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ERNEST D ROWLEY, WEBER COUNTY RECORDER
01-FEB-07 2:14 PM FEE \$37.00 DEP JPM
REC FOR: LANKMARK TITLE

WHEN RECORDED, PLEASE RETURN TO:

Robert A. McConnell
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

**DECLARATION
OF
EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS DECLARATION (this "Declaration") is executed to be effective as of the 26th day of January, 2007, by LOWE'S HIW, INC., a Washington corporation ("Lowe's"), whose address for the purposes hereof is 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697, RIVERDALE CENTER II, L.C., a Utah limited liability company ("Riverdale II"), whose address is 90 South 400 West, Suite 200, Salt Lake City, Utah 84101, and RIVERDALE CENTER IV, L.C., a Utah limited liability company ("Riverdale IV"), whose address is 90 South 400 West, Suite 200, Salt Lake City, Utah 84101.

RECITALS:

- A. Lowe's, Riverdale II and Riverdale IV own separate but adjoining parcels of real property located in Weber County, State of Utah
- B. Lowe's, Riverdale II and Riverdale IV desire to create certain rights-of-way, easements and restrictions among the said parcels.

AGREEMENT:

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned agree as follows:

- 1. Definitions. As used in this Declaration, each of the following terms shall have the indicated meaning:

"Access Easement Area" means all those certain portions of the Parcels that are from time to time designed and/or otherwise designated for vehicular and pedestrian movement, including, without limitation, roads, driveways, walkways and sidewalks. The Access Easement Area shall not

include any parking areas. The Access Easement Area is generally depicted as the crosshatched portions of the Parcels shown on the Site Plan attached hereto as Exhibit A.

"Utility Easement Area" means all those certain portions of the Parcels that are from time to time designed and/or otherwise designated as areas designated for vehicular movement, including, without limitation, roads and driveways. The Utility Easement Area shall not include any parking areas. The Utility Easement Area is generally depicted as the crosshatched portions of the Parcels shown on the Site Plan attached hereto as Exhibit A.

"Mortgage" means a mortgage or a deed of trust recorded in the official records.

"Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a deed of trust, recorded in the official records.

"Official records" means the official records of the Weber County Recorder, State of Utah.

"Owner" means the person that at the time concerned is the legal owner of record (in the official records) of a whole or undivided fee interest in any portion of any Parcel. If there is more than one Owner of a Parcel at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Parcel concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

"Parcel A" means the real property located in Weber County, Utah, described as the "Lowe's Property" on Exhibit B attached hereto.

"Parcel B" means the real property located in Weber County, Utah, described as the "Riverdale II Property" on Exhibit B attached hereto.

"Parcel C" means the real property located in Weber County, Utah, described as the "Riverdale IV Property" on Exhibit B attached hereto.

"Parcels" means Parcel A, Parcel B and Parcel C, collectively, and "Parcel" means either Parcel A, Parcel B or Parcel C, individually, where no distinction is required by the context in which such term is used.

"Site Plan" means the Site Plan attached as Exhibit A, incorporated in this Declaration by this reference.

2. Grant of Rights-of-Way and Easements.

2.1 Access Right-of-Way and Easement. The Parcels (but no other real property) shall have appurtenant thereto and shall be benefited by, and the Access Easement Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress only (no parking) on, over and across the Access Easement Area. Such right-of-way and easement shall be limited to use for such purposes and to such extent as may be customary to the use of the Parcels for general commercial purposes, which shall include reasonable and customary deliveries.

2.2.1 Grant of Utility Easement. The Parcels (but no other real property) shall have appurtenant thereto and shall be benefited by, and the Utility Easement Area shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water) under, through and across the Utility Easement Area.

