CITY OF OXNARD
PLANNING COMMISSION
AGENDA

AMENDED AGENDA - ADDITION OF SPECIAL MEETING TO ADD ITEM B-1; ADDITION OF AB 361 OPEN MEETINGS: TELECONFERENCE PROTOCOLS

SPECIAL MEETING
Human Resources Activity Room, 300 West Third Street
Thursday, October 7, 2021, 6:00 p.m.

This meeting is being held in accordance with Assembly Bill 361, allowing members of the Planning Commission, members of the public and staff to participate via teleconference.

Consistent with City policies imposed to promote social distancing, the facility where the Planning Commission regularly meets is temporarily closed to the public. The public is encouraged to view the meeting from home on the City's website at Oxnard.org/city-meetings, Spectrum Channel 10, Frontier Channel 35, or YouTube at Youtube.com/oxnardnews. Video recordings are typically available online following the meeting at the City's website at http://www.oxnard.org/city-meetings

YOU MAY PARTICIPATE IN THE MEETING IN THE FOLLOWING WAYS:

1. EMAILING COMMENTS OR REQUESTS TO SPEAK BEFORE THE MEETING
   a. Submit an email to Planning@oxnard.org no later than 3:00 p.m. on the day of the meeting (Please indicate the agenda item number in the subject line). All email correspondence will be forwarded to the Planning Commission prior to the start of the meeting and made part of the legislative record.
   b. Submit a request to speak by no later than 3pm on the day of the meeting by using the form https://forms.gle/Gq9Hxsr9YzdfsWPv7, emailing the Planning office at planning@oxnard.org, or calling (805) 385-7878.

2. PROVIDING PUBLIC COMMENTS DURING THE MEETING
   a. Speakers shall have up to three minutes to speak.
   b. Speakers may register to speak by completing the public comment form https://forms.gle/Gq9Hxsr9YzdfsWPv7 and the Planning Commission Secretary will call you.
   c. Public comments on items on the agenda shall be taken following the announcement of the item. After all public speakers have been given an opportunity to speak on an agenda item, the public comment period shall be held open for three minutes to allow additional speakers to register or otherwise be recognized for the purpose of providing public comment. During this three minute time period, the Planning Commission or staff may discuss the item being considered.

In the event of a disruption which prevents a legislative body of the City of Oxnard from broadcasting a meeting using a call-in option or internet-based service option, or in the event of a disruption within the City's control which prevents members of the public from offering public comment using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on a meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. However, if any of the broadcast options are disrupted, but any of the other broadcast options is still available to the public, the legislative body may

take further action on items appearing on a meeting agenda without waiting for the disrupted broadcast option(s) to be restored.

A. ROLL CALL

B. CONSENT AGENDA

1. **Subject:** Adoption of a Resolution authorizing remote teleconference meetings of the Planning Commission of the City of Oxnard.

   Recommendation: That the Planning Commission adopt a Resolution authorizing remote teleconference meetings of the Planning Commission in accordance with Assembly Bill 361.

C. ADJOURNMENT

FUTURE MEETINGS

Thursday, October 7, 2021, 6:00 p.m. immediately following the close of the Planning Commission Special Meeting, Human Resources Activity Room, 300 West Third Street

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"AMENDED AGENDA - MODIFICATION OF MEETING START TIME TO ACCOMMODATE THE SPECIAL MEETING; ADDITION OF ADDRESSES FOR ITEMS F-3 AND F-4; TRANSMITTAL MEMOS ADDED TO ITEM F-3"

REGULAR MEETING
Human Resources Activity Room, 300 West Third Street
Thursday, October 7, 2021, 6:00 p.m.immediately following the close of the Planning Commission Special Meeting

This meeting is being held in accordance with Assembly Bill 361, allowing members of the Planning Commission, members of the public and staff to participate via teleconference.

Consistent with City policies imposed to promote social distancing, the facility where the Planning Commission regularly meets is temporarily closed to the public. The public is encouraged to view the meeting from home on the City's website at Oxnard.org/city-meetings, Spectrum Channel 10, Frontier Channel 35, or YouTube at Youtube.com/oxnardnews. Video recordings are typically available online following the meeting at the City's website at http://www.oxnard.org/city-meetings

YOU MAY PARTICIPATE IN THE MEETING IN THE FOLLOWING WAYS:

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1. EMAILING COMMENTS OR REQUESTS TO SPEAK BEFORE THE MEETING
   a. Submit an email to Planning@oxnard.org no later than 3:00 p.m. on the day of the meeting (Please indicate the agenda item number in the subject line). All email correspondence will be forwarded to the Planning Commission prior to the start of the meeting and made part of the legislative record.
   b. Submit a request to speak by no later than 3pm on the day of the meeting by using the form https://forms.gle/Gq9Hxsr9YzdfsWPv7, emailing the Planning office at planning@oxnard.org, or calling (805) 385-7878.

2. PROVIDING PUBLIC COMMENTS DURING THE MEETING
   a. Speakers shall have up to three minutes to speak.
   b. Speakers may register to speak by completing the public comment form https://forms.gle/Gq9Hxsr9YzdfsWPv7 and the Planning Commission Secretary will call you.
   c. Public comments on items not on the agenda shall be taken at the beginning of the meeting. If there are more speakers than can be accommodated during thirty minutes, additional speakers who will be given an opportunity to speak at the end of the meeting. After all public speakers have been given an opportunity to speak, the public comment period shall be held open for three minutes to allow additional speakers to register or otherwise be recognized for the purpose of providing public comment. During this three minute time period, the Planning Commission or staff may briefly respond to comments on items not appearing on the agenda.
   d. Public comments on items on the agenda shall be taken following the announcement of the item. After all public speakers have been given an opportunity to speak on an agenda item, the public comment period shall be held open for three minutes to allow additional speakers to register or otherwise be recognized for the purpose of providing public comment. During this three minute time period, the Planning Commission or staff may discuss the item being considered.

In the event of a disruption which prevents a legislative body of the City of Oxnard from broadcasting a meeting using a call-in option or internet-based service option, or in the event of a disruption within the City's control which prevents members of the public from offering public comment using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on a meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. However, if any of the broadcast options are disrupted, but any of the other broadcast options is still available to the public, the legislative body may take further action on items appearing on a meeting agenda without waiting for the disrupted broadcast option(s) to be restored.

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES

C. PUBLIC COMMENTS - On Items Not On The Agenda

At this time, a person may address the Planning Commission on matters within the jurisdiction of the Planning Commission, including information/consent items and any item not appearing on the agenda. The Chair shall limit public comments to three (3) minutes. The Planning Commission cannot take action on any item presented during public comments that is not on the agenda and such item may only be referred to the Commission Secretary. Persons wishing to speak on public hearing items should do so at the time of the public hearing.

D. CONSENT AGENDA

1. APPROVAL OF MINUTES – September 16, 2021

E. EX PARTE DECLARATIONS FOR PUBLIC HEARING ITEMS

F. PUBLIC HEARING

1. Project Name: Line 8109 Removal Project; **-** PLANNING AND ZONING PERMIT No. 21-400-02 (Coastal Development Permit). A request to remove a 402-foot segment of an existing abandoned Southern California Gas Company 20-inch high pressure natural gas transmission pipeline Line 8109 adjacent to the Mandalay Generating Station. The project is in part located within the City of Oxnard (City), at 205 and 393 North Harbor Boulevard (Blvd), also known as the Mandalay Generating Station (APNs 183-0-022-015 and 183-0-022-025) within the Coastal Energy Facilities (EC) zone, and a small portion of the project to the east of North Harbor Blvd is within unincorporated Ventura County (County) (APN 183 001 046). The entire project is within the Coastal Zone. The central portion of the project along North Harbor Blvd, is within the road right-of-way. The portion within the County of Ventura is being separately reviewed by the County of Ventura. Filed by James Chuang, GenOn California South, LP, 555 West 5th Street GT02A, Los Angeles, California 90013 (the **"Applicant"**).
City Staff: Joe Pearson II, Senior Planner

Recommendation: That the Planning Commission

a) Find the Project to be Categorically Exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15302 (Class 2, Replacement or Reconstruction); and
b) Adopt Resolution 2021-XX approving Planning and Zoning Permit No. 21-400-02 (Coastal Development Permit), subject to certain findings and conditions.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/2emTAv78lNU

2. Project Name: Lockwood 2 Parcel Map Waiver **-** PLANNING AND ZONING PERMIT No. 21-300-03 (Tentative Parcel Map for a Parcel Map Waiver). A request to subdivide an existing undeveloped 6.68 acre parcel located at the southwest corner of Lockwood Street and Outlet Center Drive into two (2) lots of net size 3.08 and 3.60 acres within the Business & Research Park (BRP) zone. No structural development or infrastructure improvements are proposed or required under this application. Filed by Mark Ross on

behalf of Sunbelt Enterprises, LLC, 5715 Mesmer Avenue, Los Angeles, CA 90230.
City Staff: Joe Pearson II, Senior Planner

Recommendation: That the Planning Commission

a) Find the Project to be Categorically Exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) (No Possibility of Significant Effect); and
b) Adopt Resolution 2021-XX approving Planning and Zoning Permit No. 21-300-03 for a Parcel Map Waiver, subject to certain findings and conditions.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/6A6VjDewj74

3. **Project Name: FGH Retail Services, LLC. - Commercial Cannabis Business Retail Special Use Permit (SUP) -** PLANNING AND ZONING PERMIT No. 21-516-36 (Retail). A request to permit the operation of a commercial cannabis retail facility within an existing 23,275 square-foot commercial suite of a 92,591 square-foot multi-tenant commercial building on a 17.38-acre site located at 2320 North Rose Avenue (APN 213-0-011-255) within the General Commercial (C-2) zone. Proposed development includes tenant improvements: installation of interior wall partitioning, plumbing upgrades, upgrades to an existing fire alarm system, security upgrades to the existing building, and installation of new secure doors/windows, and upgrades to the storefront facade. Cannabis retail operations will be conducted between the hours from 9:00 AM to 9:00 PM daily. Filed by Jeff Zook, 505 S. A Street Suite 200, Oxnard, CA 93030, on behalf of FGH Retail Services, LLC.
City Staff: Jose Coyotl, Associate Planner

Recommendation: That the Planning Commission

a) Finds the Project to be Categorically Exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities), and
b) Adopt Resolution 2021-XX approving Planning and Zoning Permit No. 21-516-36 (Special Use Permit – Cannabis: Retail), subject to certain findings and conditions.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/KOmMz1-D_60

4. **Project Name: HPC of Oxnard, LLC. - Commercial Cannabis Business Retail Special Use Permit (SUP) -** PLANNING AND ZONING PERMIT No. 21-516-41 (Retail). A request to permit the operation of a commercial cannabis retail facility within an existing

2,761 square-foot commercial suite of a 5,950 square-foot multi-tenant commercial building on a 1.03-acre site located at 360 West Esplanade Drive (APN 142-0-010-425) within the General Commercial Planned Development (C-2-PD) zone. Proposed development includes tenant improvements: installation of interior wall partitioning, plumbing upgrades, upgrades to an existing fire alarm system, security upgrades to the existing building, and installation of new secure doors/windows. Cannabis retail operations will be conducted between the hours from 9:00 AM to 9:00 PM daily. Filed by Beth Thuna, 501 West Channel Islands Boulevard Unit 304, Port Hueneme, CA 93041, on behalf of HPC of Oxnard, LLC.
City Staff: Jose Coyotl, Associate Planner

Recommendation: That the Planning Commission
a) Finds the Project to be Categorically Exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities), and
b) Adopt Resolution 2021-XX approving Planning and Zoning Permit No. 21-516-41 (Special Use Permit – Cannabis: Retail), subject to certain findings and conditions.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/NUnbC3J_WWY

G. STUDY SESSION/REPORTS

H. PLANNING COMMISSION BUSINESS

I. COMMUNITY DEVELOPMENT STAFF UPDATES

J. ADJOURNMENT

FUTURE MEETINGS

Thursday, October 21, 2021, 6:00 p.m., Human Resources Activity Room, 300 West Third Street

MINUTES
OXNARD PLANNING COMMISSION
REGULAR MEETING
September 16, 2021 Minutes
DRAFT

A. ROLL CALL

1. At 6:01 p.m., the regular meeting of the Oxnard Planning Commission convened in the Human Resources Activity Room, 300 West Third Street. Chair Chavez announced pursuant to Governor Newsom's Executive Order N-29-20, members of the Planning Commision or staff may participate in meetings via teleconference.
2. Chair Chavez (via videoconference), Vice Chair Arruejo (via videoconference), Commissioners Connelly (via videoconference), Meyer (via videoconference), Nash (via videoconference), and Sanchez (via videoconference) were present. Commissioner Lopez was absent.
3. Staff members present were: Vyto Adomaitis, Community Development Director; Scott Kolwitz, Planning & Environmental Services Manager; Kathleen Mallory, Planning & Sustainability Manager; Jose Coyotl, Associate Planner; Ken Rozell, Chief Assistant City Attorney; Emilio Ramirez, Housing Director; Scott Swenson, Safer Neighborhoods and Alcohol Compliance Specialist; Heather Davis, Rincon Consultant; Amy Sinsheimer, Placeworks Consultant; and Dee Lai, Recording Secretary.
4. Chair Chavez presided and called the meeting to order.

B. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES

1. Scott Kolwitz, Planning & Environmental Services Manager, led the pledge of allegiance.

C. PUBLIC COMMENTS - On Items Not On The Agenda

1. None.

D. CONSENT AGENDA

1. APPROVAL OF REGULAR MINUTES - August 26, 2021

MOTION: Commissioner Meyer moved and Commissioner Nash seconded a motion to approve the Minutes of August 26, 2021 as submitted.

VOTE: Chair Chavez, Vice Chair Arruejo, Commissioners Connelly, Meyer, Nash, and Sanchez voted in favor. Commissioner Lopez was absent. The motion carried 6:0:1:0:0[1].

[1] In Favor: Against: Absent: Abstain: Recused

2. APPROVAL OF REGULAR MINUTES - September 2, 2021

MOTION: Commissioner Meyer moved and Commissioner Nash seconded a motion to approve the Minutes of September 2, 2021 as submitted.

VOTE: Chair Chavez, Vice Chair Arruejo, Commissioners Connelly, Meyer, Nash, and Sanchez voted in favor. Commissioner Lopez was absent. The motion carried 6:0:1:0:0[2].

E. EX PARTE DECLARATIONS FOR PUBLIC HEARING ITEMS

1. Vice Chair Arruejo commented that he will recuse himself from participating in Item F-1 due to 18 U.S. Code § 203 and 18 U.S. Code § 205.

2. Commissioner Connelly stated that she knows the applicant for Item F-1, Lauren Fontein. She can hear and consider the request in a fair, objective and unbiased manner.

