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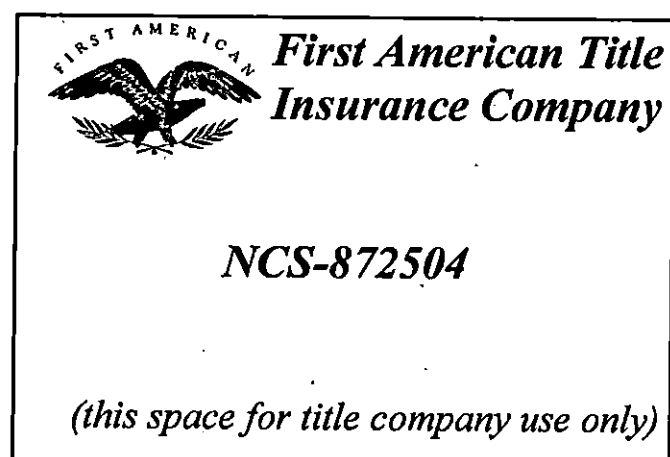
Third Amendment to Operating Agreement

Reference Number(s) of Documents assigned or released:

201910020179

Grantor(s): (Last name first, then first name and initials)

ALDERWOOD MALL L.L.C.
MACY'S WEST STORES, INC.
NORDSTROM, INC.
J.C. PENNEY PROPERTIES, INC.
GS PORTFOLIO HOLDINGS II, LLC
AVALON ALDERWOOD MF, LLC



FIRSTAMERICAN 872504

Grantee(s): (Last name first, then first name and initials)

ALDERWOOD MALL L.L.C.
MACY'S WEST STORES, INC.
NORDSTROM, INC.
J.C. PENNEY PROPERTIES, INC.
GS PORTFOLIO HOLDINGS II, LLC
AVALON ALDERWOOD MF, LLC

Abbreviated Legal Description as follows: (i.e. lot/block/plat or section/township/range/quarter/quarter)

LOTS 8A AND 5A, LYNNWOOD ALDERWOOD MALL BLA NO. 2003BLA0018, REC 200506145002
LOTS 1A AND 6A, LYNNWOOD ALDERWOOD MALL BLA NO. BLA-005755-2017, REC
201802155001
LOTS 1-9, ALDERWOOD MALL, VOL 40, PG 259
SW 1/4 OF NW 1/4 , SEC14, TWP 27N, RGE 4E, W.M.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

Assessor's Property Tax Parcel/Account Number(s):

00695200000100; 00695200000200; 00695200000300; 00695200000400; 00695200000401;
00695200000600; 00695200000700; 00695200000900

I AM REQUESTING A NONSTANDARD RECORDING FOR AN ADDITIONAL FEE AS PROVIDED IN RCW 36.18.010. I UNDERSTAND THAT THE RECORDING PROCESSING REQUIREMENTS MAY COVER UP OR OTHERWISE OBSCURE SOME PART OF THE TEXT OR THE ORIGINAL DOCUMENT.

A handwritten signature in black ink, appearing to be "E. Liang", is written over the printed text.

**THIRD AMENDMENT
TO
OPERATING AGREEMENT**

THIS THIRD AMENDMENT TO OPERATING AGREEMENT (this "Third Amendment"), made as of the 23rd day of December, 2019, by and among **ALDERWOOD MALL L.L.C.**, a Delaware limited liability company, having its principal office at c/o Brookfield Properties, 350 N. Orleans Street, Suite 300, Chicago, Illinois 60654-1607 ("Developer"); **MACY'S WEST STORES, INC.**, an Ohio corporation, having a business address at 7 West Seventh Street, Cincinnati, Ohio 45202 ("Macy's"); **NORDSTROM, INC.**, a Washington corporation, having a business address at 1700 Seventh Avenue, Suite 1000, Seattle, Washington 98101-4407 ("Nordstrom"); **J.C. PENNEY PROPERTIES, INC.**, a Delaware corporation, having an office at 6501 Legacy Drive, Plano, Texas 75024-3698 ("Penney"); **GS PORTFOLIO HOLDINGS II, LLC**, a Delaware limited liability company, having its principal office at c/o Brookfield Properties, 350 N. Orleans Street, Suite 300, Chicago, Illinois 60654-1607 ("GS Portfolio"); and **AVALON ALDERWOOD MF, LLC**, a Delaware limited liability company, having its principal office at c/o AvalonBay Communities, Inc., 671 N. Glebe Road, Suite 800, Arlington, Virginia 22203 ("ResDev").

W I T N E S S E T H:

WHEREAS, Alderwood Associates, predecessor-in-interest to Developer, Alstores Realty Corporation, predecessor-in-interest to Macy's, Allied Stores Corporation, predecessor-in-interest to Macy's, Nordstrom, Nordstrom Realty, Inc., predecessor-in-interest to Nordstrom, Penney, Lamont's Apparel, Inc., predecessor-in-interest to Developer, and Sears, Roebuck and Co., predecessor-in-interest to GS Portfolio, entered into that certain Operating Agreement dated as of November 13, 1979, recorded November 15, 1979 in the Auditor's Office for Snohomish County, Washington as Document No. 7911150334 at Vol. 1630, Page 600 (the "Original OA"), as amended by that certain First Amendment of Operating Agreement dated as of May 8, 1980, recorded May 19, 1980 in the Auditor's Office for Snohomish County, Washington as Document No. 8005190040 at Vol. 1669, Page 2735, rerecorded May 27, 1980 in the Auditor's Office for Snohomish County, Washington as Document No. 8005230250 at Vol. 1670, Page 1568 (the "First Amendment"), and by that certain Second Amendment to Operating Agreement dated as of June 5, 2019, recorded on October 2, 2019 in the Auditor's Office for Snohomish County, Washington as Document No. 201910020179 (the "Second Amendment" and collectively with the Original OA and the First Amendment, the "OA"); and

WHEREAS, concurrent with the execution of this Third Amendment, that portion of the GS Portfolio Site shown on Exhibit "A" and described in Exhibit "G-1" attached hereto and incorporated herein (the "MUD Site"), which MUD Site contains approximately 3.29 acres, will be submitted by GS Portfolio to a declaration of condominium regime establishing two (2) condominium units: (i) a commercial unit consisting of ground floor retail with approximately 70,447 square feet of floor area (the "MUD Retail Unit") and (ii) a residential unit consisting of two, five-floor residential towers with approximately 330 residential units (the "MUD Residential Towers"), together with a two-level underground parking structure (the "MUD Parking Structure" and together with the MUD Residential Towers, the "MUD Residential Unit"); and

WHEREAS, concurrent with the execution of this Third Amendment, ResDev will acquire the MUD Residential Unit from GS Portfolio with GS Portfolio retaining ownership of the MUD Retail Unit; and

WHEREAS, ResDev and GS Portfolio have requested that Developer, Macy's, Nordstrom and Penney expressly acknowledge and consent to ResDev's acquisition of the MUD Residential Unit from GS Portfolio; and

WHEREAS, GS Portfolio and ResDev have requested that Developer, Macy's, Nordstrom, Penney and GS Portfolio, as applicable: (i) grant to ResDev certain limited rights under the OA as the owner of the

MUD Residential Unit; and (ii) approve of GS Portfolio's and ResDev's construction of a mixed-use residential and retail development (the "Mixed-Use Development" or "MUD") on the MUD Site comprised of the MUD Retail Unit and the MUD Residential Unit; and

WHEREAS, Developer, Macy's, Nordstrom, Penney, and GS Portfolio hereby grant to ResDev certain limited rights under the OA, Developer, Macy's, Nordstrom and Penney approve of the construction of the Mixed-Use Development, and Developer, Macy's, Nordstrom, Penney and GS Portfolio agree to amend the OA as set-forth below; and

WHEREAS, GS Portfolio has requested that Developer, Macy's, Nordstrom and Penney (i) consent to GS Portfolio designating certain portions of the remaining GS Portfolio Site as permissible building areas ("GS PBAs"), such portions being designated as "GS PBA 1", "GS PBA 2" and "GS PBA 3" on the Plot Plan attached hereto as Exhibit "A", and (ii) approve of the building heights in Exhibit "J" and the sign criteria in Exhibit "K" with respect to the GS PBAs; and

WHEREAS, Developer, Macy's, Nordstrom and Penney hereby consent to item (i) and approve of item (ii) in the prior Recital and agree to amend the OA as set-forth below; and

WHEREAS, Macy's has requested that Developer, Nordstrom, Penney and GS Portfolio (i) consent to Macy's designating certain portions of the Macy's Site as permissible building areas ("Macy's PBAs"), such portions being designated as "Macy's PBA 1", "Macy's PBA 2" and "Macy's PBA 3" on the Plot Plan attached hereto as Exhibit "A", and (ii) approve of the building heights in Exhibit "J" and the sign criteria in Exhibit "K" with respect to the Macy's PBAs; and

WHEREAS, Developer, Nordstrom, Penney and GS Portfolio hereby consent to Macy's PBAs, all as set-forth below; and

WHEREAS, subsequent to the execution of this Third Amendment, Penney intends to convey title to that portion of the Penney Site identified on the Plot Plan attached hereto as Exhibit "A" as the "HOTEL PARCEL" (the "Penney Outparcel Site") and described in Exhibit "6" attached hereto to a bona fide third party ("Penney Outparcel Owner"); and

WHEREAS, Penney has requested that Developer, Macy's, Nordstrom and GS Portfolio release the Penney Outparcel Site from the encumbrance of the OA; and

WHEREAS, Developer, Macy's, Nordstrom and GS Portfolio hereby consent to Penney's request and agree to release the Penney Outparcel Site from the encumbrance of the OA in accordance with the terms and conditions in Paragraph 10 of this OA, as set-forth below.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, Macy's, Nordstrom, Penney, GS Portfolio and ResDev hereby agree to the following:

1. Recitals. The Recitals set forth above are incorporated into this Third Amendment as if fully set forth herein.
2. Definitions & Section References. All definitions contained in the OA are hereby incorporated herein and made a part hereof. All Section references herein shall refer to the specific Section of the OA, unless otherwise noted.
3. Exhibits. Effective as of the date of this Third Amendment, unless otherwise specifically provided for below, the following Exhibits attached hereto and made a part of this Third Amendment shall be

added to or, where applicable, shall supersede and replace the comparable Exhibits heretofore attached to the OA:

Exhibit "A"	Plot Plan dated December 12, 2019
* Exhibit "B"	Legal Description of the "Shopping Center Site"
* Exhibit "E"	Legal Description of the "Penney Site"
Exhibit "G"	Legal Description of the "GS Portfolio Site"
Exhibit "G-1"	Legal Description of the "MUD Site"
Exhibit "J"	Building Heights
Exhibit "K"	Sign Criteria

* Effective upon Penney's satisfaction of the conditions precedent to the release of the Penney Outparcel Site in Paragraph 10 below, without further action from the parties to the OA, Exhibits "B" and "E" attached hereto and made a part of this Third Amendment shall supersede and replace the comparable Exhibits heretofore attached to the OA.

4. Limited Rights of ResDev. Developer, Macy's, Nordstrom and Penney hereby expressly acknowledge and consent to ResDev's acquisition of the MUD Residential Unit and, effective as of the date hereof but subject to the express terms and conditions of this Paragraph 4, ResDev is made a party to the OA, as amended hereby, and, except as otherwise set forth in this Third Amendment, assumes all of GS Portfolio's rights, obligations and benefits of being a party to the OA with regard to the MUD Residential Unit; provided, however, ResDev shall have no consent or approval rights under the OA with respect to any matter requiring the consent or approval of any party or parties to the OA, except for the following:

- a. Any modification that adversely affects vehicular or pedestrian access to those certain critical access ways for the MUD Site shown on Exhibit "3" attached hereto and incorporated herein.
- b. Any modification that adversely affects the MUD Site's access to any utilities.
- c. Any modification that increases any parking restrictions on the MUD Parking Structure or on those four (4) parallel parking spaces on the driveway on the MUD Site for MUD Residential Unit leasing related activities and identified on Exhibit "A" as the "Residential Leasing Parking Spaces", and/or any modification that grants parking rights in the MUD Parking Structure or in the Residential Leasing Parking Spaces to any party other than ResDev and the residents and invited guests of the MUD Residential Unit.
- d. Any modification that adversely affects ResDev's ability to use the MUD Residential Unit for (a) the Primary Use, (b) any of the Ancillary Uses in clauses (i) through (vii) of Paragraph 5(c) below, or (c) any use permitted by clause (viii) of Paragraph 5(c) below, provided such use permitted by clause (viii) of Paragraph 5(c) is actually implemented by ResDev in the MUD Residential Unit at the time of such modification.
- e. Any modification to Section 8.1 of the OA that would result in the Buildings not being kept and maintained in good order, condition and state of repair and maintenance, and

any modification to Section 8.2 of the OA that would result in the common areas of the Shopping Center Site not being kept at all times in good order and condition and state of repair in accordance with the then accepted standards of first-class shopping center operations.

- f. Any (i) modification to the OA that results in the parties to the COREA having the right to record easements on the MUD Site beyond what is currently permitted by the OA, or (ii) any modification to the OA that results in the parties having the right to record documents against the MUD Site beyond what is currently permitted by the OA.
- g. Any modification that permits the Shopping Center to be used for a purpose that is inconsistent with the quality rating of the Shopping Center as it then exists, as such rating is published by a Reputable CRE Analytics Firm (as herein defined). For the avoidance of doubt, any modification that permits a use that is consistent with uses found at mixed use shopping centers with the same rating as the Shopping Center shall be deemed a permissible use under the OA and ResDev's consent shall not be required. Notwithstanding the foregoing, ResDev shall have no such consent or approval rights if the MUD Residential Unit does not comply with Section 6(e) of this Amendment. As used herein, "Reputable CRE Analytics Firm" means Green Street Advisors or its successors ("GSA"), or if mall sector ratings are no longer available from GSA, another nationally known commercial real estate analytics firm (in which case the parties agree that the GSA quality ratings described herein will be revised to the extent necessary to reflect a comparable rating). For the purposes of this subsection, ratings shall be based on the letter grade without regard to any +/- or similar supplemental designations (for example, a shopping center shall be rated an "A" even if it has a GSA rating of A+ or A-).
- h. The construction of any buildings, above-ground parking garages or other structures other than Future Deck #3 contemplated by the Second Amendment that are (i) in excess of twenty (20) feet in height above the Enclosed Mall finished floor elevation identified in Exhibit "J" and (ii) located in that certain area designated as the "Limited Build Area" on Exhibit "5" attached hereto.
- i. Any modification to Exhibit "K" (Sign Criteria) or Exhibit "4" (MUD Residential Unit Preapproved Signage) that adversely affects signage or signage rights for the MUD Residential Unit or any modification to Exhibit "K" that permits flashing action, moving action or audible signs.
- j. Any modification to the rules, regulations and maintenance standards set-forth in Exhibit "L" (Rules, Regulations and Maintenance Standards) but solely to the extent such modifications (i) adversely affects the rules, regulations and maintenance standards applicable to the MUD Residential Unit and/or (ii) modify the amendments to Exhibit "L" granted by Paragraph 6(j) below.

Notwithstanding anything in this Third Amendment to the contrary, if all or a portion of the MUD Residential Unit of the Mixed-Use Development is converted from for rental apartment units to condominium units (or such other form of multi-party ownership) (each a "Multi-Owner Conversion"), automatically effective upon the date such Multi-Owner Conversion is legally effected and without further action from the parties to the OA, as amended hereby, the condominium association (or similar association or body) following such Multi-Owner Conversion shall thereafter be deemed to be the ResDev party hereunder and shall be the sole and exclusive party to enforce ResDev's limited rights under the OA as set-forth in this Third Amendment; provided, however, automatically effective upon the date such Multi-Owner Conversion is legally effected and

without further action from the parties to the OA, as amended hereby, the limited rights granted in Paragraph 4(g) above shall only apply to the Enclosed Mall. It being further acknowledged and agreed that (i) the other parties hereto shall be able to rely on the actions of any condominium association (or similar association or body) following such Multi-Owner Conversion, and (ii) that the owners of one or more individual units of the MUD Residential Unit following a Multi-Owner Conversion shall in no event be deemed a party to this OA and shall have no direct rights to enforce any provisions hereunder or to vote on any matters for which ResDev's approval is required hereunder.

5. Mixed-Use Development Agreements. Notwithstanding anything in the OA to the contrary, in connection with the Mixed-Use Development, the parties hereby acknowledge, agree and approve the following:

- a. The Mixed-Use Development, including without limitation, the permissible Building Area for the Mixed-Use Development and modifications to the Common Area to accommodate the same as materially reflected on the Plot Plan and in the site plans and elevation plans in that certain document titled "MAP FOR 18600 ALDERWOOD MALL PARKWAY CONDOMINIUM" dated June 16, 2019 (the "MUD Plans") for the Mixed-Use Development.
- b. The construction, location, fencing, staging and construction timeline of the Mixed-Use Development in accordance with (i) the MUD Plans, (ii) the staging plan for the Mixed-Use Development (attached hereto as Exhibit "1"), and (iii) the construction schedule for the Mixed-Use Development (attached hereto as Exhibit "2"), including construction specified therein to occur during the period commencing on November 1 in any calendar year and ending on January 31 of the following calendar year, provided: (1) fencing materially as shown on Exhibit "1" is maintained throughout the construction of the Mixed-Use Development, as required by and in accordance with all applicable laws; (2) access to the Shopping Center Site (other than the entrance from the former GS Portfolio Building to the Enclosed Mall) is maintained throughout construction of the Mixed-Use Development including, without limitation, the two (2) access drives from Alderwood Mall Parkway to the Shopping Center Site; and (3) contractors, suppliers and others performing work relating to the construction of the Mixed-Use Development shall park only in the parking spaces located on the GS Portfolio Site and not in the parking spaces located on any other Site.
- c. The use of the MUD Residential Unit only for residential use (the "Primary Use") and the following contemplated ancillary uses for the MUD Residential Unit's residents and guests: (i) parking; (ii) related leasing activities; (iii) fitness center; (iv) pool, hot tub and sauna; (v) residential community center; (vi) residential laundry and dry-cleaning services; (vii) valet services for tenants (and their guests) for vehicles being parked in the MUD Parking Structure, which valet services shall be provided in accordance with Section 7.7 of the OA (other than subsections (a) and (c) thereof) and which valet pick-up and drop-off shall occur either in the MUD Parking Structure or in that portion of the driveway on the MUD Site identified in Exhibit "A" as "Residential Valet Drop-Off"; and (viii) such other ancillary support uses and amenities consistent with the operation of a first-class residential building in the Seattle, Washington area (collectively, the "Ancillary Uses").
- d. The preapproved signage for the MUD Residential Unit (attached hereto as Exhibit "4").
- e. The Mixed-Use Development as reflected in the MUD Plans for the Mixed-Use Development is architecturally harmonious with the exterior appearance of the

buildings on the Developer Site and complies with Section 1.3 of the OA (Outline Specifications by Department Stores).

6. Mixed-Use Development Amendments. In connection with the Mixed-Use Development, the parties hereby acknowledge and agree to the following amendments to the following provisions of the OA:

- a. Section 1.12 (Finish Ground Floor Elevation) shall not apply to the Mixed-Use Development.
- b. Section 2.2 (Leasing Outline) shall not apply to the MUD Residential Unit of the Mixed-Use Development.
- c. Section 4.13 (Construction by GS Portfolio) and Section 4.14 (Changes in GS Portfolio Building) are hereby deleted in their entirety and replaced with the following:

“Section 4.13 – Construction of Mixed-Use Development. GS Portfolio and ResDev will proceed diligently to construct or have constructed the Mixed-Use Development on the MUD Site, and by October 31, 2022 (subject to extension in the event of any force majeure), substantially complete or have substantially complete the construction of the Mixed-Use Development. The Mixed-Use Development shall initially be constructed within the lines of the area for such Mixed-Use Development on the Plot Plan, and shall conform to the OA, as amended, and the MUD Retail Unit shall contain approximately 70,447 square feet of floor area.”

“Section 4.14 – Changes in Mixed-Use Development. The Mixed-Use Development may at any time be altered, remodeled or expanded, provided that the Mixed-Use Development’s exterior appearance, as so altered or expanded, shall remain architecturally harmonious either with the Mixed-Use Development prior to such alteration or expansion or the other improvements on the Shopping Center Site and provided that the Mixed-Use Development, as so altered or expanded, shall continue to comply with Sections 4.4 and 4.15, as amended.”

