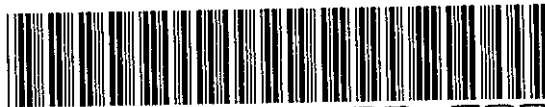




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OPERATION AND EASEMENT AGREEMENT

BETWEEN

72 PROPERTY LLC

AND

CIRCUIT CITY STORES, INC.

**THIS DOCUMENT PREPARED BY
AND AFTER RECORDING MAIL TO:**

Alan J. Salle
Kohl's Department Stores, Inc.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051

omaha7. oea [AJS/bj] 12/20/96

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DOUGLAS COUNTY, NE

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EXHIBITS

Exhibit A	-	Legal Description of the Kohl's Tract
Exhibit B	-	Legal Description of the Circuit City Tract
Exhibit C	-	Site Plan
Exhibit D	-	Circuit City Lease Provision

OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the 30 day of December, 1996, by and between 72 PROPERTY LLC, a Nebraska limited liability company ("Kohl's Landlord") and CIRCUIT CITY STORES, INC., a Virginia corporation ("Circuit City").

W I T N E S S E T H:

WHEREAS, Kohl's Landlord is the owner of a certain tract of land legally described in Exhibit A attached hereto and identified as the "Kohl's Tract" on Exhibit C (the "Site Plan") attached hereto; and

WHEREAS, Circuit City is the owner of a certain tract of land legally described in Exhibit B attached hereto and identified as the "Circuit City Tract" on the Site Plan; and

WHEREAS, concurrently with the execution and delivery of this OEA, Kohl's Landlord intends to lease the Kohl's Tract to Kohl's Department Stores, Inc., a Delaware corporation ("Kohl's") pursuant to a certain Lease of even date herewith (the "Kohl's Lease"); and

WHEREAS, the Kohl's Tract and the Circuit City Tract (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, but not a planned or common interest development, 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 I

DEFINITIONS

1.1 **Approving Party**. "Approving Party" shall mean the Party or Occupant 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 Circuit City Tract and one Approving Party representing the Kohl's Tract. During the term of the Kohl's Lease, the tenant under the Kohl's Lease shall be the Approving Party for the Kohl's Tract; thereafter, the record owner of the Kohl's Tract shall be the Approving Party for the Kohl's Tract. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate

represented by such position regardless of whether the Approving Party then owns all or less than all of the Circuit City Tract or the Kohl's Tract, as the case may be. The holder of the Approving Party position for the Kohl's Tract shall have the right to assign such position for the term of the Kohl's Lease to any Party owning a Tract within the Kohl's Tract and the holder of the Approving Party position for the Circuit City Tract shall have the right to assign such position to any Party owning a Tract within the Circuit City Tract. Circuit City shall be the initial Approving Party for the Circuit City Tract; Kohl's shall be the initial Approving Party for the Kohl's Tract.

After the execution and delivery of this OEA, Circuit City intends to convey title to the Circuit City Tract to a third party and lease the Circuit City Tract from the new owner pursuant to a written lease agreement (the "Circuit City Lease"). During the term of the Circuit City Lease, the tenant under the Circuit City Lease shall be the Approving Party for the Circuit City Tract, subject to the terms and provisions thereof which are attached hereto as Exhibit D; thereafter, the record owner of the Circuit City Tract shall be the Approving Party for the Circuit City Tract. It is understood and agreed that nothing contained herein shall lessen Circuit City's obligations under the Circuit City Lease.

1.2 **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.

1.3 **Building Area**. "Building Area" shall mean the limited areas of the Shopping Center within which Buildings may be constructed, placed or located; Building Areas are designated on the Site Plan. One or more Buildings may be within a Building Area.

1.4 **Circuit City's Preferred Area**: That area of the Circuit City Tract identified as "Circuit City's Preferred Area" as shown on the Site Plan.

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

1.6 **Constant Dollars**. "Constant Dollars" shall mean the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth calendar year following the date of this OEA, and thereafter at five (5) year intervals. 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. The "Base Index Number" shall be the level of the Index for the month during which this OEA is dated; the "Current Index Number" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, U.S. City Average, All items published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as 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.

1.7 **Floor Area.** "Floor Area" shall mean the actual number of square feet of space contained on each floor within a Building, including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or storefront and/or the centerline of any common walls; provided, however, that the following areas shall not be included in such calculations: space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located vertically above ground floor; and any space used for Building utilities or mechanical equipment. Within thirty (30) days of a request, a Party shall certify to the requesting Party the amount of Floor Area applicable to each Building on its Tract.

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.

1.8 **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.

1.9 **Party.** "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns who become owners of any portion of the Shopping Center. 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 the transferring Party shall be released from the obligations of this OEA arising subsequent to the effective date on the transfer notice. 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.

If a Tract is owned by more than one Person, 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 the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee's agent.

Nothing contained herein to the contrary 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.

1.10 **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. Persons engaged in civic, public or political activities within the Shopping Center, including but not limited to the activities set forth below, shall not be considered Permittees:

- (i) Exhibiting any placard, sign or notice;
- (ii) Distributing any circular, handbill, placard or booklet;
- (iii) Soliciting memberships or contributions for private, civic, public or charitable purposes;
- (iv) Parading, picketing or demonstrating; and
- (v) Failing to follow rules or regulations established by the Parties relating to the use of the Shopping Center.