3. None of the remaining Planning Commissioners had any ex parte communications to report for Items F-1, or F-2.

F. PUBLIC HEARING

1. **Project Name: TAT OXN, LLC. dba The Artist Tree - Commercial Cannabis Business Retail Special Use Permit (SUP) -** PLANNING AND ZONING PERMIT No. 21-516-26 (Retail). A request to permit the operation of a commercial cannabis retail facility within an existing 2,546 square-foot commercial building on a 0.24-acre site located at 600 North A Street (APN: 200-0-252-140) within the General Commercial (C-2) zone. Proposed development includes tenant improvements: installation of interior wall partitioning, plumbing upgrades, upgrades to an existing fire alarm system, security upgrades to the existing building, installation of new secure doors/windows, repainting the building, and relocation of a loading service doors. Cannabis retail operations will be conducted between the hours from 9:00 AM to 9:00 PM daily. Filed by Lauren Fontein, 11330 Ventura Boulevard, Studio City, CA 91604, on behalf of TAT OXN, LLC, dba The Artist Tree.
City Staff: Jose Coyotl, Associate Planner

Recommendation: That the Planning Commission
a) Finds the Project to be Categorically Exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities), and
b) Adopt Resolution 2021-28 approving Planning and Zoning Permit No. 21-516-26 (Special Use Permit – Cannabis: Retail), subject to certain findings and conditions.

Jose Coyotl, Associate Planner, provided the required Measure M pre-recorded presentation video outlining the request which was posted with the agenda: https://youtu.be/gZzxUKOxXOw

City staff, including: Jose Coyotl, Associate Planner; Scott Swenson, Safer

[2] In Favor: Against: Absent: Abstain: Recused

Neighborhood and Alcohol Compliance Specialist; Scott Kolwitz, Planning & Environmental Services Manager; and Ken Rozell, Chief Assistant City Attorney were available for questions.

The applicant, Lauren Fontein (The Artist Tree, Chief Compliance Officer), provided a presentation and was available for questions.

Chair Chavez opened the public comments portion of the public hearing.

No public or written comments were received in support of or against Item F-1.

Chair Chavez closed the public comments portion of the public hearing.

Discussion ensued among the Commissioners and staff about several topics, including: if there are public restrooms in the facility; long term plans of the company; are minors allowed in the building; business operations, especially as it pertains to customers inspecting and handling products and utilizing local services like banking and vendors; the process to locate the retail site; bike racks being provided on site; whether the project has a labor agreement; community outreach with residents and businesses; security philosophy; difference between this store and stores from other locations; will facility have art shows, and can they be after hours; handling of cannabis products during the art shows; crime level at this neighborhood; this business being an incubator that draws business to the area and assists with the revitalization of Downtown..

MOTION: Commissioner Nash moved and Chair Chavez seconded a motion to approve the TAT OXN, LLC. dba The Artist Tree - Commercial Cannabis Business Retail Special Use Permit (SUP) as submitted, finding the Project to be Categorically Exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities), and); and Adopt Resolution 2021-28 approving Planning and Zoning Permit No. 21-516-01 (Special Use Permit – Cannabis: Retail), subject to certain findings and conditions.

VOTE: Chair Chavez and Commissioners Connelly, Meyer, Nash, and Sanchez voted in favor. Vice Chair Arruejo was recused. Commissioner Lopez was absent. The motion carried 5:0:1:0:1[3]

2. **Project Name: City of Oxnard 2021-2029 Final Housing Element -** PLANNING AND ZONING PERMIT No. 20-620-03, General Plan Amendment replacing in its entirety the current Chapter 8 (2013-2021 Housing Element) with the 2021-2029 Housing Element; 2.) PZ No. 21-620-02, update General Plan Land Use Element (Chapter 3) text by amending the General Commercial and Business Research Park land use descriptions to allow up to 30 dwelling units with 20% lower income units per acre when identified by a zoning suffix of "-AHP" (Affordable Housing Permitted) or "-AHD" (Affordable Housing Discretionary); 3.) PZ No. 21-620-03, amending the 2030 General Plan Land Use map to re-designate 13 parcels from Limited

[3] In Favor: Against: Absent: Abstain: Recused

Manufacturing or Public/Semi Public to Business Research Park or General Commercial; 4.) PZ No. 21-580-03, amending Chapter 16 of the Oxnard City Code (OCC) to repeal the All-Affordable Housing Opportunity Program (AAHOP) and replace these regulations with newly created Affordable Housing, Permitted (-AHP) and Affordable Housing, Discretionary (-AHD) additive zone definitions, designations and regulations; amending the text in the Business and Research Park (BRP) and General Commercial (C-2) zones to allow up to 30 dwelling units per acre with 20% lower income units on parcels with the "-AHP" or "-AHD" additive zone suffix; amending the Density Bonus ordinance approval authority; and creating a ministerial Site Plan Review process; and 5.) PZ No. 21-580-04, making Zoning Map Amendments to change zoning designations on approximately 106 parcels consistent with Supplement 1 of the Final Housing Element.
City Staff: Kathleen Mallory, Planning and Sustainability Manager

Recommendation: That the Planning Commission
a) Receive a presentation on the 2021-2029 Final Housing Element (6th Cycle Housing Element; Attachment 1).
b) Open the public hearing and receive public input.
c) Review the Draft Initial Study and Mitigated Negative Declaration (IS/MND) and recommend City Council approval of the environmental document (Attachment 2).
d) Adopt Resolution 2021-XX recommending City Council adopt the 2021-2029 Final Housing Element ("Housing Element") update to replace in its entirety the current 2013-2021 Housing Element as Chapter 8 within the 2030 General Plan, and text and map changes to the General Plan Land Use Element (Attachment 3).
e) Adopt Resolution 2021-XX recommending City Council approval of text amendments to Chapter 16 of the Oxnard City Code to facilitate construction of housing units as stipulated in the City's Final Housing Element (see Attachment 4).
f) Adopt Resolution 2021-XX recommending City Council approval of zoning map amendments (see Attachment 5) to facilitate construction of housing units as stipulated in the Final Housing Element.

Kathleen Mallory, Planning and Sustainability Manager, and consultant team, provided the required Measure M pre-recorded presentation video outlining the request which was posted with the agenda: https://youtu.be/gZzxUKOxXOw

City staff, including: Vyto Adomaitis, Community Development Director; Kathleen Mallory, Planning & Sustainability Manager; Scott Kolwitz, Planning & Environmental Services Manager; Heather Davis, Rincon Consultant; Amy Sinsheimer, Placeworks Consultant, Emilio Ramirez, Housing Director; and Ken Rozell, Chief Assistant City Attorney were available for questions.

Chair Chavez opened the public comments portion of the public hearing.

Public verbal comments were received in support of Item F-2:
1. Mark Pettit (Lauterbach & Associates, Architect) provided support but provided critical comments about select portions of the proposed Ordinance Amendments: 16-420 G(E) change from 10% to 25%; 16-420 (H)(A)(1) parking locations limitations may be challenging; 16-420 (H)(A)(8) 75-foot

distance might be challenging; 16-420 (D)(6) bedroom windows should be allowed; 16-420 (E(6)(e) refuse enclosure locations should change from 150 feet to 200 feet.

2. Paul Sheehan (Dyer Sheehan, Architect) provided support and commented about the transparent process.
3. Nathaniel Levy, supported the Housing Element.
4. Barbara Macri-Ortiz provided support to the Housing element but provided critical comments as included in the letter she submitted to the Planning Commission.
5. Jackson Piper (Yes In My Backyard), supported the Housing Element.
6. Tom Cohen (Tom Cohen Land Use Law, Attorney) wanted clarification of the AHP and AHD affordable units income category distribution. Is the 20% to be distributed like the current Inclusionary Ordinance?
7. Sukhi Sandhu requested changing the zoning to allow 30 units per acre at 1227-1239 South C Street.

Public written comments were received from:

1. Transmittal Memo No. 1, dated September 16, 2021, which contained two public written comments.
    a. Ranjodh Singh submitted an email requesting a zone change to allow 30 units per acre at 4574 Saviers Road.
    b. Kristi Turner submitted an email requesting a zone change to allow 30 units per acre at 1227-1239 South C Street.
    c. Ranjodh Sukhi Sandhu submitted an email requesting a zone change to allow 30 units per acre at 1227-1239 South C Street.
2. Barbara Macri-Ortiz submitted a letter to the Planning Commission concerning the proposed Ordinance Amendment AHP and AHD additive zone's permit authority and consistency with the Housing Accountability Act.

No other verbal or written comments were received for Item F-2.

Chair Chavez closed the public comments portion of the public hearing.

Discussion ensued among the Commissioners and staff about several topics, including: the reason for extending site plan review expiration period from 24 to 36 months; how will Fish and Wildlife Mitigation Measures be applied to individual projects; Design Standard Amendment would be more appropriate with continued dialog with staff; Ordinance Amendments compliance with the Housing Accountability Act; consequences if the Planning Commission does not take action recommending certification of the Housing Element; and how often is the City allowed to modify the General Plan.

MOTION: Commissioner Nash moved and Vice Chair Arruejo seconded a motion to:

1) Adopt Resolution 2021-25 recommending City Council adopt the 2021-2029 Final Housing Element ("Housing Element") update to replace in its entirety the current 2013-2021 Housing Element as

Chapter 8 within the 2030 General Plan, and text and map changes to the General Plan Land Use Element,

2) Adopt Resolution 2021-26 recommending City Council approval of text amendments to Chapter 16 of the Oxnard City Code to facilitate construction of housing units as stipulated in the City's Final Housing Element with the inclusion of the following edits in Modification Memo No. 1:
   a) SEC. 16-420F. ASSISTANCE FOR AFFORDABLE PROJECTS.
      i) (A) Housing developments that comply with this Division and contain multiple parcels with at least one parcel less than 0.5 acres which will be merged to facilitate affordable housing may request that lot merger fees be waived. Unless the lot merger involves unique situations that involve an agency or easement party other than the city or a utility company, the city shall grant the lot merger fee waiver request.
      ii) The Sections that followed this new section will be renumbered accordingly.
   b) SEC. 16-420C. PERMITTED USES.
      i) (A) Multifamily - Multifamily residential uses are allowed in -AHP and -AHD zones, subject to compliance with all applicable requirements of this Division 7C. ~~Multi-family residential uses may include space for commercial or office uses that do not exceed 15 percent of the total floor area of the development project, where commercial or office uses are allowed in the underlying zoning designation. Approval of a Special Use Permit for the commercial or office use shall still be required for related uses in accordance with the underlying zoning designation. (B) Mixed use permissible - Multifamily residential uses which contain commercial or office space of greater than 15 percent of the total floor area of the development are also permissible if they are constructed in addition to other permitted or conditional uses that are permitted in accordance with the underlying zoning designation.~~
      ii) (B) Mixed use permissible - Mixed use multifamily residential uses are allowed in -AHP and AHD zones, subject to compliance with all applicable requirements of this Division 7C, as follows:
         1. Mixed use multifamily residential uses within the -AHP or -AHD additive zone may include space for commercial or office uses that do not exceed 15 percent of the total floor area of the development, where commercial or office uses are allowed as a permitted use in the underlying zoning designation, as part of the -AHP or -AHD associated permit. Commercial or office uses, which require a Special Use Permit in accordance

with the underlying zoning designation, shall require approval of a Special Use Permit, in both the -AHP or -AHD additive zone.

2. Mixed use multifamily residential uses within the -AHP additive zone which contain commercial or office space of greater than 15 percent of the total floor area of the development may request that the mixed use multifamily residential use application be removed from the by-right Site Plan Review permit process and submit an application for a Development Design Review planning permit pursuant to section 16-525 under which the mixed use multifamily residential use application is not considered ministerial. The commercial or office space of greater than 15 percent of the total floor area of the development are also permissible, if they are constructed in addition to other permitted or related uses that are permitted in accordance with the underlying zoning designation. The commercial or office space shall still require Development Design Review Permit or Special Use Permit in accordance with the underlying zoning designation in the -AHP additive zone.
3. Mixed use multifamily residential uses within the -AHD additive zone which contain commercial or office space of greater than 15 percent of the total floor area of the development are also permissible, if they are constructed in addition to other permitted or related uses that are permitted in accordance with the underlying zoning designation. The commercial or office space shall still require Development Design Review Permit or Special Use Permit in accordance with the underlying zoning designation in the -AHD additive zone, and

c. SEC. 16-420D. PLAN REVIEW AND PROCESSING.

i) (A) Application - ~~Housing~~ Residential or mixed use developments proposed on -AHP or -AHD Additive Zone sites and permitted under this Division shall be identified by the applicant at the time of permit application. The permit application fee and applicable supplemental development and environmental analysis and impact fees are required.

1. Residential or mixed use development applications are to identify that the development will provide a minimum of 20% of all units as affordable to extremely-low income, very-low income, or low income households and comply with this entire Division.

2. The Planned Development designation on a site is only applicable to non-residential development or development that does not fall under the -AHP or -AHD additive zone provisions.
3. An application cannot utilize both the Planned Development Additive Zone provisions found in Chapter 16, Division 17 and the -AHP or -AHD Additive Zone provisions found in Section 16-420H(E).

3) Adopt Resolution 2021-27 recommending City Council approval of zoning map amendments to facilitate construction of housing units as stipulated in the Final Housing Element, subject to certain findings and conditions.

VOTE: Chair Chavez, Vice Chair Arruejo and Commissioners Connelly, Meyer, Nash, and Sanchez voted in favor. Commissioner Lopez was absent. The motion carried 6:0:1:0:0[4]

G. STUDY SESSION/REPORTS

1. None

H. PLANNING COMMISSION BUSINESS

1. Commissioner Connelly commented that she appreciates having the hardcopy version of the Planning Commission agenda and packets; however, she recommended that the presentations be printed as 6 slides per page double-sided to save paper. She asked if there is a location in the City where the agendas and packets can be recycled.

2. Commissioner Nash thanked Kathleen Malllory and City staff for their work on the Housing Element and bringing it to the Planning Commission and the Community.

3. Chair Chavez requested to receive the digital version, not the hardcopy, of the Planning Commission packets to save paper. He asked if there is another platform online to view the packets such as using a flip page format vs the pdf format. He thanked City staff for their work on the Housing Element. He announced that Mexican Independence Day is September 16, 2021.

4. Vice Chair Arruejo asked if the City will resume in-person meetings soon.

I. COMMUNITY DEVELOPMENT STAFF UPDATES

Scott Kolwitz, Planning & Environmental Services Manager announced:

1. Planning Commission packets can be distributed as electronic only packets. Planning Commissioners were requested to email their preference to Dee Lai, Recording Secretary.

2. On September 7, the City Council took the first of two actions on the Peninsula Road Street Vacation project to vacate the right-of-way and put in an easement. The second action is scheduled for October 5, 2021.

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[4] In Favor: Against: Absent: Abstain: Recused

3. The Firearms Ordinance Amendment project is scheduled for the City Council meeting on September 21, 2021.
4. The next Regular Planning Commission meeting is scheduled for October 7, 2021 at 6:00 p.m. Meetings will continue to be virtual meetings until, at least, the Council Chamber's construction project is completed.

J. ADJOURNMENT

1. At 8:26 p.m., the Planning Commission concurred to adjourn.

FUTURE MEETINGS

Thursday, October 7, 2021, 6:00 p.m, Human Resources Activity Center

________________________________	ATTEST ________________________________
Daniel Chavez Jr.,	Scott Kolwitz,
Chair	Planning & Environmental Services Manager

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
214 SOUTH C STREET
OXNARD, CALIFORNIA 93030

MEMORANDUM

Agenda Item No.: F.3

Date: October 5, 2021

To: **Planning Commission**

From: **Jose Coyotl, Associate Planner (805) 385-7863**
Scott Kolwitz, Planning & Environmental Services Manager

Subject: **Transmittal Memo No. 1 – FGH Retail Services, LLC. - Commercial Cannabis Business Retail Special Use Permit (SUP)** - PLANNING AND ZONING PERMIT No. 21-516-36 (Retail). A request to permit the operation of a commercial cannabis retail facility within an existing 23,275 square-foot commercial suite of a 92,591 square-foot multi-tenant commercial building on a 17.38-acre site located at 2320 North Rose Avenue (APN 213-0-011-255) within the General Commercial (C-2) zone. Proposed development includes tenant improvements: installation of interior wall partitioning, plumbing upgrades, upgrades to an existing fire alarm system, security upgrades to the existing building, and installation of new secure doors/windows, and upgrades to the storefront facade. Cannabis retail operations will be conducted between the hours from 9:00 AM to 9:00 PM daily. Filed by Jeff Zook, 505 S. A Street Suite 200, Oxnard, CA 93030, on behalf of FGH Retail Services, LLC.