- d. Subsection (a) of Section 5.5 (Floor Area, Use and Management) shall not apply to the Mixed-Use Development.
- e. Section 6.1 (Shopping Center Operation) shall only apply to the MUD Retail Unit of the Mixed-Use Development; provided, however, (i) that the MUD Residential Unit shall be used solely for the Primary Use and the Ancillary Uses in Paragraph 5(c) above, and (ii) that the Mixed-Use Development as a whole shall be operated in accordance with the then current reasonable standards of first-class mixed-use buildings in the Seattle, Washington area and the provisions of Exhibit “L” (subject to subparagraph (j) below).
- f. Section 7.1 shall not apply to the common areas of the MUD Residential Unit of the Mixed-Use Development or to the MUD Parking Structure of the Mixed-Use Development; provided, however, ResDev and the residents and invited guests of the MUD Residential Unit shall be permitted to use the common areas of the other Sites in accordance with the terms and conditions of the OA including, without limitation, Section 7.1 of the OA, other than for the parking of vehicles in the parking fields of the Shopping Center. Parking for the MUD Residential Unit shall be provided solely by the MUD Parking Structure or in the Residential Leasing Parking Spaces. Notwithstanding anything in the OA to the contrary, the residents and invited guests

of the MUD Residential Unit of the Mixed-Use Development shall be entitled to use the ring road, interior roads and access points located at the Shopping Center, however they may exist from time to time, twenty-four (24) hours per day, seven (7) days per week generally for, as applicable, pedestrian and vehicular ingress, egress and general navigation of the Shopping Center, subject in all other respects to the rules enumerated in Exhibit "L" regarding "CONDUCT OF PERSONS"; provided that the foregoing shall not in any way prohibit or otherwise restrict a party's right to change, remove, temporarily or permanently close or otherwise modify such ring roads, interior roads and access points at any time and for any reasons, subject in all respects to Paragraph 4(a) of this Third Amendment and Exhibit "3" attached hereto and to the other terms and conditions of the OA, as amended hereby.

- g. The obligations in Sections 10.1 and 10.2 to maintain the insurance required therein shall not apply to the MUD Residential Unit; rather, the MUD Residential Unit shall be required to maintain customary insurance for a first-class residential apartment building in the Seattle, Washington area.
- h. The Mixed-Use Development does not violate the Developer covenant and warranty in Article XVI (Zoning) that the Shopping Center Site be developed, used and operated as a regional shopping center and in the manner contemplated by the Agreement, as amended hereby.
- i. All references in the OA to the "GS Portfolio Building" or "GS Portfolio Department Store" shall hereafter refer to the Mixed-Use Development.
- j. The parties hereby acknowledge: (i) the rules enumerated in Exhibit "L", Paragraph B.4 shall not apply to the MUD Residential Unit of the Mixed-Use Development; (ii) the rules enumerated in Exhibit "L", Paragraph C.1 shall apply to the residents and invited guests of the MUD Residential Unit; provided, however, the rules shall be expanded for such residents and invited guests of the MUD Residential Unit to use the MUD Site Critical Access Ways for, as applicable, pedestrian and vehicular ingress, egress and general navigation of those portions of the Shopping Center; (iii) the rules enumerated in Exhibit "L", Paragraph C.5(c) shall not apply to any condominium association(s) created now or at any point in the future in connection with all or any portion of the Mixed-Use Development; and (iv) the rules enumerated in Exhibit "L", Paragraph C.5(e) shall not apply to the common areas of the MUD Residential Unit of the Mixed-Use Development, and the rules enumerated in Exhibit "L", Paragraph C.5(e) shall not apply to the residents and invited guests of the MUD Residential Unit's use of the MUD Site Critical Access Ways for, as applicable, pedestrian and vehicular ingress, egress and general navigation of those portions of the Shopping Center.

7. Parking Ratio. Section 4.4(a) is hereby deleted in its entirety and replaced with the following:

"(a) The parking ratio for the Shopping Center and each Site comprising the Shopping Center shall at all times comply with the applicable requirements of any governmental agency having jurisdiction over the Shopping Center. Subject to Article IX hereof, there shall be available at all times in the aggregate within the parking areas of the Shopping Center Site (other than the MUD Site) not less than four (4) automobile parking spaces for each one thousand (1,000) square feet of floor area within the Shopping Center (exclusive of any theater) plus 750 spaces for the existing theatre on the Shopping Center Site, which amount shall be reduced to 660

spaces if and when the Phase 2 Expansion is completed. Each party shall furnish, within thirty (30) days of such request by any party, a certification of the total floor area of the buildings on its Site, along with the total number of ground level parking on its Site. As stated above, this Section 4.4 shall not apply to the MUD Site; provided, however, (i) the MUD Retail Unit shall be included as part of the GS Portfolio Site when determining the parking ratio for the GS Portfolio Site, and (ii) ResDev shall be obligated to provide the total floor area numbers for the MUD Residential Unit to any party requesting such information in accordance with this Section 4.4. Parking for the MUD Residential Unit shall be provided solely by the MUD Parking Structure in accordance with and as required by applicable zoning laws, and the MUD Residential Unit shall not have the right to use any other parking areas at the Shopping Center other than the Residential Leasing Parking Spaces. The MUD Parking Structure shall contain at a sufficient number of parking spaces to park the vehicles of the residents and invited guests of the MUD Residential Unit at all times.”

8. Utility Easements. Notwithstanding anything in Section 7.2 (Utility Easements) of the OA, prior to the placement of any utility lines by a party to the OA over, on, in or under the Parcel of any other party to the OA, the benefitting party’s right to place such utility lines and facilities or cause a utility company to place such utility lines and facilities shall be subject to and conditioned upon the burdened party (acting reasonably and in good faith) executing a commercially reasonable easement document with the applicable utility company.

9. GS PBAs and Macy’s PBAs. Subject to the terms and conditions of the OA, as amended hereby:

- a. GS Portfolio shall have the right to construct buildings or structures on the GS PBAs for an aggregate square footage not to exceed 30,500 square feet.
- b. Macy’s shall have the right to construct buildings or structures on Macy’s PBAs. The aggregate square footage that Macy’s may construct on the Macy’s PBAs shall not to exceed 50,000 square feet. In addition, Macy’s acknowledges and agrees that Developer and GS Portfolio have granted to tenants of the Shopping Center the exclusive right to sell certain products and services and/or the right to restrict certain occupants or uses at the Shopping Center (collectively, “Tenant Rights”). Concurrently with the execution of this Third Amendment, (i) Developer and Macy’s have entered into that certain Third Amendment to Supplement to Operating Agreement listing all Tenant Rights that Developer has granted at the Shopping Center as of the date of this Third Amendment, and (ii) GS Portfolio and Macy’s have entered into that certain Supplement to Operating Agreement (the “GS Portfolio-Macy’s Supplement”) listing all Tenant Rights that GS Portfolio has granted at the Shopping Center as of the date of this Third Amendment. Macy’s acknowledges and agrees that it shall not allow (nor shall it permit) any occupants of the Macy’s PBAs to operate in a manner that causes Developer or GS Portfolio, as applicable, to be in violation of any Tenant Rights that either Developer or GS Portfolio, as applicable, have granted at the Shopping Center as of the date of this Third Amendment.
- c. At least sixty (60) days prior to constructing any buildings or structures on the GS PBAs or Macy’s PBAs, GS Portfolio or Macy’s, as applicable, shall provide a letter (the “PBA Consent Letter”) to all other parties to the OA that includes the following: (a) any additional consents or approvals required from such party pursuant to the rights of such party under the Operating Agreement, as amended hereby, (b) architectural renderings for such building or structure to enable Developer, Nordstrom, JCPenney and, as applicable, Macy’s and GS Portfolio, to

confirm that such building or structure is “architecturally harmonious” as required by Section 1.3 of the Operating Agreement and, as applicable, Section 4.6 and 4.14 of the Operating Agreement, and (c) construction, staging and phasing plans, including “haul-routes”. Approval of the PBA Consent Letter by the parties to the Operating Agreement shall not be unreasonably withheld, conditioned or delayed and, if limited to items (b) and (c) above, not tied to any reciprocal consents, approvals or demands. In addition, if the party receiving the PBA Consent Letter (a “Receiving Party”) does not respond to a request for approval within thirty (30) days after receipt, then the party issuing the PBA Consent Letter (the “Requesting Party”) shall have the right to send a second notice requesting approval. So long as the Requesting Party sends all information required hereunder and includes on its second notice the following language in bold, capitalized letters in not less than 10-point font, the Receiving Party shall be deemed to have approved the PBA Consent Letter if the Receiving Party fails to respond to the second notice within ten (10) business days of receipt: **“PER THE TERMS OF THE THIRD AMENDMENT TO OPERATING AGREEMENT, YOU SHALL BE DEEMED TO HAVE APPROVED THE PBA CONSENT LETTER IF YOU DO NOT RESPOND WITHIN TEN BUSINESS DAYS OF RECEIPT OF THIS SECOND NOTICE”**.

10. Release of the Penney Outparcel Site. Subject to, and conditioned upon, (i) title to the Penney Outparcel Site being conveyed to Penney Outparcel Owner and (ii) Penney, Penney Outparcel Owner and Developer executing, delivering and recording that certain Covenants, Conditions, Restrictions and Easement Agreement materially in the form attached hereto as Exhibit “7” (the “CC&R”), the Penney Outparcel Site shall be released from the encumbrance of the OA, as amended hereby, without further action from the parties to the OA; provided, however, those certain utility easements granted by Section 7.2 (Utility Easements) of the OA and encumbering the Penney Outparcel Site, together with all provisions applicable to such utility easements in Section 7.4 (Duration of Easements) and Section 13.1 (Term) of the OA, shall not be released, but shall remain in full force and effect, unless and until terminated by such Sections of the OA; provided, however, from and after the date the conditions precedent in this Paragraph 10 are satisfied by Penney, the parties to the OA shall no longer have the right under Section 7.2 of the OA to either place new utility lines and facilities on the Penney Outparcel Site or cause a utility company to place new utility lines and facilities on the Penney Outparcel Site.

11. Developer Encroachment Easement on Macy’s Site. Macy’s permitted Developer to construct a new loading dock area that encroaches onto Macy’s Site in the area shown on the Plot Plan as the “Developer Encroachment Area”. Macy’s grants to Developer, for its use and the use of its Permittees, and for the benefit of the Developer Site an exclusive easement (the “Developer Encroachment Easement”) in, to, over, and across the Developer Encroachment Area for the purposes of the use, construction, operation, maintenance and restoration of those portions of the Developer improvements located within the Developer Encroachment Area, including, the compactors and screen wall identified on the Plot Plan as the “Developer Encroaching Improvements”.

Notwithstanding the fact that the Developer Encroaching Improvements are located on the property of Macy’s, the Developer Encroaching Improvements shall be deemed to be located on the Developer Site for all purposes under the OA except for real property taxes, including without limitation, with respect to maintenance obligations, operations, insurance obligations and repair and restoration obligations. Developer shall exercise its easement rights in and obligations with regard to the Developer Encroachment Easement, including, without limitation, use, operation, maintenance and/or restoration of the Developer improvements, all pursuant to the applicable provisions of the OA, within the Developer Encroachment Area, all at Developer's sole expense.

Notwithstanding any provisions to the contrary in the OA, the Developer Encroachment Easement shall be terminated on the earlier to occur of: (a) abandonment of the Developer Encroachment Easement (abandonment being defined as Developer or its Permittee not using the Developer Encroachment Easement for a consecutive twelve (12) month period), or (b) the improvement(s) benefitted by the Developer

Encroachment Easement or the Developer Encroaching Improvements are destroyed or removed without commencement of work to replace same within such period of time after destruction or removal as may be reasonable under the circumstances (but in no event longer than twelve (12) months after such destruction or removal), or (c) the Termination Date of the OA. The Developer Encroachment Easement granted herein shall run with the land for the term set forth in the preceding sentence. The Developer Encroachment Easement shall inure to the benefit of Developer (and any successor owner of the improvement(s) benefitted by such easement) and shall be binding upon Macy's (and any successor owner of the land on which such easement is located). Upon the termination of the Developer Encroachment Easement, Developer, if requested by Macy's in the exercise of Macy's sole and absolute discretion, shall, at Developer's sole cost and expense, demolish the improvements constructed by Developer on the Developer Encroachment Area and clear of all debris.

12. Notices. Section 17.7 is deleted in its entirety and the following is substituted in its place:

"Section 17.7. Notices. (a) Any notice, demand, request, consent, approval, designation or other communication that any party is required or desires to give, make or communicate to any other party will be in writing and will be given, made or communicated by United States registered or certified mail, return receipt requested, with postage fully prepaid, or by an independent, nationally recognized overnight delivery service that provides receipts to indicate delivery with delivery fees prepaid, addressed to:

in the case of Developer:

Alderwood Mall L.L.C.
c/o Brookfield Properties
350 N. Orleans, Suite 300
Chicago, Illinois 60654-1607
Attention: President

with a copy to:

Brookfield Properties
350 N. Orleans, Suite 300
Chicago, Illinois 60654-1607
Attention: General Counsel

in the case of Nordstrom:

Nordstrom, Inc.
1700 Seventh Avenue, Suite 1000
Seattle, Washington 98101-4407
Attention: Real Estate Notices, Store #10

in the case of Penney:

J.C. Penney Properties, Inc.
c/o J.C. Penney Corporation, Inc.
Attention: Real Estate Counsel (MS 4106)
P.O. Box 10001
Dallas, Texas 75301-1108

if by overnight delivery use the following address for each of above in lieu of post office box in the case of Penney:

J. C. Penney Corporation, Inc.
6501 Legacy Drive
Plano, Texas 75024-3698
Attention: Real Estate Counsel (MS 4106)

in the case of GS Portfolio:

c/o Brookfield Properties
350 N. Orleans Street, Suite 300
Chicago, Illinois 60654-1607
Attn: Chief Legal Counsel

with a copy to:

c/o Seritage Growth Properties
489 Fifth Avenue, 18th Floor
New York, New York 11017
Attention: Legal Department

in the case of Macy's:

Macy's West Stores, Inc. - WA
7 West Seventh Street
Cincinnati, Ohio 45202
Attention: Real Estate Department

with a copy to:

Macy's West Stores, Inc. - WA
7 West Seventh Street
Cincinnati, Ohio 45202
Attention: Law Department - Real Estate Group

in the case of ResDev:

c/o Brookfield Properties
350 N. Orleans Street, Suite 300
Chicago, Illinois 60654-1607
Attn: Chief Legal Counsel

with a copy to:

* c/o AvalonBay Communities, Inc.
671 North Glebe Road, Suite 800
Arlington, VA 22203
Attn: Legal Department

* After the date of April 6, 2020:

c/o AvalonBay Communities, Inc.
4040 Wilson Boulevard, Suite 1000
Arlington, VA 22203

Attn: Legal Department

subject to the right of any party to designate a different address by twenty (20) days advance written notice similarly given. Any notice, demand, request, consent, approval, designation or other communication so sent will be deemed to have been given, made, received, or communicated, as the case may be, on the date of delivery or refusal as shown on the return receipt or delivery receipt. No post office boxes are permitted for notice addresses. In addition,

- (i) from and after the date that a party receives notice from another party containing the name and address of such party's mortgagee, each party will give any and all notices of default given to such party to the holder of the mortgage covering such party's Site (such obligation to continue whether or not such mortgagee is in possession of any Site of any party) but the giving of any notice of default or the failure to deliver a copy to any first mortgagee shall in no event create any liability on the part of the party so declaring a default; and
- (ii) each party may designate no more than three (3) other Persons to whom a copy of any notice will be sent, and
- (iii) all notice addresses must be within the United States of America."

13. Counterpart Execution. This Third Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

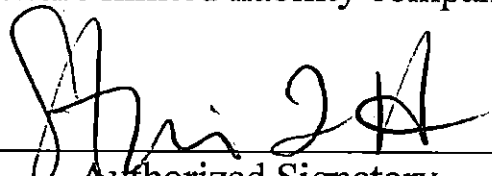
14. Representation. Each party to this Third Amendment represents and warrants to all other parties to this Third Amendment that: (i) no third-party consents or approvals are required in order for such party to enter into this Third Amendment; (ii) the execution, delivery and performance of this Third Amendment by such party will not violate any agreement to which such party is a party and will not require the consent, approval or authorization of any person or entity; and (iii) this Third Amendment has been duly executed by such party and is a valid, legally binding obligation of such party enforceable against such party in accordance with its terms.

15. Conflicts. Except as modified and amended by the terms of this Third Amendment, all of the terms, covenants, representations, warranties, waivers, and agreements set forth in the OA remain in full force and effect and are incorporated herein and are hereby ratified and confirmed in all respects. In the event of a conflict between this Third Amendment and the OA, this Third Amendment shall control.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

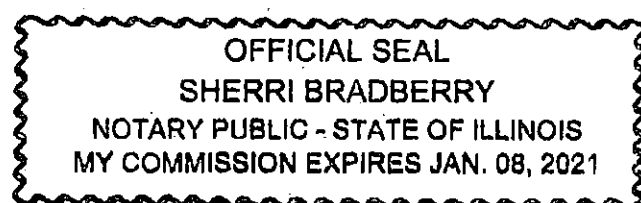
ALDERWOOD MALL L.L.C.,
a Delaware limited liability company

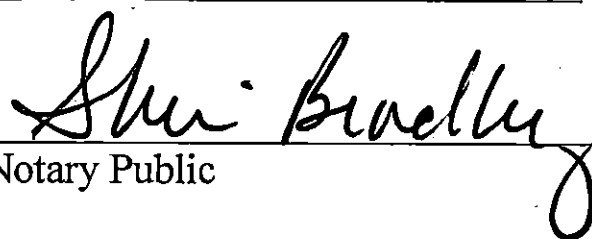
By: 
Authorized Signatory

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Stacie Herman as Authorized Signatory of Alderwood Mall L.L.C., a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument on behalf of the limited liability company, as his/her own free and voluntary act and as the free and voluntary act of the limited liability company, for the uses and purposes therein set forth.


GIVEN under my hand and Notarial Seal this 18 day of December, 2019.




Notary Public

(First Signature Page of Third Amendment of
Operating Agreement for Alderwood Mall, Lynnwood)

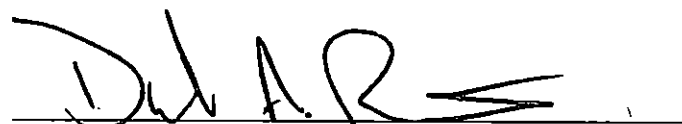
MACY'S WEST STORES, INC.
an Ohio corporation

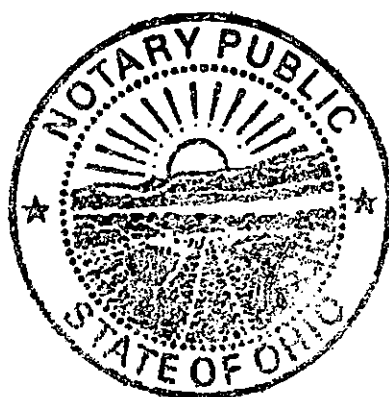
By: 
Name: Charles DiGiovanna
Title: Vice President

STATE OF Ohio)
) SS.
COUNTY OF Hamilton)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Charles DiGiovanna, as Vice President of Macy's West Stores, Inc., an Ohio corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument on behalf of the corporation, as his/her own free and voluntary act and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19th day of December, 2019.

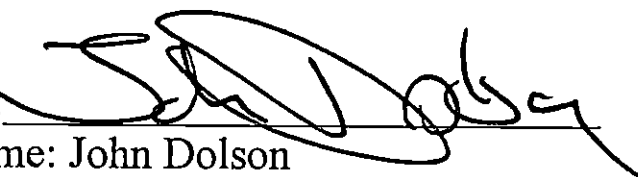

Notary Public



DEBORAH ANN BRELITCH
Notary Public, State of Ohio
My Commission Expires
September 14, 2022

(Second Signature Page of Third Amendment of
Operating Agreement for Alderwood Mall, Lynnwood)

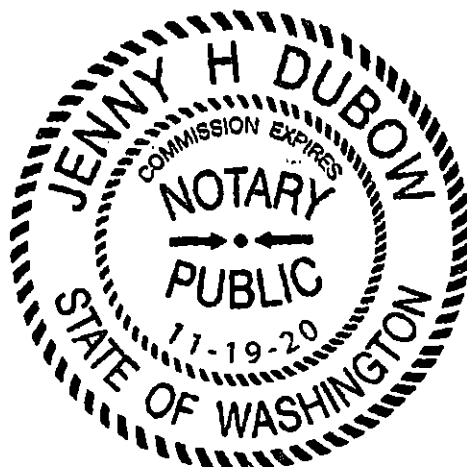
NORDSTROM, INC.,
a Washington Corporation

By: 
Name: John Dolson
Title: Vice President of Real Estate

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that John Dolson, as Vice President of Real Estate of Nordstrom, Inc., a Washington corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument on behalf of the corporation, as his/her own free and voluntary act and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of December, 2019.