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

1.12 **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 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.

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

1.14 **Utility Lines**. "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to both the Circuit City Tract and the Kohl's Tract. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to either the Circuit City Tract or the Kohl's Tract. 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 II

EASEMENTS

2.1 **Ingress, Egress and Parking.** 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 and sidewalk areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations as well as any other applicable provisions contained in this OEA:

(i) Each Party further 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 reserves the right at any time and from time to time to reasonably exclude and restrain any Person who is not a Permittee from using the Common Area on its Tract; and

(iii) As more fully provided in Article VII below, the ingress and egress easements set forth herein shall be perpetual as to the portion of the Shopping Center depicted on the Site Plan as "Perpetual Access".

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. 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 or delayed. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a Party. Upon request, the grantee shall provide

to the grantor a copy of an as-built survey showing the location of such Utility Line. All Utility Lines shall be underground except:

- (i) ground mounted electrical transformers;
- (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iii) as may be required by governmental agencies having jurisdiction over the Shopping Center;
- (iv) as may be required by the provider of such service; and
- (v) fire hydrants.

At least thirty (30) days prior to exercising the right granted herein, the grantee shall first provide the grantor with a written statement describing the need for such easement, 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 5.4(B) hereof. 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 agrees to indemnify, protect, hold harmless and defend the grantor from all losses, claims, costs, liabilities and/or expenses (including reasonable attorneys fees and court costs) arising out of or resulting from the exercise of the right to install, maintain and operate the Utility Line as herein provided. The grantee shall not exercise the rights granted in this Section 2.2(A) during the months of October, November, December or January except in exigent circumstances and except in connection with the initial construction of the Building on the grantee's Tract.

(B) The grantor shall have the right to relocate a Utility Line upon thirty (30) days' prior written notice, provided that such relocation:

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

(C) 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 drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the details approved by the Approving Parties; and

(ii) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract if such alteration would materially 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.

The surface water collection, retention and distribution facilities shall be deemed a Common Utility Line.

2.3 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. Notwithstanding the foregoing, the Party owning the Kohl's Tract may grant parking and access easements to the owner of the property located to the south of the Shopping Center in order to obtain an access easement to Pacific Street for the benefit of the Kohl's Tract.

ARTICLE III
CONSTRUCTION

3.1 General Requirements.

(A) Each Party agrees that all construction activities performed by it within the Shopping Center shall be performed in compliance with the Site Plan and all applicable laws, rules, regulations, orders, and ordinances of the city, county, state and federal government, or any department or agency thereof. All construction shall utilize new materials, and shall be performed in a good, safe, workman like manner.

(B) Each Party further agrees that its construction activities shall not:

(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;

(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;

(iv) cause any Building located on another Tract to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state or federal government, or any department or agency thereof; or

(v) after initial construction on a Tract, and except in cases of emergency or the prior consent of all Parties, all exterior construction work shall be undertaken only after giving all other Parties ten (10) days prior written notice of the work to be undertaken, the scope and nature of the work, the duration of the work, and the area within which the work is to be performed.

(C) Each Party agrees to defend, indemnify and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), 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 5.4(C).

(D) 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 unreasonably interfere with access between such Tract and the other areas of the Shopping Center. 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. 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.

(E) Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen and laborers a temporary license 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, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by others. Any Party availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently 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. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, each Party shall have the reasonable right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Tract.

3.2 **Common Area.** The Parties have agreed that the Common Area of the Shopping Center 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 the limited curbing and other forms of traffic control depicted on the Site Plan, or 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 completed in a good and workmanlike manner and in accordance with good engineering standards; provided, however, the following minimum general design standards shall be complied with throughout the term of this Agreement:

(A) The lighting system shall be designed to produce a minimum maintained lighting intensity measured at grade at all points in the Common Area of 2.0 footcandle; provided however, that the extreme edge of the parking or driveway areas may have not less than a minimum maintained lighting intensity measured at grade of 1.0 footcandle, and provided further that the driveway areas within fifty feet (50') of the entrance to any Building shall have not less than a minimum maintained lighting intensity measured at

grade of 5.0 footcandles. 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.

(B) The slope in the parking area shall not exceed a maximum of four percent (4%), nor be less than a minimum of one and one-half percent (1.5%).

(C) 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.

(D) Utility Lines that are placed underground shall be at depths designated by consultants approved by the Approving Parties. If surface water retention and/or detention areas are located outside of the general parking lots, such areas shall be fenced or otherwise secured to impede public access thereto.

(E) The parking area on the Kohl's Tract and on the Circuit City Tract each shall contain sufficient 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; provided, however, that compact car parking spaces shall be located only in the areas, if any, designated on the Site Plan;

(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; and

(iii) for each single Restaurant, then five (5) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

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) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than ten percent (10%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. In the event an Occupant utilizes 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.

Anything contained herein to the contrary notwithstanding, Circuit City shall have the exclusive right to the use the three (3) parking spaces within the portion of the Circuit City Tract labelled "Customer Pick-Up" on the Site Plan.