Subsequent to the release of the Staff Report, staff has received public correspondence regarding the subject project (attached).

<u>Attachment</u>

A. Letter dated October 5, 2021, sent by Michael Chernis

CHERNIS LAW GROUP P.C.
2425 Olympic Blvd. Suite 4000-W
Santa Monica, CA 90404
Telephone: (310) 566-4388
Facsimile: (310) 382-2541

Email: michael@chernislaw.com

October 5, 2021

Honorable Chair and Member of the Planning Commission
City of Oxnard
214 S. "C" Street.
Oxnard, California 93030

cc: Planning@oxnard.org
Scott.kolwitz@oxnard.org
Jose.coyotl@oxnard.org
Kenneth.rozell@oxnard.org

RE: FGH Retail Services, LLC Commercial Cannabis Business Retail Special Use Permit

Dear Honorable Members of the City of Oxnard Planning Commission:

I serve as legal counsel to FGH Retail Services, LLC ("FGH") and as a member of its Advisory Board. I have been an attorney for more than 25 years in both New York and California, and for the last decade my practice has focused on representing clients in the adult-use and medical cannabis industries. I have worked with FGH for the last two years in its effort to open a retail cannabis dispensary in Oxnard, and I proudly write in support of its application for a Commercial Cannabis Business Retail Special Use Permit ("SUP").

In connection with the October 7, 2021 hearing on FGH's application for a SUP, I write primarily to highlight a number of ways in which FGH's retail dispensary will benefit the Oxnard community and improve the safety, security, appearance and productivity of the shopping center in which it will operate. I also write to address the concerns lodged by some of FGH's neighboring property owners who seem opposed to retail cannabis in Oxnard.

Project Overview

FGH seeks a permit to operate a dispensary at 2320 N. Rose Avenue in Oxnard (hereinafter, "FGH Property"), which is part of a shopping plaza known as the Shopping at the Rose II (hereinafter the "Rose II Center"). The FGH Property consists of an existing 23,275 sf commercial building in the General Commercial (C-2) zone and the Rose II Center overall comprises a 17.38 acre site. There are no sensitive uses within ¼ mile of the FGH Property.

FGH's location is ideal for a cannabis dispensary because of its proximity to existing commercial centers and major traffic thoroughfares like Highway 101 and N. Rose Avenue; this location sees 150,000 passing cars daily and there are 260,000 residents within a 5-mile radius. It has more than sufficient parking with 129 dedicated spaces.

Planning Staff has recommended approval of the SUP and concluded, in relevant part, that the "site will be secured at all times by the use of property security measures as reviewed by the Police Department."[1] Planning Staff has further advised that "[w]ith implementation of the recommended operating conditions, the Police Department anticipates the retail of cannabis products will have little, if any, adverse impact on area crime or demand for policing services."[2]

FGH is both the dispensary operator and the owner of the FGH Property through an affiliated entity. FGH's management team is nearly-all born and raised in Oxnard, with most still residing and raising children there. Thus, FGH is incentivized to not only build its business and profit margin, but also to enhance the FGH Property and the surrounding neighborhood.

FGH's management team is deeply rooted in the Oxnard community. They are a group of highly accomplished and competent professionals from diverse backgrounds including Fortune 500 companies, government, finance and highly regulated multi-state businesses including cannabis. They have more than 25 years of experience owning and operating cannabis businesses including a retail dispensary in adjacent Port Hueneme. The team is led by CEO Vanessa Hernandez, CEO-Alex Soriano and COO-David Garcia, each of whom were born in Oxnard and still lives in Oxnard (except for Mr. Soriano who now lives in nearby Ventura). In fact, of the seven key members of the management team, all but one are current or formers residents of Oxnard, and all are current residents of Ventura County.

FGH is truly a local endeavor. Apart from being 100% locally managed, FGH is majority-owned (58.5%) by City of Oxnard Residents. FGH is thus proud to be the first beneficiary of the City of Oxnard Local Equity Program.

Granting FGH a SUP to operate a cannabis dispensary will not only be a great accomplishment for its managers but will also reflect the values and commitment to diversity of Oxnard. FGH has an all-Hispanic management team, the majority of whom (Vanessa Hernandez, David Garcia, Alex Soriano, Maria Valdez and Ricardo Hernandez) had parents and/or grandparents who worked as migrant farm workers in Oxnard and often worked in the fields themselves alongside their parents. Thus, FGH represents "Oxnard Pride" and the successes of the Hispanic community in helping to build Oxnard, and thus FGH's success will also reflect the City's success in creating opportunities for its diverse community.

[1] Planning Commission Staff Report from Jose Coyotl, Associate Planner, Section 6.a.
[2] Planning Commission Staff Report from Jose Coyotl, Associate Planner, Section 6.d.

FGH's management team is truly committed to their heritage and the Oxnard community which it has already demonstrated through significant volunteer and public service efforts, undertaken both before and after becoming part of FGH. Its Community Benefits plan is multi-faceted but includes donating 1% of its gross revenue (in addition to the 1% gross revenue donation required by the City) to various non-profit partners, which are causes committed to farmworkers, veterans, teens, and City beautification.

<u>Rose II Center</u>

The Rose II Center where the FGH Property is located was originally developed twenty-five years ago in 1996. In recent years it has become underoccupied and underutilized, and at times appears seemingly abandoned. The shopping center at one time consisted of several successful "big-box" retailers but that is no longer the case. For example, the FGH Property used to house **Office Max**, but since that store closed in 2019 it has been leased to a costume store which only uses part of the space. On one side of the FGH Property is a **Best Buy** (the only remaining retail store in the shopping center) and on the other side a **Goodwill** store. **Babies R Us** used to occupy a standalone building in the shopping center but it closed in 2018 and the space has been vacant ever since (apart from being used temporarily as a vaccine facility). The other parcels consist of a gas station/convenience store, a **Golden Corral** restaurant, and an undeveloped vacant lot. Thus, the Rose II Center does not currently have the prestige, appearance or customer traffic of its neighboring shopping centers.

As the larger retailers have vacated, the Rose II Center has become neglected and run down, and the absence of customers and adequate security has created a vacuum filled by vandals, homelessness and even criminals.

June 7, 2021

June 26, 2021

Thus, in just the last two years there have been numerous incidents of vagrants starting fires and other nuisance activities at the Rose II Center. For example, in August 2019, while the FGH Property was still in escrow, all of the copper from its A/C units were stolen and many of the units were vandalized leading to a $67,400 repair bill. And just a month later, in September 2019, someone set fire to an electrical closet behind the FGH Property which destroyed an electrical transformer that powered a number of the businesses and parking lot lights in the Rose II Center.

Damage from September 2019 fire

In February 2020, a homeless person living behind the store started a fire behind the FGH Property leading to $5,000 in repairs.

And in November 2020, someone started a second fire behind the FGH Property.

Many vagrants are able to access the Rose II Center from the area adjacent to Highway 101 through a hole cut in a border fence that remained unrepaired for months.

March 25, 2021

Unfortunately, the limited security presence provided by the Rose II Center has proven inadequate to prevent these fires and other nuisance activity. It has also proven inadequate to deter more serious crimes which have been on the rise at the shopping center. In the year ended August 31, 2021 alone, there have been numerous police reports and arrests for shoplifting, vehicle theft, possession of methamphetamine, and even drug overdoses in and around the neighboring businesses in the Rose II Center. On October 21, 2020, the Oxnard PD Drug Enforcement Unit arrested a man at the gas station located at the Rose II Center suspected of operating a large scale heroin distribution operation; he was reportedly arrested with enough heroin to cause 2,000 overdoses. https://www.citizensjournal.us/oxnard-narcotics-sales-arrest-2/

Apart from crime, the Rose II Center has also become garbage strewn and generally neglected.

June 26, 2021

September 21, 2021

FGH's presence at the Rose II Center will immediately increase the security presence, attract more customers and help the shopping center become more prestigious and vibrant. Rather than having a reputation of being garbage-strewn and dated, it will become enhanced by housing one of the largest and most beautiful and modern cannabis dispensaries in California. FGH plans an extensive renovation and upgrade of the FGH Property, both inside and out. The architectural plans and designs for the dispensary were prepared by Jeff Zook, an Oxnard-based architect who has won numerous prestigious awards and participates on the Oxnard Design Advisory Committee. The aesthetic is a contemporary design with an emphasis on natural and recycled materials. The interior will have a modern and large showroom, spacious waiting area and ample education center that will be made available to the community for certain events.

The renovation includes all new interior walls, ceilings, doors, floor and wall finishes, new high-end restrooms, and complete lighting and mechanical systems.

The exterior façade will also be redesigned to match the aesthetic of the interior, including an art installation. The idea is to make this one of the biggest and most beautiful dispensaries and shopping experiences in California.

FGH will also help boost business for its neighbors. Cannabis is the fastest growing industry in the United States. The impact from cannabis sales is expected to reach $92 billion in 2021 – up more than 30% from 2020 – and upwards of $160 billion by 2025.[3] California is the biggest beneficiary of that growth trend given the size of its population and scope of its regulated cannabis sector, and Oxnard and FGH will account for a significant share of those cannabis sales. FGH through its relationship with the **Tree Factory** brand is expected to achieve its conservative sales goals of $11 million in revenue and approximately $800,000 in local taxes and charitable donations in Year 1, and $16 million in revenue and $1.1 million in local taxes and charitable donations by Year 3. FGH's target customer ranges from 21-75 years of age, with an average age of 37. This demographic will create ancillary foot traffic to the restaurant, **Best Buy** and gas station businesses. The uptick in business will likely also help the owners of the former **Babies R Us** space finally lease their space which has had no permanent tenant since 2018.

FGH will also bring much needed security to the Rose II Center. FGH has worked with the City of Oxnard to refine its security plan and ensure it meets with the approval of the Oxnard PD. FGH's security measures will be coordinated and overseen by Curtis Smith, a long time Ventura County resident, a retired Navy Seabee-Chief and a retired Oxnard Police Detective. Curt's assignments at Oxnard PD included Field Training Officer, Police Academy Instructor, Narcotics Detective and Homicide Detective. He also served as President of the Oxnard Peace Officers Association. Among other things, FGH's security measures will include multiple security guards, dozens of exterior and interior cameras, electronically-controlled points of entry, patrols in the parking lot to reduce nuisance activity and loitering, and enhanced exterior lighting. Oxnard PD will have 24-7 web access to FGH's security cameras.

In fact, FGH has already started working with the Oxnard PD to improve security and reduce nuisance activity at the Rose II Center. For example, on March 25, 2021, FGH's President Vanessa Hernandez met with Oxnard Police Officer Juanita Suarez to discuss ongoing loitering and vandalism issues and other ways of improving safety. Ms. Hernandez shared the Oxnard PD's recommendations with Stanley Rothbart (the property manager and gas station owner) on May 4, 2021, and together they developed the concept of a "Rose Improvement Day" to make small improvements at the shopping center. Thereafter, FGH coordinated a follow-up meeting with Oxnard Police Officer Suarez to discuss proposed ways of improving safety and security at the shopping center. As a result, FGH has already undertaken a number of minor improvements to improve safety and security, including 1) trimming trees and bushes to eradicate hiding spots for vagrants; 2) repairing the fence that separates the rear of the property from the 101 and which has become an access point for homeless and vagrants; and 3) picking up trash left behind by homeless and loiterers.

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3 https://mjbizdaily.com/marijuana-industry-expected-to-add-92-billion-to-us-economy-in-2021/.

July 11, 2021

Just these modest clean-up efforts by FGH in the last year and the frequent presence of its management team on the premises had led to a decrease in calls to the Oxnard PD relating to the Rose II Center. Once FGH commences its buildout and operations, its steady presence will further deter nuisance activity at the shopping center.

<u>Opposition</u>

Unfortunately, not all of FGH's neighbors at the Rose II Center appreciate the benefits FGH's project offers to the community and the shopping center; thus some (<u>but not all</u>) of its neighbors have registered opposition to FGH's application for an SUP. In letters written to the City on behalf of three neighboring property owners, Attorney Seena Samini claims that (1) FGH's proposed use would violate existing Easements with Covenants and Restrictions ("CC&Rs") which allegedly prohibit the operation of a cannabis business, and that (2) FGH misled the City of Oxnard during the application process by not divulging the fact that some of its neighbors were opposed to the project. In truth, FGH's neighbors seem to be fearful about possible nuisance issues historically connected to cannabis businesses generally.

In any case, Mr. Samini's assertions about the CC&Rs are inaccurate – and irrelevant. The City has made it clear on a number of occasions that a purported private dispute about the content of CC&R's is not a basis for denying a SUP. In fact, the Staff Report prepared in connection with FGH's SUP application concludes, "Staff has extensively reviewed the project and has found it in compliance with cannabis, general plan, and zoning regulations. Furthermore, the City does not enforce CC&Rs."[4] (Emphasis added). Section 5 of the Draft Standard Conditions of Approval For Land Use Permits for FGH, dated September 7, 2021, states that "Any covenants, conditions, and restrictions (CC&Rs) applicable to the project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&Rs and the City Code or this permit, the City Code or this permit shall prevail. (CA, G-7)." (Emphasis added). Thus, even if there were some prohibition in the CC&Rs against cannabis – which there is not – that would be irrelevant to the Planning Commission's determination.

Because Mr. Samimi recognizes that enforcement of the CC&R's is not within the purview of the Planning Commission, he states in his letter that its purpose is "not to ask the City to enforce the CC&Rs governing the Complex." Yet, Mr. Samimi suggests that the existence of the CC&R's is something to be considered by the Planning Commission under Oxnard City Code §16-531(A), on the ground that "such use will adversely affect or be materially detrimental to such adjacent uses…" This is really asking the Planning Commission to deny a SUP based on CC&Rs, which is precisely what the City has said repeatedly is not proper. Thus, it is respectfully submitted that there is no need for the Planning Commission to delve into the Rose II Center CC&Rs.

If Mr. Samini's clients truly believe that the FGH project would be detrimental to the Rose II Center and in contravention of the CC&Rs, they are free to file a formal dispute against FGH – which they have not yet done. FGH is confident that it will prevail should Mr. Samini's clients take that step. Contrary to his implication, there is nothing in the CC&Rs that prohibits a cannabis business that is licensed and approved by the City of Oxnard from operating in the Rose II Center. And there no statement in the CC&Rs to the effect that a business that is legal in California and in the City of Oxnard cannot operate because it is in violation of the federal Controlled Substances Act. The CC&Rs say no such thing. The language Mr. Samini relies upon was drafted twenty-five (25) years ago and did not anticipate a time when Oxnard, California, and indeed most of the United States would legalize medical and/or adult-use cannabis. It contains antiquated and, at best, vague language that generally instructs not to violate any law "of any governmental authority with jurisdiction over any portion of the Shopping Center." This language refers to land use and zoning law, which is the province of the City of Oxnard, and not the federal Controlled Substances Act.

