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OPERATION AND EASEMENT AGREEMENT
BETWEEN
KOHL'S DEPARTMENT STORES, INC.
AND
CONTINENTAL 139 FUND LLC

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING MAIL TO:

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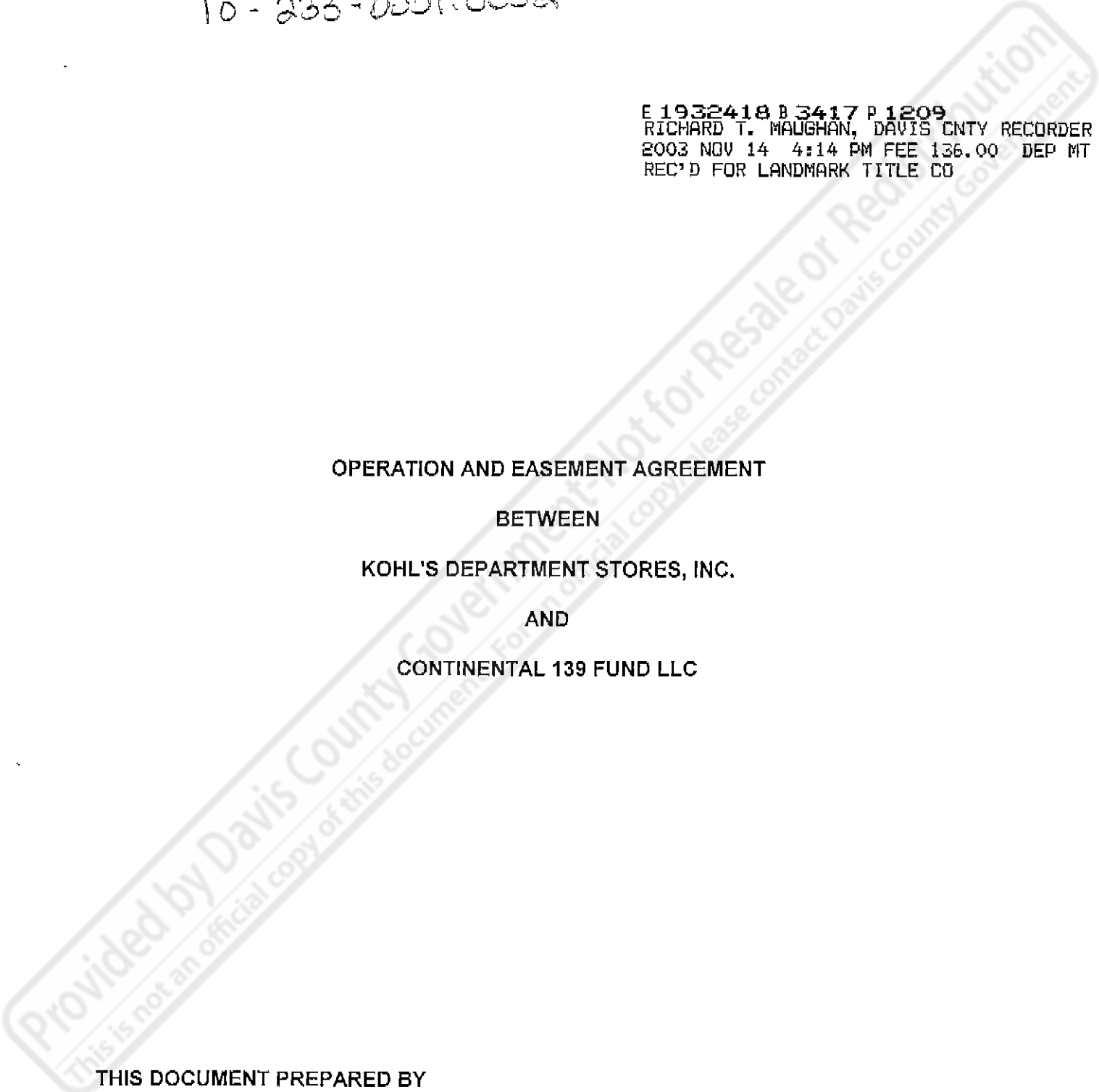


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EXHIBITS

- Exhibit A - Legal Description of the Kohl's Tract
- Exhibit B - Legal Description of the Developer Tract
- Exhibit B-1 - Legal Description of the Outlot Tracts
- Exhibit C - Design and Dimensions of Freestanding Signs
- 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 November, 2003, 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 **CONTINENTAL 139 FUND LLC**, a Wisconsin limited liability company, having its principal place of business at c/o Continental Properties Company, Inc., 10850 W. Park Place, Suite 600, Milwaukee, Wisconsin ("Developer").

W I T N E S S E T H:

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 Tract" 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 identified on the SITE PLAN as the "Developer Tract" and legally described in EXHIBIT B attached hereto and made a part hereof; and

WHEREAS, Developer is also the owner of certain tracts of land legally described in EXHIBIT B-1 attached hereto and made a part hereof and identified as the "Outlot Tracts" on the SITE PLAN; and

WHEREAS, the Kohl's Tract, the Developer Tract and the Outlot Tracts (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 their respective Tracts 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 Tracts.

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:

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 **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 Developer Tract and one Approving Party representing the Kohl's Tract. The Approving Party representing the Developer Tract shall also represent the Outlot Tracts. Developer shall be the initial Approving Party for the Developer Tract; Kohl's shall be the initial Approving Party for the Kohl's Tract. Each Approving Party shall have the right to assign its position as Approving Party pursuant to Section 12.4.

1.3 **Building.** "Building" shall mean any enclosed structure placed, constructed or located on a Tract, which for the purpose of this OEA shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

1.4 **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.

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

1.6 **Common Area.** "Common Area" shall mean all areas within the Shopping Center, exclusive of Buildings. 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.

1.7 **Constant Dollars.**

(a) "Constant Dollars" shall mean the present value of the dollars to which such phrase refers. The first adjustment of Constant Dollars shall occur on January 1, 2014, and Constant Dollars shall be adjusted every five (5) years thereafter. 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 October, 2004.

(c) "Current Index Number" shall mean the level of the Index for the month of October of the year preceding the adjustment year.

(d) "Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84=100), 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.

1.8 **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; and

(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.

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 Tract. 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.

1.9 **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).

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

1.11 **Main Access Drives.** "Main Access Drives" shall mean the two (2) main access drives within the Shopping Center and identified as such on the SITE PLAN.

1.12 **Major Occupant.** "Major Occupant" shall mean any Occupant which occupies more than ten thousand (10,000) square feet of Floor Area within the Shopping Center or who is a "national retailer", meaning a retailer operating twenty-five (25) or more stores.

1.13 **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.

1.14 **Operator.** "Operator" shall mean the Party designated from time to time by the Approving Parties to operate, maintain and repair the surface water collection, retention and distribution facilities within the Shopping Center (collectively, the "Surface Water Facilities") and the Main Access Drives.

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

1.16 **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.

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

1.18 **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.

1.19 **Tract.** "Tract" shall mean that portion of the Shopping Center owned by a Party.

1.20 **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.

(b) "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to both the Kohl's Tract and the balance of the Shopping Center. The Surface Water 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 to either the Kohl's Tract or the balance of the Shopping Center, but not both. 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 the grantor's Tract, 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 the grantor's Tract, 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 the grantor's Tract, 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 Tract 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 exclude and restrain Occupants of the Outlot Tracts and their Permittees from parking vehicles on its Tract, and notwithstanding anything to the contrary contained in this OEA, the easements granted in this OEA for the parking of vehicles shall not extend to the Occupants of the Outlot Tracts and their Permittees; 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 Tract.

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) located on the grantor's Tract necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract, including but not limited to, sanitary sewers, storm drains, and water (fire and domestic), gas, electrical, telephone and communication lines.

(b) All new Utility Lines shall be underground except:

(i) ground mounted electrical transformers;

(ii) above-ground Surface Water 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 subject to the prior written approval of the Party whose Common Area is to be burdened thereby, such approval not to be unreasonably withheld, conditioned or delayed. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility. Upon request, the grantee shall provide to the grantor a copy of an as-built survey showing the location of such Utility Line.

(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.

(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 Tract the perpetual right and easement to discharge surface storm drainage and/or

runoff from the grantee's Tract over, upon and across the Common Area of the grantor's Tract, upon the following conditions and terms:

(i) The Common Area grades and the Surface Water Facilities 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 Tract if such alteration would unreasonably increase the flow of surface water onto an adjacent Tract 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 Tract's boundary line, each Party grants to each Party owning an adjacent Tract 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 Tract 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 Tract, the Constructing Party shall advise the Party owning the adjacent Tract (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 Tract 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 Tract 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 Tract 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 Tracts, 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.** Developer and Kohl's hereby grant and convey to each of the Parties entitled to place sign panels on the Shopping Center Signs (as hereinafter defined), for their use and for the use of designated Occupants of their Tracts, a non-exclusive perpetual easement for the right and privilege to place sign panels on the Shopping Center Signs located on the Developer Tract and the Kohl's Tract, respectively. Each Party shall have the right to use the panel space allocated to such Party in Section 9.1 and EXHIBIT C of this OEA and no other panel space whatsoever. The Parties entitled to place sign panels on the Shopping Center Signs shall pay all costs and expenses with respect to the operation, maintenance and repair of the Shopping Center Signs in accordance with Section 9.1, and each Party shall pay for the installation and maintenance of its own panel. The foregoing easement, together with the rights included therewith, shall be for the benefit of and appurtenant to the lands of each of the Parties entitled to place sign panels on the Shopping Center Signs and shall be binding on and burden the lands upon which the Shopping Center Signs are constructed.