Notary Public

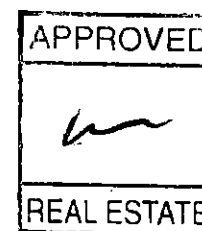
(Third Signature Page of Third Amendment of
Operating Agreement for Alderwood Mall, Lynnwood)

Third Amendment to Operating Agreement

J. C. PENNEY PROPERTIES, INC.,
a Delaware corporation



By: [Signature]
Name: Bradley Dwyson
Title: Vice President

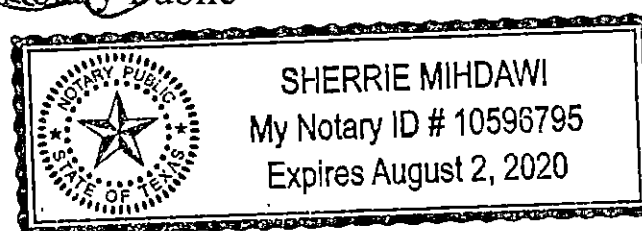


STATE OF TEXAS)
) SS.
COUNTY OF Collins)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Bradley Dwyson, as Vice President of J.C. Penney Properties, Inc., a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument on behalf of the corporation, as his/her own free and voluntary act and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of December, 2019.

[Signature]
Notary Public



(Fourth Signature Page of Third Amendment of
Operating Agreement for Alderwood Mall, Lynnwood)

Third Amendment to Operating Agreement

GS PORTFOLIO HOLDINGS II, LLC,
a Delaware limited liability company

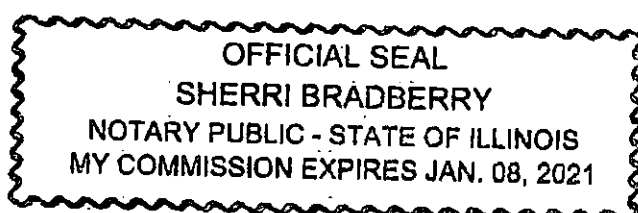
By: GGP-SRC Member, LLC,
its Managing Member

By: 
Authorized Signatory

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Stacie Herron as Authorized Signatory of GGP-SRC Member, LLC, the Managing Member of GS Portfolio Holdings II, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument on behalf of the limited liability company, as his/her own free and voluntary act and as the free and voluntary act of the limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18 day of December, 2019.



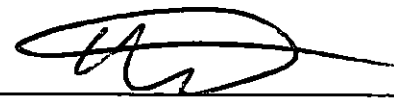

Notary Public

(Fifth Signature Page of Third Amendment of
Operating Agreement for Alderwood Mall, Lynnwood)

AVALON ALDERWOOD MF, LLC,
a Delaware limited liability company

By: Avalon Alderwood MF Member, LLC,
a Delaware limited liability company,
its Managing Member

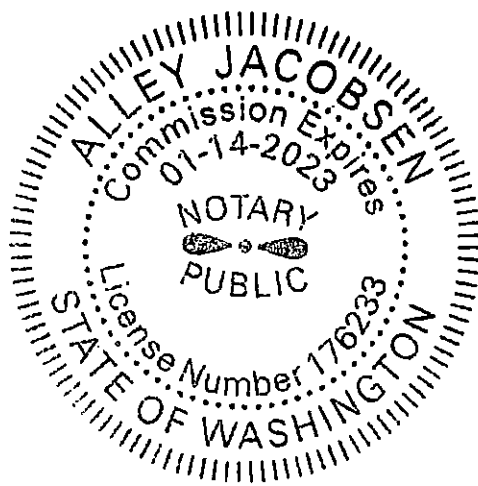
By: AvalonBay Communities, Inc.,
a Maryland corporation,
its Sole Member

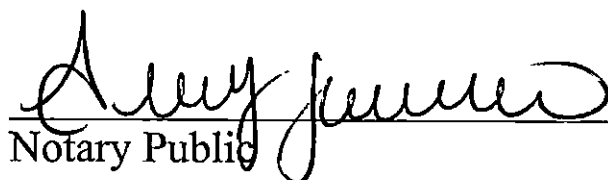
By: 
Name: Derek Bottles
Title: Vice President of Development

STATE OF WA)
COUNTY OF King) SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Derek Bottles, as Vice President of Development of AvalonBay Communities, Inc., the Sole Member of Avalon Alderwood MF Member, LLC, the Managing Member of Avalon Alderwood MF, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument on behalf of the corporation, as his/her own free and voluntary act and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13 day of Dec 2019.




Notary Public

LENDER CONSENT AND SUBORDINATION

Wells Fargo Bank, National Association, solely in its capacity as Trustee for the benefit of the Certificateholders of MSCCG Trust 2015-ALDR, Commercial Mortgage Pass-Through Certificates, Series 2015-ALDR, and on behalf of the companion loan holders, the current beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of May 5, 2015 and recorded at the Auditor's Office for Snohomish County, Washington on May 6, 2015 as Document No. 201505060210 (as the same may have been or may be amended, modified, supplemented or restated from time to time, the "Mortgage"), hereby approves of and consents to the provisions of the foregoing Third Amendment to Operating Agreement, dated December 23, 2019, among Alderwood Mall L.L.C., Macy's West Stores, Inc., Nordstrom, Inc., J.C. Penney Properties, Inc., GS Portfolio Holdings II, LLC, and Avalon Alderwood MF, LLC (the "Third Amendment"), and agrees that the Mortgage is subordinate to the terms and provisions of the Third Amendment with the same force and effect as though the Third Amendment were recorded prior to the Mortgage.

Beneficiary:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
SOLELY IN ITS CAPACITY AS TRUSTEE FOR THE
BENEFIT OF THE CERTIFICATEHOLDERS OF
MSCCG TRUST 2015-ALDR, COMMERCIAL
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2015-ALDR, AND ON BEHALF OF THE
COMPANION LOAN HOLDERS

By: KeyBank National Association,
as Authorized Agent

By: [Signature]
Name: KURT TUTHILL
Its: VICE PRESIDENT

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

This instrument was acknowledge before me on December 18th, 2019 by Kurt Tuthill, as a(n) Vice President of KeyBank National Association as Authorized Agent of Wells Fargo Bank, National Association, solely in its capacity as Trustee for the benefit of the Certificateholders of MSCCG Trust 2015-ALDR, Commercial Mortgage Pass-Through Certificates, Series 2015-ALDR, and on behalf of the companion loan holders.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

[Signature]
Notary Public in and for
said County and State

Print Notary's Name: Ernest Merritt Jr.

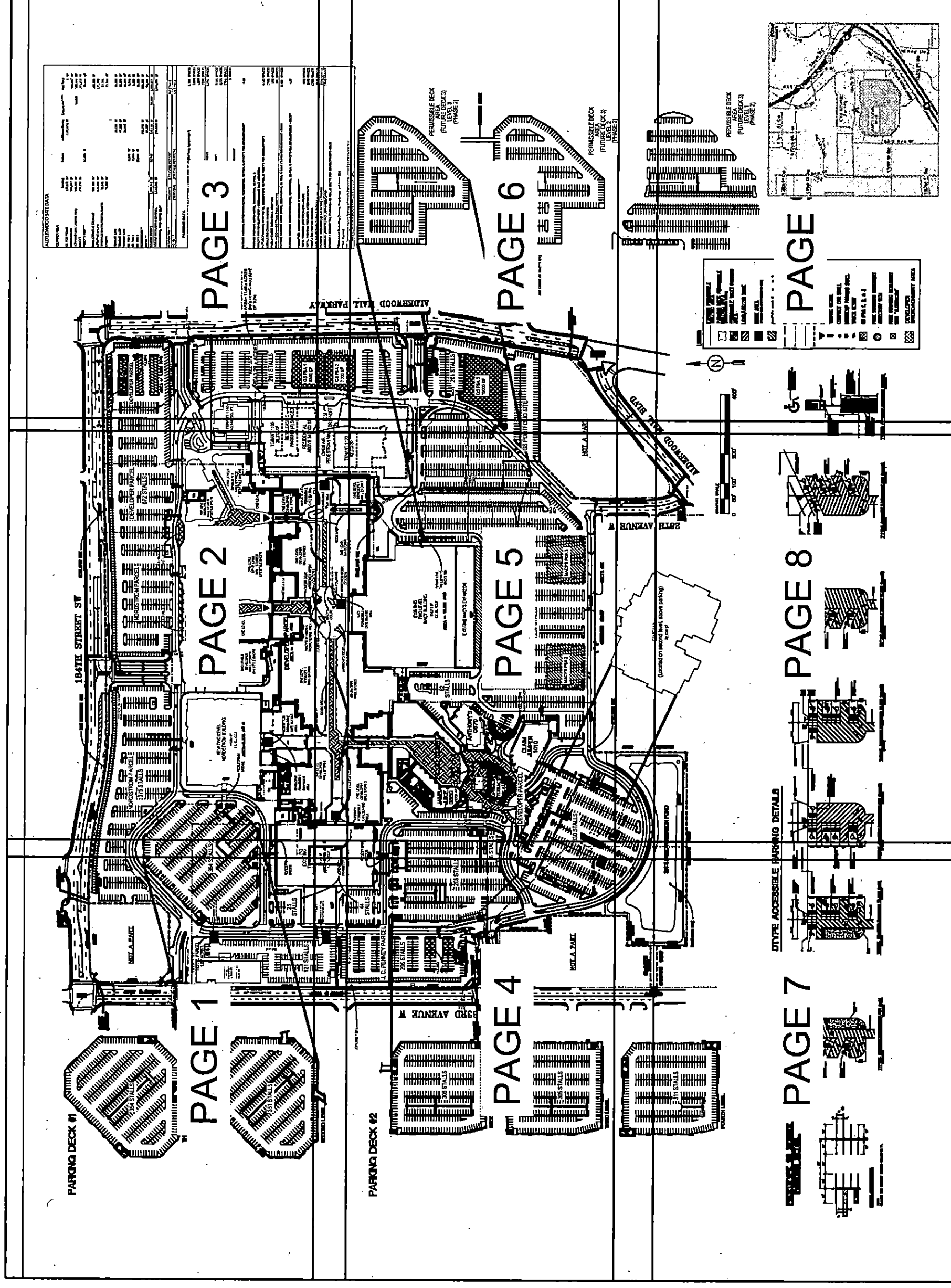
My Commission Expires: 3/25/2023

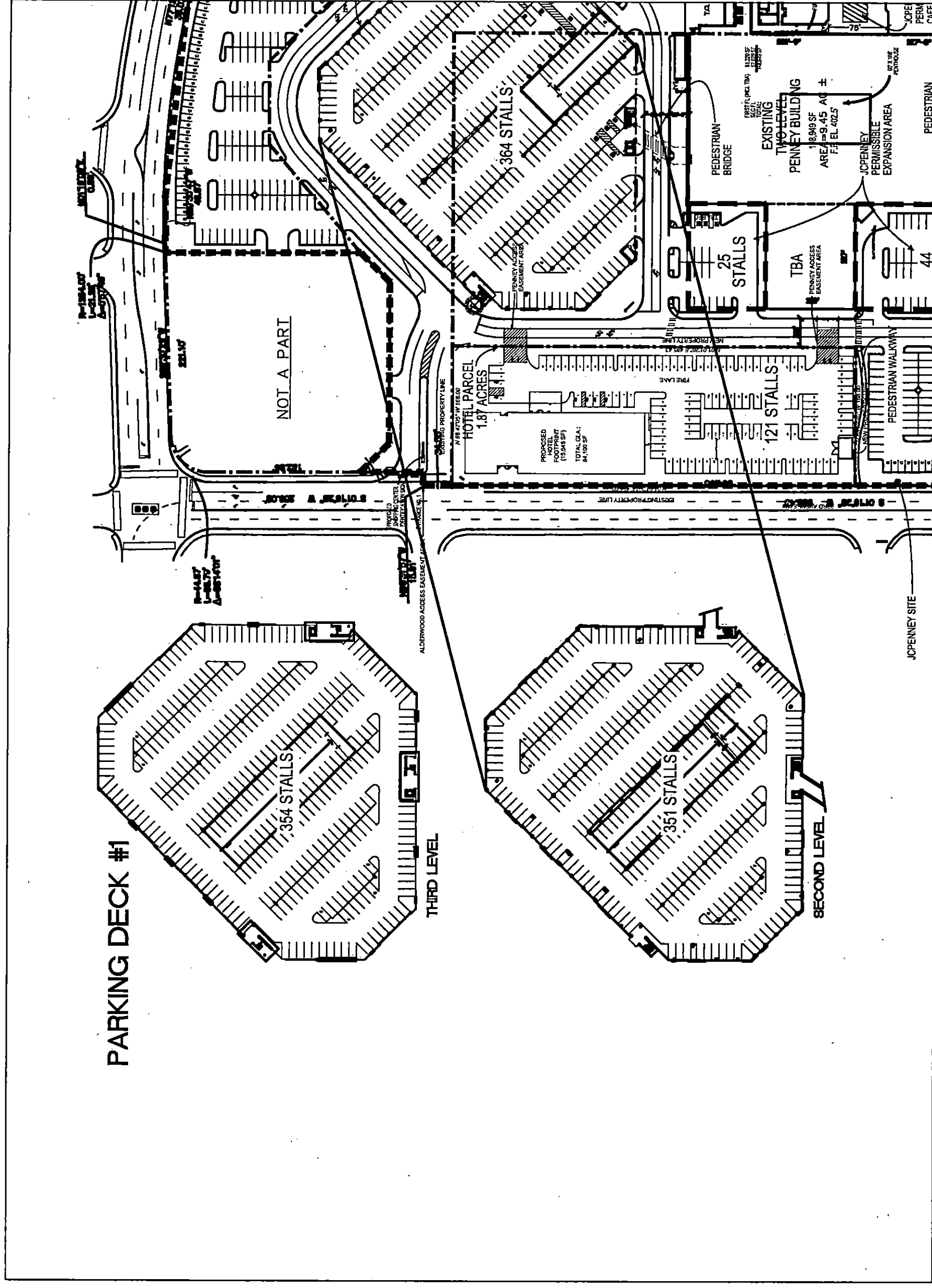
TRUSTEE EXCULPATION STAMP:

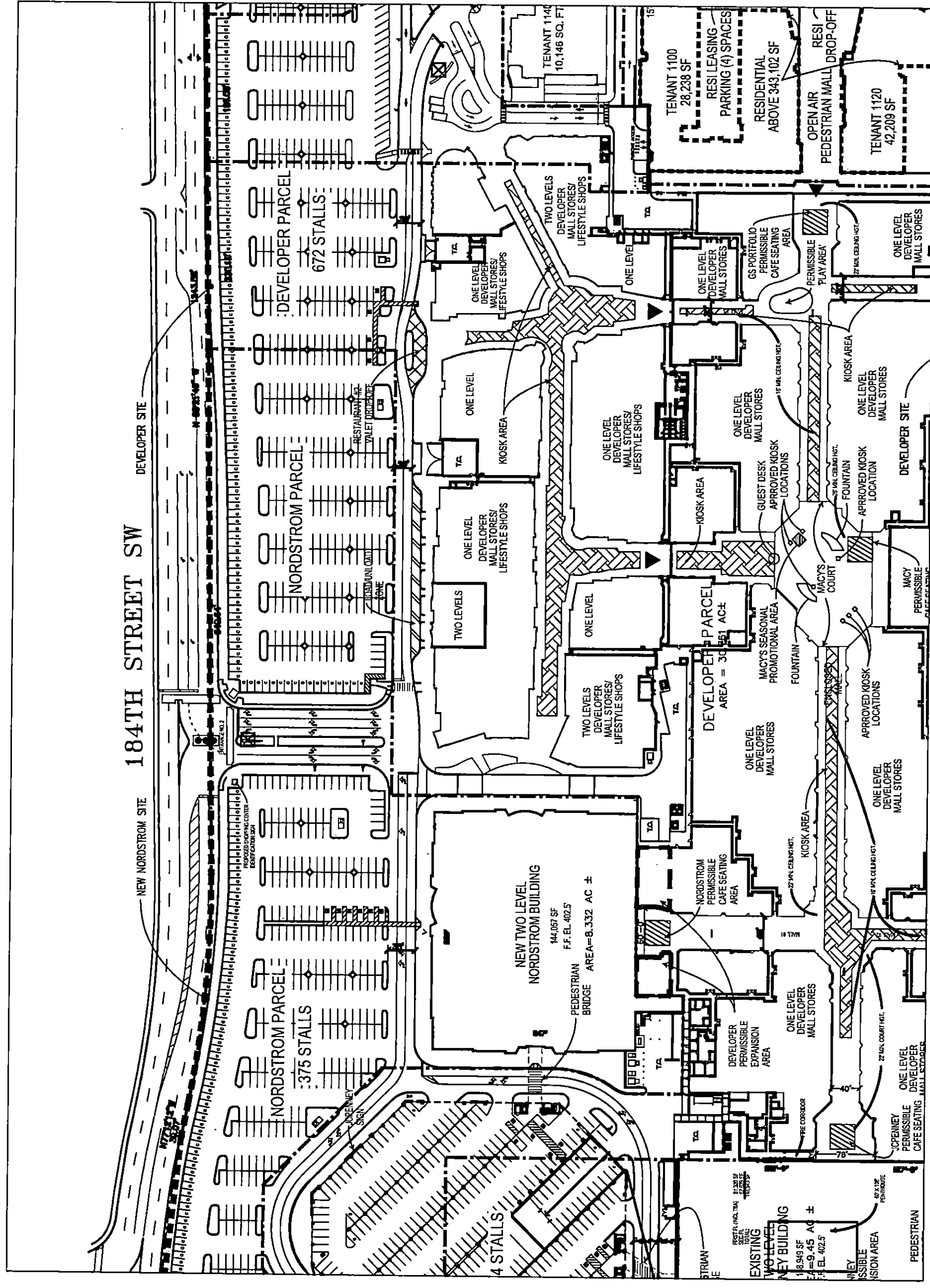


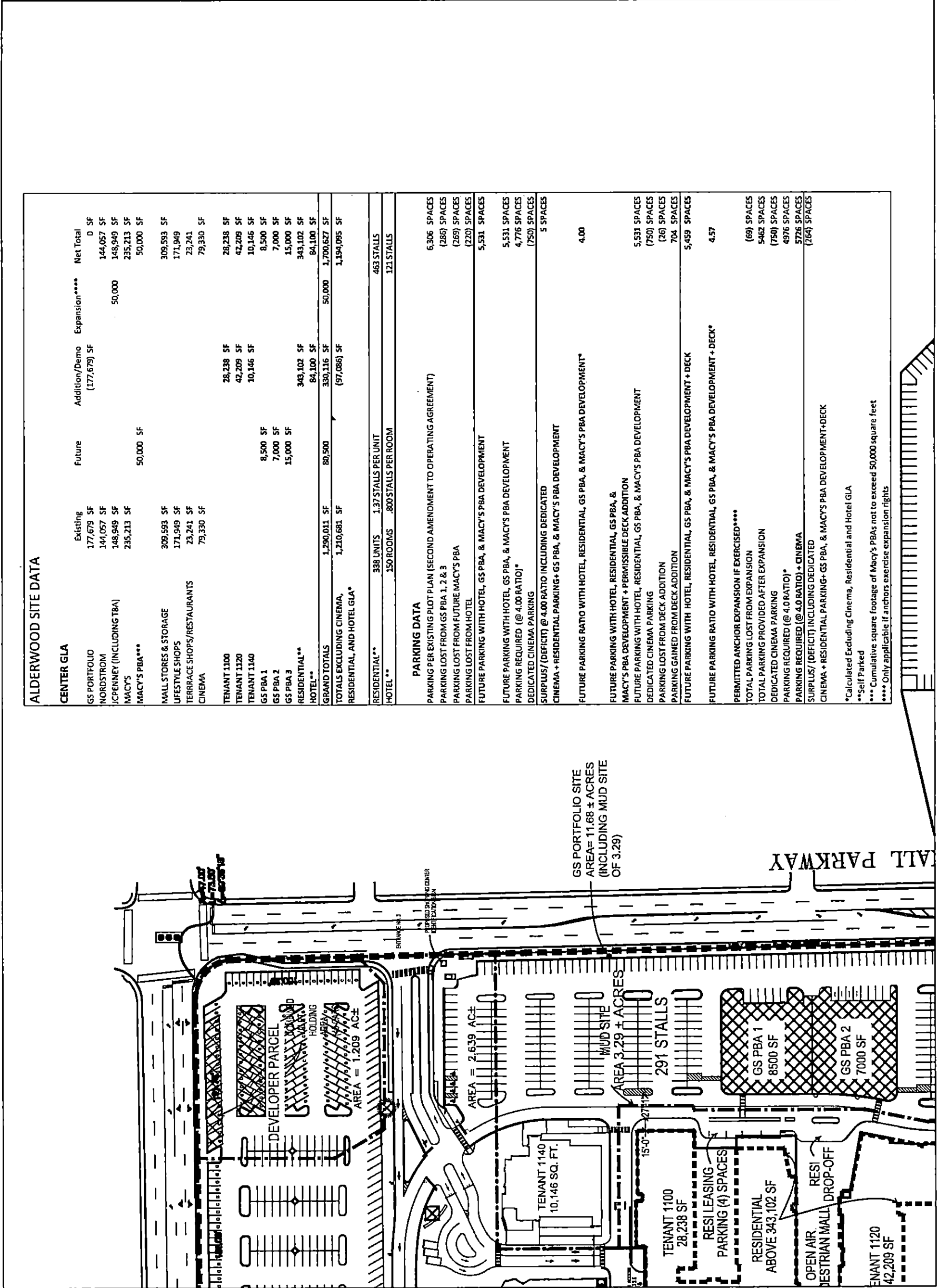
Exhibit "A"