The phrase "governmental authority with jurisdiction" used in the CC&Rs is a term of art routinely used as shorthand in development documents, ordinances and industry codes to refer to the governmental authority that sets standards for myriad building code issues, equivalent to the term *"authority having jurisdiction"* ("AHJ"). Because many of the local ordinances and regulations governing building and safety codes are based upon model codes, such as the

[4] Planning Commission Staff Report from Jose Coyotl, Associate Planner, Section 8.

National Electrical Code and National Fire Code, there is a benefit to using a single term to refer to the group of agencies and authorities involved in enforcing and approving the conduct related to a particular activity rather than seeking to list them all in the operative document. In Section 203.0 of the California Mechanical Code, for example, the term "Authority Having Jurisdiction" is defined as "[t]he organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, installations, or procedures." Similarly, Cal. Code of Reg. Title 24, Part 3, Art. 100, defines "Authority Having Jurisdiction" as "[a]n organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure." Therefore, the AHJ language, and in particular the words "*governmental authority with jurisdiction over any portion of the Shopping Center*," are "[t]echnical words [that] are to be interpreted as usually understood by persons in the profession or business to which they relate,…" and not in the ordinary sense of what jurisdiction might mean. (Cal. Civ. Code § 1645.) Simply put, it does not have the meaning urged by Mr. Samini.

Similarly, the CC&Rs do not prohibit all "adult use" as has been suggested, but rather very specific ones that implicate sexual activities (i.e., adult bookstores, adult theaters, massage parlors, and acupuncture studios[5]). Thus, Mr. Samini's claims about the CC&R's may be disregarded, as they are not a basis for denial of FGH's SUP application.

Likewise, his suggestion that FGH has somehow misled the City about his clients' opposition to the FGH project is unfair and untrue. FGH never claimed during the licensing process, or during its February 18, 2021 interview with Staff, that it had the full support of its neighbors. To the contrary, FGH during the interview and application review process disclosed to the City that some of its neighbors were taking the position that FGH's intended operation of a dispensary would violate the CC&Rs. I specifically discussed this matter with Kenneth Rozell, Chief Assistant City Attorney, who advised that the City does not get involved in disputes pertaining to CC&Rs and that they are not a basis for a denial of a permit. And during the interview with Staff on February 18, 2021, FGH disclosed that it was scheduled to meet the following week with neighboring property owners about their concerns. Thus, it is plainly wrong to suggest that FGH misled the City about the support of Mr. Samini's clients.

And, in any case, as of the time FGH gave its February 18, 2021 presentation to the City, FGH was hopeful its neighbors would support the project and it was not clear each of Mr. Samini's clients would stand in opposition. For example, beginning in Fall 2019 I first spoke with Mr. Rothbart (one of Mr. Samini's clients and the Rose II Center property manager) about FGH's plans for a dispensary and his concerns about how it might fit into the shopping center. Mr. Rothbart asked me to provide him with information on other dispensaries operating in comparative shopping centers in California, which I happily did on December 16, 2020 (See Exhibit A attached). I invited Mr. Rothbart to meet to discuss the data, but he never accepted my offer. On May 6, 2020, I again wrote to Mr. Rothbart inviting a dialogue about FGH's plans.

[5] Inclusion of this last type of business indicates the outdated mores in place at the time of drafting.

We didn't hear anything further from Mr. Rothbart about the FGH project– let alone any opposition to FGH's plans for more than a year – until February 23, 2021 –when FGH and I gave a two-hour long Zoom presentation to all the neighboring property owners at the Rose II Center. This presentation was done at the request of the neighboring parcel owners to learn more about the project, and spearheaded by the owner of the property that leases to the **Best Buy** store (which has not opposed this project). In advance of the presentation, FGH and I prepared an extensive PowerPoint presentation that sought to address the list of questions presented to us in advance (attached as Exhibit B), most of which implicate nuisance concerns. During the presentation, we explained the scope of FGH's plans, introduced FGH's management, provided a number of renderings and project details, shared statistics to show the demographics of FGH's target customer and the lack of correlation between dispensaries and crime, and sought to calm concerns about perceived nuisances. We answered questions and offered to make ourselves available to answer any questions in the future.

Notably, this presentation to the neighboring owners was conducted after FGH submitted its retail application to the City of Oxnard during the renewed application process, and approximately one week after FGH had its February 18, 2021 interview with the City. We were optimistic at that time that the neighbors would appreciate the obvious benefits of FGH's dispensary. It was only months later that we learned Mr. Samimi had written to the City in formal opposition to our plans. Thus, it is disingenuous to paint FGH as having misled the City about Mr. Samini's client's opposition when it was not apparent to us at the time FGH made its presentation to the City.

In fact, on March 12, 2021, a month after FGH gave its presentation to the City, I again wrote to Mr. Rothbart asking whether he would like to chat further about the FGH presentation and discuss any questions he had, and he had no response. It was not until June 4, 2021, long after FGH had received its conditional license from the City, that Mr. Rothbart told FGH he was in opposition to its dispensary plans. At that time, Mr. Rothbart expressed concerns about the "type of people" who would frequent the dispensary, and what part of Oxnard they were from.

FGH has done its level best to address any concerns lodged by its neighbors, and has engaged in an extensive effort to build community support for the project. Vanessa Hernandez has personally canvassed all of the businesses in the adjacent Rose I, Rose Crossing and Rose Ranch Shopping Centers multiple times leaving information about FGH including its contact information. Ms. Hernandez spoke or met with the majority of the owners or business managers about FGH's proposed dispensary and not a single person spoken with raised any objection or had any concerns; rather, they seemed excited about the new business opportunities. This is reflected, in part, by the petition submitted by FGH reflecting the support of 180 local businesses and community members. And on July 24, 2021, FGH hosted a "Meet & Greet" event for the community at large and the Oxnard PD to discuss improvements, security issues and employment opportunities. These are just examples of the efforts by Ms. Hernandez and other members of FGH to address concerns of its neighbors over the last two years.

Conclusion

FGH understands the fears and nuisance concerns of Mr. Samini's clients – which are rather typical for businesses adjacent to cannabis dispensaries – but they are all quite speculative and we expect to prove them wrong. What they don't seem to appreciate yet is the tremendous value FGH will bring to the Rose II Center, by revitalizing the FGH Property and driving more consumer traffic to each of the surrounding businesses. The current state of the Rose II Center is sad – parts of it remain undeveloped (including Lot 4 owned by one of the opposing neighbors) or empty (Lot 3 which is the former **Babies R Us**). The only thriving business that remains is **Best Buy**, which does not oppose the FGH project. FGH's store will be one of the largest in the State, will draw hundreds of new customers daily, and promises to revitalize the Rose II Center.

The FGH Management team has roots in Oxnard and most still currently live there. As such, they are all invested in the community and its improvement, for themselves and their families, and have a long track record of community involvement and engagement; they are not the type of people who would allow a store and their investment to become a nuisance on their own community to make a buck.

Accordingly, I enthusiastically urge the Planning Commission to adopt the recommendation of Planning Staff to issue FGH its Special Use Permit.

Sincerely,

Michael Chernis, Esq.

EXHIBIT A

From:	Michael Chernis
To:	"Stanley Rothbart"
Bcc:	Michael Chernis
Subject:	RE: Rose Property 2
Date:	Monday, December 16, 2019 4:16:00 PM
Attachments:	California_Dispensaries_shopping_centers.pdf Out of state_Dispensaries_shopping_centers.pdf

Hello Stanley – I hope you had a nice thanksgiving.

Sorry for the delay but the project was a little more cumbersome then expected, especially given the holidays. But we have compiled comp data that we believe answers you question, in that it shows dispensaries already co-exist in shopping centers similar to Rose II. We have included our findings on the attached documents. There is one which lists about 20 California dispensaries, as well as a list of 4 out-of-state dispensaries. Each of the out-of-state dispensaries we found appears to be in a shopping center on par if not exceeding the level of stores in Rose, with big national brand retailers and restaurants and other businesses. For the in-state list of 20, more than half of them also fit the same criteria; some of the ones we included we could not determine if the dispensary was technically on the same property as the shopping center but even in those cases the dispensary is co-existing immediately adjacent to big national retail brands and parking, and a few are smaller shopping plazas which include national brand retailers or restaurants, but not quite what I would call a shopping center.

I hope this satisfies you that Rose II would not be the first shopping center of its kind to have a dispensary. While we have not determined for each of these locations whether CCRs or ECRs exist, I think given the type of properties we are looking at it is safe to say most of them do.

Lastly, we believe there are other examples out there, especially in other states, of dispensaries in shopping centers, but which we have not yet identified. That is because I do not have access to this information from out of state and thus had to rely on examples provided to me by colleagues. And as for in-state, I got the universe of dispensaries from the State website of retailers already operating, but that does not include hundreds of dispensaries that are not yet operational but are in the planning or build-out stage, some of which may be in shopping centers. For example, Los Angeles is in the process of approving licenses for an additional 100 applicants, some of which are no-doubt located in shopping centers.

Please let me know when you would like to meet to discuss this further.

Thank you, Michael

From: Stanley Rothbart <stan@rothbartdev.com>
Sent: Wednesday, November 27, 2019 8:39 PM
To: Michael Chernis <michael@chernislaw.com>
Subject: Re: Rose Property 2

I would like to visit the centers in person (assuming that they are convenient) before we meet

Stanley Rothbart
Stan@rothbartdev.com

On Nov 27, 2019, at 6:17 PM, Michael Chernis <michael@chernislaw.com> wrote:

At the meeting was what I was thinking

From: Stanley Rothbart <stan@rothbartdev.com>
Sent: Wednesday, November 27, 2019 6:15 PM
To: Michael Chernis <michael@chernislaw.com>
Subject: Re: Rose Property 2

When will you get me the comp locations

Stanley Rothbart
Stan@rothbartdev.com

On Nov 27, 2019, at 4:06 PM, Michael Chernis <michael@chernislaw.com> wrote:

Hi Stanley – I am following up on our call from last week and the dispensary issue. As you suggested we are putting together a list of comp situations with dispensaries to review with you and was wondering whether you might be available for a meeting towards the end of next week.

Have a nice thanksgiving.

Michael

Michael S. Chernis, Esq.
CHERNIS LAW GROUP P.C.
Santa Monica Water Garden
2425 Olympic Blvd
Suite 4000-W
Santa Monica, CA 90404

Tel: (310) 566-4388
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Michael@chernislaw.com

www.chernislaw.com

<image001.jpg>

EXHIBIT B

<u>Questions for Rose Oxnard II Presentation – Feb. 23, 2021 at 1PM (PST)</u>

Have you previously operated a cannabis operation?
If so,

- How many:
- Where:
- Dates of operations:
- Square footage operated:

What is the trade name of the business?

How will the interior of the space be used?

How much area would be allocated to the dispensary?

What would the balance of the building be used for? Any cultivation?

Are you proposing any changes to the common area?

Do you have any floor plans/design for the building?

What City permits are you required to obtain to operate?

What is the status of City Approval for Cannabis Licensing?

Why do you think you will get a license?

What are your proposed hours of operation?

What security measures are proposed for inside and outside the store? Such as Armed Guard, Controlled Access, Cash Controls, etc.

What demographic is the operator targeting? What's the price point of the merchandise being sold (low, medium, high relative to competitors)?

Are there other cannabis shops the principals own? Are there other large format cannabis stores in Southern CA market that would be good comparisons?

Does this use produce a smell of cannabis inside or outside the store? Would adjacent tenants be affected? If so, will an Air Filtration system be utilized?

Does this use lead to customers smoking or using cannabis in the parking lot or common areas?

Does this use increase the insurance costs of the other owners or the insurance on the common area? If so, would the cannabis operator be open to covering the increased costs?

Do you have any statistics on this use increasing crime in the surrounding area?

Does this use prevent other owners &/or occupants operating in the same center from receiving loans from lenders?

Any statistics on the demographics of the customers frequenting cannabis stores? Are they more/less likely to cross shop? Will this use benefit the other tenants in the shopping center?

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
214 SOUTH C STREET
OXNARD, CALIFORNIA 93030

MEMORANDUM

Agenda Item No.: F.3

Date: October 7, 2021

To: **Planning Commission**

From: **Jose Coyotl, Associate Planner (805) 385-7863**
Scott Kolwitz, Planning & Environmental Services Manager

Subject: **Transmittal Memo No. 2 – FGH Retail Services, LLC. - Commercial Cannabis Business Retail Special Use Permit (SUP)** - PLANNING AND ZONING PERMIT No. 21-516-36 (Retail). A request to permit the operation of a commercial cannabis retail facility within an existing 23,275 square-foot commercial suite of a 92,591 square-foot multi-tenant commercial building on a 17.38-acre site located at 2320 North Rose Avenue (APN 213-0-011-255) within the General Commercial (C-2) zone. Proposed development includes tenant improvements: installation of interior wall partitioning, plumbing upgrades, upgrades to an existing fire alarm system, security upgrades to the existing building, and installation of new secure doors/windows, and upgrades to the storefront facade. Cannabis retail operations will be conducted between the hours from 9:00 AM to 9:00 PM daily. Filed by Jeff Zook, 505 S. A Street Suite 200, Oxnard, CA 93030, on behalf of FGH Retail Services, LLC.

Subsequent to the release of the Staff Report, staff has received public correspondence regarding the subject project (attached).

Attachments

A. Email dated October 6, 2021, sent by Mike Barber
B. Letter dated October 6. 2021 sent by Seena M. Samimi

Lai, Dee <dee.lai@oxnard.org>

[Ask Planning Action] Item F3 please read into record

1 message

Mike Barber <t2thebar@gmail.com> Wed, Oct 6, 2021 at 8:39 PM
To: planning@oxnard.org

To All Planning Commissioners,

I am in strong support of the Special Use Permit for FGH Retail Services, LLC. FGH has been a strong supporter of Santa to the Sea for the last few years in providing a large amount of toys for the residents of our neighborhood. They have also participated in the distribution of toys and assisting our community in other programs for our residents.

I believe that FGH will help improve the building site where proposed and will help improve the shopping center area and bring additional economic development to Oxnard.

Thank you for your consideration and I request that you approve the SUP.

Sincerely,

Mike Barber
Founder, Santa to the Sea

Seena M. Samimi
ssamimi@jmbm.com

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October 6, 2021

VIA EMAIL ONLY
City of Oxnard Planning Commission
300 West Third Street
Oxnard, CA 93030
Planning@oxnard.org
Jose.Coyotl@oxnard.org

Re: FGH LLC – PROPOSED LOCAL EQUITY CANNABIS FACILITY APPLICANT FOR 2320 N. ROSE AVE., OXNARD, CA
Planning Commission Oct. 7, 2021 Hearing – Agenda Item #3

Dear Honorable Planning Commissioners,

This letter of opposition is written on behalf of Rose II LLC (owner of 2200 N. Rose Avenue and 1901 Lockwood St.), Oxnard Place, LLC (owner of 2340 N. Rose Avenue), and Rose TIC, LLC (owner of 2330 N. Rose Avenue and Lot 4), all of which are owners and operators of businesses (the "Neighboring Owners") in the commercial complex (the "Complex") where FGH Retail Services LLC ("FGH") intends to open its cannabis retail dispensary business ("Project"), at 2320 N. Rose Avenue, Oxnard, CA (the "Property").