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 Tract to governmental or quasi-governmental authorities or to public utilities.

ARTICLE 3

CONSTRUCTION OF BUILDINGS

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 Tract;

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

(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 (provided, however, that, subject to the terms of this OEA, temporary inconveniences typically associated with construction shall not be deemed to be unreasonable interference).

(c) No enclosed mall shall be permitted within the Developer Tract without the prior written consent of the Approving Party for the Kohl's Tract.

3.2 Permissible Building Areas.

(a) Although no Party shall have an obligation to commence construction of any Building on its Tract, once construction of a Building has been commenced, such Building shall be completed within a reasonable period of time, subject to force majeure matters as set forth in Section 12.10 of this OEA. 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) no more than one (1) Building may be constructed on each of the Outlot Tracts;

(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 Tract 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.

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 Tract - 35 feet

(ii) On the Developer Tract - 35 feet

(iii) On the Outlot Tracts - 30 feet

(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 Tract 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 Intentionally Omitted.

3.5 Staging Areas.

(a) In connection with any construction, reconstruction, repair or maintenance on its Tract, 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 Tract at such location as will not (i) unreasonably interfere with access between such Tract 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) If a business is operating on the Kohl's Tract, then no other Party's staging and/or storage area shall be located within one hundred feet (100') of the Kohl's Tract, unless located within a Building Area or an Outlot Tract, and if a business is operating on the Developer Tract, then no other Party's staging area shall be located within one hundred feet (100') of the Developer Tract, unless located within a Building Area or an Outlot Tract. If substantial work is to be performed, the constructing Party shall, at the request of any Approving Party, fence off the staging and/or storage area.

(c) Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Tract, a Party shall give at least twenty (20) days prior notice to the Approving Parties of the proposed location of such staging and/or storage area. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Party's Tract, 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.

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 Tract as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Tract; 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 Tract.

(d) Each Party hereby irrevocably grants to each other Party a license for an outdoor sales area so long as such other Party operates such sales area in accordance with all Laws and further provided that such use does not unreasonably interfere with any easement rights granted herein.

3.7 Adjacent Buildings.

(a) Except for the Outlot Tracts, the Parties hereby specifically consent to the placement of Buildings along their respective common boundary lines, and each Party shall support any request by another Party for a side-yard or setback variance if the same is required in order to accommodate such construction.

(b) The second Party to construct a Building adjacent to a common boundary line shall do so in a manner that does not result in damage to the improvements in place on the adjoining Tract, and such Party shall undertake and assume at its sole cost the obligation of completing and maintaining the nominal attachment (flashing and seal) of its Building to that of the existing Building on the other Tract, it being the intent of the Parties to establish and maintain the appearance of one continuous Building complex. In performing such attachment, the wall of one Building shall not receive support from nor apply pressure to the wall of the other Building.

3.8 Side Yard Requirements.

(a) The Parties acknowledge that Kohl's initially proposes to construct on the Kohl's Tract 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). All Buildings constructed within the Shopping Center shall comply with the following requirements:

(i) no Building shall be constructed within sixty feet (60') of the Building Area on an adjoining Tract unless such Building, hereinafter referred to as the "Adjacent Building," shall be located immediately adjacent to the common boundary line and is attached to the Building, if any, on the adjacent Tract in accordance with Section 3.7(b);

(ii) if an Adjacent Building exists, then no Building shall be located within sixty feet (60') of the Adjacent Building unless such Building is attached to the Adjacent Building in accordance with Section 3.7(b); the Adjacent Building and all other Buildings on the Tract that are attached to the Adjacent Building and to each other are hereinafter referred to as the "Building Group";

(iii) any Building that is not part of the Building Group, shall be located at least sixty feet (60') distant from the Building Group; and

(iv) the Adjacent Building or the Building Group, as the case may be, shall comply with the Building code requirements applicable to an "unlimited area" building, including without limitation the installation of an approved sprinkler system for fire protection.

(b) In addition to the requirements set forth above, no Building shall initially be placed or constructed on their respective Tracts in a manner which will, based on then existing governmental regulations, either preclude the construction of an "unlimited area" building within the Building Areas, 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.

(c) If required by any governmental authority, each Party shall join in a recordable declaration which confirms the existence of a sixty foot (60') clear area around the Building Areas.

3.9 Liens.

(a) If any mechanic's lien is filed against the Tract 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 Tract 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.

(c) Notwithstanding the foregoing, upon request of the Party whose Tract 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 Tract, the constructing Party shall cause the Common Area on its Tract to be substantially completed no later than the day on which the first Occupant of such Tract 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 Tract, on each separate Tract comprising the Developer Tract and on each of the Outlot Tracts shall contain sufficient uncovered ground level parking spaces in order to comply with the following minimum requirements:

(i) five (5.0) parking spaces for each one thousand (1,000) square feet of Floor Area;

(ii) if a business use contains a drive-up unit (such as remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit;

(iii) except as set forth in subparagraph (iv) below, for each single Restaurant, then ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use; and

(iv) for each "fast food" Restaurant, including, without limitation, Burger King, Wendy's, Cousins Subs and Subway, then seven (7) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

(b) If an Occupant operates a Restaurant incidentally to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the application of (iii) and (iv) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. If an Occupant uses Floor Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements.

(c) The foregoing requirements, together with the parking requirements imposed under all applicable Laws, shall be satisfied throughout the term of this OEA for each Tract and for each of the Outlot Tracts without reliance on the easements granted under Section 2.1, except to the extent otherwise indicated on the SITE PLAN. On the Kohl's Tract and the Developer Tract, (i) all parking spaces shall be at a 90° angle to the spine and initially shall be not less than nine feet (9') in width, and (ii) the distance between rows of parking stalls initially shall be at least sixty-two feet (62'), measured from spine to spine.

(d) If a condemnation of part of a Tract or sale or transfer in lieu thereof reduces the number of usable parking spaces below that which is required herein, the Party whose Tract 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 reasonably 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 Tract. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Tract 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 (except the Outlots) of at least the lesser of the maximum lighting intensity permitted by applicable Laws, or 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 may elect to control the lighting system located on its Tract. 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 two and one-half percent (2.5%), 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 the Approving Parties; 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 consultants in accordance with standard industry practice.

4.5 Common Area Modifications.

(a) No Party shall make changes to the improved Common Area on its Tract without the approval of the Approving Parties, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any insignificant change, modification or alteration in its portion of the Common Area, provided that:

(i) the accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the SITE PLAN;

(ii) there shall be maintained at all times within such Common Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 4.2;

(iii) all Laws applicable to such modifications shall be satisfied by the Party performing the same; and such action shall not result in any other Party being in violation of any Law;

(iv) no change shall be made in the access points between the Common Area and the adjacent public streets; provided, however, that additional access points may be created with the approval of the Approving Parties, which approval shall not be unreasonably withheld;

(v) at least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to each other Party copies of the plans therefor; and

(vi) such work shall not be performed during the months of November and December, except in case of emergency.

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

ARTICLE 5

COMMON AREA MAINTENANCE AND REPAIR

5.1 Common Area Maintenance Standards.

(a) Each Party shall maintain, or cause to be maintained, the Common Area on its Tract in a safe and attractive condition and in a good state of repair. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area 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 shall be operated, maintained and repaired in compliance with all applicable

Laws and with the provisions of this OEA. All Common Area 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.

(b) 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 all papers, debris, filth, refuse, ice and snow, including periodic vacuuming and broom sweeping to the extent necessary to keep the Common Area 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 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 lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers.

(v) *Landscaping.* Maintaining and replacing all landscape plantings, trees and shrubs, including those adjacent to the exterior walls of Buildings, in an attractive and thriving condition, trimmed and weed free. Maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings. Modifying irrigation system to satisfy governmental water allocation or emergency requirements.

(vi) *Obstructions.* Keeping the Common Area 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.

(vii) *Sidewalks.* Maintaining, cleaning, repairing and replacing all sidewalks, including those adjacent and contiguous to Buildings located within the Shopping Center. 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.

(viii) *Supervisory Personnel.* Providing professional supervisory personnel for the Common Area, if reasonably required.

(ix) *Traffic.* Supervising traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow.

(x) *Security.* In their sole and absolute discretion, providing security services for the Common Area.

5.2 Maintenance of the Surface Water Facilities and Main Access Drives.

(a) Operator shall maintain, clean and repair the Surface Water Facilities and the Main Access Drives, or cause the Surface Water Facilities and the Main Access Drives to be maintained, cleaned and repaired, in compliance with all applicable Laws so as to keep the same in a safe, attractive and fully functional condition and in a good state of repair, including, without limitation, performance of the applicable maintenance and repair obligations set forth in Section 5.1(b) above. The Surface Water Facilities and the Main Access Drives 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.