In the event of a condemnation of part of a Tract or sale or transfer in lieu thereof that 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 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.

(F) 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, including the installation of convenience facilities such as mailboxes, public telephones and benches, 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 3.2(E), as well as all governmental rules, regulations, and/or ordinances relating to parking requirements, but without reliance on parking spaces that may be available on another Tract; provided, however, that no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Tract shall be eliminated;

(iii) no governmental rule, ordinance or regulation shall be violated as a result of such action; any and all governmental conditions 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 governmental rule, ordinance or regulation;

(iv) no change shall be made in the access points between the Common Area and the 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; and

(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 provided further that such work shall not occur during the months of October, November, December or January;

The provisions of this paragraph (F) 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.

3.3 **Building Improvements.**

(A) While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Tract, the Parties hereby agree that once construction has been commenced, such Building shall be completed. If a Building Area has a maximum Floor Area designation, such amount shall not be exceeded.

(B) 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). The Parties agree that 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 on the Building Areas of an "unlimited area" building, or cause an existing "unlimited area" building thereon to no longer be in conformance with applicable building code requirements, it being understood and agreed, however, that subsequent changes in governmental regulations shall not obligate a Party to modify or alter its existing Building. If required by any governmental authority, each Party agrees to join in a recordable declaration which confirms the existence of a sixty foot (60') clear area around the Building Areas.

(C) No Building shall exceed one story, nor thirty feet in height, exclusive of architectural features, or thirty-five feet in height, inclusive of architectural features. The height of any Building shall be measured perpendicular from the finished floor elevation 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.

(D) Except as shown on the Site Plan, no Building within the Shopping Center shall be positioned so as to project beyond the portion of the front wall of the Building immediately adjacent thereto. No outparcels, barriers, buildings, kiosks or other structures, either temporary or permanent, shall be located within Circuit City's Preferred Area.

3.4 **Alterations.** Once a Building has been constructed on a Tract, any subsequent exterior alteration, modification or change thereto (individually or collectively, "Alteration") shall be subject to the approval of the Approving Parties. When requesting an Approving Party's approval of such proposed Alteration, the Party on whose Tract such Alteration is proposed to be made shall forward to the Approving Party exterior elevation drawings showing such proposed Alteration. The Approving Parties shall not withhold their approval of any Alteration which does not violate any other provision of this OEA. If the Alteration is intended to conform the exterior of a Building to the typical exterior format of a national or regional retailer, the requirements of this Section 3.4 shall be deemed waived.

ARTICLE IV

MAINTENANCE AND REPAIR

4.1 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 utilized by it regardless of where located. Any maintenance, replacement and/or repair of nondedicated Utility Lines located on another Party's Tract shall be performed: after two (2) weeks' 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 agrees: to promptly pay all costs and expenses associated therewith; to diligently complete such work as quickly as possible; and to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(B) Common Utility Lines shall be maintained, repaired and/or replaced as part of the Common Area pursuant to Section 4.2 below.

4.2 Common Area.

(A) Each Party shall maintain, or cause to be maintained, the Common Area on its Tract in a sightly, safe condition and 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 Omaha metropolitan area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and 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 of the Shopping Center as a whole. The maintenance and repair obligation shall include, but 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, replacement of base, skin patch, resealing and resurfacing, all in a manner which continues the original layout thereof as shown on the Site Plan.

(ii) *Debris and Refuse.* Periodic removal of all papers, debris, filth, refuse, ice and snow (2" on surface), including daily 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.

(iii) *Non-Occupant Signs and Markers.* Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers; restripe parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keep clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks.

(iv) *Lighting.* Maintaining, cleaning 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 of all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free. Maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings.

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

(vii) *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.

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

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

(x) *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.

(B) In the event that 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 5.4(C) hereof, in the event that 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.

4.3 **Building Improvements.**

(A) After completion of construction, each Party covenants and agrees to maintain and keep the exterior portion of the Buildings (including, without limitation, truck ramps and compactor areas), if any, located on its Tract in first-class condition and state of repair, in compliance with all governmental laws, rules, regulations, orders and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this OEA. Each Party further agrees to 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) In the event that 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, immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter

shall either (i) 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, or (ii) erect another Building in such location, such construction to be performed in accordance with all applicable provisions of this OEA, or (iii) 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. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty of which alternative it elects.

ARTICLE V

OPERATION OF THE SHOPPING CENTER

5.1 Uses.

(A) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(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 or which is inconsistent with an integrated, community-oriented retail shopping center;

(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;

(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, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(vii) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities

for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located;

(viii) Any automobile, truck, trailer, mobile home or recreational vehicles sales, leasing, display or body shop repair operation or gas station;

(ix) Any bowling alley or skating rink;

(x) Any movie theater or live performance theater, banquet hall, auditorium or other place of public assembly;

(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);

(xiii) Any mortuary or funeral home;

(xiv) Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia;

(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 percent (30%) of the gross revenues of such business;

(xvi) Any health spa, fitness center or workout facility;

(xvii) Any flea market, laser tag or virtual reality facility, amusement or video arcade, pool or billiard hall, car wash, or dance hall;

(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; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center;

(xix) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such

governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant;

(xx) Any general office facility; provided, however, the foregoing restriction shall not prohibit services oriented offices which may be found in retail shopping districts in the metropolitan area where the Shopping Center is located such as medical, travel, real estate, insurance and employment offices; and

(xxi) Any Restaurant located (a) within Circuit City's Preferred Area, (b) on the Kohl's Tract within five hundred feet of the front entrance to the store being operated on the Circuit City Tract, or (c) on the Circuit City Tract within five hundred feet of the front entrance to the store being operated on the Kohl's Tract, provided, however, the foregoing restriction shall not apply to a Restaurant which is an incidental operation (as described in Section 3.2).