[CONTINUED ON NEXT PAGE]

I. EXECUTIVE SUMMARY

1. **The City is unable to make the findings required under Oxnard Zoning Code Section 16-531(A)**. This provision requires that the Planning Commission analyze the "nature, condition and development of [FGH's] adjacent uses, buildings and structures," and to ensure that FGH's proposed use does not "adversely affect or be materially detrimental to such adjacent uses, buildings or structures." The adverse effects on adjacent uses include, but are not limited to (see Section III for additional details):
    a. **Loss of Business/Tenants**: Due to proximity to an adult use, there are now restrictions on entire classes of tenants within the Complex (schools/childcare or family-oriented businesses). Also, the presence of the dispensary will also discourage certain types of patrons from shopping at the Complex.
    b. **Financing**: Many financial institutions have advised that on projects that contain cannabis uses, they would refuse to lend or refinance if there is a tenant within the Complex that is a cannabis use.
    c. **Crime/Loitering**: Due to the high volume of cash and high-priced products on site, the dispensary will increase crime risks. Also, loitering in front of surrounding businesses, and cannabis consumption in the parking lot will be disruptive.
    d. **Insurance**: Insurers have indicated that there will be premium increases due to the risks associated with a neighboring cannabis use.
    e. **Odors**: The notorious odors emanating from dispensaries will be disruptive to neighboring businesses.
2. **FGH's business can never open within the Complex anyway**: The CC&Rs expressly prohibit 1) adult uses and 2) federally illegal uses, such as a cannabis dispensary. Because the Neighboring Owners will sue to enforce the CC&Rs (which are clear on this point) the City will be wasting its time and resources, and will be depriving itself of the tax revenues from a more deserving (and properly located) cannabis business. (See Section IV.)
3. **FGH misrepresented facts in its presentation to the City**: FGH touts "neighborhood compatibility" as a key reason for why its application should be granted, and repeatedly implied that the Neighboring Owners would support the use. This is utterly false. FGH was put on notice of the Neighboring Owners' vehement opposition to the Project since at least April 2020, and made no mention of this fact to the City. (See Section V.)
4. **The Project is subject to CEQA**: The exemption claimed by the City is inapplicable, and even if it was applicable, exceptions apply, due to unusual circumstances. (See Section VI.)
5. **The Planning Commission Resolution is rife with errors that need correction**: Even if the Planning Commission decides to approve the Project (it should not), it cannot approve the Resolution that is before it without making several changes and clarifications, discussed in Section VII. For example, even though the Project is presented as a storefront retail operation only, the Conditions of Approval also purport to regulate delivery of cannabis to end-consumers, as well as cultivation.

II. BACKGROUND AND CORRECTION OF THE INCOMPLETE RECORD

The Neighboring Owners submitted a thorough letter to the City on June 15, 2021[1], addressing several crucial points that they wanted to ensure were brought to the attention of the Planning Commission. However, the letter's main point of contention – **that the City is unable to make the findings required under Oxnard Zoning Code Section 16-531(A)** – was entirely ignored by the staff report. The letter's purpose was twofold (as stated expressly therein): 1) provide the City with the relevant information needed to properly analyze the "nature, condition and development of [FGH's] adjacent uses, buildings and structures," and to ensure that FGH's proposed use does not "adversely affect or be materially detrimental to such adjacent uses, buildings or structures" as required by Oxnard Zoning Code Section 16-531, and 2) to put the City on notice that even if it approves the Project, FGH will never be able to open, operate, or provide a tax benefit for the City, as the Neighboring Owners will act to enforce the CC&Rs, which expressly prohibit adult uses, including cannabis businesses.

The Neighboring Owners write now to again express their vehement opposition to the Project, and to bring to the Planning Commission's attention several major flaws with the proposed resolution. The Planning Commission should vote to deny the Project.

III. THE CITY CANNOT MAKE THE REQUIRED FINDINGS UNDER OXNARD ZONING CODE SECTION 16-531(A)

Before it may issue a Special Use Permit, the first finding the City must make is that the proposed use will cause no adverse or detrimental effects to the neighboring uses and businesses. The requirement, in relevant part, is set forth below (emphasis added):

> **SEC. 16-531. REQUIREMENTS FOR GRANTING.**
> Before a special use permit may be granted, the applicant must show and the commission must find that the proposed use is in conformance with the general plan and other adopted standards and that the following conditions are met:
> ***(A) The nature, condition and development of adjacent uses, buildings and structures shall be considered, and no proposed special use permit shall be granted if the approval body finds such use will adversely affect or be materially detrimental to such adjacent uses, buildings or structures or to the public health, safety or general welfare.***
> …

[1] A portion of this letter (which was mischaracterized by the staff report) is attached as "Attachment K" to the staff report, but the accompanying exhibits to the letter were omitted. As such, for the sake of a complete record, attached hereto as **Exhibit A** is the complete version of the June 15, 2021 letter, including the omitted Exhibits 1-2 thereto (April 24, 2020 and May 27, 2020 letters sent from Neighboring Owners to FGH). Note that the CC&Rs are also attached as an internal exhibit to the April 24, 2020 letter.

Staff reports, and proposed resolutions for the Planning Commission's consideration, typically contain a list of required findings that are taken verbatim from the relevant municipal codes (in this case, Oxnard Zoning Code Section 16-531), and then explain how the Project satisfies, or fails to satisfy, each of the requirements. The staff report before the Planning Commission for the October 7, 2021 hearing (and the accompanying proposed Planning Commission Resolution) does no such thing.

Rather than listing the requirements from Oxnard Zoning Code Section 16-531, pages 3-5 of the proposed Planning Commission Resolution instead only paraphrases some of the requirements therein, and in so doing, misses some important mandatory requirements, such as those listed Oxnard Zoning Code Section 16-531(A).[2] As such, if the City were to approve the project based on the resolution currently before the Planning Commission, it would constitute an abuse of discretion under California Code of Civil Procedure Sections 1094.5(b)-(c): "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, **the order or decision is not supported by the findings, or the findings are not supported by the evidence**." (*See also, Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [an agency must set forth findings to "bridge the analytic gap between the raw evidence and the ultimate decision or order."].)

The Neighboring Owners want to again be very clear regarding the intent of this letter (and the June 15 letter). **The purpose is not to ask the City to enforce the CC&Rs governing the Complex**. The Neighboring Owners will do so themselves through litigation, if necessary. Rather, the Neighboring Owners **simply ask the City to do as Oxnard Zoning Code Section 16-531(A) requires**: consider the "nature, condition and development of adjacent uses, buildings and structures"[3] and to reject the Project if it "will adversely affect or be materially detrimental to such adjacent uses, buildings or structures." Because the Project will have an adverse effect on the neighboring uses, the Planning Commission should reject the application, as it cannot make this required finding.

A. Adverse Impacts on Neighboring Uses

There are several adverse impacts on the adjacent uses that the Planning Commission should be aware of, as it determines whether it can make the required finding under Oxnard Zoning Code Section 16-531(A):

1. **Future Tenant Restrictions and Future Tenant Hesitancy**: Because cannabis sales are an adult use, and regulations prohibit certain sensitive uses near cannabis operations, the Neighboring Owners will be legally prevented from renting to certain types of businesses

[2] Surprisingly, the staff report makes no mention of Oxnard Zoning Code Section 16-531 (aside from attaching a portion of the letter submitted by Neighboring Owners to this effect).

[3] This is the requirement of Oxnard Zoning Code Section 16-531(A) that the staff report fails to cite, and fails to address. That is because neither the staff report, nor the Planning Commission Resolution, take this requirement into consideration.

in the future, such as youth groups, schools, preschools, day-cares, and the like. Beyond the outright prohibition regarding certain classes of tenants, many family-oriented businesses (including themed restaurants, family restaurants, event spaces, etc.) also will refuse to sign a lease if there is a cannabis operation within the Complex. There are also non-family-oriented commercial businesses that will simply refuse to be located in a complex containing a cannabis dispensary.[4] This means that the pool of potential tenants will be reduced, which in turn, means that vacancies will take longer to fill, which has a negative financial impact on the Neighboring Owners (as well as the City, due to decreased tax revenues).

2. **Financing**: Many financial institutions have advised that on projects that contain cannabis uses, they would refuse to lend or refinance if there is a tenant within the Complex that is a cannabis use. Due to federal illegality of cannabis, financial institutions tend to take a hard stance on cannabis uses (even when it is an adjacent use), and this issue could put Neighboring Owners in a precarious position when it comes to financing.
3. **Traffic**: FGH's operations are expected to bring a significant amount of vehicle traffic, foot-traffic and visitors to the business. The staff report is ambiguous regarding whether FGH's operation also includes delivery beyond storefront retail.[5] To the extent that FGH operates a delivery business from the Property, that will greatly impact the atmosphere of the parking lot, converting it from a space for parking, to a hub for delivery vehicles. The impacts from such a major change would need to be analyzed and potentially mitigated.
4. **Crime**: Because cannabis remains federally illegal in most circumstances, most cannabis operators still deal heavily in cash. Some cannabis operators have established illegal workarounds[6] to this typically cash-only business, only to be criminally prosecuted. The large amounts of cash, often kept in safes onsite, along with the extremely high-valued products, mean that cannabis operations such as that of FGH often have millions of dollars of combined cash and products on site. This leads to higher security threats, and a greater probability of crime and attempted theft. In addition, consumption of cannabis in public is still a crime in all of California, even in local jurisdictions where it has been legalized, including in Oxnard. (California Health and Safety Code Sections 11362.3-11362.4 .) The increased crime risks would also lead to higher security costs for the Neighboring Owners.
5. **Odors**: Cannabis dispensaries are notorious for emitting strong smells which the Neighboring Owners consider to be offensive and a nuisance. Conditions of approval relating to these smells do little to mitigate the impacts. To the extent that patrons of the

[4] This is not mere conjecture. One of the Neighboring Owners was told by a large national retailer that it would not enter into negotiations for a lease if there was a possibility of a cannabis-related use being permitted within the Complex.
[5] See full discussion in Section VII below. However, if delivery is included in the Project proposal, the Neighboring Owners hereby request a continuance of the hearing, so that facts can be gathered, and a proper response can be made as to the impacts that would have on the Complex.
[6] https://www.americanbar.org/groups/business_law/publications/blt/2020/02/cannabis-banking/; https://arstechnica.com/tech-policy/2020/07/feds-indict-men-for-disguising-pot-payments-as-orders-for-dog-toys-and-soda/

neighboring businesses are bothered by the smells, they will also avoid shopping in the Complex, and go elsewhere.

6. **Loitering**: Patrons who obtain the cannabis from FGH may loiter and consume the cannabis products in the parking lot, and in and around the businesses of the neighboring properties, which would materially interfere with the operations and success of those businesses.
7. **Insurance**: For many of the same reasons listed above (increased crime risk, loitering, odors, tenant restrictions, etc.), the Neighboring Owners will suffer from an increase in insurance premiums due to the neighboring cannabis use.
8. **Loss of Business**: Cannabis smells, loitering of FGH patrons, and the increased security risks (described above) are a material interference with neighboring businesses. In addition, a cannabis business would materially alter the prestige of the shopping center, and therefore, the neighboring businesses. It is possible, if not likely, that many families with younger children (and those who oppose cannabis for other reasons) would no longer want to take their business to the Complex once a cannabis dispensary opens therein.

The full extent of the negative impacts from FGH's operations cannot be known, but FGH was put on full notice of the concerns listed above, and despite multiple letters to FGH from counsel for several of the Neighboring Owners, FGH has not responded to these issues. Notably, the staff report also fails to address any of these issues, and despite having received the June 15 letter (with attachments) from this firm, does not even include any analysis or discussion regarding how or why these concerns have been mitigated or otherwise addressed.

In any event, based on the above adverse impacts to the Neighboring Owners, the Planning Commission cannot make the required findings under Oxnard Zoning Code Section 16-531(A), and must reject the application.

B. Direct Violation of the CC&R's Express Terms

In addition to the adverse impacts to the Neighboring Owners, the Planning Commission is also tasked with considering the "nature, condition, and development of adjacent uses, buildings and structures." In this particular case, the "nature, condition, and development of adjacent uses, buildings and structures" which the City ***must consider*** under Oxnard Zoning Code Section 16-531(A), are governed by a ***written document***: the CC&Rs.[7] The CC&Rs expressly prohibit the proposed cannabis use, as thoroughly analyzed in the letters to FGH from the Neighboring Owners (See Exhibit A, Exhibit 1 [April 24, 2020 letter]). FGH acquired the Property having been provided with actual and constructive notice of the CC&Rs, and FGH was fully aware of the restrictions and limitations of the Property it purchased.

[7] The CC&R's formal name is the "Amendment and Restatement of Easements with Covenants and Restrictions Affecting Land", recorded on August 15, 1996. (See Exhibit A, internal Exhibit 1 [April 24, 2020 letter], Exhibit 1 thereto [CC&Rs].)

The City cannot make the required finding regarding adjacent uses in a vacuum. All of the owners in the Complex have agreed to be bound by the CC&Rs; those CC&Rs are therefore relevant to the City's findings concerning the effects on surrounding uses. Here, the CC&Rs expressly prohibit the use that FGH is proposing. While the below list is not exhaustive, here is a representative list of prohibitions that FGH has utterly ignored:

1. **Prohibition on "adult uses" (Section 2.b):** The CC&Rs broadly prohibit "adult uses" at the Complex. By definition, cannabis retail facilities are adult businesses that can only service adult customers under California law. In fact, the very first slide of FGH's presentation to the City describes a cannabis business as an "adult use." An adult cannabis business is no different than the myriad other types of adult businesses that are also expressly called out in the CC&Rs as prohibited uses in the Complex.

2. **Prohibition on illegal uses (Section 2.b.iv):** The CC&Rs also prohibit any use that violates "***any*** law, ordinance, rule or regulation of ***any*** governmental authority with jurisdiction over any portion of the Shopping Center." Despite changes in State and local law, cannabis remains a Schedule 1 drug under the Controlled Substances Act (21 U.S.C. 802, 812) and the sale of cannabis is illegal under federal law. As a result, cannabis sales are prohibited by the CC&Rs.

3. **Prohibition on activities which interferes with the business of any other occupant (Section 2.b.iii)**: The list of adverse impacts described in Section III.A above show that FGH's operation will interfere with the businesses of the Neighboring Owners.

Thus, beyond the actual adverse impacts listed in Section III.A above, the fact that FGH has decided to attempt to open a cannabis dispensary in a Complex where it is expressly prohibited is telling. The fact that FGH has refused to present any arguments as to how or why it complies with the CC&Rs also speaks volumes. This is not a company that has high regard for the rules or regulations of the Property it has purchased, even when put on notice of those requirements repeatedly. Why would FGH act any differently in connection with the City's rules or regulations? A company that would seek the City's approval of a business that it undeniably knows is prohibited at the Property is not one deserving of the City's consideration for a Special Use Permit.

IV. APPROVAL OF THE APPLICATION WILL BE A WASTE OF THE CITY'S TIME AND RESOURCES

It is abundantly clear from the language of the CC&Rs that FGH's proposed cannabis dispensary use is prohibited, and the Neighboring Owners have already expressed their willingness and desire to enforce the terms of the CC&Rs. There is no doubt that the courts will act to enforce the CC&Rs, and that FGH will not be permitted to open the dispensary at the Property.