(b) The Party designated as Operator shall serve in such capacity until he resigns or is removed by the Approving Parties. The Approving Parties hereby designate Developer as the initial Operator, and Developer accepts such appointment; provided, however, if Developer, in its role as Operator, fails to operate, maintain and repair the Surface Water Facilities and/or the Main Access Drives in accordance with the terms and conditions of this OEA and such failure shall continue for a period of fifteen (15) days after delivery of written notice thereof from Kohl's to Operator (except in the case of an emergency or Operator's failure to carry the insurance coverages required in Article 10 hereof, in which event no prior notice or cure period shall be required, and provided that, if such matter is not susceptible of being cured within fifteen (15) days, the cure period shall be extended for a reasonable period of time provided that Operator commences the cure within said fifteen (15) day period and thereafter diligently pursues the cure to completion), Kohl's shall have the right to assume the role of Operator in lieu of Developer upon written notice to the Approving Parties.

(c) Operator shall Indemnify each Party from and against any mechanic's, materialmen's and/or laborer's liens and all Claims in connection therewith arising out of the operation, maintenance and repair of the Surface Water Facilities and the Main Access Drives by Operator, and if any Tract shall become subject to any such lien, Operator 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 such bond or other security as shall be required by law to obtain such release and discharge.

5.4 Operator Maintenance Costs.

(a) Operator shall expend any and all funds reasonably necessary for the operation, maintenance, repair and insurance of the Surface Water Facilities and the Main Access Drives pursuant to Section 5.2(a) above (the "Operator Maintenance Costs"), and shall promptly pay the Operator Maintenance Costs when incurred.

(b) For purposes of this OEA, Operator Maintenance Costs shall also include an annual administrative fee of ten percent (10%) of the Operator Maintenance Costs ("Administrative Fee"). Operator Maintenance Costs specifically shall not include the following:

- (i) any late charges or fees;
- (ii) real property taxes and assessments (except real property taxes and assessments affecting the Surface Water Facilities);
- (iii) Operator's profit, administrative and overhead costs, including, but not limited to, office space, equipment and utilities, legal, accounting and administrative services and wages, and salaries and benefits of Operator's personnel (except for the Administrative Fee described above); and
- (iv) excepting the Administrative Fee, any fee or charge paid to a third party, commercial management company or similar provider for administrative services and/or supervision of the management or operation of the Surface Water Facilities, the Main Access Drives or any part thereof.

(c) Each Party's proportionate share of the Operator Maintenance Costs ("Proportionate Share") shall be computed by multiplying the Operator Maintenance Costs incurred by Operator by a fraction, the numerator of which shall be the aggregate Floor Area on that Party's Tract (expressed in square feet) and the denominator of which shall be the sum of the aggregate Floor Area on all Tracts comprising the Shopping Center (expressed in square feet). In the event an existing Tract is divided, the Party causing such division shall prorate the allocation of Operator Maintenance Costs attributable to the existing Tract between the newly created Tracts, file a recorded declaration confirming such allocation and deliver a copy of such declaration to Operator and each other Party. Each Party's Proportionate Share shall be recalculated from time to time as Buildings are constructed on Tracts or existing Buildings are expanded.

(d) Each Party shall pay to Operator, on the first day of each calendar month, an amount estimated by Operator to be the monthly amount of such Party's Proportionate Share of the Operator Maintenance Costs calculated in accordance with Section 5.3(c) above. Within ninety (90) days after the end of each calendar year, Operator shall provide each Party with a certified reconciliation statement and supporting invoices covering the calendar year just expired, showing the actual Operator Maintenance Costs for that period, the amount of such Party's Proportionate Share of the Operator Maintenance Costs for that period and the payments made by such Party during that period for Operator Maintenance Costs. If a Party's Proportionate Share of actual Operator Maintenance Costs exceeds such Party's total payments of Operator Maintenance Costs for a period, then that Party shall pay to Operator the deficiency within thirty (30) days after receipt of the reconciliation statement. If a Party's payments for the period exceed such Party's Proportionate Share of actual Operator Maintenance Costs, Operator shall refund the excess to such Party at the time such reconciliation statement is delivered.

5.5 Damage to the Common Area. If any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this OEA, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense

with all due diligence; provided that no Party shall be required to expend more than \$250,000 in Constant Dollars in excess of insurance proceeds which may be available (or which would have been available except for elections relating to deductibles or self-insurance for which the Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require another Party to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of such sum. Except to the extent limited by Section 10.3, if such damage or destruction of Common Area is caused in whole or in part by another Party or by a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution or damages.

ARTICLE 6

MAINTENANCE OF BUILDINGS AND UTILITY LINES

6.1 Building Improvements.

(a) After completion of construction, each Party shall maintain and keep the exterior portion of the Buildings, if any, located on its Tract 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, and to arrange for regular removal of such trash or garbage.

(b) If any of the Buildings are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such Building is located shall, subject to governmental regulations and/or insurance adjustment delays, promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall perform one of the following alternatives:

(i) such Party shall repair or restore the Building 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 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 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 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 Tract 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 Tract 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 Tract 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 by the Party on whose Tract the Common Utility Lines are located in accordance with the standards set forth in Section 6.2(a) above.

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 that is inconsistent with the operation of a high quality retail shopping center of comparable size in the market area in which the Shopping Center is located. 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 Restaurant operation or reasonable sounds typically associated with a drive through order system);

(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;

(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);

(vi) Any fire sale, going out of business sale, 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; provided, however, that the Parties acknowledge that the adjacent property identified on the SITE PLAN as Auto Body Shop is not part of this OEA but shall be permitted to use the Main Access Drive abutting its property and that use of such Main Access Drive shall not constitute a violation hereof;

(ix) Any bowling alley or skating rink;

(x) Any movie theater, night club or live performance theater;

(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);

(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 or other adult oriented materials not lawfully available for sales to minors 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 thirty-five percent (35%) 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;

(xvii) Any flea market, 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);

(xviii) Any training or educational facility, 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);

(xix) Any church, school, day care center or related religious or educational facility or religious reading room;

(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., banks and financial institutions, real estate agencies, stock brokerages, title company and escrow offices, travel and insurance agencies, and medical, dental and legal clinics or offices). 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 Shopping Center are Retail Offices;

(ii) not more than ten percent (10%) of the total Floor Area on the Developer Tract may be used for Retail Offices; and

(iii) no Retail Office Occupant shall occupy more than six thousand (6,000) square feet of Floor Area.

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 Tract and the Outlot Tracts:

(i) Unless located on an Outlot Tract, no Restaurant shall be located thereon within 250 feet of the Building Area located on the Kohl's Tract; and

(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.

(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 Tract.

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 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) the temporary storage of shopping carts in cart corrals;
- (ii) any recycling center required by law, the location of which shall be subject to the approval of the Approving Parties; and
- (iii) trash enclosures designated on the SITE PLAN;

Notwithstanding the foregoing, an Occupant of space in the Shopping Center shall be entitled to sell and display merchandise on the sidewalks immediately in front of or alongside such Occupant's space ("Sidewalk Sales"), provided that such Sidewalk Sales (i) shall occupy no more than fifty percent (50%) of the depth of the sidewalk and shall not interfere with vehicular or pedestrian traffic, (ii) shall not occur within eighty (80) feet of the Building on the Kohl's Tract, (iii) shall not occur on any one Tract comprising a part of the Shopping Center more than four (4) times per year and shall not extend for a period of more than five (5) consecutive days, (iv) shall not occur during the months of October, November or December, and (v) shall be conducted and maintained in a neat, clean and orderly condition.

(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 best efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract.

(d) The name of any business or trade conducted on the Developer Tract or any of the Outlot Tracts shall not be used to identify the Shopping Center.

7.3 Hazardous Materials. No Party shall use or permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in its Tract, 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 Tract, each Party shall keep its Tract 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 Tract to incidentally shine on the adjoining Tract.

8.2 **After Hours Lighting.**

(a) Any Party owning all or part of the Developer Tract or the Kohl's Tract ("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 actual 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.

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 to identify the Occupant of the Kohl's Tract, Occupants of the Developer Tract and the name of the Shopping Center (collectively, the "Shopping Center Signs"). Additionally, the existing sign depicted as Auto Body Sign on the SITE PLAN shall remain for the benefit of the owner of the Auto Body Shop and the owner of the Auto Body Shop is hereby granted and easement over the applicable Outlot Tract for maintenance and repair of the Auto Body Sign. The Occupant of the Kohl's Tract shall be entitled to have sign panels in the top position of the Shopping Center Signs. Each Outlot Tract may have a monument sign to identify up to two (2) Occupants of the Outlot Tract, but only if such monument sign does not preclude the installation of the Shopping Center Signs designated on the SITE PLAN.

(b) Prior to July 1, 2004, Developer shall construct the Shopping Center Signs in connection with the development of the Common Area. Developer shall be responsible for the operation and maintenance of the Shopping Center Signs on a first-class basis, and each Party having a sign panel thereon shall reimburse Developer for the cost of such operation and maintenance (based upon the relative sign area of the panels of such Party's Occupants) and shall maintain and illuminate such panel at its expense. The Approving Parties shall have the right to approve the design of all identification panels to be attached to the Shopping Center Signs; provided, however, that any Major Occupant shall have the unqualified right to use in the panel or space allocated to it on the Shopping Center Sign its standard prototype identification as the same exists from time to time.