(B) 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, protect, defend and hold harmless the other Parties from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including, but not limited to, costs of investigation, litigation and remedial response arising out of any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

For the purpose of this paragraph (C), the term (i) "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, and (ii) "Environmental Laws" shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

(C) 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 within the Common Area; provided, however, that the foregoing prohibition shall not be applicable to (i) the storage of shopping carts on the Kohl's Tract and the Circuit City Tract; (ii) the seasonal display and sale of bedding plants on the sidewalk in front of any Building; (iii) the location of a promotional truck [such as, by way of example only, a "Bose" truck] located within the portion of the Circuit City Tract identified on the Site Plan as "Promotional Truck Area" for the purpose of demonstrating merchandise provided that such truck shall not occupy more than ten (10) parking spaces and is limited to not more than three (3) times (not to exceed five (5) days each time) in any calendar year; (iv) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Parties which may be withheld in their sole and

absolute discretion; or (v) any recycling center required by law, the location of which shall be subject to the approval of the Approving Parties.

(D) The name "Kohl's" shall not be used to identify the Shopping Center or any business or trade conducted on the Circuit City Tract.

(E) 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 an imposition required by law.

(F) Each Party shall use good faith, diligent efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract.

(G) 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.

5.2 Lighting.

(A) After completion of the Common Area lighting system on its Tract, each Party hereby covenants and agrees to 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 further agrees to 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.

(B) It is recognized that Occupants within the Shopping Center may be open for business at different hours, and that a Party may wish to have the Common Area lights on another Tract to be illuminated before or after the required period. Accordingly, a Party ("Requesting Party") shall have the right, at any time to require another Party ("Requested Party") to keep its Common Area lights operating as stipulated by the Requesting Party; provided that the Requesting Party shall reimburse the Requested Party for the reasonable cost for such additional operation (including electrical power, bulbs and manpower), as estimated by the Requested Party.

5.3 Occupant Signs.

(A) No exterior signs shall be permitted in the Shopping Center except for the following: (i) directional signs for guidance around the parking and driveway areas or information signs such as "Handicapped Parking", (ii) exterior building identification signs of any Occupant attached to the exterior of any building as long as same are approved by the City

of Omaha, (iii) temporary signs identifying the lender(s) providing construction and/or permanent financing for any improvement to be located on a Tract, (iv) signs containing leasing or sales information, (v) a sign or signs identifying an automated teller machine(s) or similar financial equipment operated on any of the Building Areas as long as such signs are similar to other such signs in first-class shopping centers in the State of Nebraska, (vi) small stickers or decals located at the entrance of an Occupant's space indicating hours of business, emergency telephone numbers, acceptance of credit cards and other similar bits of information as long as such signs are similar to other such signs in first-class shopping centers in the State of Nebraska and (vii) "Pylon A" (as defined below), "Pylon B" (as defined below), (collectively the "Pylon Sign(s)") and, subject to and to the extent permitted by the provisions of this section, identification panels thereon of the Occupants. Anything contained in this OEA to the contrary notwithstanding, all exterior building signage shall be built to Underwriters Laboratories specifications and shall not violate the provisions of the Paragraph (C) below.

(B) The Party owning the Circuit City Tract shall have the exclusive right to construct and use, and erect doublesided identification panels on, a pylon structure located (or to be located) in the Shopping Center as shown and identified on the Site Plan as "Pylon A", provided that it obtains all required governmental approvals, permits, licenses and the like necessary to construct and operate Pylon A ("Pylon A Approvals"). The approval of any Party (including, without limitation, any Approving Party) with respect to any identification panel erected on Pylon A shall not be required, provided that it complies with the Pylon A Approvals and any other applicable laws. The Party who owns the Circuit City Tract, at its sole cost and expense, shall be responsible for the maintenance of Pylon A. The Party owning the Kohl's Tract shall have the exclusive right to construct and use, and erect doublesided identification panels on, a pylon structure located (or to be located) in the Shopping Center as shown and identified on the Site Plan as "Pylon B", provided that it obtains all required governmental approvals, permits, licenses and the like necessary to construct and operate Pylon B ("Pylon B Approvals"). The approval of any Party (including, without limitation, any Approving Party) with respect to any identification panel erected on Pylon B shall not be required, provided that it complies with the Pylon B Approvals and any other applicable laws. The Party who owns the Kohl's Tract, at its sole cost and expense, shall be responsible for the maintenance of Pylon B.