As such, the City will never see the tax revenues from this location even if the SUP application is approved. The available dispensary permit should be given to another deserving applicant, so that the City can see the tax revenues that would come from a properly situated cannabis dispensary.[8]

V. FGH MISREPRESENTED FACTS IN ITS PRESENTATION TO THE CITY

FGH's February 18, 2021 PowerPoint presentation to the City[9] touted purported "Neighborhood Compatibility" as a key reason for why it should be selected to apply for and obtain a Special Use Permit, spending nearly 50% of the slides discussing FGH's efforts at “building trust” and “being a good neighbor.” This inaccurate narrative, however, flies in the face of reality. FGH has been acutely aware of, but failed to disclose, the Neighboring Owners' strong opposition to its proposed operations since at least April 2020, when several of the Neighboring Owners put FGH on written notice that its proposed use at the Complex would violate several provisions of the governing CC&Rs, and would create various nuisances and disturbances within the Complex. (See Exhibit A, Exhibit 1 [April 24, 2020 letter] and Exhibit 2 [May 27, 2020 letter].)

FGH’s failure to be transparent with the City and disclose the strong opposition of the Neighboring Owners to its proposed use at the Complex is anything but an example of “building trust” and “being a good neighbor.” Indeed, its presentation to the City attempted to give the impression that the Neighboring Owners in the Complex would benefit from, and perhaps even support, FGH's application. Nothing could be further from the truth.

It should be noted that the staff report also attaches a "petition" with purported signatures of approval of FGH's business. The Planning Commission should give zero weight to this petition. The staff report notes that "the City received a petition in support of the proposed Project." (Staff report p. 7.) However, the staff report does not say who provided that petition, or when, or how the petition was conducted. There is no declaration or affidavit from the person (or persons) who purportedly collected the signatures. There is no real evidence before the Planning Commission that these signatures are legitimate,[10] and they should be disregarded entirely.

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[8] It should be noted that although FGH's representatives met with the Neighboring Owners regarding their operations in advance of the hearing, FGH's precondition to such a meeting was that there would be no discussion of the CC&Rs. In other words, FGH understands that its proposed use violates the CC&Rs, has no arguments to rebut this violation, and has stubbornly proceeded with its application despite this context.

[9] Available at: https://www.oxnard.org/wp-content/uploads/2021/03/CCB-21-38-3.-FGH_Phase-3-Presentation_02.18.21_redacted.pdf

[10] Without going into detail (because it is not particularly relevant for the purposes of this Planning Commission hearing), it is obvious that some of the signatures are fraudulent, as different names often appear with the same handwriting throughout the petition.

VI. THE PROJECT IS SUBJECT TO CEQA

The staff report and Planning Commission Resolution state that the Project is exempt from CEQA because it is an Existing Facility. To support this conclusion, the staff report goes on to state that 1) the Project request will not increase the square footage of the existing building and 2) no exceptions to the exemptions (Section 15300.2) apply to defeat the exemption. (Staff report p. 4.) Both of these contentions are wrong.

A. The Project Increases the Square Footage of the Building

Although the staff report claims that there will be no increase in square footage, that is false. FGH requested a permit "for a 23,000 square-foot cannabis retail facility." (Staff report p. 4.) Yet, the current application is a "request to permit the operation of a commercial cannabis retail facility within an existing 23,275 square-foot commercial suite." (Staff report p. 1.) Thus, there is an increase of 275 square feet. The staff report is internally contradictory on this issue, but there is evidence in the record that the applicant is requesting a square footage increase, and has even suggested a Community Development Director approval for such an increase. (Staff report p. 5.) As such, there is indeed an increase in square footage, and the existing facilities exemption cannot apply.

B. Several Unusual Circumstances Apply, Rendering the Categorical Exemption Inapplicable in Any Event

Categorical exemptions are narrowly construed (*Dehne v County of Santa Clara* (1981) 115 Cal.App.3d 827, 842) and the scope of the exemptions should not be unreasonably expanded (*Wildlife Alive v Chickering* (1976) 18 Cal.3d 190, 205; *McQueen v Board of Dirs.* (1988) 202 Cal.App.3d 1136.) Strict construction ensures that categorical exemptions are interpreted in a manner affording the greatest environmental protection within the reasonable scope of their language. (*Save Our Schools v Barstow Unified Sch. Dist. Bd. of Educ.* (2015) 240 Cal.App.4th 128, 140.) Furthermore, for all types of exemptions “a project is only exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (*Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 656 [internal quotes and marks removed], disapproved on other grounds by *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576, fn. 6.)

To establish unusual circumstances and defeat the use of a categorical exemption pursuant to CEQA Guidelines § 15300.2(c), a petitioner must establish that 1) unusual circumstances are present, and 2) there is a reasonable possibility of a significant environmental impact due to those circumstances. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109-1117.) Alternatively, a petitioner “may establish an unusual circumstance with evidence that the project will have a significant environmental effect.” (*Id.* at p. 1105.) Here, there are several unusual circumstances at play, any of which render the categorical exemption inapplicable.

Unusually Large Size: First, the size of FGH's proposed operation is much, much, larger than your typical cannabis dispensary. The average dispensary consists of about 2,000 square feet or less.[11] FGH's cannabis dispensary is over ten times larger, and it is unknown to the Neighboring Owners (and even perhaps the City) what that additional space will be used for. To the extent that the additional space will be used for cultivation or manufacturing, that would not be permitted by FGH's license, and would be a violation of the law. Furthermore, cultivation activities bring additional burdens such as additional odors and noises, hazardous materials and runoffs, etc.

Crime/Loitering: The increased potential for crime and loitering is something that should be analyzed under CEQA.

Odor/Noise/Traffic: As discussed in Section III.A above, there are several collateral effects of a cannabis dispensary, such as odor, noise, and traffic, that should be analyzed under CEQA.

VII. THE RESOLUTION ITSELF IS FLAWED, AND CONTAINS MANY ERRORS THAT MUST BE CORRECTED

Assuming the Planning Commission approves the Project despite the myriad problems identified above (it should not), the Planning Commission cannot approve the Planning Commission Resolution that is before it without making several changes and clarifications:

1. **Community Relations Contact (Oxnard Zoning Code Section 11-489; Planning Commission Resolution p. 13, Condition of Approval Nos. 48-49.)**: Both the Oxnard Zoning Code Section 11-489 and the Conditions of Approval 48-49 require that FGH provide to the City, and to the businesses located within 600 feet of the business, the contact information of a "community relations officer." This has not been done, and there is no timeframe associated with this requirement. (Compare that to the other conditions of approval, such as #50, which have express timeframes).
    a. **Impose timing requirement:** This requirement should be immediate, and definitely prior to any construction or tenant improvements taking place, as the contact information will be necessary to address any issues at all stages. Given FGH's track record of ignoring and misrepresenting concerns from its neighbors, this requirement is all the more important.
2. **General Plan Consistency (Staff Report Attachment G)**: The chart states that "The Project proposes to locate within an established commercial shopping center which allows for retailing of cannabis products. The proposed site would operate with other businesses that engage in similar retail business practices therefore the Project would be compatible. Furthermore, the Project was reviewed for neighborhood compatibility, architectural design compatibility, security, and overall community benefits." **Every single sentence in the above statement is categorically false. Each sentence will be taken in turn.**
    a. *The Project proposes to locate within an established commercial shopping center which allows for retailing of cannabis products*: False. As noted above, the

[11] https://mjbizdaily.com/landing-right-retail-location/

commercial shopping center expressly prohibits adult uses such as cannabis dispensaries, so it is unknown how the staff report came to this conclusion. There is no citation provided for this claim. Section III.B above provides citations to the CC&Rs showing that the use is expressly prohibited.

b. *The proposed site would operate with other businesses that engage in similar retail business practices therefore the Project would be compatible*: False. There are no other businesses in the Complex that engage in similar retail business practices, because adult uses are expressly prohibited. The staff report does not specifically mention any similar businesses either (it cannot, because they do not exist).

c. *Project was reviewed for neighborhood compatibility, architectural design compatibility, security, and overall community benefits*: This simply cannot be true. The staff report failed to attach the full set of letters that was provided to the City in advance of the hearing, and did no analysis regarding neighborhood compatibility, because all of the points above were raised with the City prior to the issuance of the staff report (see Exhibit A, June 15, 2020 letter, and attachments), and not a single one of the points raised herein was analyzed or discussed – the most important of which, being the required finding regarding neighborhood compatibility. (Oxnard Zoning Code Section 16-531(A).)

3. **Cultivation Exception Should be Stricken** (**Planning Commission Resolution p. 19, Condition of Approval No. 85; Planning Commission Resolution p. 24, Condition of Approval No. 121)**: There is no cultivation allowed on site. All cultivation exceptions should be stricken.

    a. Condition of Approval nos. 85 and 121 read: "Except for live growing plants which are being cultivated at a cultivation facility, all cannabis and cannabis products shall be stored in a secured and locked vault or vault equivalent. All safes and vaults shall be compliant with Underwriter Laboratories burglary-resistant and fire-resistant standards. All cannabis and cannabis products, including live plants that are being cultivated, shall be kept in a manner as to prevent diversion, theft, and loss."

    b. FGH does not have the authority to cultivate cannabis on the premises. The exception for cultivation should be stricken entirely. Condition of Approval nos. 85 and 121 should read as follows: "~~Except for live growing plants which are being cultivated at a cultivation facility, a~~ **A**ll cannabis and cannabis products shall be stored in a secured and locked vault or vault equivalent. All safes and vaults shall be compliant with Underwriter Laboratories burglary-resistant and fire-resistant standards. All cannabis and cannabis products~~, including live plants that are being cultivated,~~ shall be kept in a manner as to prevent diversion, theft, and loss."

4. **Loitering Prohibition Within 50 Feet Must be Expanded to Cover the Entire Complex (Planning Commission Resolution p. 22, Condition of Approval Nos. 102-103; Planning Commission Resolution p. 26, Condition of Approval No. 131)**: The current conditions of approval only prohibit loitering within 50 feet of the business. That does not cover nearly enough space. The neighboring businesses cannot have FGH's patrons

loitering in front of their businesses, or in the parking lot of the Complex, as long as they are over 50 feet away from FGH's Property.[12]

   a. This can be accomplished either by ensuring that the radius covers the entire Complex, or expressly stating that loitering is prohibited in the entire Complex, including the parking lot, and other neighboring businesses.

5. **Cannabis Deliveries Should be Prohibited (Planning Commission Resolution p. 30, Condition of Approval No. 150)**: Condition of Approval no. 150 presumes that cannabis deliveries will take place, using the FGH storefront dispensary as their home base. This appears to be a mistake, and it should be stricken. Aside from appearing in this condition of approval, nothing about delivery is mentioned in the staff report, or in the FGH PowerPoint presentation, or elsewhere in the Planning Commission Resolution. If delivery is being contemplated, the public, and the Neighboring Owners, have not gotten any facts about it, and have not had an opportunity to hear the facts and respond accordingly. There has been no public notice of a delivery operation – only storefront retail.
   a. Either this Condition of Approval should be stricken entirely, and replaced with an outright prohibition on delivery, or the hearing should be postponed, and the delivery should be addressed in the staff report, so that the Neighboring Owners and the public can respond accordingly.

VIII. REQUEST TO SPEAK AT OCTOBER 7, 2021 HEARING

Counsel and its clients have been unable to successfully sign up online to be a speaker at the October 7, 2021 public hearing. As such, please confirm that the following speakers (all of whom are Neighboring Owners or their representatives) will be given an opportunity to be heard at the Planning Commission hearing: Seena Max Samimi, Stan Rothbart, Laura McAvoy, Steven Weiss.

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[12] Condition of Approval no. 56 (p. 14) also prohibits consumption of cannabis on the premises by any employee or patron. That prohibition should also extend to the entire Complex.

IX. CONCLUSION

Based on the foregoing, the Planning Commission should reject the application and vote to deny the Project.

Very truly yours,

SEENA M. SAMIMI for
Jeffer Mangels Butler & Mitchell LLP

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EXHIBIT A

- June 15, 2021 Letter to City
    - Ex. 1: April 24, 2020 Letter to FGH
        - Ex. 1: CC&Rs
    - Ex. 2: May 27, 2020 Letter to FGH

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June 15, 2021

VIA EMAIL ONLY
City of Oxnard
City Manager's Office
300 West Third Street
4th Floor
Oxnard, CA 93030
Attn: Alexander Nguyen
City Manager
Alexander.Nguyen@oxnard.org

Re: FGH LLC – PROPOSED LOCAL EQUITY CANNABIS FACILITY APPLICANT FOR 2320 N. ROSE AVE., OXNARD, CA

Dear Mr. Nguyen,

This letter is written on behalf of Rose II LLC (owner of 2200 N. Rose Avenue and 1901 Lockwood St.), Oxnard Place, LLC (owner of 2340 N. Rose Avenue), and Rose TIC, LLC (owner of 2330 N. Rose Avenue and Lot 4), all of which are owners and operators of businesses (the "Neighboring Owners") in the commercial complex (the "Complex") where FGH Retail Services LLC ("FGH") intends to open its cannabis retail dispensary business, at 2320 N. Rose Avenue, Oxnard, CA (the "Property"). FGH has progressed to Phase 4 of the City's application process based upon false and misleading information.[1] We therefore write this letter to set the record straight and bring to the City's attention several matters that FGH either flat out misrepresented or willfully failed to disclose as the City prepares to evaluate FGH's application for a Special Use Permit for a cannabis dispensary at the Complex.

FGH's February 18, 2021 PowerPoint presentation to the City[2] touted purported "Neighborhood Compatibility" as a key reason for why it should be selected to apply for and obtain a Special Use Permit, spending nearly 50% of the slides discussing FGH's efforts at "building trust" and "being a good neighbor." This inaccurate narrative, however, flies in the face of reality. FGH has been acutely aware of, but failed to disclose, the Neighboring Owners' strong opposition to its proposed

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[1] Final rankings of retail cannabis applicants available at: https://www.oxnard.org/wp-content/uploads/2021/03/City-Manager-Approved-Final-Ranking.pdf
[2] Available at: https://www.oxnard.org/wp-content/uploads/2021/03/CCB-21-38-3.-FGH_Phase-3-Presentation_02.18.21_redacted.pdf

operations since at least April 2020, when several of the Neighboring Owners put FGH on written notice that its proposed use at the Complex would violate several provisions of the governing CC&Rs, and would create various nuisances and disturbances within the Complex. (See Exhibit 1 [April 24, 2020 letter] and Exhibit 2 [May 27, 2020 letter].)

FGH's failure to be transparent with the City and disclose the strong opposition of the Neighboring Owners to its proposed use at the Complex is anything but an example of "building trust" and "being a good neighbor." Indeed, its presentation to the City attempted to give the impression that the Neighboring Owners in the Complex would benefit from, and perhaps even support, FGH's application. Nothing could be further from the truth.

Before it may issue a Special Use Permit, the first finding the City must make is that the proposed use will cause no adverse or detrimental effects to the neighboring uses and businesses. The requirement, in relevant part, is set forth below (emphasis added):

> **SEC. 16-531. REQUIREMENTS FOR GRANTING.**
> Before a special use permit may be granted, the applicant must show and the commission must find that the proposed use is in conformance with the general plan and other adopted standards and that the following conditions are met:
> ***(A) The nature, condition and development of adjacent uses, buildings and structures shall be considered, and no proposed special use permit shall be granted if the approval body finds such use will adversely affect or be materially detrimental to such adjacent uses, buildings or structures or to the public health, safety or general welfare.***
> …

In this particular case, the "nature, condition, and development of adjacent uses, buildings and structures" which the City ***must*** (read: "shall") consider in its decisionmaking process, are governed by a written document: the "Amendment and Restatement of Easements with Covenants and Restrictions Affecting Land" (the "CC&Rs") which was recorded on August 15, 1996. (See Exhibit 1 [attachment to April 24, 2020 letter].) The CC&Rs prohibit the proposed cannabis use, as thoroughly analyzed in the letters to FGH from the Neighboring Owners (See Exhibits 1-2). FGH acquired the Property having been provided with actual and constructive notice of the CC&Rs, and FGH was fully aware of the restrictions and limitations of the Property it purchased.

