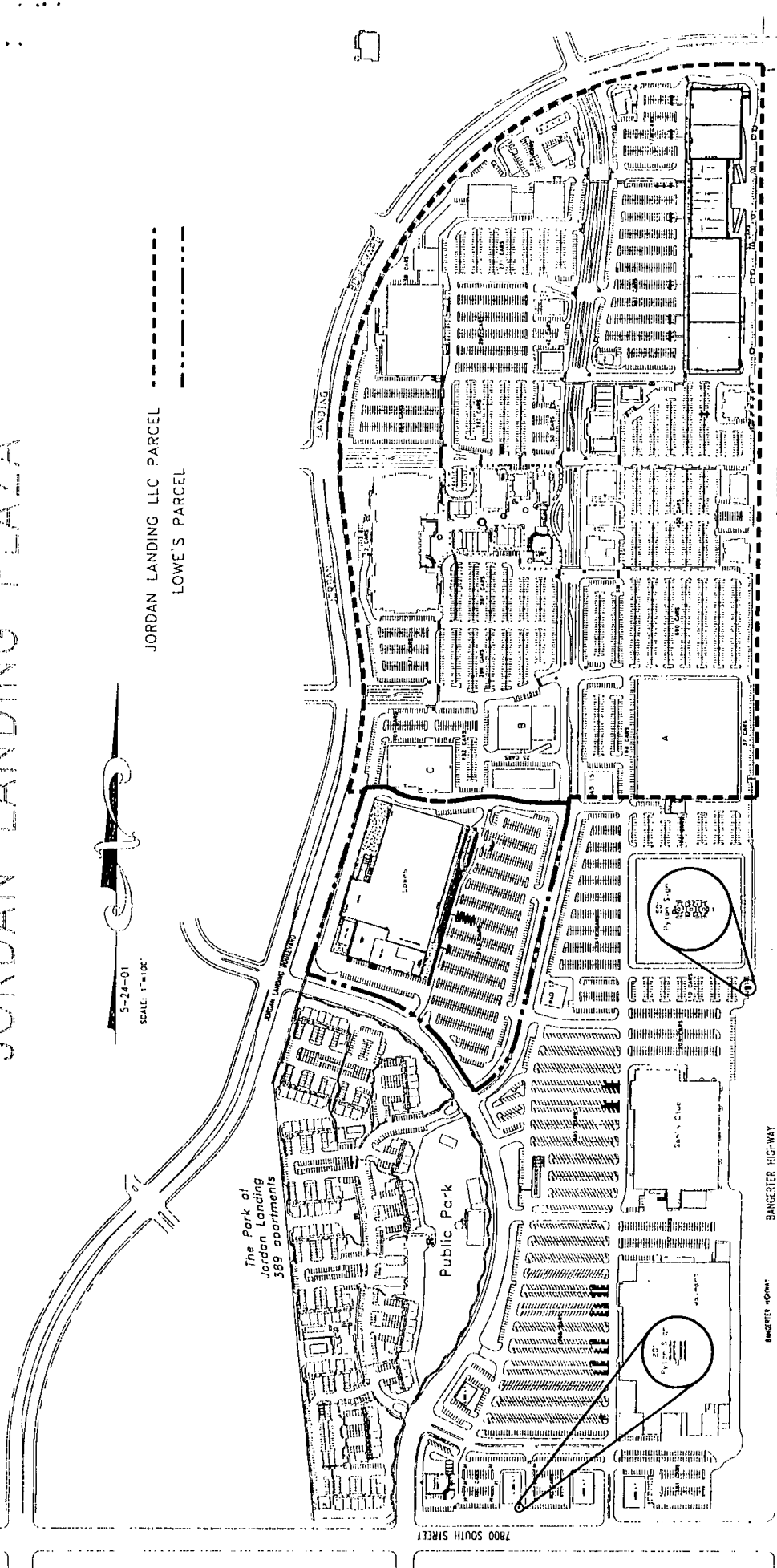


EXHIBIT C

LEGAL DESCRIPTION OF LANDING PROPERTY

BEGINNING AT THE CENTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 07°46'27" WEST ALONG THE QUARTER SECTION LINE 16.50 FEET; THENCE NORTH 82°25'51" WEST 670.38 FEET; THENCE SOUTH 07°46'06" WEST 3.99 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 01°55'16" A DISTANCE OF 16.76 FEET; THENCE NORTH 82°13'59" WEST 117.54 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 12°43'49" A DISTANCE OF 66.66 FEET TO A POINT OF TANGENCY; THENCE NORTH 69°30'10" WEST 26.01 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 330.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24°40'13" A DISTANCE OF 142.09 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 496.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 27°47'39" A DISTANCE OF 240.61 FEET TO A POINT OF COMPOUND CURVATURE; THENCE ALONG THE ARC OF A 100.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 20°12'17" A DISTANCE OF 35.26 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 78.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 38°29'29" A DISTANCE OF 52.40 FEET TO A POINT OF TANGENCY; THENCE NORTH 84°39'56" WEST 56.24 FEET; THENCE SOUTH 24°57'09" WEST 16.04 FEET TO THE QUARTER SECTION LINE OF SECTION 29; THENCE NORTH 82°25'51" WEST 59.74 FEET TO THE EASTERLY BOUNDARY LINE OF JORDAN LANDING BOULEVARD; THENCE ALONG SAID EASTERN BOUNDARY LINE THE FOLLOWING (6) SIX COURSES: NORTH 24°56'01" EAST 13.22 FEET TO A POINT OF CURVATURE FOR A 1103.000 FOOT RADIUS CURVE, THEN ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24°58'42" A DISTANCE OF 480.86 FEET TO A POINT OF TANGENCY, THENCE NORTH 00°02'41" WEST 538.910 FEET TO A POINT OF CURVATURE ON A 1377.000 FOOT RADIUS CURVE, THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 97°42'50" A DISTANCE OF 2348.38 FEET TO A POINT OF TANGENCY, THEN SOUTH 82°19'51" EAST 124.580 FEET; THENCE SOUTH 47°30'59" EAST 5.23 FEET; THENCE SOUTH 07°46'07" WEST 2578.36 FEET TO THE POINT OF BEGINNING.