(C) No Occupant identification sign attached to the exterior of a Building shall be:

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

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

(iii) painted on the surface of any Building;

- (iv) flashing, moving or audible signs;
- (v) signs employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers; or
- (vi) paper or cardboard signs, temporary signs (exclusive of contractor signs), stickers or decals; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar bits of information.

5.4 **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. Each Party ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Party ("Indemnitee") from and against all claims, including any actions or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees and costs of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Tract owned by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitee, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof.

(B) 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 \$500,000 each accident for bodily injury, \$500,000 policy limit for bodily injury by disease and \$500,000 each employee for bodily injury by disease.

(ii) General liability insurance: 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 Contractor under the Contract Documents,
 - (4) Broad Form Property Damage (including Completed Operations),
 - (5) Explosion, Collapse and Underground Hazards, and
 - (6) Personal Injury Liability.
- (b) Minimum limits of liability:
 - (1) \$1,000,000 each occurrence (for bodily injury and property damage)
 - (2) \$1,000,000 for Personal Injury Liability,
 - (3) \$2,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work),
 - (4) \$2,000,000 general aggregate applying separately to this Project.

(iii) Automobile Liability Insurance: Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. If the Contractor's general liability insurance is provided by the Commercial General Liability policy, then the Contractor shall require each of his Subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.

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

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 covered by the insurance required to be maintained under Section 5.4(C), 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 agrees to 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. To the full extent permitted by law, each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless 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 covered by the insurance required to be maintained under Section 5.4(C), irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

(D) All insurance required by this Section 5.4 shall be procured from companies authorized to issue insurance in the state where the Shopping Center is located and shall be rated by Best's Insurance Reports not less than A-/X. Exclusive of the insurance referenced in (B) above, all insurance may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than Twenty Millions Dollars (\$20,000,000) in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of Twenty Million Dollars (\$20,000,000) in Constant Dollars, (iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has One Hundred Million Dollars (\$100,000,000) in Constant Dollars or more of net current assets, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with Section 5.4, such Party 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 Two Hundred Fifty Thousand Dollars (\$250,000.00) in Constant Dollars unless such Party complies with the requirements

regarding self-insurance pursuant to (iii) above. Each Party agrees to 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.

The insurance required pursuant to Section 5.4(A) above shall include the following provisions:

(i) shall provide that the policy may not be canceled or 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) shall provide for severability of interests;

(iii) 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) shall provide for contractual liability coverage with respect to the indemnity obligations set forth herein.

5.5 Taxes and Assessments. 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.

5.6 Liens. In the event 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 agrees to 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 further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record within 30 days after notice thereof by the Party whose Tract is subject to such lien, 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. 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. In the event 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.

ARTICLE VI

MISCELLANEOUS

6.1 Default.

(A) 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"):

(i) The failure to make any payment required to be made hereunder within ten (10) days of the due date, or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this OEA, other than as described in (i) above, within thirty (30) days after the issuance of a notice by another Party (the Non-Defaulting Party") specifying the nature of the default claimed.

(B) With respect to any default under Section 6.1(A)-(ii) above, 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, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance 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. 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. Each Party shall be responsible for the default of its Occupants. In the event that 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 of receipt of demand, together with reasonable documentation supporting the expenditures made.

(C) Costs and expenses accruing and/or assessed pursuant to Section 6.1(B) above shall 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 office of the Recorder 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 a curing 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 hereof. The notice 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, by personal service or by mailing pursuant to Section 6.4 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and 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.

(D) 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 defaulting 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. 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.

(E) In addition to the recovery of damages and of any sums expended on behalf of the Defaulting Party, together with interest thereon, as hereinabove provided, the prevailing Party in any action to enforce any provision of this OEA shall be entitled to receive from the non-prevailing Party the prevailing Party's reasonable costs and expenses incurred in connection with such action including, without limitation, reasonable attorneys' fees and court costs (including any appeal).

6.2 **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) The highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, whichever is less; or

(ii) Three percent (3%) per annum in excess of the prime rate from time to time published by The Wall Street Journal or another financial publication chosen by the Approving Parties if The Wall Street Journal shall cease to publish a prime rate.

6.3 **Estoppel Certificate.** Each Party agrees that upon the written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party, it will issue to such Party, 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.

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information (but it shall estop such Person from making assertions contrary to those set forth in the certificate for the period covered by the certificate), nor shall such issuance be construed to waive any rights of the issuer to challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

6.4 **Notices.** All notices, demands and requests (collectively, the "notice") required or permitted to be given under this OEA must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, or (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid. The initial addresses of the Parties shall be:

Kohl's Landlord: 72 Property LLC
c/o The Lerner Company
10855 West Dodge Road
Omaha, Nebraska 68154

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

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

Circuit City: Circuit City Stores, Inc.
9950 Mayland Drive
Richmond, Virginia 23233
Attention: Vice President of Real Estate

and Circuit City Stores, Inc.
9950 Mayland Drive
Richmond, Virginia 23233
Attention: Corporate Secretary

Upon at least ten (10) days prior written notice, each Person shall have the right to change its address for notice purposes to any other address within the United States of America.