This letter's purpose is not to ask the City to enforce the CC&Rs governing the Complex. The Neighboring Owners will do so themselves.

Rather, this letter has two purposes: **First**, it provides the City with the relevant information, which FGH has not provided, for the City to properly analyze the "nature, condition and development of [FGH's] adjacent uses, buildings and structures," and to ensure that FGH's proposed use does not "adversely affect or be materially detrimental to such adjacent uses, buildings or structures or to the public health, safety or general welfare" as required by Section 16-531. The City cannot make that finding in a vacuum. All of the owners in the Complex have agreed to be bound by the CC&Rs; those CC&Rs are therefore relevant to the City's findings concerning the effects on surrounding uses. The Neighboring Owners will vigorously oppose the permitting of FGH's proposed cannabis use through the administrative process, and at all public hearings, due to the numerous adverse effects that it will have on them. The City should understand this, and the CC&Rs provide insights into the some of the reasons, and some of the specific adverse effects arising from the Property.

Second, because the Neighboring Owners understand and support the City's desire to grow its tax base, and approve businesses that will thrive in this new regulatory environment, it is important for the City to be on notice that even if it approves FGH's application for a Special Use Permit, FGH will not be permitted to open or operate its business in the Complex. Thus, the City will not see tax revenues from FGH at this location. Even if FGH were to succeed in securing a Special Use Permit, the Neighboring Owners will act to enforce the CC&Rs. Given the clarity of the CC&Rs on this issue, there is little question that a court will enforce them and enjoin any proposed cannabis operation at the Complex.

Indeed, the CC&Rs include a number of provisions that prohibit FGH's proposed cannabis use. Those provisions are detailed, with appropriate citations, in the April 24, 2020 letter attached as Exhibit 1. For the purposes of this letter, a brief summary of just two of the key prohibitions will suffice:

1. **Prohibition on "adult uses":** The CC&Rs broadly prohibit "adult uses" at the Complex. By definition, cannabis retail facilities are adult businesses that can only service adult customers under California law. In fact, the very first slide of FGH's presentation to the City describes a cannabis business as an "adult use." An adult cannabis business is no different than the myriad other types of adult businesses that are also expressly called out in the CC&Rs as prohibited uses in the Complex. A company that would seek the City's approval of a business that it undeniably knows is prohibited at the Property is not one deserving of the City's consideration for a Special Use Permit.

2. **Prohibition on illegal uses:** The CC&Rs also prohibit any use that violates "***any*** law, ordinance, rule or regulation of ***any*** governmental authority with jurisdiction over any portion of the Shopping Center." Despite changes in State and local law, cannabis remains a Schedule 1 drug under the Controlled Substances Act (21 U.S.C. 802, 812) and the sale of cannabis is illegal under federal law. As a result, cannabis sales are prohibited by the CC&Rs.

In short, as the City proceeds to consider Special Use Permit applications from FGH and others who may be rightly deserving of one, the Neighboring Owners believe it is important for the City to have all of the relevant information at its disposal (including the CC&Rs) when considering whether it can make supportable findings. Moreover, the City should also understand that issuing a Special Use Permit—especially at the expense of another worthy applicant—would be a futile act resulting in wasted City efforts and the loss of needed tax revenues.

The Neighboring Owners are hopeful that, once the City is aware of the full information governing the Property and the Complex, it will understand that it cannot make the findings required under

Section 16-531(A) of the Oxnard Municipal Code, and should thus reject FGH's application for a Special Use Permit.

Thank you for your attention to this important matter. The Neighboring Owners, and their counsel, would be happy to meet with the City to discuss further, to the extent that the City has any questions relating to the contents of this letter.

Very truly yours,

SEENA M. SAMIMI for
Jeffer Mangels Butler & Mitchell LLP

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EXHIBIT 1

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April 24, 2020

VIA EMAIL ONLY
FGH, LLC.
1650 E. Gonzales Blvd., #296
Oxnard, CA 93036
Attn: Maria Valdez, David Allen Management Group
Office Phone: 805-384-0537
Cell: 805-223-4827
Email: mariav@damanagementgroup.com

Re: POTENTIAL CANNABIS USE AT 2320 N. ROSE AVE., OXNARD, CA, IN VIOLATION OF COVENANTS AFFECTING LAND

Dear Ms. Valdez,

This letter is written on behalf of Oxnard Place, LLC, the owner of the property located at 2340 N. Rose Ave, Oxnard, CA 93036 (the "Neighboring Property"). As you know, the Neighboring Property, along with the property that you have recently purchased at 2320 N. Rose Ave, Oxnard, CA 93036 (the "Cannabis Property") are both governed by the "Amendment and Restatement of Easements with Covenants and Restrictions Affecting Land" (the "Restated E.C.R.") which was recorded on August 15, 1996. (See Exhibit 1.)

The Neighboring Property owner understands that the new owner and/or operator of the Cannabis Property intends to use the Cannabis Property for a cannabis-related retail/dispensary business enterprise ("Proposed Cannabis Business"). The purpose of this letter is to inform you that such a Proposed Cannabis Business would be in violation of the Restated E.C.R., and Neighboring Property owner will take any and all necessary legal action to ensure that the terms of the Restated E.C.R are properly effectuated.

The Restated E.C.R. has several provisions that restrict the use of the Cannabis Property for the use of the Proposed Cannabis Business. Those provisions have been reproduced below, with a brief analysis following each:

- Section 2.b.iv: "No portion of the Shopping Center shall be used for (iv) any violation of any law, ordinance, rule or regulation of any governmental authority with jurisdiction over any portion of the Shopping Center."
    - Cannabis is federally illegal as a Schedule 1 drug under the Controlled Substances Act (21 U.S.C. 802, 812, hereinafter "CSA"). This provision in the Restated

E.C.R. unequivocally references violation of "any law" of "any governmental authority with jurisdiction over" the Cannabis Property. Because the federal government has jurisdiction over the Cannabis Property, unless and until there is a change in federal law, any Proposed Cannabis Business is expressly forbidden under the Restated E.C.R. The fact that certain limited types of cannabis businesses have been legalized in certain limited localities within California does not affect the federal illegality of the use under the CSA.[1]

- Section 2.b.i and 2.b.ii: "No portion of the Shopping Center shall be used for (i) any offensive, noisy or dangerous trade, business or manufacturing activity or occupation, (ii) any activity which constitutes a nuisance."
  - Although the details of the Proposed Cannabis Business are not known at this time, we understand that it will be a proposed retail/dispensary use. This provision from the Restated E.C.R. will present several issues with a Proposed Cannabis Business, for several reasons.
    - 1) Cannabis dispensaries often emit strong smells which the owners of the neighboring properties consider to be "offensive" and a "nuisance";
    - 2) Due to the federal illegality of cannabis which limits bank involvement in the industry, most cannabis dispensaries operate largely in cash, which means that there are often hundreds of thousands of dollars (if not millions) in cash and cannabis-related products that are in safes and other storage areas onsite. This often necessitates heavy security, including armed guards, which would be a "dangerous trade or business" and a "nuisance";
    - 3) To the extent applicable, manufacturing of certain volatile products in the processing of certain cannabis oils/edibles is a "dangerous" activity and would constitute a "nuisance"; and
    - 4) Because cannabis is a federally illegal drug, it is inherently "offensive" and/or "dangerous" under the CSA, and could be considered a "nuisance per se" due to its underlying illegality.
- Section 2.b.iii: "No portion of the Shopping Center shall be used for (iii) any activities which materially interferes with the business of any other occupant or tenant."
  - Cannabis smells and the increased security risks (with the potential presence of armed guards), are both considered by the Neighboring Property owner as a material interference with a business. In addition, a Proposed Cannabis Business

[1] It should also be noted that that the City of Oxnard is only issuing a very limited number of permits to cannabis-related businesses, and the owners of the Neighboring Properties would vigorously oppose the permitting of any Proposed Cannabis Business at the Cannabis Property on an administrative level. Therefore, it is also unlikely that local cannabis-related permits and entitlements would be granted, which in turn, means that the Proposed Cannabis Business would be unable to procure the necessary state licenses from the California Bureau of Cannabis Control and/or other state regulatory entities. In other words, beyond federal illegality, the Proposed Cannabis Business would also likely be operating in violation of local and state law as well.

would materially alter the prestige of the shopping center, and therefore, the neighboring businesses. Furthermore, patrons who obtain the cannabis from the Proposed Cannabis Business may loiter and use the cannabis products in the parking lot, and in and around the businesses of the neighboring properties, which would materially interfere with the operations and success of those businesses.

  - Separately, the presence of the Proposed Cannabis Business may adversely affect the ability of the Neighboring Property owner to obtain financing and/or loans.

- Section 2.b: "No part of the Shopping Center shall be used for other than retail sales and service uses and incidental office uses. Retail services shall include, for example, banks, real estate brokerage offices, dental offices, accounting offices and insurance offices. … No portion of the Shopping Center shall be used for the following uses: **entertainment or recreational uses** (such as, but not limited to, bowling alleys, billiard parlors, day care and children's play centers [], health spas, game arcades and similar entertainment facilities, theaters, off-track betting parlors, etc.), **"adult" uses** (i.e. "adult" bookstores, "adult" theaters, massage parlors, and acupuncture studios)…ballroom, dance hall, **bar** (except a bar is permitted in connection with a restaurant use, provided such restaurant use is the primary or principal use), a **retail use or operation selling alcoholic beverages for off premises consumption** as its principal or primary businesses…" (emphasis added)
  - This Restated E.C.R. provision contains a long list of prohibited uses, many of which are just examples to illustrate a larger point (the list is not exhaustive). Taken as a whole, the prohibitions in Section 2.b strongly indicate that a Proposed Cannabis Business use is prohibited. Sale of cannabis would be similar in nature to sale of alcohol for offsite use (which is prohibited, unless incidental), as patrons would largely be buying cannabis for offsite use. Sale of cannabis is also an "adult" use, and would therefore be expressly prohibited thereunder as well. Because cannabis sales were illegal in 1996 when the Restated E.C.R was adopted, it was unnecessary and duplicative to expressly list cannabis uses within the document. However, these provisions strongly indicate that any cannabis-related use is prohibited, given the analogous provisions prohibiting similar uses such as alcohol and adult uses.

Taken separately, each of the above provisions of the Restated E.C.R. would prohibit any Proposed Cannabis Business. Taken collectively, the Restated E.C.R. overwhelmingly forbids the use of the Cannabis Property for any Proposed Cannabis Business, and no court or other decision-making authority would allow a Proposed Cannabis Business to operate without a prior formal amendment to the Restated E.C.R.

The Neighboring Property owner is prepared to take any and all necessary action to strictly enforce the terms of the Restated E.C.R., as provided by Section 23 therein, which provides, in relevant part: "…each of them may, in their own absolute discretion, at any time, and from time to time, exercise any and all rights and powers, and pursue any and all remedies now or hereafter given at law or in equity, including but not limited to any rights or remedies granted herein or by

California or Federal case, statutory or regulatory law…" With that said, we are hopeful that your review of the relevant provisions in the Restated E.C.R. will help you understand and determine that the Cannabis Property cannot and will not be used for a Proposed Cannabis Business.

Thank you for your attention to this important matter. We look forward to hearing from you regarding your position relating to the Restated E.C.R., and your plan as to the Cannabis Property.

Very truly yours,

SEENA M. SAMIMI for
Jeffer Mangels Butler & Mitchell LLP
Attorneys for Oxnard Place, LLC

CC:

Representatives for Oxnard Place, LLC (2340 N. Rose Avenue)

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- Steven Weiss: sweiss@naicapital.com
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Representatives for FGH, LLC (2320 N. Rose Avenue)

- Vanessa Hernandez: vanessa.hernandez246@gmail.com
- Keith Fuller: keithlfuller@yahoo.com

Representative for Rose II LLC (2200 N. Rose Avenue and 1901 Lockwood St.)

- Stanley Rothbart: stan@rothbartdev.com

Representatives for MANP BB-OX, LLC, DMP BB-OX LLC (2300 N. Rose Avenue)

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Representatives for McGrath Tenants in Common (2330 N. Rose Avenue)

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- Beverly Gutierrez: bevg@hvwonline.com

EXHIBIT 1

CONTINENTAL LAWYERS TITLE CO.-81

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

ROTHBART COMPANY
2450 Broadway, Suite 550
Santa Monica, California 90404

Attention: Stanley G. Rothbart

96-111789

Recorded
Official Records
County of
Ventura
Richard D. Dean
Recorder
8:00am 15-Aug-96

Rec Fee	148.00
A.R.	148.00

CONT CC 48

4952560 IC 13584

AMENDMENT AND RESTATEMENT OF EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("RESTATED E.C.R.")

This AGREEMENT ("Restated E.C.R.") is made as of the ____ day of ____, 1996, among ALAN F. HORN and CYNTHIA HARRELL-HORN, husband and wife as community property ("Lot 1 Owner"), BEST BUY CO., INC., a Minnesota Corporation, ("Best Buy"), and TIMOTHY S. McGRATH, as Successor Trustee of the Survivors Trust created under the John Francis McGrath and Elizabeth E. Trust dated October 29, 1982, as to an individual 23.8% interest, MARIAN E. GRAHAM, as Trustee of the Marian E. Graham Trust dated September 8, 1982, as to an undivided 23.8% interest, SEAN H. McGRATH, as Trustee of the Marital Trust created under the Frank and Lee McGrath Trust u/t/i August 27, 1982, as to an undivided 23.8% interest, CHRIS J. COOLURIS, as Trustee of the Ann Cooluris and Helen Mary Cooluris Trust dated March 12, 1982, as to an undivided 23.8% interest, and JURGEN GRAMCKOW, as Successor Co-Trustee and TIMOTHY S. McGRATH, as Co-Trustee of the M.L. Trust of the Helen McGrath Trust dated December 6, 1973, as to an undivided 4.8% interest, all as tenants in common (collectively, the "Developer").

WITNESSETH:

WHEREAS, Lot 1 Owner is the Owner (as defined in Paragraph 16 hereof) of Lot 1 as shown on the site plan (the "Site Plan") attached hereto as Exhibit A and described in Exhibit B and incorporated herein by this reference and Best Buy is the "Prime Lessee" (as defined in Paragraph 31 hereof) of Lot 1; and

WHEREAS, Developer is the Owner of Lots 2 and 3 and Lots 4, 5, and 6 (Lots 4, 5, and 6 are herein collectively referred to as the "Outparcels" and individually an "Outparcel") shown on the Site Plan attached hereto as Exhibit A and described in Exhibit B; and

WHEREAS, Lot 1 Owner, Best Buy and Developer desire that Lots 1, 2, and 3, and the "Outparcel(s)" be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the "Shopping Center", including any Expanded Areas pursuant to Paragraph 11 hereof), and further desire that Lots 1, 2, and 3 and the Outparcel(s) be subject to the easements and the covenants, conditions and restrictions hereinafter set forth.