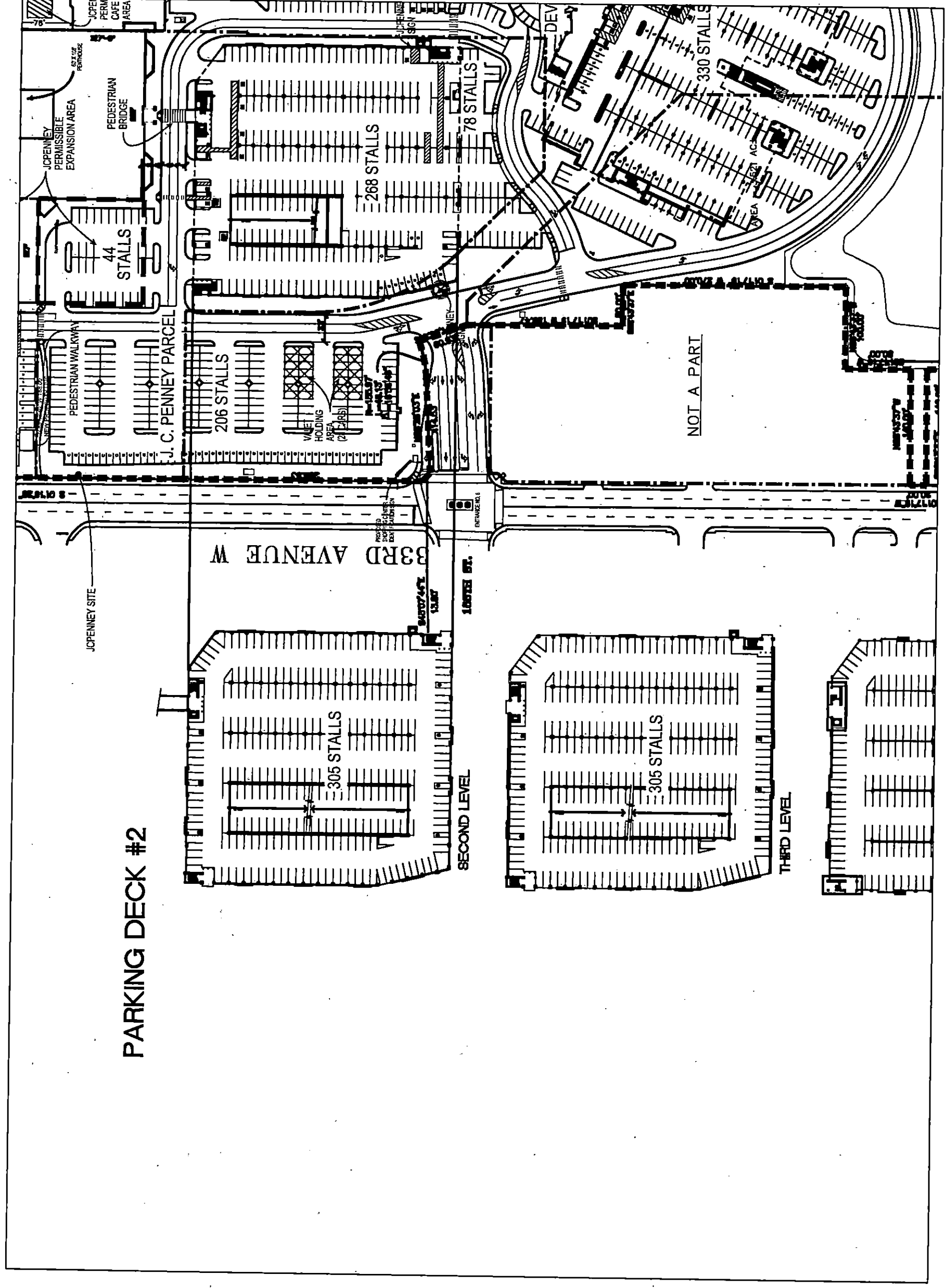
Plot Plan
(attached)

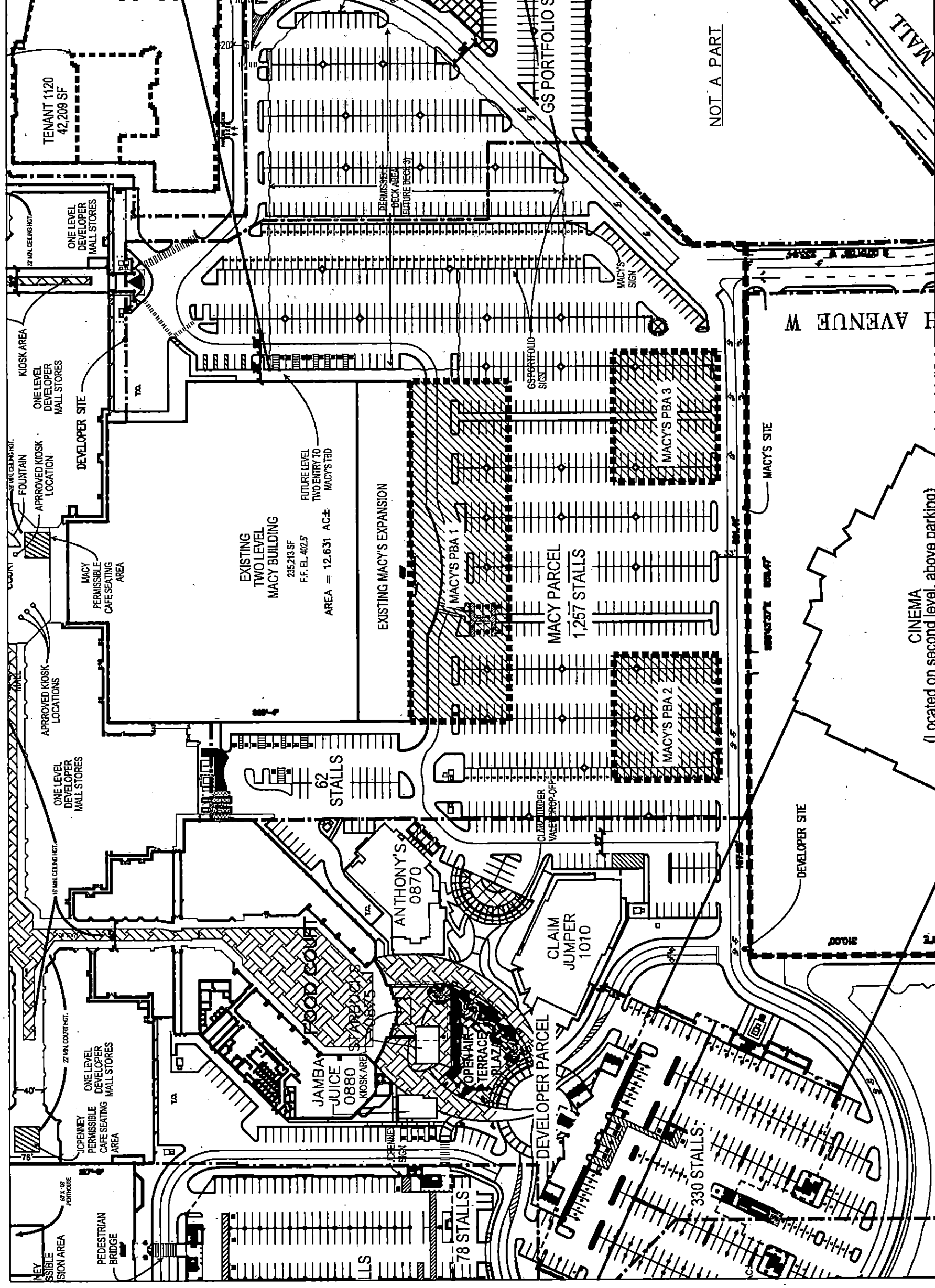


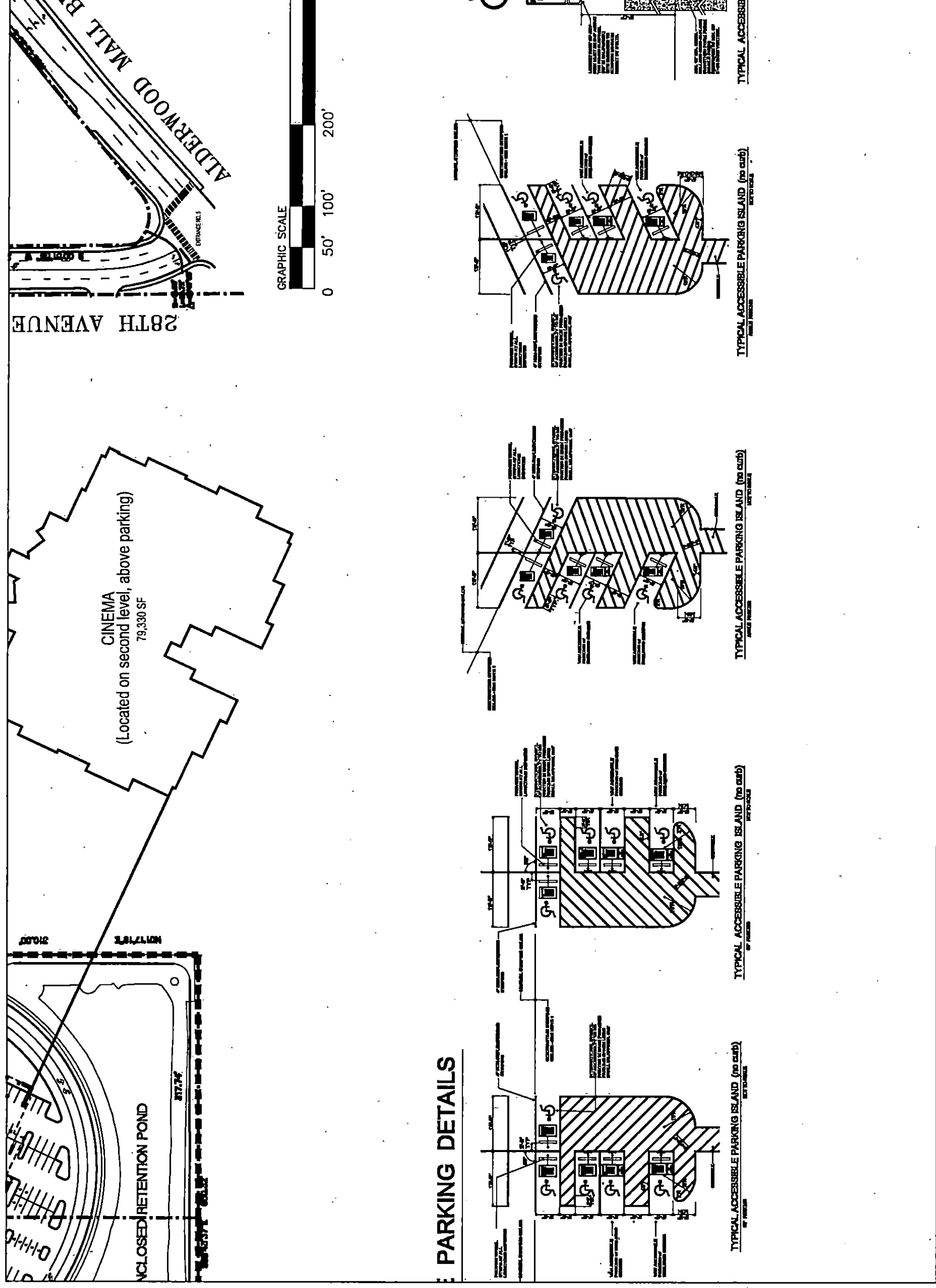












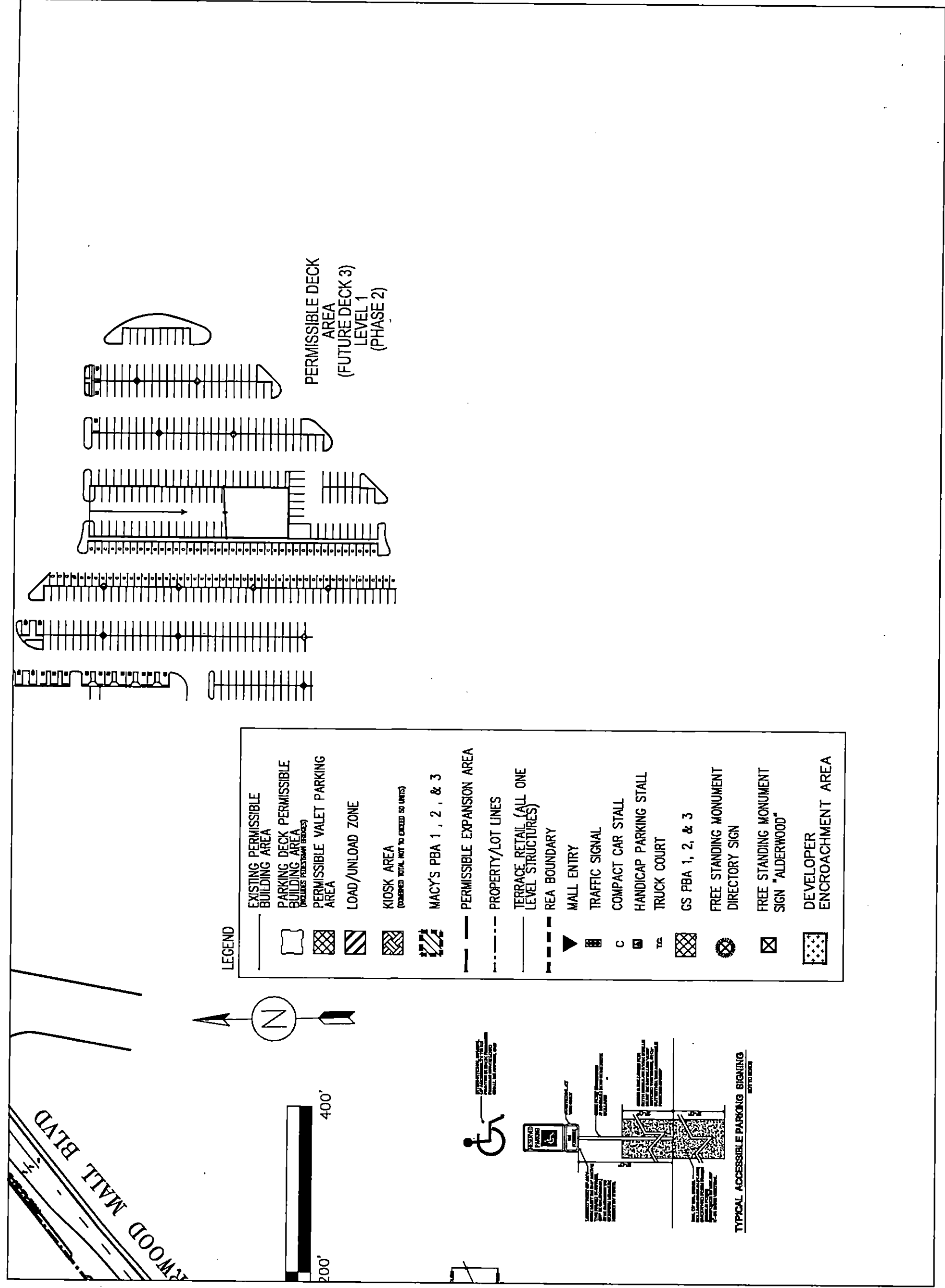


Exhibit "B"

Legal Description of the "Shopping Center Site"

LOTS 8A AND 5A, CITY OF LYNNWOOD ALDERWOOD MALL BOUNDARY LINE ADJUSTMENT NO. 2003BLA0018, RECORDED JUNE 14, 2005 UNDER AUDITOR'S FILE NUMBER 200506145002, BEING A PORTION OF LOTS 4, 5 AND 8, ALDERWOOD MALL, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 40 OF PLATS, PAGES 259 THROUGH 263, INCLUSIVE, AS MODIFIED BY INSTRUMENTS RECORDED UNDER AUDITOR'S FILE NUMBERS 8003135005, 8004070186 AND 8004070187, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, AS DESCRIBED AND DELINEATED ON SAID BOUNDARY LINE ADJUSTMENT.

LOTS 1A AND 6A CITY OF LYNNWOOD ALDERWOOD MALL BOUNDARY LINE ADJUSTMENT NO. BLA-005755-2017, RECORDED UNDER AUDITOR'S FILE NUMBER 201802155001, BEING A PORTION OF LOTS 1 AND 6, ALDERWOOD MALL, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 40 OF PLATS, PAGES 259 THROUGH 263, INCLUSIVE, AS MODIFIED BY INSTRUMENTS RECORDED UNDER AUDITOR'S FILE NUMBERS 8003135005, 8004070186 AND 8004070187, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, AS DESCRIBED AND DELINEATED ON SAID BOUNDARY LINE ADJUSTMENT.

LOTS 2, 3 AND 7, ALDERWOOD MALL, AS PER PLAT RECORDED IN VOLUME 40 OF PLATS, PAGES 259 THROUGH 263 AS MODIFIED BY INSTRUMENTS RECORDED UNDER AUDITOR'S FILE NUMBERS 8003135005, 8004070186, AND 8004070187, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

AND THAT PORTION OF LOT 9 IN SAID PLAT DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 9;
THENCE NORTH 1°12'55" EAST 402.23 FEET;
THENCE NORTH 43°47'05" WEST 362.42 FEET;
THENCE NORTH 88°47'05" WEST 28.37 FEET;
THENCE SOUTH 1°02'11" WEST 189.47 FEET;
THENCE SOUTH 88°58'45" EAST 50.00 FEET;
THENCE SOUTH 1°02'11" WEST 270.00 FEET;
THENCE NORTH 88°58'45" WEST 100.00 FEET;
THENCE SOUTH 1°02'11" WEST 80.00 FEET;
THENCE NORTH 88°58'45" WEST 140.00 FEET TO THE WESTERLY MARGIN OF 33RD AVENUE WEST;
THENCE SOUTH 1°02'11" WEST ALONG SAID WESTERLY MARGIN 20.00 FEET;
THENCE SOUTH 88°58'45" EAST 140.00 FEET;
THENCE SOUTH 1°02'11" WEST 100.00 FEET;
THENCE SOUTH 88°58'45" EAST 332.58 FEET TO THE POINT OF BEGINNING.

AND LESS AND EXCEPT FROM LOT 3 IN SAID PLAT, THAT CERTAIN PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTH 88°47'05" EAST ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 168.00 FEET; THENCE SOUTH 01°01'20" WEST A DISTANCE OF 485.43 FEET; THENCE NORTH 88°58'40" WEST A DISTANCE OF 168.00 FEET TO A POINT ON THE EASTERLY MARGIN OF 33RD AVENUE WEST, AND THE WEST LINE OF SAID LOT 3; THENCE NORTH 01°01'20" EAST ALONG SAID EAST MARGIN AND WEST LINE A DISTANCE OF 486.00 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF THE EAST HALF OF SECTION 15, TOWNSHIP 27 NORTH, RANGE 4 EAST, W.M. SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

Exhibit "E"

Legal Description of the "Penney Site"

LOT 3, AMENDMENT TO THE PLAT OF ALDERWOOD MALL AS PER PLAT RECORDED IN VOLUME 41 OF PLATS, PAGE 210, BEING AN AMENDMENT TO PLAT OF ALDERWOOD MALL AS PER PLAT RECORDED IN VOLUME 40 OF PLATS, PAGE 259, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, LESS AND EXCEPT THAT CERTAIN PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTH 88°47'05" EAST ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 168.00 FEET; THENCE SOUTH 01°01'20" WEST A DISTANCE OF 485.43 FEET; THENCE NORTH 88°58'40" WEST A DISTANCE OF 168.00 FEET TO A POINT ON THE EASTERLY MARGIN OF 33RD AVENUE WEST, AND THE WEST LINE OF SAID LOT 3; THENCE NORTH 01°01'20" EAST ALONG SAID EAST MARGIN AND WEST LINE A DISTANCE OF 486.00 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF THE EAST HALF OF SECTION 15, TOWNSHIP 27 NORTH, RANGE 4 EAST, W.M. SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

Exhibit "G"

Legal Description of the "GS Portfolio Site"

PARCEL B OF ALDERWOOD MALL LOT 1A BINDING SITE PLAN RECORDED NOVEMBER 8, 2019
AS RECORDING NO. 201911085001, IN SNOHOMISH COUNTY, WASHINGTON.