6.5 Approval Rights.

(A) Nothing contained in this OEA shall limit the right of a Party to exercise its business judgment, or act, in a subjective manner, with respect to any matter as to which it has specifically been granted such right, or the right to act in its sole discretion or sole judgment, whether "objectively" reasonable under the circumstances, and any such exercise shall not be deemed inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be part of this OEA; and the Parties intend by this OEA to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

(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. Each disapproval shall be in writing and, subject to (A) above, the reasons therefor shall be clearly stated.

(C) If the Approving Parties' approval is required, unanimous approval must be given in order to constitute approval of the Approving Parties.

6.6 **Condemnation.** In the event 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.

6.7 **Binding Effect.** 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.

6.8 **Construction and Interpretation.**

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

(B) 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.

(C) The captions preceding the text of each article and section 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.

(D) Invalidation of any of the provisions contained in this OEA, or 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.

(E) This OEA may be amended by, and only by, a written agreement signed by all of the then current Parties and shall be effective only when recorded in the county and state where the Shopping Center is located. No consent to the amendment of this OEA shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof. 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.

(F) 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.

6.9 **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.

6.10 **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.

6.11 **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 and lack of funds shall not be deemed to be a cause beyond the control of such Person.

6.12 **Mitigation of Damages.** 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.

6.13 **OEA Shall Continue Notwithstanding Breach.** It is expressly agreed that 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.

6.14 **Time.** Time is of the essence of this OEA.

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

ARTICLE VII

TERM

7.1 **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 January 31, 2069; provided, however, that the easements referred to in Article II hereof which are specified as being perpetual or as continuing beyond the term of this OEA shall continue in force and effect as provided therein unless terminated by the Parties benefitting from same. 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 relates 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 VIII

EXCULPATION

8.1 **Certain Limitations on Remedies.** None of the Persons comprising a Party (whether partners, shareholders, officers, directors, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any such judgment obtained against a Party. Each Party agrees to look solely to the interest in the Shopping Center of a defaulting Party for recovery of damages for any breach of this OEA; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of a Party:

(i) *Casualty Insurance and Condemnation Proceeds.* 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.

(ii) *Hazardous Substances.* To recover from a Party all damages and costs arising out of or in connection with, or on account of, breach by a Party of its obligations under Section 5.1(B).

(iii) *Liability Insurance.* To recover from a Party all loss or damages, and costs arising out of or in connection with, or on account of, breach by a Party of its obligation to carry liability insurance or fund its self-insurance obligation as specified under Section 5.4.

(iv) *Taxes, Assessments and Liens.* 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 5.5.

(v) *Fraud or Misrepresentation.* 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.

(vi) *Equitable Relief; Costs.* To pursue equitable relief in connection with any term, covenant or condition of this OEA, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance.

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

CIRCUIT CITY STORES, INC.
("Circuit City")

By: Benjamin B. Cummings, Jr.
Name: BENJAMIN B. CUMMINGS, JR.
Title: VICE PRESIDENT

Approved as
to form
LJH

COMMONWEALTH OF VIRGINIA)
)
CITY OF RICHMOND) SS.

I, J. Dale Anderson, a Notary Public in and for said City, in the Commonwealth aforesaid, DO HEREBY CERTIFY that Benjamin Commins personally known to me to be the Vice President of Circuit City Stores, Inc., a Virginia corporation, 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 officer, as his free and voluntary act and as the free and voluntary act and deed of said OCA, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 27 day of December, 1996.

Shirley Dale Anderson
Notary Public

My Commission Expires: 10/31/00

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

3
1
IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

72 PROPERTY LLC
("Kohl's Landlord")

By: 

Name: Jay R. Kerner

Title: Manager

STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

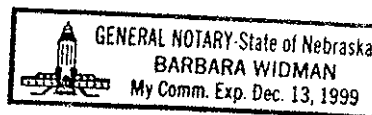
SS.

I, Barbara Widman, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jay R. Kerner, personally known to me to be the Manager of 72 PROPERTY LLC, a Nebraska 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 Manager, 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 27 day of December, 1996.

Barbara Widman
Notary Public

My Commission Expires: 12/13/99



NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

CONSENT AND SUBORDINATION

The undersigned, Kohl's Department Stores, Inc., a Delaware corporation, hereby consents to the foregoing Operation and Easement Agreement ("OEA") and agrees that its right, title and interest in, to and under the Kohl's Tract (as defined in the OEA) shall be subject and subordinate to the terms, conditions and provisions of the OEA.

KOHL'S DEPARTMENT STORES, INC.

By: *John F. Herma*
Name: John F. Herma
Title: Chief Operating Officer

APPROVED
AJS

STATE OF WISCONSIN)
)
COUNTY OF WAUKESHA) SS.

APPROVED
PEP

I, Karen S. Hebert, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John F. Herma, personally known to me to be the Chief Operating Officer of Kohl's Department Stores, Inc., a Delaware corporation, 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 officer, as his 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 17th day of December, 1996.

My Commission Expires: 12/27/98

Karen S. Hebert
Notary Public

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

EXHIBIT A

LEGAL DESCRIPTION OF THE KOHL'S TRACT

Lot 2 in Bobette Subdivision, a replat of part of the SW 1/4 of Section 24, a subdivision located in the SW 1/4 of Section 24, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska.