2.2.2 Exercise of Utility Easement.

(a) The Owner of any Parcel (sometimes herein referred to as a "grantee"), at its expense, may (a) enter on any portion of the Utility Easement Area located on the other Owner's Parcel as may be necessary or appropriate in order to accomplish the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the utilities and facilities referred to in Paragraph 2.2.1, and (b) in connection with such utilities and facilities, excavate or conduct construction activities within the Utility Easement Area, so long as such excavation or construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion. Any such laying, construction, installation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement shall be performed by a grantee only after ten (10) days advance notice to the Owner of the Parcel where such activities are to occur (sometimes herein referred to as the "grantor") of the grantee's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after giving such advance notice to the grantor as is practicable under the circumstance. On completion of such excavation or construction activities, the Owner of the Parcel who has caused such construction activities to take place shall immediately restore any portion of the Utility Easement Area affected to the same condition as existed prior to the commencement of such excavation or construction activities, using the same type and quality of materials previously used. In addition, the Parties agree that all such laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the utilities and facilities referred to in Paragraph 2.2.1 shall be performed in a manner that causes as little disturbance to the grantor, the parking areas located within each Parcel and the business operations of each Parcel as may be practicable under the circumstances. No such laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the utilities and facilities referred to in Paragraph 2.2.1, except emergency repair work or work required by

governmental authorities, shall be carried on during the period from November 1 through the next succeeding January 4, or during the 30 day period prior to Easter, or on any weekends.

(b) All utilities and facilities referred to in Paragraph 2.2.1 shall be installed underground, and the location of such utilities and facilities shall be subject to the approval of the Party across whose Parcel the same are to be located. No such utilities or facilities shall conflict with any other existing utility or facility installed in the Utility Easement Area.

(c) The grantee, at its expense, shall be solely responsible for the repair, maintenance and replacement of any utilities or facilities installed by grantee pursuant to this Section 2.2.1.

(d) The grantee shall defend, indemnify and hold the grantor harmless from and against any and all claims, liens, losses, liabilities, costs or expenses (including reasonable attorney's fees), incurred in connection with the grantee's exercise of the easement for utilities under this Section 2.2.1, except to the extent occasioned by the grantor's negligent or wrongful act or omission to act.

3. No Interference With Access Easement Area. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in Paragraph 2.1 above shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements.

4. Access Easement Area Maintenance. Each Owner shall at all times maintain or cause to be maintained that portion of the Access Easement Area located on such Owner's Parcel in a reasonably good, clean and safe condition and repair, reasonably free from debris, rubbish, snow, ice and other materials. If any Owner fails to comply with the provisions of the preceding sentence, any other Owner may (but is not obligated to), after giving twenty (20) days' written notice to the noncomplying Owner, perform or cause to be performed such work as is necessary to cause the Access Easement Area to so comply. In such event, all sums reasonably expended and all costs and expenses reasonably incurred by such other Owner in connection with such work shall bear interest from the date expended or incurred (as the case may be) at the rate of twelve percent (12%) per annum until paid or otherwise satisfied in full, and shall be paid promptly to such other Owner by the noncomplying Owner on written demand.

5. Prohibited Uses. Except for business use and operations of Lowe's, its successors and assigns, the Parcels and any portion thereof shall not be used for a home improvement/hardware retail store similar to that of Lowe's and Home Depot as of the date hereof. In addition, no portion of the Parcels shall be used or operated for any business or operation that is inconsistent and incompatible with the operation and reputation of a first class, family-oriented retail/entertainment center or for any use which is repugnant to the sensibility of the community in general, including,

without limitation: (i) a store primarily selling or leasing sexually explicit materials; (ii) a massage parlor (but not including a day-spa or beauty parlor which offers legitimate massage services); (iii) a so-called "head shop" or drug paraphernalia store; (iv) bowling alley; (v) a facility featuring strip tease acts, nude or topless dancing or similar activities; (vi) tavern or bar or (vii) an off-track betting parlor, or (viii) a funeral home or mortuary.

6. Duration. This Declaration and each right-of-way, easement, covenant and restriction set forth in this Declaration shall be perpetual.

7. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Parcels for the general public or for any public purpose whatsoever, it being the intention of the undersigned that this Declaration be strictly limited to the purposes expressed in this Declaration.

8. Appurtenances to Parcels; Covenants Run with Land; Various Events.

8.1 Appurtenances to Parcels. Each right-of-way, easement, covenant and restriction created by this Declaration is an appurtenance to the Parcel benefited by such right-of-way, easement, covenant and restriction (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to the benefited Parcel. For the purposes of each such right-of-way, easement, covenant and restriction, the benefited Parcel shall constitute the dominant estate and the burdened Parcel shall constitute the subservient estate.