Exhibit "G-1"

Legal Description of the "MUD Site"

PARCEL A OF ALDERWOOD MALL LOT 1A BINDING SITE PLAN RECORDED NOVEMBER 8, 2019
AS RECORDING NO. 201911085001, IN SNOHOMISH COUNTY, WASHINGTON.

Exhibit "J"

Building Heights

The maximum heights of the buildings in the Shopping Center shall not exceed the following dimensions. The dimensions as indicated for each building represent the exterior wall height, including the parapet walls above the Enclosed Mall finished floor elevation of 402.5 feet, United States Coast and Geodetic Survey Datum. Mechanical equipment, penthouses, screens to hide the mechanical equipment and entrance structure cupolas and canopies on all buildings may extend above the maximum dimensions as shown:

		MAXIMUM EXTERIOR WALL HEIGHT ABOVE FINISH FLOOR ELEVATION
1.	Developer	
	(a) Mall Stores fronting on Enclosed Mall	35 feet
	(b) Enclosed Mall	35 feet
	(c) Cinema	70 feet
	(d) Terraces Retail	35 feet
	(e) Mall Stores - Lifestyle Shops - two levels*	52 feet
	(f) Mall Stores - Lifestyle Shops - one level	35 feet
2.	Macy's	56 feet
	(a) Macy's PBAs	56 feet
3.	Nordstrom	56 feet
4.	Penney	56 feet
5.	GS Portfolio	
	(a) GS Portfolio Site (including GS PBA 1 and GS PBA 2)	56 feet
	(b) GS PBA 3 only**	80 feet
6.	Mixed-Use Development	100 feet

*to the extent such Lifestyle Shops are two levels as of the date hereof, as shown on Exhibit A.

** As between GS Portfolio and Macy's, the maximum height of any building(s) to be constructed on GS PBA 3 is subject to the terms and conditions of the GS Portfolio-Macy's Supplement.

Exhibit "K"

Sign Criteria

This sign criteria is established for the purpose of assuring a first class regional shopping center and for the mutual benefit of all parties. Each party will have the right to enforce this criteria. All installed nonconforming or unapproved signs must be brought into conformance.

I. Shopping Center Site Signage.

The following signage shall be incorporated into the site development plans and these signs will become a part of the Common Area;

- a. Traffic signs used to regulate the flow of traffic upon the Shopping Center Site which shall be to the standards of the applicable public authorities;
- b. Informational signs which the parties deem necessary to inform the public and orient them within the Parking Area; and
- c. "Entry markers", to be placed at each entry to the Shopping Center Site, which the project architect will be directed to design and submit to all parties for approval, which shall incorporate the name and logo of the Shopping Center, the Department Store parties, a theatre and restaurants, as applicable.
- d. Pylon or pole signs existing on the date of this Amendment but only as long as the existing documents permitting the same remain in full force and effect and unamended.

II. Signage for Developer Mall Stores, Lifestyle Shops, Terraces Retail, MUD Retail Unit, GS PBAs and Macy's PBAs.

- a. Tenants in the Developer Mall Stores will be responsible for the fulfillment of all requirements and specifications as stated in the "Mall Tenant Sign Criteria" set forth below, which will be a part of all leases for Floor Area in the Developer Mall Stores. Developer will administer and interpret said regulation but is not empowered to authorize any departure. The purpose of Developer Mall Stores signage criteria is to establish a quality atmosphere while creating an environment which produces maximum identity and traffic and promotes the greatest sales for all tenants in the Shopping Center.

1. Criteria - Interior Storefront Signs.

- i. All signs must be internally illuminated and connected to tenant's electric service, provided that external spot or accents lights shall be permitted.
- ii. The face of the sign will not extend more than 5" beyond the face of the storefront. Letters will be no deeper than 5 inches, and no higher than 20 inches.
- iii. Light boxes will be permitted only if recessed and approved by Developer. The exposed light surface is limited to the letters and/or other minimum decorative surfaces; also, background will be opaque.
- iv. Wording will be limited to the name and/or logo of the store.

- v. The maximum length of the lettering will not exceed seventy percent (70%) of the horizontal storefront dimension.
 - vi. Reverse channel illuminated letters are not permitted.
 - vii. Exposed neon signs when held together by a clear glass tube framing system exposed in a window, inside of a light box covered with a colored translucent, or mirrored plexiglass, or mounted directly on the storefront may be permitted upon demonstration to Developer that quality and aesthetic integration into store design is achieved.
 - viii. No sign may be within three (3) feet of the Enclosed Mall facade of any Department Store building.
 - ix. All signs shall comply with all laws, ordinances, rules and regulations.
2. Criteria - Exterior Building Signs. Developer acknowledges, that by nature of the project, only certain types of tenants will be permitted to have exterior signage. The following represents a list of the tenants eligible (in Developer's discretion) for such exterior signage along with a description of such tenant's exterior signage rights;
- i. Any tenant leasing in excess of twenty thousand (20,000) square feet of Floor Area and any theatre tenant (and any replacement tenant for any of them) may have exterior identification signs on each building face of its respective store consistent with their signage in comparable shopping centers (collectively, "Big Box Exterior Signage").
 - ii. Any sit-down restaurant tenant (including any cafeteria tenant) in the Developer Mall Stores with an exterior customer entrance and any mall tenant having an exterior customer entrance may each have one exterior sign at such exterior customer entrance, provided that such exterior sign is (a) is in a location shown on the Site Plan or otherwise approved in advance and in writing by all of the Department Stores and (b) otherwise in compliance with the Exterior Signage Criteria (as hereinafter defined).
 - iii. Any national or regional tenants in the Lifestyle Shops, Terrace Retail, MUD Retail Unit, GS PBAs or Macy's PBAs (the "R&N Tenants") which have an exterior customer entrance (including tenants with exterior customer entrances that open to the Open Air Terrace Plaza or the Open Air Pedestrian Mall or the open air paseo for the Mixed-Use Development) may install one sign on each exterior wall of its respective store which signage shall be either (a) consistent with such tenants standard signage at comparable shopping centers on each exterior walls of the building (the "National and Regional Tenant Standard Signage") provided that the letters do not exceed 36 inches in height or (b) in compliance with the Exterior Signage Criteria.
 - iv. All (a) Lifestyle Shops, Terraces Retail and MUD Retail Unit tenants that do not qualify as R&N Tenants which have an exterior customer entrance that fronts the Open-Air Pedestrian Mall or the Open-Air Terrace Plaza or the open air paseo for the Mixed-Use Development or (b) tenants in the GS PBAs or Macy's PBAs that do not qualify as R&N Tenants shall be permitted to have exterior signage at such customer entrance subject to the following "Exterior Signage Criteria":
 - a. The face of the sign will not extend more than 12" beyond the face of the storefront. Letters will be no deeper than 5 inches, and no higher than 36 inches.

- b. Light boxes will be permitted only if recessed and approved by Developer. The exposed light surface is limited to the letters and/or other minimum decorative surfaces.
- c. Wording will be limited to the name and/or logo of the store.
- d. The maximum length of the lettering will not exceed seventy-five percent (75%) of the horizontal storefront dimension.
- e. Exposed neon signs when held together by a clear glass tube framing system exposed in a window, inside of a light box covered with a colored translucent, or mirrored plexiglass, or mounted directly on the storefront may be permitted upon demonstration to Developer that quality and aesthetic integration into store design is achieved.
- f. No sign may be within three (3) feet of the Enclosed Mall facade of any Department Store building.
- g. All signs shall comply with all laws, ordinances, rules and regulations.

3. General.

i. Administration.

The administration of this Exhibit is vested in the Developer. Developer shall enforce the provisions of this Exhibit and shall administer and interpret these criteria provided, however, that Developer shall not authorize any substantive variation from such criteria without the prior approval of the Department Stores.

ii. Doors and Windows.

Lettering on doors, windows or on show windows will not exceed 24" in height. No temporary or permanent paper or cardboard signs will be permitted to be applied to the interior or exterior face of the storefront glass or other storefront materials.

iii. Sidewalks.

No signs will be allowed in the exterior sidewalk or beyond the interior lease line of the leased premises contiguous to the malls, courts, and arcades. Floor signs such as inserts into floors, carpet, etc., will not be permitted within the leased premises in or near their storefronts on both exterior and interior fronts, provided that temporary signs for special events and signs for valet parking pick-up areas shall be permitted.

iv. Service Courts.

Service entrance signs will be provided by Developer.

v. Action Signs.

No flashing action, moving action or audible signs are permitted.

vi. Colors.

Colors must be compatible to colors and materials for the Tenant's storefront and submitted to the Developer for approval.

vii. Responsibility.

All signs, permits and related or resulting construction will be each tenant's responsibility and all signs will be installed under the supervision of Developer. No sign maker's identification or registered trademark indications will be permitted. The sign contractor will repair any damage caused by his work. All signs must conform to local building and electrical codes.

- b. At each entry to the Developer Mall Stores, an exterior identification sign bearing the Shopping Center name and logo will be permitted.
- c. Directories and other information signage which Developer feels is necessary will be permitted in the Enclosed Mall; each Department Store will be designated on any Shopping Center directory in a manner reasonably acceptable to such party and which is consistent and harmonious with the design and size of such directory. The location of any directory in the court of a Department Store shall be subject to the approval of such Department Store.
- d. Developer shall install and maintain Department Store directional signs, the locations and design of which shall be subject to the approval of the Department Stores. Developer will submit a comprehensive sign package to the Department Store parties for approval of such directional signage. Developer shall have the right to include the names of (i) the theater, (ii) any restaurant, and (iii) any bookstore in excess of twenty thousand (20,000) square feet of Floor Area on such directional signs.

III. Department Store Signage.

Each of the Department Stores may have its usual identification signs on its Building (both exterior and facing the Enclosed Mall) as the same exists in similar department store buildings operated by it, as it may be modified from time to time, and such signage will not identify any occupant other than such Department Store during its operating covenant. Thereafter, the restriction against signage identifying any other Occupant on a Department Store shall not apply to such Department Store and only Part V below shall apply. Notwithstanding anything herein to the contrary, each Department Store may continue to have its signs that exist at the Shopping Center Site as of the date of this Amendment.

IV. MUD Residential Unit Signage.

The ResDev shall be permitted to install the following signage for the MUD Residential Unit:

- a. Internally illuminated MUD Residential Unit identification blade signs limited to a max of 4' x 14'; signs may be vertically or horizontally orientated and installed in the locations indicated on Exhibit "4" to the Third Amendment.
- b. Externally illuminated parking wayfinding signs for the MUD Parking Structure and residential loading (move in) area limited to a max of 27" x 27", and installed in the locations indicated on Exhibit "4" to the Third Amendment.

- c. Unilluminated, plastic or sheet metal "Future Resident" parking spot signs at each such space in the MUD Parking Structure or the Residential Leasing Parking Spaces limited to a max of 18"x 18".
- d. Externally illuminated or unilluminated, metal pedestrian signs for lobbies, leasing office and mail/ package room for the MUD Residential Unit limited to a max of 2'x 7' each, or if hung from a canopy, not to exceed the length of the canopy.
- e. Building addresses for the MUD Residential Unit limited to 5" numbers and letters applied to the exterior of the MUD Residential Unit or to the exterior windows of the MUD Residential Unit.
- f. Window signs for office and lobbies for the MUD Residential Unit limited to 3" letters applied to windows of the office and/or the lobbies of the MUD Residential Unit.
- g. Office hour for the office for the MUD Residential Unit limited to 3" letters applied to windows or doors of the office of the MUD Residential Unit.
- h. Externally illuminated or unilluminated pedestrian wayfinding signs for the MUD Residential Unit of substantially similar size and construction to the pedestrian wayfinding signs for the MUD Retail Unit, located at each end of the ground level walkway (paseo) between the towers for the Mixed-Use Development, and installed in the locations indicated on Exhibit "4" to the Third Amendment.
- i. Unilluminated loading area signs constructed of metal and each sign is limited to a max of 27"x 27".
- j. Bang bars for MUD Parking Structure and loading docks.
- k. Two (2) unilluminated "A" boards for leasing office during office hours placed in front of the leasing office entrance and not in a location which interferes with the tenants and customers of the MUD Retail Unit.
- l. Externally illuminated wayfinding to the leasing office, limited to a max of 27" x 27", and installed in the locations indicated on Exhibit "4" to the Third Amendment.
- m. Three (3) temporary "Now Leasing" or similar message banners not to exceed 6'x 25' which may remain left on the exterior façade of the MUD Residential Unit for a period not to exceed twelve (12) months after the first unit in the MUD Residential Unit is available for lease.
- n. Temporary construction signs for warnings, wayfinding, safety, FDC, addressing and other construction related notices, as required by applicable laws.

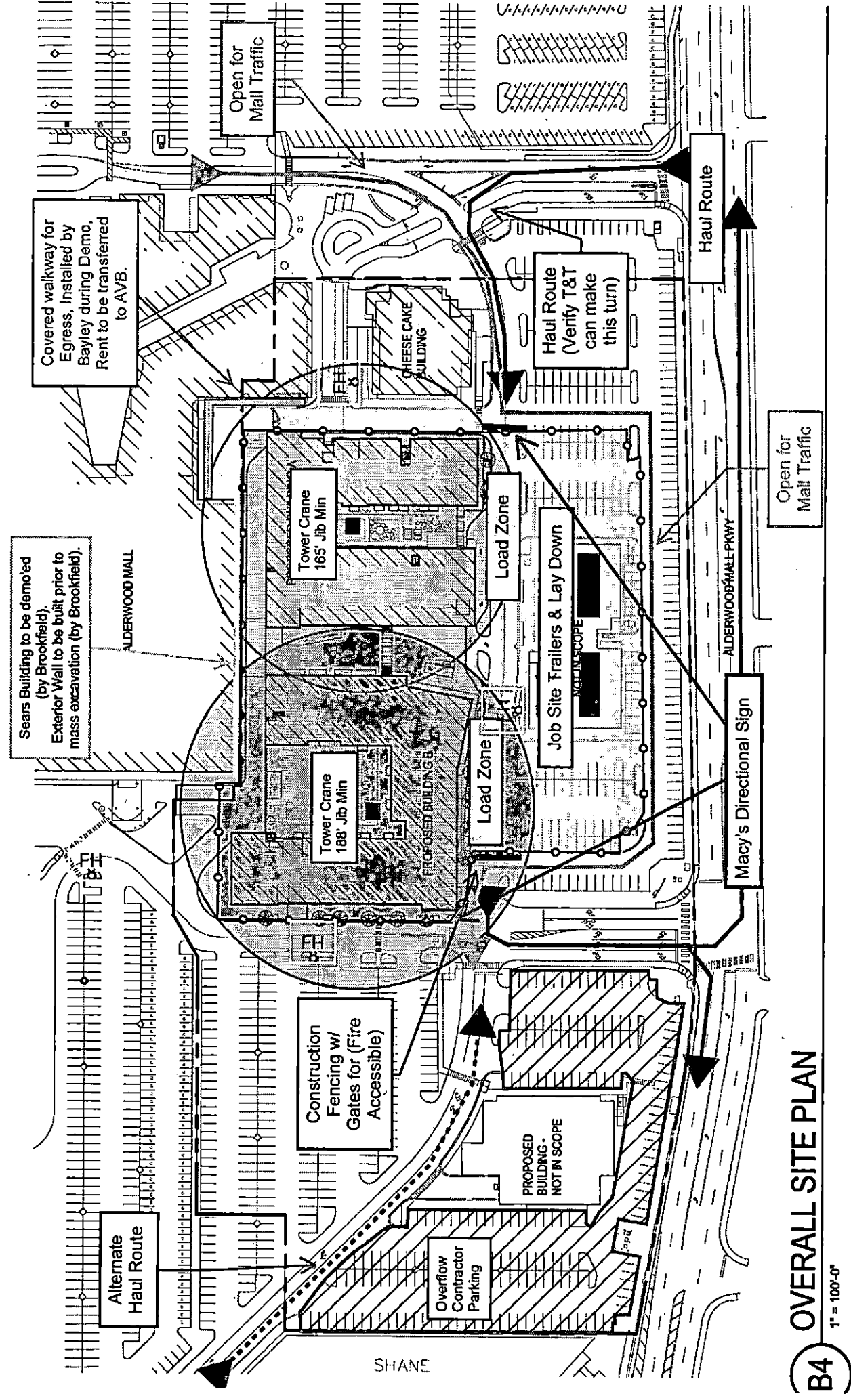
V. Prohibited Signs.

Other than the Developer's Shopping Center Site signage referred to in Section I above, none of the parties will erect any sign on any Common Area, including parking area, or on any roof top in the Shopping Center Site other than a sign affixed to the facade of any penthouse or cooling tower, without the express written approval of the other parties, which approval may be withheld in each other party's sole and absolute discretion. The parties will not permit any flashing action, moving action, or audible signs on their respective Sites.