(c) The design and dimensions of the Shopping Center Signs, and the panel areas allocated to the Occupant of the Kohl's Tract and the Occupants of the Developer Tract, is set forth in EXHIBIT C attached hereto and made a part hereof.

9.2 Building Signs.

(a) 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; or

(iii) painted on the surface of any Building.

(c) Without the prior written consent of the Approving Parties, which consent shall not be unreasonably withheld, conditioned or delayed, no Occupant shall have an exterior sign which identifies leased departments and/or concessionaires operating under the Occupant's business or trade name, nor shall such sign identify specific brands or products for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name; provided, however, the foregoing restriction shall not apply to Anchor Occupants or Major 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 (and specifically the rights of Major Occupants to place identification signs as set forth in Section 9.2(a)) without the prior written approval of the Approving Parties.

(b) No Occupant identification sign attached to the exterior of a 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) with the prior approval of the Approving Parties "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 Tract:

(i) directional signs or informational signs such as "Handicapped Parking";

(ii) temporary signs displaying leasing information;

(iii) one (1) temporary sign identifying each contractor working on a construction job; and

(iv) one (1) temporary sign identifying a lender financing a construction project.

ARTICLE 10

INSURANCE

10.1 Commercial General Liability Insurance.

(a) Each Party (as to its Tract 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 Five Million Dollars (\$5,000,000.00) 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 Tract.

(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 Tract 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.

10.2 Insurance During Construction.

(a) Prior to commencing any construction activities within the Shopping Center, each Party 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 (if applicable); 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 Tract, then the owner of such Tract 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 Tract 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 10.3.

10.3 Casualty Loss Insurance.

(a) Effective upon the commencement of construction of any Building on its Tract 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 10.3(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 (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 10.3(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 Tract for any loss or damage to the property of such Permittee located upon the Indemnitor's Tract, which loss or damage is of the type generally covered by the insurance required to be maintained under Section 10.3(a), irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

10.4 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 Millions 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 10.4(a)(i) or Section 10.4(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 B+/VIII. 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 10.4(a)(iii) or Section 10.4(a)(iv). Each Party 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:

(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 written notice of its failure to make such payment on or before the due date for such payment; 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 written 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 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 failure prior to the passage of the time period set forth in Section 11.1(b) upon such advance written notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter.

(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 Tract 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 shall not pay any sum payable hereunder to another within five (5) days of the due date, such delinquent Party 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 Tract. 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 Tract or interest therein against which the lien is claimed;

(iv) A description of the Tract 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 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 mortgages or deeds of trust which are of record on or before the date on which the claim of lien is placed of record.

11.5 **Costs of Enforcement.** If either 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 of any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this OEA.

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) Federal Express, Airborne Express or another nationally recognized overnight courier service, in which event the notice shall be deemed to have been given upon first attempted delivery;

(ii) 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

(iii) 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) or (ii) 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: Continental 139 Fund LLC
c/o Continental Properties Company, Inc.
10850 W. Park Place, Suite 600
Milwaukee, Wisconsin 53224
Attention: Legal Department
Fax: (262) 502-5522

(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 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 shall, within twenty (20) days after the written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, 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; and
- (iii) whether this OEA is in full force and effect.

(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 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, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Tract without the consent of such 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.

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 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, condition or delay its approval, and disapproval shall be in writing and the reasons therefor shall be clearly stated;

(iv) 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

(v) 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 Tract within the Developer Tract or the Kohl's Tract, 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 Tract owned by such Approving Party, then such Approving Party position shall automatically be deemed assigned to the Party acquiring the last Tract 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 Tract, 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 Tract 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 Tract, each Party owning a Tract 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 Tract 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 Tract within the larger tax parcel, the Parties owning Tracts within the larger tax Parcel shall petition the appropriate governmental authority to create separate tax parcels for each of the Tracts 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.

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 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) Invalidation of any of the provisions contained in this OEA, or invalidation 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 Occupant is not a Party, if such Occupant's lease gives the 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 Tract 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 **Notice of Transfer.**

(a) Subject to the provisions of Section 12.12, each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time (i) the transferring Party shall be released from the obligations of this OEA arising subsequent to the effective date of the transfer notice and (ii) the transferee Party shall assume the obligations of this OEA arising subsequent to the effective date of the transfer notice.

(b) A Party transferring all or any portion of its interest in the Shopping Center shall give notice to all other Parties of such transfer and shall include therein at least the following information:

- (i) the name and address of the new Party;
- (ii) a copy of the legal description of the portion of the Shopping Center transferred; and
- (iii) if the transferee is the designated Approving Party.

Until the notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee's agent.

(c) If a Tract is owned by more than one Person as tenants in common or as joint tenants, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Tract shall designate one of their number to represent all owners of the Tract and such designated Person shall be deemed to be the Party for such Tract.

(d) Nothing to the contrary contained in this OEA shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Shopping Center prior to receipt of the notice of the transfer or which is placed on the transferred portion of the Shopping Center after receipt of the notice of transfer with respect to events occurring prior to the effective date of the transfer notice.

12.12 **Limitation of Liability.** Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, shareholders, members, partners, employees or agents of a party hereto with respect to any of the terms, covenants, conditions, and provisions of this OEA. Any Non-Defaulting Party who seeks recovery from a Defaulting Party hereto shall look solely to the interest of such Defaulting Party, its successors and assigns, in the Shopping Center for the satisfaction of each and every remedy of the Non-Defaulting Party; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party:

(a) to pursue equitable relief in connection with any term, covenants or condition of this OEA, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance;

(b) to recover from another Party all damages and costs on account of, or in connection with, casualty insurance or condemnation proceeds which are not applied or used in accordance with the terms of this OEA;

(c) to recover from another Party (or its guarantor) all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Party's (or its guarantor's) breach of its obligation to carry liability insurance, or fund its self-insurance obligation pursuant to Section 10.4;

(d) to recover from a Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 7.3;

(e) to recover from a Party all damages and costs arising out of or in connection with, or on account of, the failure by such Party to pay when due any tax, assessment or lien as specified under Section 12.5; and

(f) to recover from a Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenants, or condition in this OEA.

ARTICLE 13

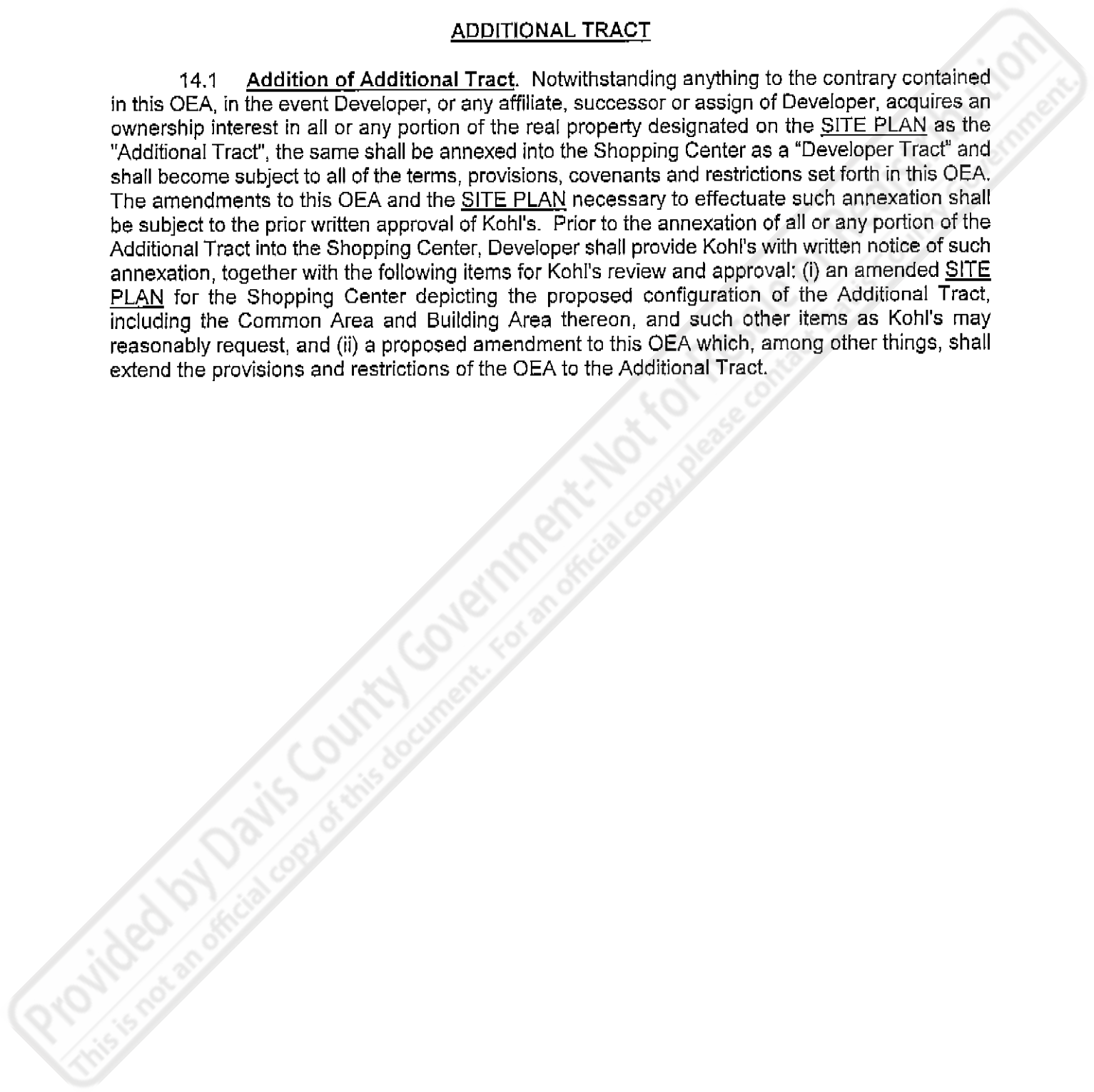
TERM

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, 2100; provided, however, that the easements referred to 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.