8.2 Covenants Run with Land; Various Events.

8.2.1 Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained in this Declaration (whether affirmative or negative in nature) shall (a) create an equitable servitude on the burdened Parcel in favor of the benefited Parcel (but no other real property), (b) constitute a covenant running with the land, (c) benefit and bind every person having any fee, leasehold, Mortgage lien or other interest in any portion of the Parcel concerned to the extent that such portion is affected or bound by the right-of-way, easement, covenant or restriction in question, or to the extent that such right-of-way, easement, covenant or restriction is to be performed on such portion, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

8.2.2 Transfer of Parcel. If any Owner transfers all or any portion of the Parcel owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Declaration, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such Parcel, such transferring Owner shall be released and discharged from all obligations under this Declaration that accrue after the date of recordation in the official records of the instrument effecting such transfer.

8.2.3 Effect of Breach. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner may have under this Declaration by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Parcel, except as provided in Paragraph 9.

8.2.4 Identical Ownership. The ownership of both Parcels by the same person shall not result in the termination of this Declaration.

8.2.5 Priority of Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the undersigned or any other person on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Declaration.

9. Lien. If the failure to timely pay any sum when due under this Declaration is not cured within ten (10) days after written notice is given by any Owner to the defaulting Owner, such sum and any subsequent delinquencies may be secured by a lien against all or any portion of the defaulting Owner's Parcel. Such lien shall be evidenced by a notice of lien or similar instrument filed for record by the nondefaulting Owner in the official records. A copy of such notice of lien or similar instrument shall be given by the nondefaulting Owner to the defaulting Owner within ten (10) days following recordation in the official records. Such notice of lien or similar instrument shall set forth the unpaid amount, the date such amount was due and a description of the property subject to such lien, and shall be signed by the nondefaulting Owner. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of Mortgages, but shall be subject and subordinate to (a) each Mortgage affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, (b) this Declaration, (c) each (recorded or unrecorded) utility easement, right-of-way or similar interest affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, (d) the interest of the tenant or lessee under each lease, rental agreement or similar instrument (whether recorded or unrecorded) affecting the defaulting Owner's Parcel at the time such notice of lien or similar instrument is recorded, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests or estates (whether recorded or unrecorded at the time such notice of lien or similar instrument is recorded) in or respecting the defaulting Owner's Parcel.

10. Modification. This Declaration and any right-of-way, easement, covenant or restriction contained in this Declaration may not be terminated, extended, modified or amended without the consent of each Owner, and any such termination, extension, modification or amendment shall be effective on recordation in the official records of a written document effecting the same, executed and acknowledged by each Owner, provided, however, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee holding a Mortgage constituting a lien on any Parcel unless such Mortgagee consents to the same in writing.

11. Attorneys' Fees. If any Owner brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this Declaration, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

12. General Provisions. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Declaration shall inure to the benefit of, and be binding on, each Owner and the heirs, personal representatives, successors and assigns of each Owner. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

[Signatures appear on the next page.]

THE UNDERSIGNED have executed this Declaration to be effective as of the date first set forth above.

Lowe's:

Lowe's HIW, Inc.,
a Washington corporation

By: David E. Shelton

Name: David E. Shelton
Senior Vice President

Title: _____

KOD
JEB
WUK

Riverdale IV:

Riverdale Center IV, L.C.,
a Utah limited liability company, by its
Manager

The Boyer Company, L.C., a Utah limited
liability company

By: [Signature]

Name: STAN B. OSTIN

Title: Manager

Riverdale II:

Riverdale Center II, L.C.,
a Utah limited liability company, by its
Manager,

Riverdale Center II Manager, Inc., a Utah
corporation

By: [Signature]

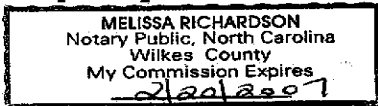
Name: STAN B. OSTIN

Title: Secretary

STATE OF NORTH CAROLINA)
) SS:
COUNTY OF WILKES)

On the 26 day of January, 2007, personally appeared before me David E. Shu Hon, the signer of the above instrument, who duly acknowledged to me that he executed the same, as SVP of Lowe's HIW, Inc., a Washington corporation.

[SEAL]

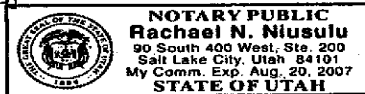


David E. Shu Hon
Notary Public

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

On the 30th day of January, 2007, personally appeared before me Stacy B. Astler the signer of the above instrument, who duly acknowledged to me that he executed the same, as a Manager of The Boyer Company, L.C., the Manager of Riverdale Center IV, a Utah limited liability company.