ALSO DESCRIBED AS FOLLOWS:

A tract of land located in the SW 1/4 of the SW 1/4 of Section 24, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Southwest Corner of said Section 24; thence N 00°00'01" E (assumed bearing) along the West line of said Section 24, a distance of 1321.77 feet to the Northwest corner of said SW 1/4 of SW 1/4 of Section 24; thence N 89°50'17" E along the North line of said SW 1/4 of the SW 1/4 of Section 24, a distance of 50.40 feet to a point on the East right-of-way line of 72nd Street; thence S 00°00'01" W along the East right-of-way line of 72nd Street, a distance of 253.99 feet to a point, said point also being the point of beginning; thence N 89°59'25" E, a distance of 108.63 feet; thence S 00°00'01" W, a distance of 19.10 feet; thence N 89°59'25" E, a distance of 206.46 feet; thence N 00°07'18" W, a distance of 1.94 feet; thence N 89°52'42" E, a distance of 294.92 feet; thence S 00°00'00" W, a distance of 806.05 feet; thence S 89°52'16" W, a distance of 135.65 feet to a point of the North right-of-way line of Little Papillion Creek; thence along said North right-of-way line of Little Papillion Creek on the following described courses; thence N 37°56'40" W, a distance of 188.35 feet; thence N 39°08'37" W, a distance of 115.91 feet; thence N 45°43'16" W, a distance of 149.81 feet; thence N 57°01'34" W, a distance of 119.28 feet; thence N 73°39'44" W, a distance of 81.33 feet to a point on said East right-of-way line of 72nd Street; thence N 00°00'01" E along said East right-of-way line of 72nd Street, a distance of 392.01 feet to the point of beginning.

Said tract of land contains an area of 368,775 square feet or 8.466 acres, more or less.

EXHIBIT B

LEGAL DESCRIPTION OF THE CIRCUIT CITY TRACT

Lot 1 in Bobette Subdivision, a replat of part of the SW 1/4 of Section 24, a subdivision located in the SW 1/4 of Section 24, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska.

ALSO DESCRIBED AS FOLLOWS:

A tract of land located in the SW 1/4 of the SW 1/4 of Section 24, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Southwest Corner of said Section 24; thence N 00°00'01" E (assumed bearing) along the West line of said Section 24, a distance of 1321.77 feet to the Northwest corner of said SW 1/4 of SW 1/4 of Section 24; thence N 89°50'17" E along the North line of said SW 1/4 of the SW 1/4 of Section 24, a distance of 50.40 feet to a point on the East right-of-way line of 72nd Street, said point also being the point of beginning; thence N 89°50'17" E along said North line of the SW 1/4 of the SW 1/4 of Section 24, a distance of 610.00 feet; thence S 00°00'00" W, a distance of 272.19 feet; thence S 89°52'42" W, a distance of 294.92 feet; thence S 00°07'18" E, a distance of 1.94 feet; thence S 89°59'25" W, a distance of 206.46 feet; thence N 00°00'01" E, a distance of 19.10 feet; thence S 89°59'25" W, a distance of 108.63 feet to a point on said East right-of-way line of 72nd Street; thence N 00°00'01" E along said East right-of-way line of 72nd Street, a distance of 253.99 feet to the point of beginning.

Said tract of land contains an area of 164,144 square feet or 3.773 acres, more or less.