ARTICLE 14

ADDITIONAL TRACT

14.1 **Addition of Additional Tract.** Notwithstanding anything to the contrary contained in this OEA, in the event Developer, or any affiliate, successor or assign of Developer, acquires an ownership interest in all or any portion of the real property designated on the SITE PLAN as the "Additional Tract", the same shall be annexed into the Shopping Center as a "Developer Tract" and shall become subject to all of the terms, provisions, covenants and restrictions set forth in this OEA. The amendments to this OEA and the SITE PLAN necessary to effectuate such annexation shall be subject to the prior written approval of Kohl's. Prior to the annexation of all or any portion of the Additional Tract into the Shopping Center, Developer shall provide Kohl's with written notice of such annexation, together with the following items for Kohl's review and approval: (i) an amended SITE PLAN for the Shopping Center depicting the proposed configuration of the Additional Tract, including the Common Area and Building Area thereon, and such other items as Kohl's may reasonably request, and (ii) a proposed amendment to this OEA which, among other things, shall extend the provisions and restrictions of the OEA to the Additional Tract.



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

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

By: [Signature]
R. Lawrence Montgomery
Chairman and Chief Executive Officer

Attest: [Signature]
Richard D. Schepp
Secretary

STATE OF WISCONSIN)
)
COUNTY OF WAUKESHA)

SS.



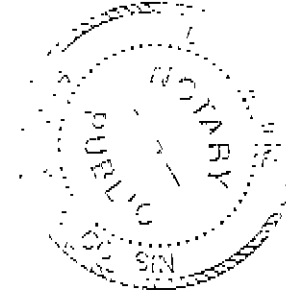
APPROVED
PEP

I, L. Ann M. Lipke, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that R. Lawrence Montgomery and Richard D. Schepp, personally known to me to be the Chairman and Chief Executive Officer and Secretary, respectively, 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 November, 2003.

[Signature]
Notary Public

My Commission Expires: 11-30-05



Provided by Davis County Government
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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.

CONTINENTAL 139 FUND LLC,
a Wisconsin limited liability company

By: Continental Properties Company, Inc.,
its Manager

By: Daniel J. Minahan
Daniel J. Minahan, President

STATE OF WISCONSIN)
)
) SS.
COUNTY OF MILWAUKEE)

I, Sandra L. Smallish, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel J. Minahan, personally known to me to be the President of Continental Properties Company, Inc., Manager of CONTINENTAL 118 FUND LLC, a Wisconsin limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument of writing as such President, as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 13th day of November, 2003.

Sandra L. Smallish
Notary Public

My Commission Expires: 6/3/07

Sandra L. Smallish
Notary Public
State Of Wisconsin

CONSENT AND SUBORDINATION

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, as beneficiary of the real estate legally described on Exhibit A hereto under the terms of a deed of trust, assignment of rents, leases and profits, and security agreement and fixture financing statement dated as of November 12, 2003 and recorded on November 14, 2003 with the Recorder for Davis County, Utah, as Document No. 1932418, hereby joins in the execution of the foregoing Operation and Easement Agreement and further acknowledges and agrees that all of its right, title and interest under said mortgage is and shall be subject and subordinate in all respects to the easements, covenants and agreements set forth in the foregoing Operation and Easement Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination as of the 11th day of November, 2003.

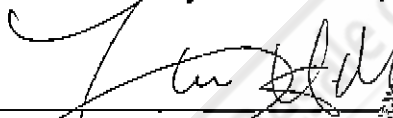
RICHTER-SCHROEDER COMPANY, INC.

By: Margaret Jaberg
Margaret Jaberg, Assistant Vice President

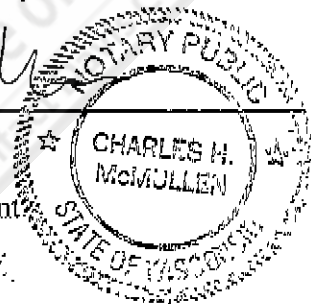
STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

I, Charles H. McMullen, a notary public in and for said county, in the state aforesaid, do hereby certify that Margaret Jaberg, an Assistant Vice President of Richter-Schroeder Company, Inc. who is personally known to me to be the same person whose name is subscribed in the foregoing instrument as such Assistant Vice President appeared before me this day in person and acknowledged that she signed and delivered said instrument as her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11th day of November, 2003.



Notary Public
State of Wisconsin
My Commission is permanent.



Provided by Davis County Government-Notary Public
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EXHIBIT ALEGAL DESCRIPTION OF THE KOHL'S TRACT

A PART OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY IN LAYTON CITY, DAVIS COUNTY, UTAH: BEGINNING at a point which is 1873.66 feet North 0°03'20" West along the Section line and 145.00 feet North 89°56'40" East and 126.44 feet North 84°16'15" East and 168.00 feet North 89°56'40" East from the Southwest corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian, and running thence North 0°05'09" West 284.91 feet; thence North 10°56'09" East 86.59 feet; thence North 0°17'00" East 89.83 feet; thence North 89°54'50" East 642.78 feet to the Westerly right of way line of Interstate 15; thence South 34°56'28" East 388.61 feet along said Westerly right of way line of Interstate 15; thence South 0°03'15" West 204.21 feet; thence South 89°54'50" West 277.85 feet; thence North 62.86 feet; thence West 206.30 feet; thence South 0°05'10" East 30.07 feet; thence South 89°54'53" West 165.70 feet; thence South 0°05'10" East 65.16 feet; thence West 206.08 feet; thence North 25°55'10" West 58.93 feet; thence North 0°05'09" West 42.09 feet to the point of BEGINNING.

[The foregoing being a part of Lots 1 and 2, PETERSEN MOTOR CO. SUBDIVISION, according to the official plat thereof, filed on August 23, 2001, as Entry No. 1684019, in Book 2872, at Page 207 of the Official Records of the Davis County Recorder.]

EXHIBIT B

LEGAL DESCRIPTION OF THE DEVELOPER TRACT

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E 1932418 B 3417 P 1259

EXHIBIT B
Developer Tract

A part of the Southwest Quarter of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City, Davis County, Utah:

Beginning at a point on the Northerly right of way line of U.S. Highway 91, which is 1873.66 feet North $0^{\circ}03'20''$ West along the Section line; 33.00 feet North $89^{\circ}56'40''$ East; 127.84 feet South $0^{\circ}03'20''$ East along the East right of way line of 1200 West Street (Sugar Street) to a point of intersection with said Northerly right of way line of U.S. Highway 91 and 360.05 feet along said Northerly right of way line of U.S. Highway 91 from the Southwest corner of said Section 17; and running thence North $38^{\circ}14'51''$ East 145.00 feet; thence North $41^{\circ}46'27''$ East 81.28 feet; thence Northeasterly along the arc of a 133.00 foot radius curve to the right a distance of 47.50 feet (Central Angle equals $20^{\circ}27'38''$ and Long Chord bears North $48^{\circ}28'40''$ East 47.24 feet); thence North $25^{\circ}57'28''$ West 69.77 feet; thence East 206.08 feet; thence North $0^{\circ}05'10''$ West 65.16 feet; thence North $89^{\circ}54'53''$ East 165.70 feet; thence North $0^{\circ}05'10''$ West 30.07 feet; thence East 206.30 feet; thence South 62.86 feet; thence Southwesterly along the arc of a 75.30 foot radius curve to the left a distance of 24.84 feet (Central Angle equals $18^{\circ}53'56''$ and Long Chord bears South $31^{\circ}27'34''$ West 24.73 feet) to a point of reverse curvature; thence Southwesterly along the arc of a 143.00 foot radius curve to the right a distance of 111.64 feet (Central Angle equals $44^{\circ}43'46''$ and Long Chord bears South $44^{\circ}22'28''$ West 108.82 feet); thence

E 1932418 B 3417 P 1260

South 23°15'39" East 41.17 feet; thence South 0°05'10" East 175.41 feet; thence South 89°54'50" West 186.01 feet; thence North 0°05'10" West 201.72 feet; South 89°54'50" West 219.66 feet; thence Southwesterly along the arc of a 98.00 foot radius curve to the left a distance of 88.37 feet (Central Angle equals 51°39'59" and Long Chord bears South 64°04'50" West 85.41 feet); thence South 34°43'15" West 81.28 feet; thence South 38°14'51" West 145.00 feet to the Northerly right of way line of U.S. Highway 91; thence North 51°45'09" West 45.00 feet along said Northerly right of way line of U.S. Highway 91 to the point of beginning.