Exhibit "1"

Staging Plan for the Mixed-Use Development

Exhibit 1: Staging Plan for the Mixed-Use Development



AVALON BAY
ALDERWOOD MALL LOGISTICS PLAN

Exhibit "2"

Construction Schedule for Mixed-Use Development

Prepared on 12/16/19

1. Architectural Design
 - a. 05/2019: 100% Design Development Documents Issued
 - b. 03/2020: Complete Construction Documents
2. Entitlements and Permits
 - a. 01/2020: Type IA Building Permit Issued
 - b. 03/2020: Type VA Building Permits Issued
3. Preconstruction, Construction, and Lease-Up
 - a. 12/2019: Begin Construction
 - b. 12/2020: South Retail Ready for Build Out
 - c. 02/2021: North Retail Ready for Build Out
 - d. 07/2021: 1st Apartment Turns
 - e. 07/2022: Complete Construction

Exhibit "3"

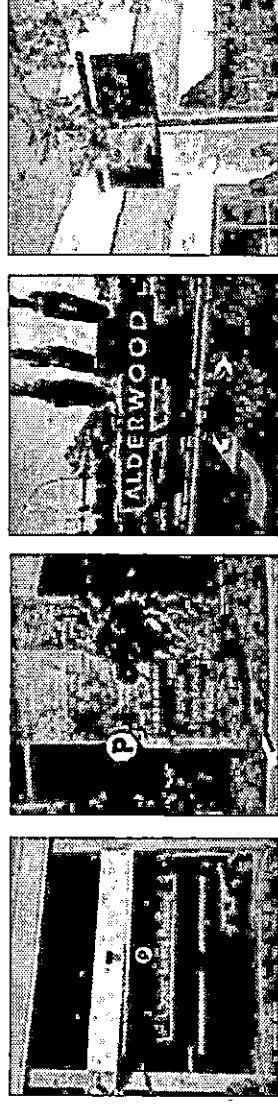
MUD Site Critical Access Ways

Exhibit "4"

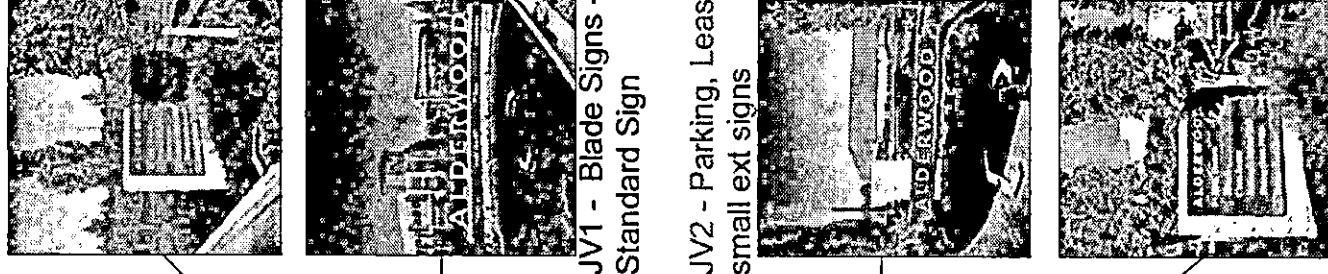
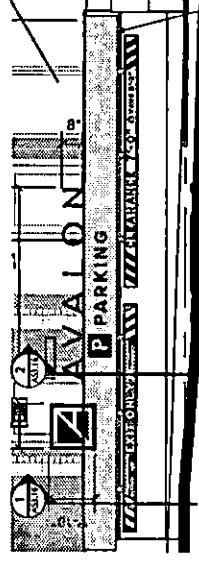
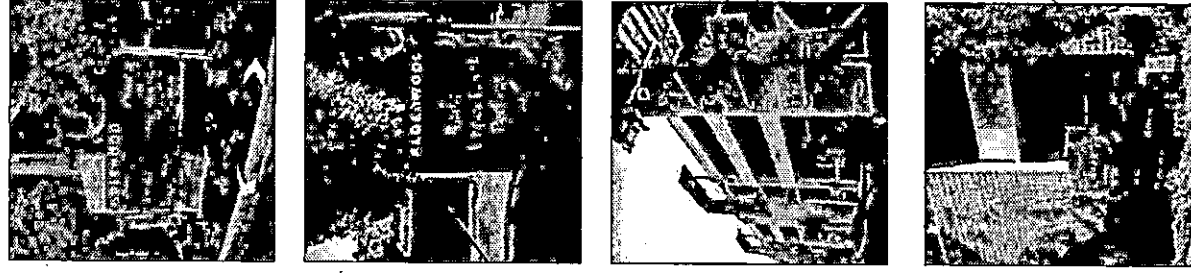
MUD Residential Unit Preapproved Signage

[Attached]

Res Unit will add way
finding to this sign to
match

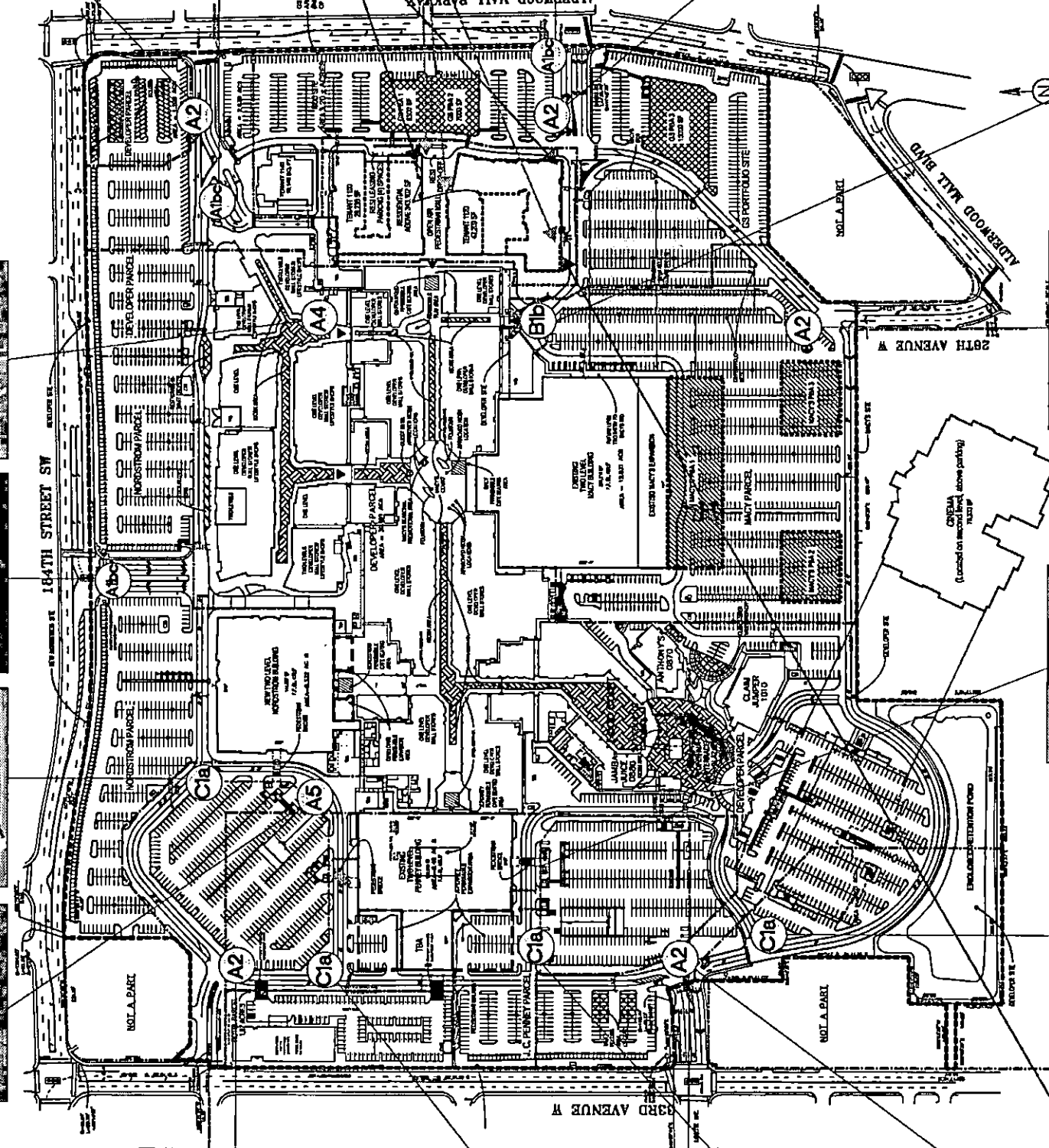


Brookfield
Properties



Res Unit will add way
finding to this sign to
match

- LEGEND:
- (B1b) WALL SIGN "ALDERWOOD"
 - (B3) INTERIOR "THE TERRACE"
 - (C1a) PARKING DIRECTIONS MONUMENT SIGN
 - (A1b) FREE STANDING MONUMENT SIGN "ALDERWOOD"
 - (A2) FREE STANDING MONUMENT DIRECTORY SIGN
 - (A4) FREE STANDING DIRECTORY SIGN
 - (A5) HANGING PARKING SIGN



ALDERWOOD MALL
3000 184TH STREET SW, SUITE 145
LYNNWOOD, WASHINGTON 98037

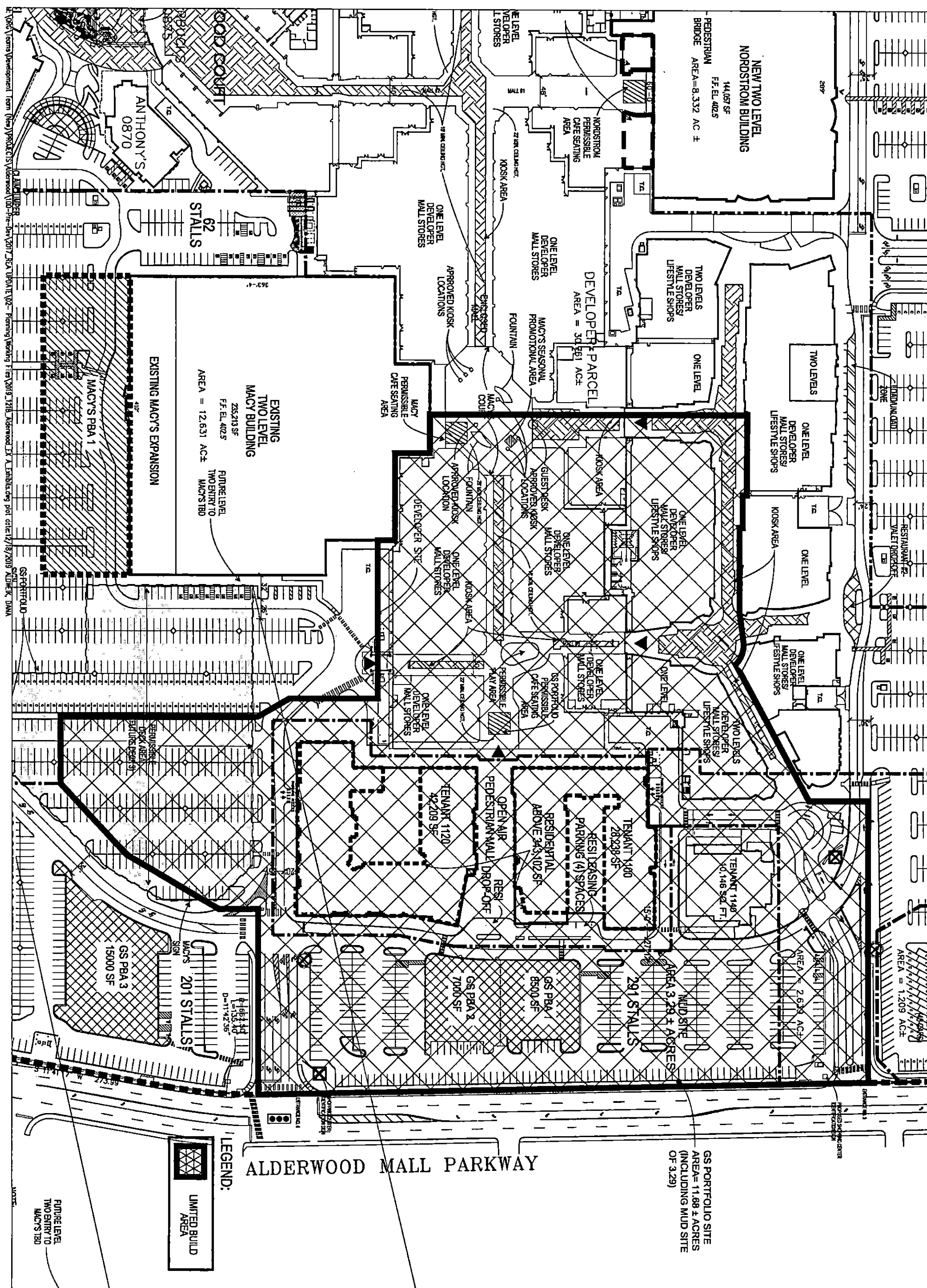
SHEET NO.
EX-4

DATE: 12/12/2019

Exhibit "5"

Limited Build Area

[Attached]



ALDERWOOD MALL

3000 184TH STREET SW, SUITE 145
LYNNWOOD, WASHINGTON 98037

Brookfield Properties

EXHIBIT 5

EX-5

DATE: 12/12/2019

Exhibit "6"

Legal Description of the "Penney Outparcel Site"

THAT PORTION OF LOT 3, AMENDMENT TO THE PLAT OF ALDERWOOD MALL AS PER PLAT RECORDED IN VOLUME 41 OF PLATS, PAGE 210, BEING AN AMENDMENT TO PLAT OF ALDERWOOD MALL AS PER PLAT RECORDED IN VOLUME 40 OF PLATS, PAGE 259, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTH 88°47'05" EAST ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 168.00 FEET; THENCE SOUTH 01°01'20" WEST A DISTANCE OF 485.43 FEET; THENCE NORTH 88°58'40" WEST A DISTANCE OF 168.00 FEET TO A POINT ON THE EASTERLY MARGIN OF 33RD AVENUE WEST, AND THE WEST LINE OF SAID LOT 3; THENCE NORTH 01°01'20" EAST ALONG SAID EAST MARGIN AND WEST LINE A DISTANCE OF 486.00 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF THE EAST HALF OF SECTION 15, TOWNSHIP 27 NORTH, RANGE 4 EAST, W.M. SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

Exhibit "7"

Form of CC&R

[Attached]

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENT AGREEMENT

THIS COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENT AGREEMENT ("**Agreement**") is made and entered into as of _____, 2020 (the "**Effective Date**") by and among **J.C. PENNEY PROPERTIES, INC.**, a Delaware corporation ("**Penney**"), **ALDERWOOD MALL L.L.C.**, a Delaware limited liability company ("**Alderwood**"), and [_____, a _____] ("**Outparcel Owner**"). Penney, Alderwood and Outparcel Owner, and their respective successor owners of their Parcels (hereinafter defined) from time-to-time, may be referred to herein collectively as the "**Parties**" or individually as a "**Party**". Penney and Alderwood, and their respective successor owners of their Parcels from time-to-time, may be referred to herein collectively as the "**Approving Parties**" or individually as an "**Approving Party**".

Recitals

- A. Alderwood is the owner of the property described in Exhibit A attached hereto and incorporated by reference (the "Alderwood Parcel"). Penney is the owner of the property described in Exhibit B attached hereto and incorporated by reference (the "Penney Parcel"). Outparcel Owner is the owner of the property described in Exhibit C attached hereto and incorporated by reference (the "Outparcel"). The Alderwood Parcel, Penney Parcel and the Outparcel may be referred to individually herein as a "Parcel" or collectively as the "Parcels."
- B. The Alderwood Parcel and the Penney Parcel together with those other parcels of land described in that certain Operating Agreement dated as of November 13, 1979, recorded November 15, 1979 in the Auditor's Office for Snohomish County, Washington as Document No. 7911150334 at Vol. 1630, Page 600, as amended and assigned to date (the "OA"), collectively comprise that certain regional shopping center located in Lynwood, Washington, and commonly known as Alderwood Mall (the "Shopping Center"). Alderwood, Penney and the other parties to the OA are individually referred to herein as a "Shopping Center Party" and collectively referred to herein as the "Shopping Center Parties").
- C. The Outparcel has been subdivided from the Penney Parcel and concurrent with the execution and recordation of this Agreement will be released from the encumbrance of the OA, and Outparcel Owner intends to construct the Project, as hereinafter defined, on the Outparcel.
- D. The Parties wish to enter into this Agreement for the orderly development of the Project and to provide for the covenants, conditions, restrictions and easements as set forth hereinafter for their mutual benefit.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants hereinafter contained, the parties hereto hereby agree as follows:

Section 1. Use of Outparcel; Parking

(a) Permitted Uses. The Outparcel shall be used only for the construction and operation of a hotel (not to exceed 84,100 square feet) with parking areas and landscaping and such ancillary facilities and uses customarily included with hotels in the Seattle, Washington area, including without limitation meeting rooms, a guest café with kitchen and/or buffet, guest lounge and bar not to exceed 6,000 square feet in the aggregate, gift shop not to exceed 500 square feet, and fitness facilities (the "Project"). It is contemplated (but not required) that the Project shall initially be operated as an AC Hotels by Marriott flagged hotel. For so long as this Agreement is effective, the Project and the Outparcel shall be operated, maintained and repaired in the manner necessary to maintain a hotel flag classification at or above the level of a Hampton by Hilton, Fairfield by Marriott or Holiday Inn Express by Intercontinental or their then-applicable equivalent.

(b) Parking. Outparcel Owner shall (i) operate, maintain, and repair (or cause to be operated, maintained and repaired) at all times from and after the completion of the construction of the Project a number of parking spaces contained solely on the Outparcel sufficient to comply with all governmental parking requirements applicable to the Outparcel from time to time, and (ii) otherwise satisfy all applicable laws and ordinances with respect to the use and operation of the Project. Outparcel Owner and its guests, employees and invitees shall have no right to utilize any parking spaces within the Shopping Center, including the Alderwood Parcel and the Penney Parcel, and the Shopping Center Parties, including Alderwood and Penney, and their guests, employees and invitees shall have no right to utilize any parking spaces on the Outparcel.

Section 2. Construction of the Project

(a) Description of Work.

(i) The Project shall consist of the Project building and the parking areas and other facilities to be constructed in the locations shown on the site plan attached hereto as Exhibit D ("Site Plan"), and in accordance with the elevations, plans, drawings and renderings described in Exhibit E attached hereto ("Drawings"), as such Site Plan and Drawings may be modified as prescribed herein (including, without limitation, as described in Section 2(a)(iii) below). The construction of the Project building, parking areas and other facilities are herein sometimes collectively referred to as the "Work". Outparcel Owner shall be solely responsible to perform, or cause to be performed, the construction of the Work.

(ii) Outparcel Owner shall not perform any of the Work unless and until the plans and specifications for same (collectively, the "Plans") shall have been reviewed and approved in writing by the Approving Parties. The Approving Parties' approval of such Plans shall be limited to the exterior size, elevation,

colors, layout, general appearance, external signage, and confirming that the quality of exterior construction materials complies with hotel brand standards. The Approving Parties agree that their approval of Plans shall not be unreasonably be withheld, conditioned or delayed. Once the Plans are so approved by the Approving Parties, Outparcel Owner's performance of the Work shall comply in all material respects with the approved Plans.

(iii) The Site Plan, the Drawings and the Plans shall not be modified in any material respect without the Approving Parties' review and written approval; provided, however, for purposes of clarity, a square footage for the Project that exceeds the square footage set-forth in subsection 1(a) above and a height for the Project that exceeds the height approved in the Plans shall be deemed material changes and shall be subject to the Approving Parties' review and written approval.

(iv) If Outparcel Owner desires modifications to the Site Plan, the Drawings or the Plans prior to completion of the Work, Outparcel Owner shall deliver a copy of the proposed revised Site Plan and/or Plans and/or Drawings (as the case may be) to the Approving Parties. The revised Site Plan, Drawings and / or Plans, as ultimately approved pursuant to this subsection 2(a)(iii) [or subsection 2(a)(iv), if applicable] shall govern and control. Within twenty-one (21) days following receipt of the proposed revised Site Plan, Drawings and/or Plans, each Approving Party shall deliver written notice to the Outparcel Owner either approving the revisions, disapproving the revisions or requesting revisions to the submitted Site Plan, Drawings and/or Plans. If (1) an Approving Party shall fail to deliver such notice responding to a request for such a revision within such twenty-one (21) day period, (2) thereafter Outparcel Owner delivers a second written notice to the non-responding Approving Party captioned with **"URGENT NOTICE RE: OUTPARCEL DEVELOPMENT - IMMEDIATE RESPONSE REQUIRED; FAILURE TO RESPOND IN SEVEN (7) BUSINESS DAYS WILL CONSTITUTE A DEEMED APPROVAL"** in capital letters and bold font on the first page of such notice specifying that the non-responding Approving Party failed to respond to Outparcel Owner's initial request for modifications and that failure to timely respond to this subsequent notice will be deemed an approval by the non-responding Approving Party ("Second Notice"), and (3) the non-responding Approving Party fails to deliver a written notice to Outparcel Owner either approving or disapproving the requested revisions within seven (7) business days after the non-responding Approving Party's receipt of the Second Notice, then the requested revisions shall thereafter be conclusively deemed to be approved by the non-responding Approving Party. Any notice by an Approving Party disapproving requested revisions shall specify the reasons therefor. Outparcel Owner and the Approving Parties shall use commercially reasonable, good faith efforts to agree on the final form of the revised Site Plan, Plans and/or Drawings, including the continued delivery and review of revised Site Plan, Plans and/or Drawings in accordance with the foregoing procedure described in this subsection 2(a)(iii).

(v) The Parties acknowledge that the City of Lynnwood, Washington (the "City") may require modification of elements of the Site Plan, the Drawings or the Plans prior to completion of the Work (collectively, "City Required Modifications"), in which case Outparcel Owner shall deliver a copy of the City Required Modifications to the Approving Parties for review, and the submission and response procedure set forth in subsection 2(a)(iii) shall control the review and approval of the City Required Modifications by the Approving Parties, except that the twenty one (21) day period set forth in subsection 2(a)(iii) shall be a fourteen (14) day period in the case of submissions and responses to City Required Modifications.

(vi) Following completion of the Work, Outparcel Owner may make subsequent material modifications to the exterior façade (including the existing roof so long as modifications to same do not extend above the original roof line contemplated in the approved Plans) of the Project building, the outdoor amenity areas and landscaping, without the approval of the Approving Parties, provided such material modifications are generally consistent with the character and quality of similar hotel projects located in the City. Except as provided in the immediately preceding sentence, following completion of the Work, all other subsequent material modifications to the exterior of the Project shall require the prior written consent of the Approving Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Any such desired material modifications to the exterior of the Project shall be submitted, reviewed and approved in accordance with the procedure set forth in subsection 2(a)(iii) above.