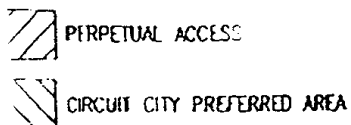
EXHIBIT C

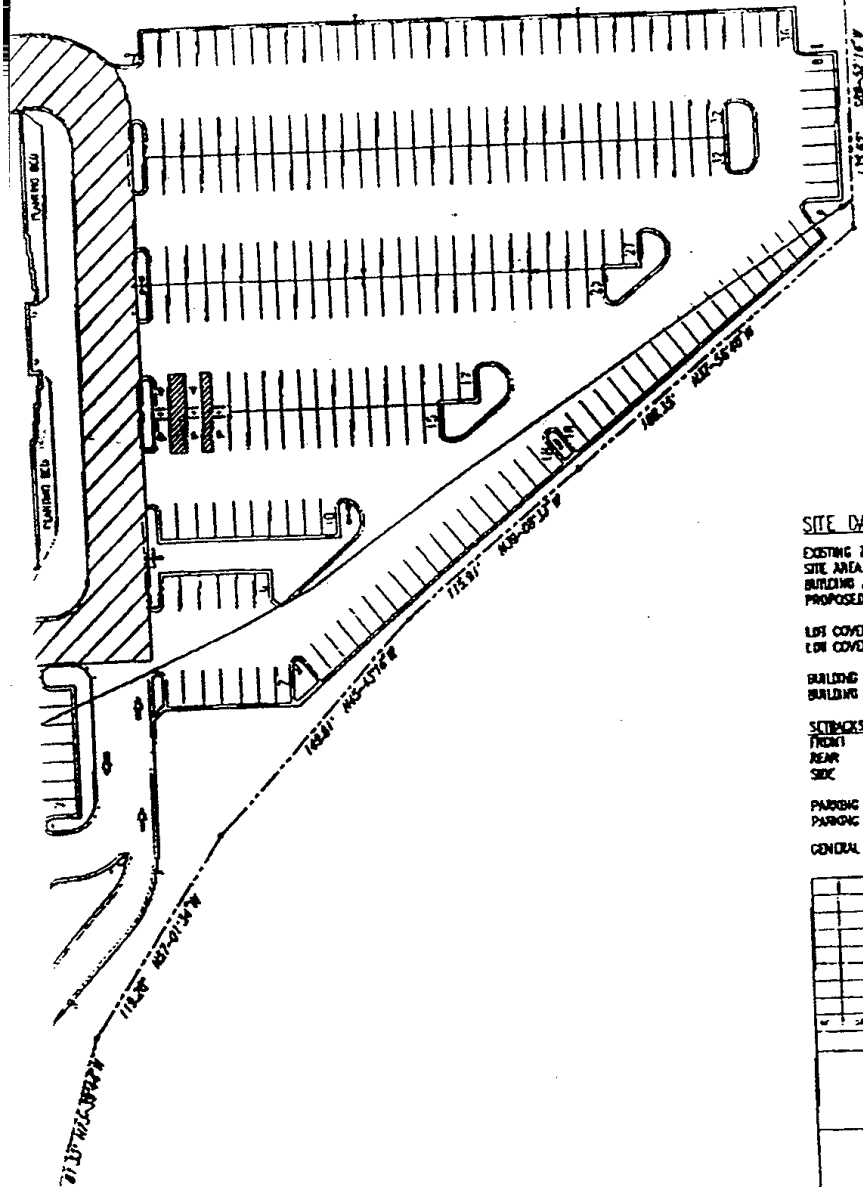
SITE PLAN

EXHIBIT D

CIRCUIT CITY LEASE PROVISION

35. Tenant to Comply With Reciprocal Easement Agreement. Tenant agrees that Tenant is obligated to and shall perform all obligations of the owner of the Leased Premises and pay all expenses which the owner of the Leased Premises may be required to pay in accordance with any reciprocal easement agreement or any other agreement or document of record now affecting the Leased Premises, herein referred to collectively as "REA". Provided that at such time Tenant shall have a tangible net worth of not less than Two Hundred Million Dollars (\$200,000,000.00) as determined in accordance with generally accepted accounting principles, consistently applied, Tenant shall have the right to grant consents and approval under and amend the REA as from time to time it, in its sole discretion, deems necessary except that in any instance where (x) either (1) money will be paid to Tenant in consideration for Tenant amending the REA, or (2) Tenant is granted any concession with respect to any site (other than the Leased Premises) and (y) the amendment at issue is not limited in operation to the term of Tenant's leasehold estate hereunder, Tenant shall be required to obtain the consent of Landlord and Lender before amending the REA. Tenant shall give Notice to Landlord and Lender within twenty (20) days of the execution of any amendment to the REA. During any time that Tenant shall have a tangible net worth of less than Two Hundred Million Dollars (\$200,000,000.00), Tenant shall not grant consents or approvals or enter into any amendments to the REA without the prior written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed if the consent, approval or amendment proposed by Tenant (a) will not adversely affect the value of the Leased Premises and (b) does not result in any remuneration to Tenant. Tenant further covenants and agrees to indemnify, defend and hold harmless Landlord and Lender against any claim, loss or damage suffered by Landlord or Lender by reason of (i) any action under this paragraph 35 which results in a diminution in value of Landlord's revisionary interest in the Leased Premises or (ii) Tenant's failure to perform any obligations or pay any expenses as required under any REA or comply with the terms and conditions of any REA as hereinabove provided during the Term.





SITE DATA

EXISTING ZONING - GENERAL INDUSTRIAL
 SITE AREA - 8.456 ACRES
 BUILDING AREA - 10,000 SF
 PROPOSED USE - GENERAL RETAIL

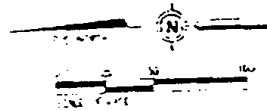
LOT COVERAGE ALLOWABLE = 30 %
 LOT COVERAGE PROPOSED = 45 %

BUILDING HEIGHT ALLOWABLE = 45 FEET
 BUILDING HEIGHT PROPOSED = 30 FEET

SETBACKS	BUILDING	PARKING
FRONT	30'	25'
REAR	21.5'	21.5'
SIDE	0'	0'

PARKING REQUIRED (1 SPACE PER 150 SF) - 333 SPACES
 PARKING PROVIDED (INCLUDING 3 HC SP.) - 413 SPACES

GENERAL LOCATION ON 72ND ST. N. OF PINE STREET



SHEET NO. 1	
DATE: 10/1/78	
DRAWN BY: J. L. HARRIS	
CHECKED BY: J. L. HARRIS	
APPROVED BY: J. L. HARRIS	
PROJECT FOR CONSTRUCTION	
KOHL'S	
OMAHA, NEBRASKA	
SITE PLAN	
JOB NO. 1000 SHEET NO. 1 DATE: 10/1/78 DRAWN BY: J. L. HARRIS CHECKED BY: J. L. HARRIS APPROVED BY: J. L. HARRIS	SHEET NO. 1 DATE: 10/1/78