Contains 118,686 sq ft or 2.725 acres

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EXHIBIT B-1

LEGAL DESCRIPTION OF THE OUTLOT TRACTS

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E 1932418 B 3417 P 1262

EXHIBIT B-1**Outlot Tract**

A part of the Southwest Quarter of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City, Davis County, Utah;

Beginning at a point on the Northerly right of way line of U.S. Highway 91, which is 1873.66 feet North 0°03'20" West along the Section line; 33.00 feet North 89°56'40" East; 127.84 feet South 0°03'20" East along the East right of way line of 1200 West Street (Sugar Street) to a point of intersection with said Northerly right of way line of U.S. Highway 91 and 405.05 feet along said Northerly right of way line of U.S. Highway 91 from the Southwest corner of said Section 17; and running thence North 38°14'51" East 145.00 feet; thence North 34°43'15" East 81.28 feet; thence Northeasterly along the arc of a 98.00 foot radius curve to the right a distance of 88.37 feet (Central Angle equals 51°39'59" and Long Chord bears North 64°04'50" East 85.41 feet); thence North 89°54'50" East 219.66 feet; thence South 0°05'10" East 201.72 feet; thence South 0°03'15" West 81.61 feet; thence South 38°51'57" West 216.89 feet to the Northerly right of way line of U.S. Highway 91; thence North 51°45'09" West 377.76 feet along said Northerly right of way line of U.S. Highway 91 to the point of beginning.

Contains 130,794 sq ft or 3.002 acres

E 1932418 B 3417 P 1263

OUTLOT TRACT

A part of the Southwest Quarter of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City, Davis County, Utah:

Beginning at a point on the East right of way line of 1200 West Street (Sugar Street) which is 1873.66 feet North $0^{\circ}03'20''$ West along the Section line and 33.00 feet North $89^{\circ}56'40''$ East from the Southwest corner of said Section 17; and running thence North $89^{\circ}56'40''$ East 112.00 feet; thence North $0^{\circ}17'22''$ West 147.86 feet; thence North $89^{\circ}59'00''$ West 111.40 feet to said East right of way line; thence North $0^{\circ}03'20''$ West 74.00 feet along said East right of way line; thence North $89^{\circ}56'40''$ East 112.00 feet; thence North $0^{\circ}24'45''$ West 73.86 feet; thence North $89^{\circ}59'17''$ West 111.54 feet to said East right of way line; thence North $0^{\circ}03'20''$ West 30.03 feet along said East right of way line; thence North $89^{\circ}55'00''$ East 190.60 feet; thence North $0^{\circ}03'20''$ West 146.00 feet; thence North $89^{\circ}54'50''$ East 232.12 feet; thence South $0^{\circ}17'00''$ West 89.83 feet; thence South $10^{\circ}56'09''$ West 86.59 feet; thence South $0^{\circ}05'09''$ East 326.99 feet; thence South $25^{\circ}55'10''$ East 58.93 feet; thence South $25^{\circ}57'28''$ East 69.77 feet; thence Southwesterly along the arc of a 133.00 foot radius curve to the left a distance of 47.50 feet (Central Angle equals $20^{\circ}27'38''$ and Long Chord bears South $48^{\circ}28'40''$ West 47.24 feet); thence South $41^{\circ}46'27''$ West 81.28 feet; thence South $38^{\circ}14'51''$ West 145.00 feet to the Northerly right of way line of U.S. Highway 91; thence

E 1932418 B 3417 P 1264

OUTLOT TRACT

North 51°45'09" West 360.05 feet along said Northerly right of way line of U.S.

Highway 91 to a point of intersection with said East right of way line of 1200 West Street;

thence North 0°03'20" West 127.84 feet along said East right of way line to the point of

beginning.

Contains 247,163 sq ft or 5.674 acres

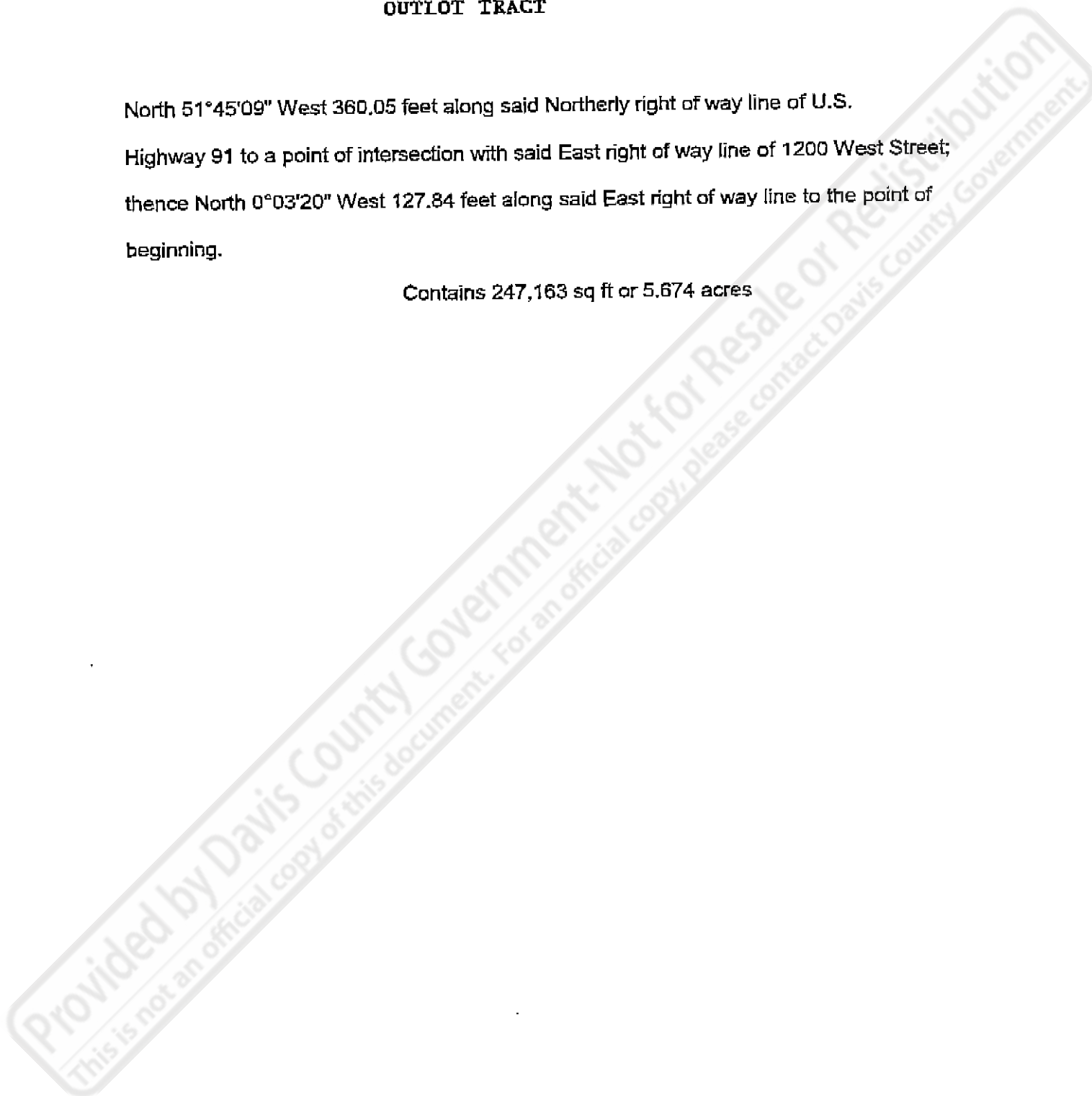
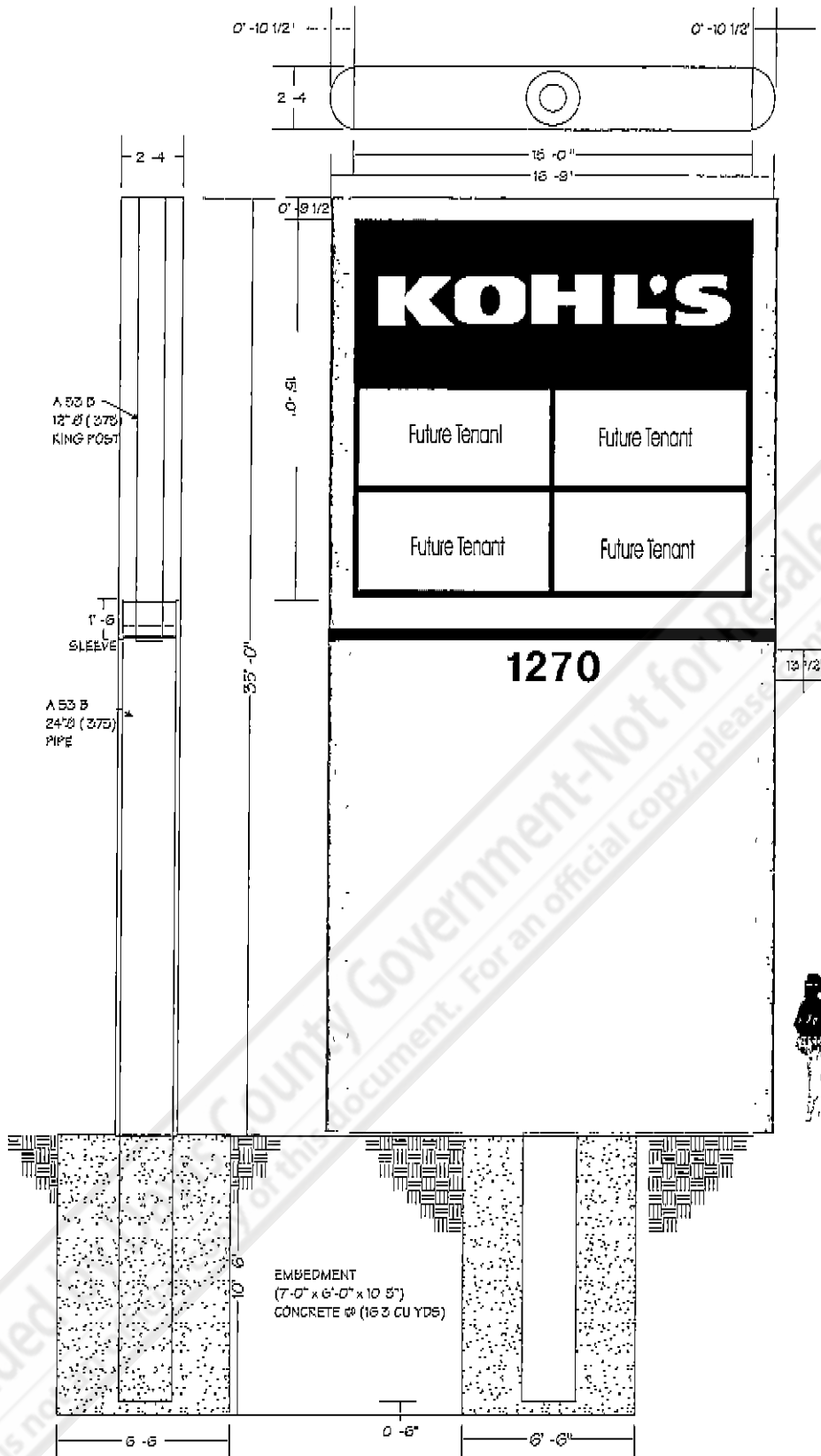