(b) Standards of Work. All construction and other work performed under this Section 2 including, without limitation, the Work (collectively, "Construction Activities"), shall be subject to the following requirements:

(i) Upon the commencement of any Construction Activities, Outparcel Owner shall prosecute such Construction Activities to completion with commercial diligence (without being required to incur non-standard expenses to expedite Construction Activities, such as labor overtime) in accordance with the terms of this Agreement;

(ii) All Construction Activities shall be performed in a good and workmanlike manner using first-class materials and in accordance with all applicable laws, ordinances, rules and regulations and the safety (including fire safety) standards of a nationally recognized rating service;

(iii) Outparcel Owner shall perform or cause all Construction Activities to be performed so as not to: (A) unreasonably impair the use, occupancy or enjoyment of the Shopping Center or any part thereof, including the Alderwood Parcel and the Penney Parcel, by the Shopping Center Parties, including Alderwood and Penney, and their guests, employees and invitees, or (B) cause or

allow any mechanics' or materialmen's liens to attach to the Shopping Center or any part thereof, including the Alderwood Parcel and the Penney Parcel; and

(iv) Outparcel Owner at all times: (A) shall take any and all safety measures reasonably required to protect the Shopping Center, including the Alderwood Parcel and the Penney Parcel (and the tenants, occupants and invitees thereof) from injury or damage caused by or resulting from its performance of any Construction Activities, and (B) shall, indemnify, defend and hold harmless Alderwood and Penney from and against mechanic's, materialmen's and/or laborer's liens arising from its performance of any Construction Activities. Outparcel Owner shall conduct such defense with attorneys and other professionals retained by Outparcel Owner and reasonably approved by the applicable indemnified party and shall pay all fees and costs related thereto. Notwithstanding the foregoing, such indemnified party may elect to engage its own attorneys and other professionals, at Outparcel Owner's commercially reasonable expense, to defend it or assist in such defense. In all events, case strategy will be determined by the applicable indemnified party as said indemnified party so elects and no action or claim may be settled without the indemnitor's and indemnitee's prior written approval, which shall not be unreasonably withheld by each of the indemnitor and indemnitee.

(c) Clean-up. Outparcel Owner shall cause its contractors and subcontractors to keep the construction site in an orderly condition consistent with good and workmanlike construction practices and in accordance with all applicable laws, including without limitation the prompt removal from the Outparcel and disposal of debris and rubbish caused by or resulting from the performance of any Construction Activities. No construction waste, dirt, supplies or machinery and equipment may be placed outside the Outparcel either during or after the performance of any Construction Activities. Within a reasonable period of time after completion of any component of the Construction Activities for which temporary structures, materials, machinery and equipment have been utilized which are no longer necessary for the balance of the Construction Activities, Outparcel Owner shall, and shall cause its contractors and subcontractors to, remove such temporary structures, surplus materials, machinery and equipment. The construction area on the Outparcel shall be screened by construction fencing, and Alderwood and Penney shall be entitled to place one or more temporary signs on the construction fencing, at each such party's sole cost and expense, indicating that the Penney store or the Shopping Center, as applicable, is open, such sign or signs to be in a location or locations approved by Outparcel Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

(d) Protection of Adjacent Property. Outparcel Owner shall, and shall cause each of its contractors and subcontractors to, maintain protection of the property and improvements adjacent to the areas in which any Construction Activities are performed (the "Construction Area") as may be necessary or reasonably appropriate in such a manner as to prevent any damage to such property and improvements by reason of its performance of any Construction Activities, and shall use such lights, guard rails, and

"Minor Contractor" shall be a general contractor or sub-contractor performing portions of any Construction Activities with a cost, in the aggregate, up to \$3,000,000.

(h) Indemnification. Outparcel Owner shall indemnify and defend Penney and Alderwood against, and hold Penney and Alderwood harmless from, any and all claims, demands, suits, costs, expenses and liabilities arising from or related to the performance of any Construction Activities, except to the extent that any such liabilities arise from the negligence or willful misconduct of the applicable indemnified party or its agents and employees. Outparcel Owner shall conduct such defense with attorneys and other professionals retained by Outparcel Owner and approved by the applicable indemnified party and shall pay all commercially reasonable fees and costs related thereto. Notwithstanding the foregoing, the applicable indemnified party may elect to engage its own attorneys and other professionals, at Outparcel Owner's commercially reasonable expense, to defend it or assist in such defense. In all events, case strategy will be determined by the applicable indemnified party if such Party so elects and no action or claim may be settled without Outparcel Owner's and the applicable indemnified party's prior written approval, which shall not be unreasonably withheld.

(i) Release and Waiver of Subrogation. Each of the Parties to this Agreement, from time-to-time for itself, releases the other Parties from and, to the extent legally possible for it to do so on behalf of its insurer, hereby waives any liability for any loss or damage to its property located upon their respective parcels, but only as and to the extent such loss or damage is of the type covered typically by a "Causes of Loss – Special Form" policy of property insurance or any comparable ISO form replacement or successor thereto. If the waiver of subrogation provided for in this subsection (i) is not effective as to any insurer of a Party hereto, such Party covenants that it will obtain for the benefit of the other Parties an express waiver of any right of subrogation which the insurer of such Party may acquire against the other Parties by virtue of the payment of any such loss covered by such insurance; provided, however, in the event any Party (a "Non-Waiver Party") is by law, statute, governmental regulation or otherwise unable to obtain a waiver of the right of subrogation for the benefit of the other Parties (including without limitation, an inability to obtain it at a commercially reasonable cost), then, during any period of time when such waiver is unobtainable, the Non-Waiver Party shall be deemed not to have released any subrogated claim of its insurance carrier against the other Parties, and during the same period of time the other Parties shall be deemed not to have released the Non-Waiver Party from any claims they or their insurance carriers may assert which otherwise would have been released pursuant to this Section. If any Party is unable to obtain such waiver of the right of subrogation for the benefit of another Party, such Non-Waiver Party shall, within thirty (30) days of receiving notice of such inability, give the other Parties written notice of such inability.

(j) Traffic Flow. Any Construction Activities undertaken by Outparcel Owner that will adversely affect traffic flows at the Shopping Center, including the Penney Parcel and the Alderwood Parcel, shall be subject to the following additional provisions: (i) Outparcel Owner shall give not less than thirty (30) days advance written notice to Penney and Alderwood of such Construction Activities ("Access

barricades as may be necessary or reasonably appropriate in accordance with prevailing construction standards and all applicable laws to secure all parts of the Construction Area and such property and improvements against accident and any other hazard.

(e) Insurance. Outparcel Owner shall maintain at all times while this Agreement is in effect, at its sole cost and expense, and shall cause any Major Contractor (as hereinafter defined) performing all or any portion of any Construction Activities to maintain, at its sole cost and expense, the following policies of insurance procured from insurance companies reasonably satisfactory to Penney and Alderwood rated "A-VII" or better by the current edition of Best's Insurance Reports published by the A.M. Best Company, and naming Penney and Alderwood as additional insureds with respect to subsections (ii) and (iii) below:

(i) Worker's Compensation Insurance providing statutory benefits and limits which shall fully comply with all applicable state and federal requirements with a waiver of subrogation in favor of Penney and Alderwood with limits of not less than \$100,000 per accident or disease and \$500,000 aggregate by disease.

(ii) Motor Vehicle Liability Insurance with coverage for all owned, non-owned and hired vehicles with combined single limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

(iii) Commercial General Liability Insurance including, but not limited to, coverage for products/completed operations, premises/operations, contractual and personal/advertising injury liabilities, and including contractual indemnification coverage, with combined single limits of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate, for bodily injury and property damage.

Any Major Contractor and any architect, engineer, surveyor, and general contractor hired to perform all or any portion of any Construction Activities shall maintain errors and omissions or professional liability insurance covering injury or damage arising out of the rendering or failing to render professional services with limits of at least \$1,000,000 per claim. Outparcel Owner shall not commence any portion of its Work prior to delivery to Penney and Alderwood of an insurance certificate evidencing satisfaction of the provisions of this Section 2(g).

Outparcel Owner shall cause any Minor Contractor (as hereinafter defined) performing all or any portion of any Construction Activities to maintain, at its sole cost and expense, those insurance coverages described in subsections 2(g)(i), 2(g)(ii) and 2(g)(iii) above, except that with respect to the coverage described in subsection 2(g)(iii) above said Minor Contractor shall only be required to provide limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

A "Major Contractor" shall be a general contractor or sub-contractor performing portions of any Construction Activities with a cost, in the aggregate, in excess of \$3,000,000. A

Section 4. Access Easements for Benefit of Outparcel Owner.

(a) Penney Access Easement.

(i) Penney hereby grants to Outparcel Owner for the use by Outparcel Owner and Outparcel Owner's employees, agents, tenants, subtenants, contractors, concessionaires, licensees, employees, customers, and invitees from time to time (all of the foregoing parties, the "Outparcel Owner's Beneficiaries"), a perpetual, non-exclusive easement (the "Penney Access Easement") to use the roadways and driveways located on the Penney Parcel, including without limitation all entry/exit areas located thereon (as applicable from time to time, the "Penney Access Easement Area"), in each case in common with others, for vehicular and pedestrian access, ingress and egress to and from the Outparcel and roadways and driveways located thereon.

(ii) Notwithstanding anything to the contrary contained in this Agreement, Penney may change the location, design, size or grade of the Penney Access Easement Area from time-to-time, without obtaining Outparcel Owner's written consent to such changes and provided, in all events, (i) the traffic capacity of the Penney Access Easement Area is not reduced in any material manner; (ii) the size and location of access points and curb cuts between the eastern boundary of the Outparcel and the "Penney Main Roadway," as depicted on Exhibit F attached hereto, are not altered, (iii) the size, location and accessibility of the Penney Main Roadway between the "Northern 33rd Avenue W. Access" and the "Southern 33rd Avenue W. Access," as both are depicted on Exhibit F attached hereto, are not altered. The foregoing alteration prohibitions shall not prohibit temporary partial closures of roadways and driveways undertaken to perform repairs as required under subsection 4(a)(iii) below so long as such temporary partial closures are undertaken in a manner so as to minimize inconvenience and assure continued access.

(iii) Penney shall from time-to-time make all necessary repairs, maintenance, snow removal and restoration, at Penney's sole cost and expense, to the Penney Access Easement Area and shall keep the Penney Access Easement Area in good order and repair, and in a clean and safe condition and at all times in compliance with all applicable laws, ordinances, rules and regulations.

(iv) Without limiting Outparcel Owner's other rights and remedies hereunder, if Penney fails to perform any of the provisions of Section 4(a)(iii) of this Agreement on its part to be performed in the manner herein provided within forty-five (45) days after Penney's receipt of written notice thereof from Outparcel Owner (or in the case of a default

Area Work Notice”), describing the nature and duration of such Construction Activities and the anticipated effect on traffic flows at the Shopping Center, including the Penney Parcel and/or the Alderwood Parcel, such written notice to include a reasonable traffic plan with proposed traffic control procedures to be implemented during the period commencing one hour before and ending hour after the applicable operating hours for the Shopping Center (“Proposed Traffic Plan”); (ii) no Construction Activities that will require the closure of a lane of traffic shall be undertaken without Alderwood’s and Penney’s prior written consent; (iii) no Construction Activities that require the closure of a lane of traffic will take place during the period from November 1 through the first week of the following January, and (iv) Outparcel Owner shall cooperate with any other reasonable requirements of Penney and Alderwood with regard to any Construction Activity that will require the closure of a lane of traffic. Within ten (10) business days after receipt of the Access Area Work Notice, Penney and/or Alderwood may respond in writing to the Proposed Traffic Plan and provide any additional reasonable requirements of Penney and/or Alderwood in connection with such Proposed Traffic Plan. If (1) Penney and/or Alderwood shall fail to respond in writing to the Proposed Traffic Plan within such ten (10) business day period, (2) thereafter Outparcel Owner delivers a second written notice to the non-responding Party captioned with “**URGENT NOTICE RE: PROPOSED TRAFFIC PLAN – IMMEDIATE RESPONSE REQUIRED; FAILURE TO RESPOND IN FIVE (5) BUSINESS DAYS WILL CONSTITUTE A DEEMED APPROVAL**” in capital letters and bold font on the first page of such notice specifying that the non-responding Party failed to respond in writing to the Proposed Traffic Plan and that failure to timely respond to this subsequent notice will be deemed an approval by the non-responding Party (“Second Proposed Traffic Plan Notice”), and (3) the non-responding Party fails to respond in writing to the Proposed Traffic Plan within five (5) business days after the non-responding Party’s receipt of the Second Proposed Traffic Plan Notice, then the Proposed Traffic Plan shall thereafter be conclusively deemed to be approved by the non-responding Party. Without limiting Penney’s or Alderwood’s other rights and remedies hereunder, if Outparcel Owner fails to complete any Construction Activities that affect traffic flows at the Shopping Center, including the Penney Parcel and the Alderwood Parcel, within five (5) business days after the commencement of such Construction Activities and the expiration of two (2) business days after written notice from Penney and/or Alderwood that such party(ies) intend to exercise self-help rights, Penney and/or Alderwood shall be entitled to proceed to take such action as shall be necessary to complete such Construction Activities, all in the name of and at the sole cost and expense of Outparcel Owner. In such event, Outparcel Owner shall on written demand reimburse Penney and/or Alderwood for the out-of-pocket expenses incurred by Penney and/or Alderwood (including reasonable attorneys’ fees) in completing such Construction Activities.

Section 3. Future Modifications to the Project Building. After the initial completion of the Project, Outparcel Owner shall not construct any improvements on the Outparcel or make any material modifications to the exterior of the Project, except as expressly set forth in Section 2(a)(vi) above.

that by its nature cannot be cured within such forty-five (45) day period, such longer period as is required to cure so long as Penney commences the curing thereof within such forty-five (45) day period, and thereafter diligently prosecutes the curing thereof to completion), then during the continued failure to perform any of the provisions of Section 4(a)(iii) of this Agreement on its part to be performed in the manner herein provided within thirty (30) days after Penney's receipt of a "Further Notice" (defined below) from Outparcel Owner specifying the details of Penney's failure to perform, Outparcel Owner shall be entitled to proceed to take such action as shall be necessary to cure such default, all in the name of and at the sole cost and expense of Penney. In such case, Penney shall on written demand reimburse Outparcel Owner for the out-of-pocket expenses incurred by Outparcel Owner (including reasonable attorneys' fees), in so doing. If Outparcel Owner shall in good faith deem that an emergency is occurring or has occurred, so that the default requires immediate curing, then no written notice will be required, and Outparcel Owner shall give such notice as is practical under the circumstances without giving written notice and promptly take such action as is necessary to cure the default. In performing any action pursuant to the preceding sentences, Outparcel Owner will use good faith efforts to interfere to the minimum extent possible with the use and operation of the Penney Parcel, and with reasonable promptness will give notice to Penney of the performance of such work and the claimed default; such notice, notwithstanding any other provisions of this Agreement, need not be in writing if the giving of a written notice would not be reasonably practicable under the circumstances. Written confirmation of the action will be given as soon as reasonably possible. Outparcel Owner will prosecute any work performed by it under this Section 4(a)(iv) in a good and workmanlike manner diligently to completion. For purposes hereof, the term "Further Notice" shall mean a second written notice from Outparcel Owner captioned **"URGENT NOTICE RE: OUTPARCEL DEVELOPMENT – PERFORMANCE REQUIRED; FAILURE TO PERFORM WILL ENTITLE OUTPARCEL OWNER TO SELF-HELP"** in capital letters and bold font on the first page of the notice.

(v) Outparcel Owner shall defend, indemnify and save Penney harmless from and against any and all claims, liabilities and demands of any nature whatsoever incurred by Penney and arising from injury or death to persons and/or damage to property on the Penney Parcel (including, without limitation, on the Penney Access Easement Area) relating to or resulting from Outparcel Owner's use of the Penney Access Easement or Penney Access Easement Area, except to the extent that any such claims, liabilities or demands arise from the negligence or willful misconduct of Penney, or Penney's employees, visitors or invitees. Outparcel Owner shall conduct such defense with attorneys and other professionals retained by Outparcel Owner and approved by Penney. In

all events, case strategy will be determined by Penney if Penney so elects, and no action or claim may be settled without Outparcel Owner's and Penney's prior written approval, which shall not be unreasonably withheld in any case.

(b) Alderwood Access Easement.

(i) Alderwood hereby grants to Outparcel Owner for the use by Outparcel Owner and Outparcel Owner's Beneficiaries, a perpetual, non-exclusive easement (the "Alderwood Access Easement") to use those certain entry/exit entryways, roadways and driveways located on the Alderwood Parcel and shown on Exhibit D (the "Alderwood Access Easement Areas"), in common with others, for vehicular and pedestrian access, ingress and egress, from 33rd Avenue West to the applicable roadways and driveways located on the Penney Parcel.

(ii) Notwithstanding anything to the contrary contained in this Agreement, Alderwood may make changes to the Alderwood Access Easement Area from time-to-time, without obtaining Outparcel Owner's consent to such changes, so long as vehicular and pedestrian access, ingress and egress from 33rd Avenue West to the Penney Parcel is not restricted. The foregoing shall not prohibit temporary partial closures of all or any portion of the Alderwood Access Easement Areas undertaken to perform repairs and maintenance to and restoration of the Alderwood Access Easement Areas so long as alternative access from the Alderwood Parcel to the roadways and driveways of the Penney Parcel is provided.

(iii) Alderwood shall perform all repairs and maintenance to and restoration of the Alderwood Access Easement Areas, including any necessary snow removal, at Alderwood's sole cost and expense, as required by the OA; provided, however, Outparcel Owner shall pay an annual sum, in advance on or prior to the initial January 2nd following the Effective Date and on each January 2nd thereafter, of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "Maintenance Fee"), provided the Maintenance Fee shall increase annually by an amount equal to the product of the Maintenance Fee payable for the prior calendar year times a number equal to the percentage increase in the Consumer Price Index for the "Seattle area", as measured by the Consumer Price Index for All Urban Consumers issued by the U.S. Bureau of Labor Statistics, over the prior calendar year, for Outparcel Owner's contribution towards the repairs and maintenance to and restoration of the Alderwood Access Easement Areas, including any necessary snow removal. Such payments shall be mailed to the following address:

Alderwood Mall L.L.C., SDS-12-3019, Minneapolis, MN 55486-3019
or such other address designed in writing by Alderwood.

(v) Outparcel Owner shall defend, indemnify and save Alderwood harmless from and against any and all claims, liabilities and demands of any nature whatsoever incurred by Alderwood and arising from injury or death to persons and/or damage to property on the Alderwood Parcel (including, without limitation, on the Alderwood Access Easement Area) relating to or resulting from Outparcel Owner's or its employees', agents' or contractors' use of the Alderwood Access Easement Areas, except to the extent that any such claims, liabilities or demands arise from the negligence or willful misconduct of Alderwood or its agents, employees or contractors. Outparcel Owner shall conduct such defense with attorneys and other professionals retained by Outparcel Owner and reasonably approved by Alderwood. Notwithstanding the foregoing, Alderwood may elect to engage its own attorneys and other professionals at Outparcel Owner's expense, to defend it or assist in such defense. In all events, case strategy will be determined by Alderwood if Alderwood so elects, and no action or claim may be settled without Outparcel Owner's and Alderwood's prior written approval, which shall not be unreasonably withheld in any case.

Section 5. Temporary Crane Swing Easement. Penney and Alderwood hereby acknowledge that in connection with Outparcel Owner's performance of the Work, Outparcel Owner may require the use of a steel construction crane (the "Crane") the boom section of which may periodically extend into the airspace over the driveways and parking areas on the Penney Parcel and the Alderwood Parcel (the "Crane Swing Easement Area"). Penney hereby grants to Outparcel Owner a temporary easement to use the portion of the Crane Swing Easement Area located on the Penney Parcel during the construction of the Project. Outparcel Owner shall defend, indemnify and save Penney harmless from and against any and all claims, liabilities and demands of any nature whatsoever incurred by Penney and arising from injury or death to persons and/or damage to property relating to or resulting from the use by Outparcel Owner, or the existence, of the Crane or the use by Outparcel Owner of the Crane Swing Easement Area, except to the extent that any such claims, liabilities or demands arise from the negligence or willful misconduct of Penney or its employees, agents, tenants, subtenants, contractors, concessionaires, licensees, customers or invitees. Outparcel Owner shall defend, indemnify and save Alderwood harmless from and against any and all claims, liabilities and demands of any nature whatsoever incurred by said indemnitees and arising from injury or death to persons and/or damage to property relating to or resulting from the use by Outparcel Owner, or the existence, of the Crane or the use by Outparcel Owner of the Crane Swing Easement Area, except to the extent that any such claims, liabilities or demands arise from the negligence or willful misconduct of Penney. If such easement is needed, Alderwood agrees to grant to Outparcel Owner a temporary easement to use the portion of the Crane Swing Easement Area located on the Alderwood Parcel during the construction of the Project, pursuant to a separate document which is in a form reasonably acceptable to Alderwood and to Outparcel Owner.