[SEAL]



Rachael N. Niusulu
Notary Public

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

On the 30th day of January, 2007, personally appeared before me Stacy B. Astler, the signer of the above instrument, who duly acknowledged to me that he executed the same as the Secretary of Riverdale Center II Manager, Inc., the Manager of Riverdale Center II, L.C., a Utah limited liability company.

[SEAL]



Rachael N. Niusulu
Notary Public

Exhibit A
to
Declaration of Easements, Covenants and Restrictions

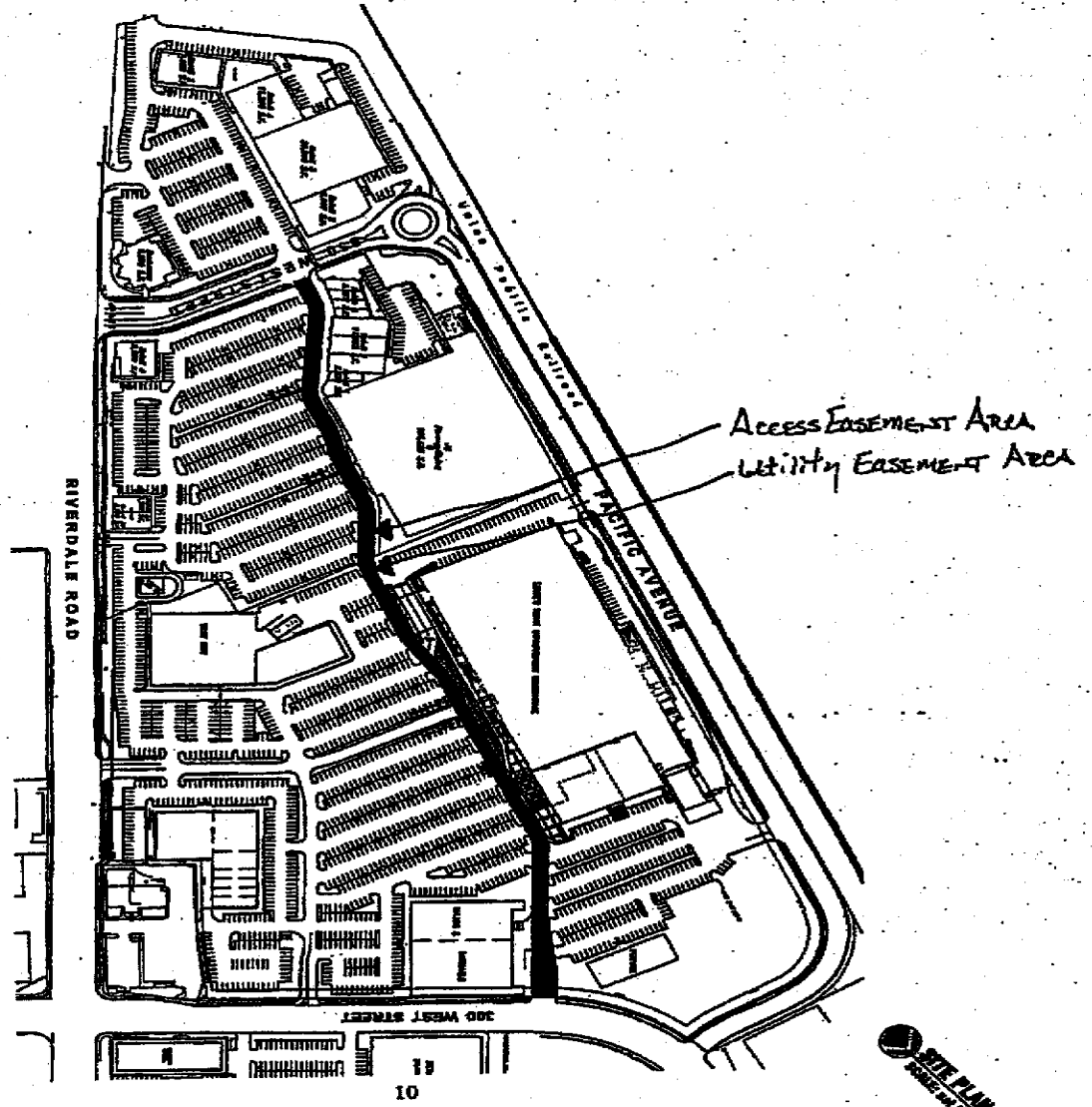


Exhibit B
to
Declaration of Easements, Covenants and Restrictions

[Legal Descriptions of Parcel A, Parcel B and Parcel C]