EXHIBIT C

DESIGN AND DIMENSIONS OF FREESTANDING SIGNS

[see attached]

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Scope of Work: Manufacture and Install (1) Internally Illuminated D/F Monolith Display Cabinet to be Aluminum/Angle Iron Construction
 Illumination to be T-12 800 Ma Daylight Fluorescent Lamps
 Cabinet to be Painted Glass White.
 Faces to be White Lexan Decorated with Vinyl
 "Kohl's" to be 3630-49 Burgundy Vinyl background with Reversed out White Copy
 Tenant Panels to be black vinyl border and Divider Lines with white reversed out areas for future tenants
 Apply non illuminated 3630-49 Burgundy vinyl stripe above address numbers
 "1270" to be black vinyl
 Embedment and Pylon structure as per engineering
SURVEY EXISTING SIGN FOR EXACT DIMENSIONS BEFORE PRODUCTION!

CUSTOMER APPROVAL
 I have studied these drawings and find no changes necessary.
 () Co. Sales Office
 () District
 () District
 Client Signature: _____ Date: _____

COLOR PRINT
 30810
 DESIGN NO.
 30810
 SHEET NO.
 1/4
 SCALE
 1/4" = 1'-0"
 DATE
 01/28/03
 BY
 JAC

SCALES
 1/4" = 1'-0"
 1/8" = 1'-0"
 1/2" = 1'-0"
 3/4" = 1'-0"
 1" = 1'-0"
 1 1/2" = 1'-0"
 2" = 1'-0"
 3" = 1'-0"
 4" = 1'-0"
 6" = 1'-0"
 8" = 1'-0"
 12" = 1'-0"

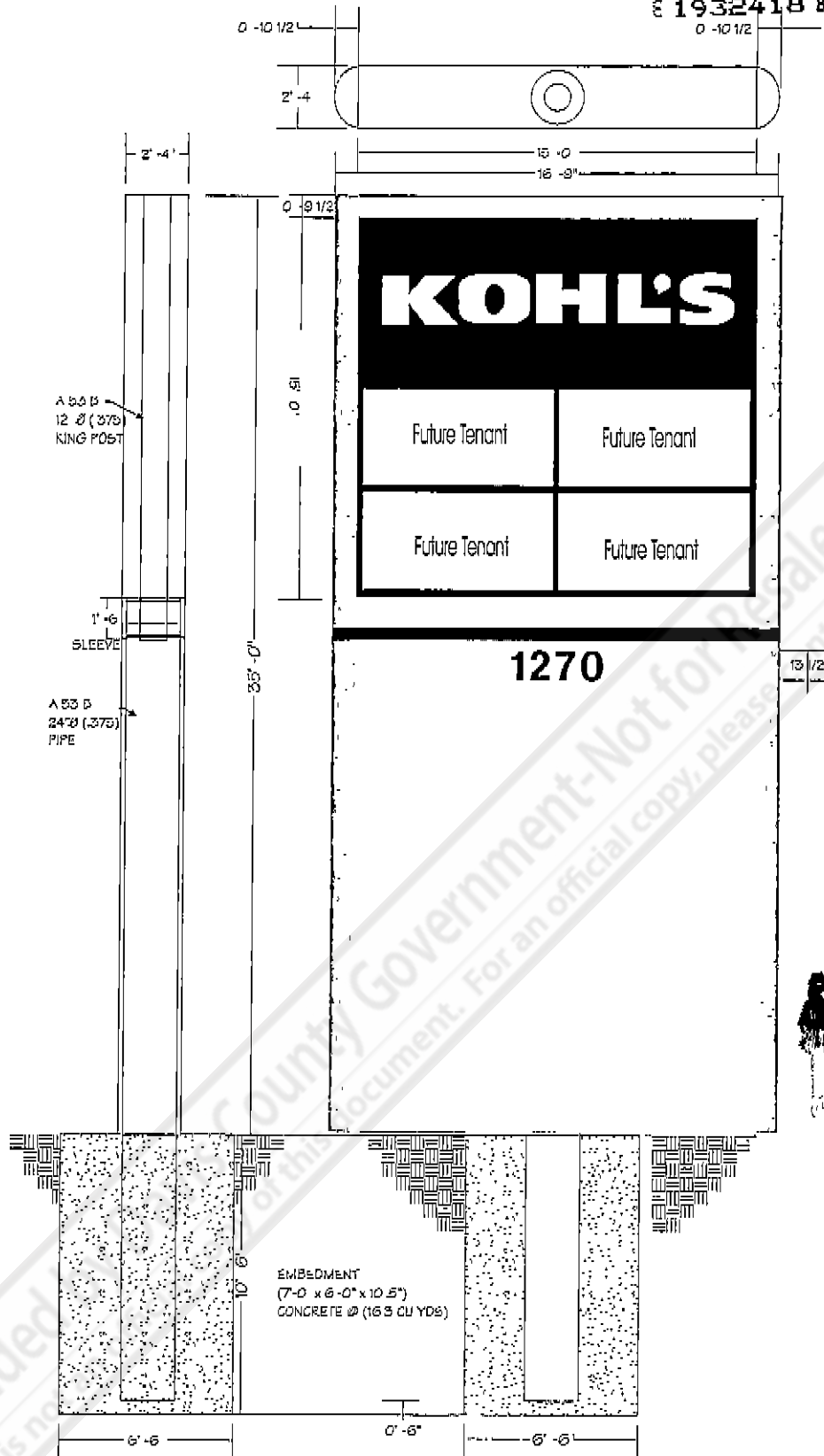
PROJ. APPROVAL
 DATE
 BY
 DATE
 BY
 DATE
 BY

DESIGN NO. 30810
SHEET NO. 1/4
SCALE 1/4" = 1'-0"
DATE 01/28/03
BY JAC
FIRM NAME/LOCATION/ADDRESS
 Kohls'co. Internal Projects
 1271 N. Main
 Layton, Utah
CLIENT
 Wal-Mart
 1271 N. Main
 Layton, Utah

OGDEN DIVISION
YOUNG ELECTRIC SIGN COMPANY
 2767 Industrial Dr., Ogden, Utah 84401 (801) 621-4710
 FAX (801) 621-4710

DESIGN/2003/ACTIVE 2003/GBROWN/30810 Kohls new.cdr
 THIS DOCUMENT IS THE PROPERTY OF YOUNG ELECTRIC SIGN COMPANY. IT IS TO BE USED ONLY FOR THE PROJECT AND NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM. WITHOUT THE WRITTEN AGREEMENT WITH YOUNG ELECTRIC SIGN COMPANY.

1932418 83417 P1267



CUSTOMER APPROVAL
 I have read and approved the above information and agree to the terms and conditions of the contract.
 () Initials
 () Signature
 () Date
 Client Signature - Date

COLOR PRINT
 30810
 1/4" = 1'-0"

PROG. APPROVAL	DATE	BY	DATE	SCALE	SHEET NO.	DATE	BY
DESIGN			08/28/13	1/4" = 1'			
SALES							
DESIGN							
ESTIMATE							
PERMITS							
ORDERED							

OGDEN DIVISION
YOUNG ELECTRIC SIGN COMPANY
 2787 Industrial Dr., Ogden, Utah 84401 (801) 821-4710

Scope of Work:
 Existing internally illuminated D/F Pole sign
 Manufacture and install new Faces Decorated with Vinyl
 "Kohl's" to be 3630-49 Burgundy Vinyl background with Reversed out Copy
 Tenant Panels to be black vinyl border and Divider Lines with white reversed out areas for future tenants
 Repaint Entire cabinet Gloss White
 Apply non illuminated 3630-49 Burgundy vinyl stripe above address numbers
SURVEY FACES FOR EXACT SIZES BEFORE PRODUCTION!