Section 6. Encroachment Easements. Penney hereby grants to Outparcel Owner a permanent, non-exclusive appurtenant easement in and under any portion of the Penney Parcel adjacent to the Outparcel for minor, unintentional encroachments as hereinafter described (collectively, the "Encroachment Easement"). The Encroachment Easement is an easement as required from time-to-time for subsurface roadway tie-backs and any other minor subsurface encroachments. Such Encroachment Easement, however, shall be limited to a projection of no more than one (1) foot for footings and other aforescribed subsurface matters. Nothing contained in this Section shall create easements for intentional encroachments without the written consent of Penney.

Section 7. Utility Easements.

(a) Agreement to Grant Utility Easements. Penney agrees to grant Outparcel Owner such easements on the Penney Parcel as may be reasonably required in order to serve the Outparcel with water supply, sanitary sewer, storm sewer, natural gas supply, electricity supply and communications systems (collectively, the "Utility Facilities"). Prior to the installation of any Utility Facilities on the Penney Parcel, Outparcel Owner shall obtain from Penney easement(s) for the installation, utilization, maintenance, repair and replacement of the applicable Utility Facilities (in each instance, a "Utility Easement") in those certain areas specified by Outparcel Owner and approved by Penney (in each instance, a "Utility Easement Area"), whereupon the Parties shall enter into and record a written amendment to this Agreement with respect to the applicable Utility Easement and Utility Easement Area. For purposes of clarification, Outparcel Owner hereby acknowledges and agrees that the Utility Easement Areas have not been approved by Penney as of the Effective Date, and accordingly, Outparcel Owner may not install any utility facilities on the Penney Parcel until the applicable written amendment to this Agreement has been duly executed and recorded.

(b) Minimizing Interruptions; Prior Notification. Outparcel Owner acknowledges and agrees that all Utility Facilities shall be installed, utilized, maintained and repaired in a manner which shall not create any interruption of utility service to the Shopping Center, including the Penney Parcel and the Alderwood Parcel, and which shall not adversely affect the concurrent use of the affected Utility Easement Area. Furthermore, prior to undertaking the installation, maintenance, or repair of the contemplated Utility Facilities, Outparcel Owner shall notify Penney, which notification shall include the plans and specifications for such installation, maintenance or repair, the time frame and schedule for same and describe the impact of the installation, maintenance or repair on the use of the affected Utility Easement Area during and after such work, all of which shall be subject to the prior written consent of Penney, utilizing commercially reasonable judgment. Notwithstanding the foregoing, if a temporary interruption of utility service to the Penney Parcel only cannot reasonably be avoided for the installation, maintenance or repair of Utility Facilities, Outparcel Owner shall provide reasonable advance notice of the work and interruption contemplated, and no such interruption shall be scheduled to occur during Penney's business hours. Outparcel Owner shall indemnify, defend and hold harmless the Shopping Center Parties, including Penney and Alderwood, for any loss, damage, expense, claim or liability resulting from

an interruption in utility service to the Shopping Center, including the Alderwood Parcel and the Penney Parcel, to the extent caused by Outparcel Owner or its contractors or subcontractors, which indemnification shall include any consequential damages (including lost profits) suffered by Penney and/or Alderwood proven to have resulted from such interruption.

(c) Relocation of Utility Facilities. Outparcel Owner hereby agrees that Penney may, at any time and from time-to-time, relocate the Utility Facilities installed by Outparcel Owner on the Penney Parcel, provided such relocation does not create any commercially unreasonable interruption of utility service, such relocation is undertaken at Penney's expense, and Outparcel Owner has approved same in writing (which approval shall not be unreasonably withheld, conditioned or delayed). If the Utility Facilities are relocated to an area outside the Utility Easement Area previously established for same, this Agreement shall be amended to describe and establish the new Utility Easement Area and to vacate any previously established Utility Easement Area which will no longer contain active Utility Facilities.

(d) Use of Utility Easement Areas. Penney hereby reserve the right, from time-to-time, to use the Utility Easement Areas located on the Penney Parcel for all purposes for which such Utility Easement Areas are then being used as of the date that the Outparcel Owner and Penney agree upon the precise location of each Utility Facility as described in this Section 7, and thereafter for any future use and purpose not inconsistent with the rights hereby granted (including, without limitation, the right to construct removable improvements thereon), provided such future use does not create any commercially unreasonable interruption to the use of the Utility Facilities or materially and adversely affect Outparcel Owner's ability to maintain, repair and replace such Utility Facilities.

(e) Maintenance, Repair, Replacement of Utility Facilities. Outparcel Owner agrees to, at its sole cost and expense, keep and maintain and to repair, replace and reconstruct as necessary the Utility Facilities that it installs within the applicable Utility Easement Areas from time to time in safe and good order, condition and repair, at no cost or expense to Penney. For all utility repair, maintenance or construction work (including, without limitation, the initial installation), Outparcel Owner shall be responsible upon completion of its work for restoring the disturbed property to the condition it was in prior to Outparcel Owner undertaking such work. Without limiting the generality of the foregoing, Outparcel Owner shall, at its expense, refill its excavations, re-grade the surface of the property subject to the applicable Utility Easement Area, repave and restripe any roadway and parking improvements and replace shrubbery and/or trees or sod that were removed by.

(f) Outparcel Owner Grant to Penney. To the extent any utility lines or utility facilities serving the Penney Parcel ("Penney Utilities") are located on the Outparcel as of the Effective Date, Outparcel Owner hereby grants and conveys unto Penney a permanent, non-exclusive and appurtenant easement under those portions of the Outparcel in which the Penney Utilities are located as of the Effective Date ("Penney Utilities Easement Area") for the utilization, maintenance, repair and replacement of such

Penney Utilities (the "Penney Utilities Easement"), together with the right to access any such Penney Utilities to perform any maintenance, repair or replacement. If any Penney Utilities are found to exist on the Outparcel, Outparcel Owner shall have the right, at its sole cost and expense, to relocate such Penney Utilities to facilitate the construction of the Project (and from time-to-time thereafter) upon (i) providing Penney with the proposed new location of the Penney Utilities Easement Area, together with the applicable plans and specifications and construction schedule for the relocation, and (ii) obtaining Penney's prior written consent to the new location of, and the construction schedule for, the Penney Utilities, which consent shall not be unreasonably withheld, conditioned or delayed and Penney agrees to reasonably cooperate with Outparcel Owner in such relocation, including the coordination of the transfer of service to the relocated utility lines. Upon Outparcel Owner's completion of any relocation of the Penney Utilities in accordance herewith, Outparcel Owner promptly shall deliver notice thereof to Penney, whereupon the parties to this Agreement shall enter into as line, Outparcel Owner promptly shall deliver notice thereof to Penney, whereupon the parties to this Agreement shall enter into and record a written amendment to this Agreement specifically depicting and legally describing the precise new location of the relocated Penney Utilities Easement Area. Any work associated with the relocation of the Penney Utilities shall not interrupt utility service during normal business hours, or interfere with the operation of, or increase the cost of, or diminish the utility facilities of any of Penney. To the extent no Penney Utilities exist on the Outparcel, the Penney Utilities Easement shall not become effective, and this Section 7(g) shall be void and of no further force or effect. Outparcel Owner shall indemnify and defend Penney against, and hold Penney harmless from, any and all claims, demands, suits, costs, expenses and liabilities arising from or related to its performance of the Penney Utilities relocation work pursuant to this Section 7, if any, except to the extent that any such liabilities arise from the negligence or willful misconduct of Penney. Outparcel Owner shall conduct such defense with attorneys and other professionals retained by Outparcel Owner and approved by Penney. Notwithstanding the foregoing, Penney may elect to engage its own attorneys and other professionals, at Outparcel Owner's expense, to defend it or assist in such defense. In all events, case strategy will be determined by Penney if Penney so elects, and no action or claim may be settled without Outparcel Owner's and Penney's prior written approval, which shall not be unreasonably withheld.

Section 8. Intentionally Omitted.

Section 9. Covenants to Run with Land; Successors; Transfer of Outparcel.

(a) Run with the Land. Each and all of the covenants, easements, restrictions and provisions contained in this Agreement: (i) shall constitute covenants running with the land; (ii) shall bind every owner of any portion of the land and improvements which are the subject hereof to the extent that such land and / or improvements are affected or bound by the covenants, easements, conditions or restrictions herein, as the case may be; and (iii) shall inure to the benefit of the Parties hereto, the beneficiaries identified herein and their respective successors and/or assigns as owners of the burdened property and the benefited property.

(b) Restriction on Transfer. Notwithstanding anything to the contrary contained herein, until such time as the Work is completed in accordance with this Agreement (including, without limitation, in accordance with the Site Plan, the Plans and the Drawings and all applicable laws), except as may be consented to in writing by Penney (in its sole and absolute discretion), Outparcel Owner may not convey or transfer its direct or indirect interest in the Outparcel, the Project or this Agreement without obtaining the prior written consent of Penney. Notwithstanding the foregoing provisions of this subsection 9(b), the following transfers shall be permitted without obtaining Penney's prior consent: (i) a transfer of a collateral interest in the Outparcel to a bona fide institutional lender providing financing in connection with its construction of the Work and development of the Project (a "Lender"); (ii) a transfer of the Outparcel to a Lender, or any affiliate of such Lender, in connection with such Lender's foreclosure or deed in lieu of foreclosure, provided prompt written notice shall be provided to Penney; and (iii) any conveyance or transfer of Outparcel Owner's entire fee interest in the Outparcel to one of its affiliates that controls, is controlled by or under common control with Outparcel Owner, provided Outparcel Owner shall deliver written notice of such transfer to Penney within thirty (30) days after such transfer. For purposes hereof, the term "control" shall mean the power to directly or indirectly cause the direction and management and policies of the Outparcel Owner, it being understood, however, that such "control" may be subject to the customary rights of other equity holders, including consent rights, rights to resolve deadlocks with respect to major decisions, or removal rights.

Section 10. Third Party Beneficiaries. Each of the Shopping Center Parties and their successors-in-interest are intended beneficiaries of this Agreement to the extent of rights expressly granted to the Shopping Center Parties herein. Except as expressly provided herein, the rights and privileges contained within this Agreement shall not inure to the benefit of any person or entity other than the Parties to this Agreement, nor shall any other person or entity other than the Shopping Center Parties be deemed a third-party beneficiary of this Agreement.

Section 11. Remedies. In the event of the breach by any Party hereto of any of the terms, provisions or covenants of this Agreement running in favor of the Shopping Center Parties, each Shopping Center Party shall be entitled to avail itself of all of its rights and remedies at law and in equity, including without limitation, filing a lien against the breaching Party's parcel for unreimbursed expenses; provided that in no event shall the easement rights granted in this Agreement be terminated as a result of any breach of this Agreement.

Section 12. Amendments. This Agreement may be terminated, extended, modified or amended by the Parties hereto, their successors and/or assigns, only by a written instrument signed by each of the Parties (or their respective successors-in-interest) and recorded in the records of Snohomish County, Washington.

Section 13. Waivers. No delay or omission in exercising any right accruing under the terms, conditions and provisions of this Agreement shall impair any such right or be construed to be a waiver thereof. A waiver by a Party hereto of any of the covenants, conditions or agreements hereof shall not be construed to be a waiver of any other covenant, term, provision, condition or agreement herein contained.

Section 14. Interpretation. The captions of the sections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation or condition. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any Party, and should a court be called upon to interpret any provision hereof, no weight shall be given to, nor shall any construction or interpretation be influenced by, any presumption of preparation of this Agreement by a particular Party.

Section 15. Notices. All notices or communications to be given under or pursuant to this Agreement shall be in writing and will be delivered (a) in person, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) via an overnight delivery service, or (d) by electronic mail, provided such electronic mail is followed by overnight delivery service within one (1) business day. If mailed, a notice shall be deemed to have been received three (3) days after the date of mailing, or sent via overnight delivery, a notice shall be deemed to have been received the following business day. If sent via e-mail (and followed by overnight delivery within one (1) business day), a notice shall be deemed to have been received upon receipt of electronic transmission. Unless changed by notice in accordance with the provisions of this Section 18, notices, to be effective, shall be addressed to the recipient as follows:

If to Outparcel Owner:

6501 Eagle Rock Ave. NE, Suite B-5
Albuquerque, New Mexico 87113
Attn: Aleem M. Kassam
Email: akassam@legacy-hospitality.com

With a copy to:

Lawrence M. Wells
Attorney at Law
5100 Juan Tabo Blvd. NE, Suite 100
Albuquerque, NM 87111
Email: lwells@wellslawabq.com

If to Penney:

J. C. Penney Properties, Inc.
6501 Legacy Dr., MS 4106
Plano, TX 75024-3698
Attn: Real Estate Counsel
Email: _____

If to Alderwood:

Alderwood Mall L.L.C.
c/o Brookfield Properties Retail
350 N. Orleans Street, Suite 300
Chicago, Illinois 60654-1607
Attention: Adam Tritt
Email: adam.tritt@brookfieldpropertiesretail.com

With a copy to:

Alderwood Mall L.L.C.
c/o Brookfield Properties Retail
350 N. Orleans Street, Suite 300

Chicago, Illinois 60654-1607
Attention: General Counsel
Email: stacie.herron@brookfieldpropertiesretail.com

And a copy to: Alderwood Mall
3000 – 184th Street SW, Room 145
Lynnwood, WA 98037
Attention: General Manager

Section 16. Counterparts. This Agreement may be executed in multiple originals or counterparts, each of which will be an original and, when all of the Parties to this Agreement have signed and delivered at least one copy, such copies together shall constitute a fully-executed and binding agreement.

Section 17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Washington.

Section 18. Attorneys' Fees. In the event of any action between the Parties hereto for a breach of or to enforce any provision or right hereunder, the non-prevailing Party in such action shall pay to the prevailing Party all costs and expenses, expressly including, but not limited to, reasonable attorneys' fees and costs, incurred by the successful Party in connection with such action, including without limitation all commercially reasonable fees and costs incurred on any appeal from such action or proceeding.

Section 19. Breach - Effect on Mortgagee and Right to Cure.

(a) A breach by any Party hereto of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith, but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any owner of any portion of the Parcels, or any part thereof, who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale.

(b) Notwithstanding any other provision in this Agreement, for notices of default, the mortgagee of any owner in default hereunder shall be entitled to concurrent notice of said default, in the same manner that other notices are required to be given under this Agreement; provided, however, that said mortgagee shall have, prior to the time of the default, delivered written notice to the owner(s) giving said notice of default of the mortgagee's mailing address.

Section 20. Severability. In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision, or agreement contained herein.

Section 21. Estoppel Certificate. Each of the Parties hereby severally covenants that within thirty (30) days of the written request of any other Party it will issue to such other Party or to any prospective mortgagee or purchaser of such Party's parcel an estoppel certificate stating: (a) whether the Party to whom the request has been directed has actual knowledge (with no duty to investigate) of any default under this Agreement (or of any then-existing circumstance or event which, with the passage of time or giving of notice, or both, may constitute a default under this Agreement) and specifying the nature thereof; (b) whether, to such Party's actual knowledge (with no duty to investigate), this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (c) whether, to such Party's actual knowledge (with no duty to investigate), this Agreement as of that date is in full force and effect. Any such estoppel certificate may be used solely to estop the Party providing such certificate from asserting facts inconsistent with such Party's statements against the parties benefitted by such certificate, if such benefitted parties are acting in reasonable reliance of such statements and without knowledge of any facts to the contrary.

Section 22. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Outparcel or any other parcel to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

Section 23. Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

Section 24. Force Majeure. In the event that any Party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes; lockouts; labor troubles; shortages of labor or materials generally applicable to the locality of the Shopping Center after due diligence in obtaining the same; power failure not caused by the Party seeking to avail itself of delay of its obligations on account thereof; riots; insurrection; civil disorder; war; terrorist acts; fire, flooding or other casualty not caused by the Party seeking to avail itself of delay of its obligations on account thereof; condemnation; acts of God; unusually adverse weather conditions in the locality of the Shopping Center; unforeseeable governmental restrictions not caused by the Party seeking to avail itself of delay of its obligations on account thereof; general unavailability or moratorium on the issuance of governmental approvals or permits despite the exercise of due diligence and good faith by such Party; or by reason of any other cause beyond the reasonable control of the Party delayed in performing work or doing acts required of it under this Agreement after the exercise of due diligence, including diligence in contracting, and the exercise of rights under contracts with contractors and suppliers (each, an "Event of Force Majeure"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this clause shall not operate to excuse a Party from prompt payment of any assessment or other amounts that may be due from it hereunder. The Party claiming a delay due to the occurrence of an Event of Force Majeure shall give notice to the other Parties affected by its delay in performance of the circumstances supporting such claim within five (5) business days after the occurrence of a purported Event of Force Majeure. Failure of such Party to timely make a claim of the existence of an Event of Force Majeure shall be deemed to be a waiver by such Party of any claim of the existence of a

permitted excuse arising from such Event of Force Majeure. Delays caused by a Party's lack of or inability to obtain funds, material or (except as otherwise provided herein) governmental approvals necessary to complete work shall not be deemed an Event of Force Majeure, nor shall delays arising under circumstances in which the performance of such work is possible albeit at a cost higher than such Party may have anticipated or budgeted.

Section 25. Mechanics' Liens. Without limiting any of the other provisions of this Agreement, in the event any mechanics' liens are filed against any Parcel due to the acts or omissions of a Party not the owner of such Parcel, the Party permitting or causing such lien to be filed hereby covenants either to pay the same and have it discharged of record, promptly, or to take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from such Parcel, and in all events agrees to have such lien discharged prior to the entry of judgment for foreclosure of such lien. Upon request of any Party, the Party permitting or causing such lien to be filed against any other Party's parcel agrees to (i) furnish such security or indemnity as may be required, to and for the benefit of such other Party, to permit a title endorsement to such Party's title policy to be issued relating to such Party's parcel without showing thereon the effect of such lien; or (ii) bond over such lien in accordance with all applicable laws.

Section 26. Duration. This Agreement and each term, easement, covenant, restriction and undertaking of this Agreement will remain in full force and effect for a term of thirty (30) years (the "Initial Term") and after such Initial Term shall automatically renew for extension periods of five (5) years each unless and until all of the Parties to the Agreement elect in writing, in each such Party's sole and absolute discretion, to terminate this Agreement. Notwithstanding the foregoing, this Agreement shall terminate at such time as all of the following conditions are satisfied: the Shopping Center is no longer operated as a regional shopping center and the Project is no longer operated for the Permitted Use.

Section 27. Transfer. To the extent that any or all of any Parcel is sold or transferred from time to time, the seller or transferor shall be relieved of all covenants and obligations first arising under this Agreement from and after the date of such sale or transfer with respect to the Parcel transferred, and it shall be deemed, without further agreement between the Parties or their successors in interest, that the purchaser or transferee has assumed and agreed to perform all covenants and obligations of the transferor under this Agreement with respect to the Parcel so transferred. Nothing contained in this Section 27 shall limit the provisions of Section 9(b) above and the provisions of this Section 27 shall be subject, in all respects, to the provisions of Section 9(b) above.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the day and year first above written.

OUTPARCEL OWNER:

a _____

By: _____

Its: _____

STATE OF WASHINGTON 0

0

COUNTY OF KING 0

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged and signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged, it as the _____ of _____, a _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2020

Notary's Printed Name: _____
Notary Public in and for the state of Washington,
Residing at _____
My Appointment Expires: _____

PENNEY:

J. C. PENNEY PROPERTIES, INC.,
a Delaware corporation

By: _____
Name: _____
Its: _____

STATE OF _____ 0
COUNTY OF _____ 0

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged and signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the _____ of J. C. PENNEY PROPERTIES, INC., a Delaware corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2020

Notary's Printed Name: _____
Notary Public in and for the state of _____,
Residing at _____.
My Appointment Expires: _____

ALDERWOOD:

ALDERWOOD MALL L.L.C.,
a Delaware limited liability company

By: _____

Name: _____

Its: Authorized Signatory

STATE OF _____ 0

_____ 0

COUNTY OF _____ 0

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged and signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Authorized Signatory of ALDERWOOD MALL L.L.C., a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2020

Notary's Printed Name: _____

Notary Public in and for the state of _____,

Residing at _____.

My Appointment Expires: _____

CONSENT AND SUBORDINATION OF LENDER

[ONE OR MORE - TO BE DETERMINED AND COMPLETED]

Exhibit A

Alderwood Parcel

Exhibit B

Penney Parcel

Exhibit C

Outparcel

Exhibit D

Site Plan

Exhibit E

Description of Drawings

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Exhibit F
Site Plan Showing Penney Main Roadway,
the Northern 33rd Avenue W. Access and the Southern 33rd Avenue W. Access