"Parcel A" or "Lowe's Property":

06-274-0001

All of Lot 1, RIVERDALE CENTER II SUBDIVISION, according to the official plat thereof, filed in Book "52" of Plats at Page 52 of the Official Records of the Weber County Recorder.

"Parcel B" or "Riverdale II Property":

06-274-0003

All of Lot 3 RIVERDALE CENTER II SUBDIVISION, according to the official plat thereof, filed in Book "52" of Plats at Page 52 of the Official Records of the Weber County Recorder.

"Parcel C" or "Riverdale IV Property":

06-274-0005 06-030-0030
06-003-0003

A part of the Northeast Quarter of Section 7 and the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at the Northwest corner of Lot 4, Riverdale Center II Subdivision, a Commercial Subdivision in Riverdale City, Weber County, Utah which is 1064.81 feet South 1°00'35" West along the Section line and 240.48 feet North 88°59'25" West from the Northwest corner of said Section 8; and running thence South 78°05'28" East 647.93 feet along the South boundary of said subdivision; thence South 11°03'03" West 75.97 feet; thence South 78°05'28" East 36.13 feet; thence South 38°48'08" West 63.03 feet; thence South 51°11'42" East 35.56 feet to a point of curvature; thence Southerly along the arc of a 13.73 foot radius curve to the right a distance of 21.45 feet (Central Angle equals 89°30'19" and Long Chord bears South 6°26'33" East 19.33 feet); thence South 79°50'28" East 36.56 feet; thence South 51°35'37" East 91.09 feet to the New Westerly right-of-way line of Riverdale Road (SR-26), said point being 56.5 feet perpendicularly distant Northwesterly from the existing centerline of said road; thence four (4) courses along said road right-of-way as follows: South 38°25'10" West 355.31 feet parallel to said centerline to UDOT Project No. SP-0026(4)0 engineering station 139+94.47; South 38°25'10" West 26.44 feet; North 71°37'02" West 2.83 feet; and South 38°29'55" West 102.28 feet; thence North 50°54'27" West 4.39 feet to a non-tangent point of curvature; thence Southwesterly along the arc of a 20.50 foot radius curve to the right a distance of 31.99 feet (Central Angle equals 89°24'39" and Long Chord bears South 83°47'52" West 28.84 feet); North 51°29'48" West 45.81 feet to a point of curvature; thence Northwesterly along the arc of a 159.00 foot radius curve to the left a distance of 68.23 feet (Central Angle equals 24°35'08" and Long Chord bears North 63°47'22" West 67.71 feet) to a point of tangency; thence North 76°04'56" West 234.91 feet; thence South 13°55'04" West 12.00 feet; thence North 76°04'56" West 143.01 feet to a point of curvature; thence Northwesterly along the arc of a 130.50 foot radius curve to the right a distance of 55.38 feet (Central Angle equals 24°18'49"

and Long Chord bears North 48°50'07" West 54.96 feet) to a point of reverse curvature; thence Northwesterly along the arc of a 64.50 foot radius curve to the left a distance of 19.05 feet (Central Angle equals 16°55'22" and Long Chord bears North 45°08'24" West 18.98 feet) to a point of reverse curvature; thence Northwesterly along the arc of a 60.50 foot radius curve to the right a distance of 48.07 feet (Central Angle equals 45°31'25" and Long Chord bears North 30°50'22" West 46.82 feet) to a non-tangent point; thence North 13°49'01" East 374.93 feet; thence North 13°53'52" East 161.17 feet along the Easterly right-of-way line of Pacific Avenue to the point of beginning.

Tax Parcel Numbers for reference purposes only:

Parcel A: 06-274-0001

Parcel B: 06-274-0003

Parcel C: 06-274-0005; 06-003-0003 (part); 06-028-0007 (part); 06-030-0030 (part)