A DESIGN ACTIVE 2003GBROWN30810 Kohls.cdr
 10/28/13 10:51 AM

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EXHIBIT X

SITE PLAN

[see attached]



E 1932418 B 3417 P 1269

ADDITIONAL TRACT

PROPOSED MONUMENT SIGN

ADDITIONAL TRACT

ADDITIONAL TRACT

1200 West Street (Angel Street)

OUTLOT

MAIN ACCESS DRIVE

OUTLOT

OUTLOT

MAIN ACCESS DRIVE

PROPOSED OUTLOT MONUMENT SIGN

SURFACE WATER FACILITY

(Main Street)
State Highway 128

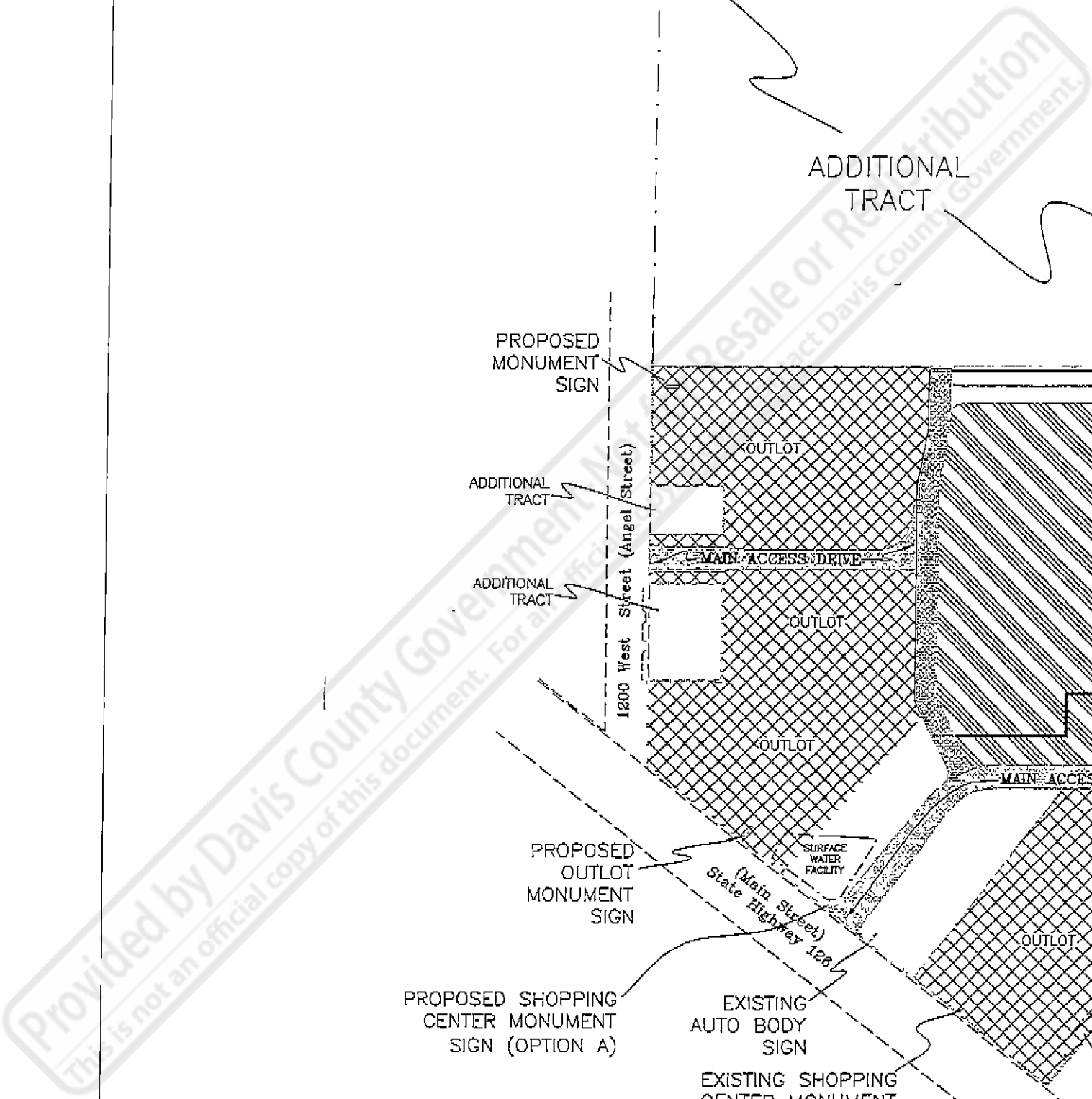
PROPOSED SHOPPING CENTER MONUMENT SIGN (OPTION A)

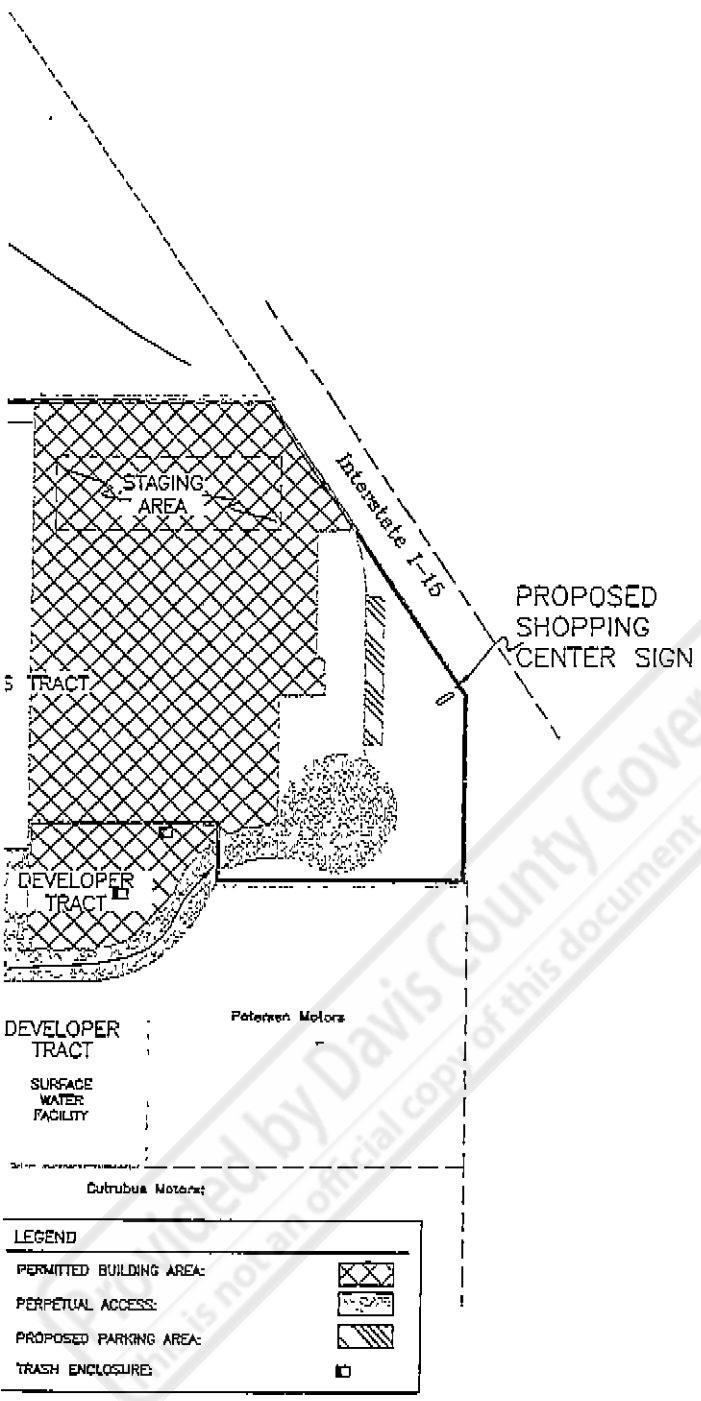
EXISTING AUTO BODY SIGN

EXISTING SHOPPING CENTER MONUMENT SIGN (OPTION B)

OUTLOT

SUR
WA
FAC





REV	DESCRIPTION	DATE
2	REVISED PER RETAIL A/S COMMENTS	11/12/2003 GIS
1	REVISE MOBILES TRACT PER FINAL PLAN ADD ADDITIONAL LABELS FOR STOPS AND REENTRAN AREAS	11/03/2003 GIS

OEA
EXHIBIT X

CONTINENTAL PROPERTIES
COMPANY INC.
 P.O. Box 220, Menomonie Falls, Wisconsin 53052
 PHONE: (262)502-5500 FAX: (262)502-5522 E-MAIL: rad_dwg@properties.com

CITY: LAYTON STATE: UT
 COUNTY: EDGAR
 MAPSHEET: DR5
 SCALE: 1:200
 DRAWING: MEXHIBITS\KOHLS\OEA_EX_X.dwg

Project No.
C-139

Sheet No.

NORTH

OEA-EX_X