WHEREAS, Best Buy (as the then Owner of Lot 1) and Developer, heretofore executed that certain Easements with Covenants and Restrictions Affecting Land ("E.C.R") dated July 11, 1995, recorded July 24, 1995, as Document No. 95-085875, in Official Records, County of Ventura, California ("Original E.C.R."), and

WHEREAS, Lot 1 Owner and Developer are the Owners of all of the Lots described in the Original E.C.R. and all of the Lots described in this Restated E.C.R., and

WHEREAS, Lot 1 Owner and Developer as such Owners, and Best Buy, desire to amend and restate the Original E.C.R. in its entirety by replacing same with this Restated E.C.R.,

NOW, THEREFORE, for and in consideration of the premises, easements, convenants, conditions, restrictions, encumbrances contained herein, the sufficiency of which are hereby acknowledged, Lot 1 Owner, Best Buy and Developer do hereby amend and restate the

Original E.C.R. in its entirety as follows:

1. Building/Common Areas.

a. "Building Areas" as used herein shall mean that portion of Lot 1 and those portions of Lots 2 through 6 shown on Exhibit A as "Building Area" or "Expansion Area." Canopies may encroach from the Building Areas and normal foundations and doors for ingress and egress may project from Building Areas, provided such canopies, doors and foundations do not materially interfere with the use of Common Areas.

b. "Common Area" shall be all of Lots 1 through 6 except those portions used for buildings on the Lots or for drive through areas, landscaping, walkways, exclusive loading areas, and patio areas immediately adjacent to an Outparcel building; provided that any portion of a Lot which is not a Building Area is not a Common Area until improved, provided, further, that so long as Lot 6 is developed and used primarily as a motor vehicle service station there shall be no Common Area thereon.

c. Conversion to Common Areas: Those portions of the Building Areas on each developed Lot which are not from time to time used or cannot, under the terms of this Agreement including Paragraph 5.a(iii), be used for buildings, excluding appurtenances servicing such buildings located within the Building Areas such as exclusive loading docks and related areas, shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

d. A Lot or lot shall mean a lot or parcel as defined in the California Subdivision Map Act and shall include any such Lot or lot in any "Expanded Area" as defined in Paragraph 11 hereof.

2. __Use.__

a. Restriction: No portion of the Shopping Center, other than Lot 1, may be used or occupied for use as:

i) an appliance store (the primary purpose of which is the retail sale of appliances such as refrigerators, washers, dryers, etc.)

ii) a computer store (the primary purpose of which is the retail sale of computer hardware or computer software of peripherals or any combination thereof, including but not limited to, any business whose primary purposes is the sale of brand name computers and accessors such as IBM, Compaq, Apple, NEC Toshiba and Hewlett Packard;

iii) an electronic store (the primary purpose of which is the retail sale of consumer electronics such as but not limited to, stereos, televisions, VCRs, etc.); or

iv) any combination of the uses described in (i), (ii), or (iii) above, (any use or uses listed in (i), (ii), (iii) or (iv) above are herein referred to as the "Exclusive Business"),

from and after the Effective Date (as defined in Paragraph 15 of this Restated E.C.R.) so long as the Owner or occupant of Lot 1 continues to operate the Exclusive Business in not less than twenty thousand (20,000) square feet of the rentable floor area of the building on Lot 1. In the event after the Owner or occupant of Lot 1 commences to operate the Exclusive Business, such Owner or occupant ceases to operate any portion of the Exclusive Business for a continuous period of twelve (12) months or more (provided, however, such 12-month period shall be extended by the period of any and each occurrence of any strikes, labor, difficulties, governmental restrictions upon building activity, or delays caused by or resulting from fire, casualty, war, acts of God or any other event of force majeure, such restriction as to any portion of the Exclusive Business which the Owner or occupant of Lot 1 has ceased to operate for such period shall terminate, provided such portion of the restriction so terminated shall be reinstated in the event the Owner or occupant of Lot 1 again commences operation for such purposes, (effective as of such commencement of operation), but such reinstated restriction shall not be effective as to any use in the Shopping Center then being conducted which would otherwise be in violation of such reinstated restriction. Such 12-month period shall not apply during any period in which a building or buildings for the permitted Exclusive Business is being built, rebuilt, repaired or remodeled upon Lot 1 or some part thereof. Notwithstanding the foregoing, up to five thousand (5,000) square feet of floor area (in the aggregate as to any building on a Lot) on any of Lots 2, 3, 4, 5, and 6 inclusive in the Shopping Center may be used for the sale and display of products and supplies sold by the occupant of Lot 1 provided such sales are incidental to the primary or principal business conducted on such Lots, and further provided that such primary or principal business is not the Exclusive Business. Additionally, not more than 9,500 square feet (including adjacent aisle space) of the interior of any building on a Lot within the Shopping Center, other than Lot 1, may be used or occupied for the use for the retail sale and/or display for sale of compact discs, records and prerecorded tapes. Notwithstanding the foregoing restrictions, an office supply store such as Office Depot, OfficeMax and/or Staples shall be a permitted use and not prohibited by the foregoing restriction.

b. Shopping Center Restrictions: No portion of the Shopping Center shall be used for (i) any offensive, noisy or dangerous trade, business or manufacturing activity or occupation, (ii) any activity which constitutes a nuisance, (iii) any activities which materially interferes with the business of any other occupant or tenant, or (iv) any violation of any law, ordinance, rule or regulation of any governmental authority with jurisdiction over any portion of the Shopping Center. No part of the Shopping Center shall be used for other than retail sales and service uses and incidental office uses. Retail services shall include, for example, banks, real estate brokerage offices, dental offices, accounting offices and insurance offices. Real estate offices, dental offices and accounting offices shall not occupy, in the aggregate, more than ten percent (10%) of the permitted Building Area of the Shopping Center determined on a first open for business basis. Incidental office uses (which are incidental to and a part of a retail use) in the Shopping Center shall be limited to no more than ten percent (10%) of the permitted Building Area of each Lot in the Shopping Center. No portion of the Shopping Center shall be used for the following uses: entertainment or recreational uses (such as, but not limited to, bowling alleys, billiard parlors, day care and children's play centers (other than a play area which is incidental to another permitted use), health spas, game arcades and similar entertainment facilities, theaters, off-track betting parlors, etc.) "adult" uses (i.e. "adult" bookstores, "adult" theaters, massage parlors, and acupuncture studios), training or educational uses (i.e. beauty schools, reading rooms, churches provided, however, that this prohibition shall not be applicable to on-site employee training or customer training by an owner or tenant incidental to the conduct of its business in the Shopping Center), laundromat or laundry, the sale, rental or storage of automobiles, recreational vehicles or boats, or flea markets, ballroom, dance hall, bar (except a bar is permitted in connection with a restaurant use, provided such restaurant use is the primary or principal use), a retail use or operation selling alcoholic beverages for off premises consumption as its principal or primary business, except that alcoholic beverages may be sold for off premises consumption in connection with retail motor vehicle service stations on Lots 4 and 6 so long as such service station is the primary or principal use, and as to Lot 1 and Lot 2, no portion thereof shall be used as a grocery store. "Grocery store" means a store, the primary purpose of which is the sale of groceries. As used herein, the term "groceries" includes, without limiation, meats, meat products, fish, poultry, fruits, vegetables, and delicatessen products (including pizza), whether any such items are canned, fresh, frozen or smoked, foodstuffs, bakery products (including ice cream). Notwithstanding the foregoing, a store which sells groceries as an incidental part of its business shall be permitted, however in no event shall the area of display for such incidental grocery sales exceed 500 square feet. A "grocery store" shall not include restaurants or other establishments which sell prepared foods to be eaten on or off of the premises or drug stores such as Payless or Walgreens. No portion of Lots 1 or 2 shall be used or operated as a restaurant of any type, provided, however, a food service operation such as a coffee or snack bar operated only as part of and incidental to a use permitted hereunder shall not constitute a violation of this restaurant use restriction. None of the foregoing shall prohibit Best Buy from operating a typical "Best Buy" facility on Lot 1, or the operation of a typical "Office Max" facility on Lot 2.

3. Buildings.

a. Design and Construction. All buildings within the Building Areas shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Lot onto another Lot except as provided for in subsection 3d below. The design and construction shall be of high quality. No building shall exceed thirty-five feet (35') in height above finished grade. No buildings shall have a metal exterior. The exterior of all buildings shall be maintained in good condition and repair and in a neat and clean condition at all times. The size of buildings shall be measured from the exterior surface of exterior walls.

b. Location. No building shall be constructed on Lots 1, 2, and 3 (as either immediate development or future expansion) except within the Building Area and no improvements or alterations which substantially vary from those shown on Exhibit A may be made without the prior written consent of the Owners of Lots 1, 2, and 3 and Developer, such consent not to be unreasonably withheld. The front wall(s) of the building(s) on Lots 1, 2, and 3 shall be constructed no closer to Lockwood than as indicated by the Building Areas depicted on Exhibit A.

c. Fire Protection. Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinkler rating on the other buildings in the Shopping Center.

d. Easements. If due to surveying errors, building wall footings encroach from one lot onto another, despite efforts to avoid that occurrence, the Owner onto whose lot the footings encroach shall reasonably cooperate in granting an encroachment permit or easement to the party whose building wall foots encroach.

e. Outparcel(s) development. The Outparcel(s), when and if developed, shall be developed only under the following guidelines;

i) Buildings constructed on the Outparcel(s) shall not exceed (a) twenty-two (22) feet in height on Lot 6, and (b) twenty-five (25) feet on Lot 4 or Lot 5. The height of any building on an Outparcel shall be measured perpendicular from the finished floor of the building to the top of the roof structure, including any screenings, parapet, penthouse, mechanical and communications equipment or similar appurtenance located on the roof of such building but excluding architectural treatments.

ii) Any buildings to be constructed on the Outparcel(s) shall not exceed the following

Outparcel(s)

Lot 4 6000 square feet of floor area

Lot 5 10,600 square feet of floor area

Lot 6 6,500 square feet of floor area

iii) Any rooftop equipment shall be screened to reduce visibility thereof by consumers;

iv) No rooftop sign shall be erected on any building in the Shopping Center;

v) No freestanding identification sign may be erected on Outparcel(s) that is not consistent with the master sign program approved by the City of Oxnard, California (the "City"), without approval of the Owner of Lot 1 and the Developer, such approval not to be unreasonably withheld, and in no event shall such freestanding identification sign exceed the height of any of the shopping center pylon signs or block the visibility of the buildings on Lots 1, 2, and 3. There may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a type and at locations reasonably approved by Developer.

vi) No improvements shall be constructed, erected, expanded or altered on the Outparcel(s) until the scaled exterior elevations ("Elevations") for same (including site layout, exterior building materials and colors and parking) have been approved by the Owners of Lots 1, 2, and 3 and the Developer, such approval not to be unreasonably withheld, provided, however, that such approval shall not be required as long as such Elevations conform to the height, no metal exterior, location and fire protection requirements of

Paragraphs 3a through c above, and a copy of such Elevations have been submitted to the Owners of Lots 1, 2, and 3 and Developer by or on behalf of the person proposing to construct same and none of them have given notice of objection thereto to such person within twenty (20) days of receipt of such Elevations, and without material modification, are thereafter approved by the City and such improvements are consistent with the architectural theme established generally for the Shopping Center and the site plan portion thereof is in accordance with Exhibit A attached. No building or structure of any kind or nature shall be erected on the Outparcel(s) except upon that area designated as Building Area on the Site Plan, provided: there may be constructed and maintained a canopy or canopies projecting from said Building Area; normal foundations and doors for ingress and egress may project from such Building Area; and signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of any other Owner or tenant of the Shopping Center;

vii) In developing and using the Outparcel(s), the Owner(s) of the Outparcel(s) shall continuously provide and maintain parking ratios as follows:

Sit Down Restaurant or Entertainment Use:

Lots 4 and 5: Ten (10) spaces for every one thousand (1,000) square feet of floor area. No "sit down," "smorgasbord" type restaurant or restaurant that serves alcoholic beverages is permitted on Lot 6.

Non Sit-Down Restaurant (Sale of food intended for consumption off-premises such as a fast food restaurant)

Lots 4, 5 and 6: Eight (8) spaces for every one thousand (1,000) square feet of floor area.

Non-Restaurant:

Lots 4, 5 and 6: Five (5.0) spaces for every one thousand (1,000) square feet of floor area. The sale of food from a convenience store operated in connection with a retail motor vehicle service station on a Lot, which motor vehicle service station is the primary or principal use, is a non-restaurant use.

viii) No motor vehicle service station shall be located on Lot 5.

ix) A convenience store selling food products may be located on Lots 4 and 6 only as part of and in connection with the operation of a retail motor vehicle service station located on the same Lot, which retail motor vehicle service station shall be the principal or primary use of such Lot. In no event shall such convenience store be the primary or principal use of such Lot.

x) The Outparcel(s) shall be kept neat, orderly, seeded with grass (but not irrigation) and trimmed until improved and constructed.

xi) Owner(s) of the Outparcels shall cause landscaping areas to be maintained in conjunction with any building or other improvement constructed on the Outparcel(s).

4. Common Area.

a. Grant of Easement.

i) Owner(s) of each Lot, as Grantor(s), hereby grant to each of the other Owners of Lots as Grantee(s), and to the agents, customers, invitees, licensees, tenants, occupants and employees of each Grantee, a nonexclusive easement over, through and around their respective Lots for roadways, walkways, ingress and egress, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.

ii) The Owner(s) of Lots 1, 2, 3, 4, 5, and 6 as Grantor do each hereby grant to one another as Grantee, and the agents, customers, invitees, licensees, tenants and employees of each Grantee, a non-exclusive easement to use the Common Area on each of their respective Lots designated and improved for parking for the purpose of parking motor vehicles.

iii) Permanent Service Drives. The Owner(s) of Lots 1, 2, 3, 4, 5 and 6 as Grantor do each hereby grant to one another as Grantee, and the agents, customers, invitees, licensees, tenants and employees of each Grantee, a non-exclusive easement to use the designated "Permanent Service Drives" delineated on Exhibit A by double crosshatching and Drive Aisles, shown by single crosshatching on Exhibit A, all of which shall be access easements for the benefit of all Lots adjoining the Permanent Service Drive and Drive Aisle, and shall burden those Lots that contain and are adjoining the Permanent Service Drive and Drive Aisles.

b. Limitation on Use.

i) Customers. Each Lot Owner shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on Common Areas except while shopping or transacting business on Lot(s) 1 through 6.

ii) Employees. Each Lot Owner shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in those areas designated on Exhibit A as "employee parking areas," if any, except employees of a Lot may park on the Common Area of the Lot on which the business of which they are an employee is located. The Owners hereto may from time to time mutually designate and approve "employee parking areas" not shown on Exhibit A.

iii) General. Any activity within the Common Areas other than the primary purpose of the Common Areas, which is to provide for access and parking for the occupants, tenants, customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using Common Areas in accordance with this Restated E.C.R. shall not be charged any fee for such use.

c. Utility and Service Easements. The Lot Owners shall cooperate and shall grant appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center. The Lot Owners shall use their best efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one Ownershall be installed within the Building Area of any other Owner(s) Lot.

d. Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of an Owner(s) improvements substantially as shown on Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted. There are hereby reserved to the Owners of Lots 1, 2, and 3 and Developer, easements in, over, under, across and through the Common Area and Outparcels to grade, establish and maintain drainage patterns and facilities for the benefit of the Shopping Center as a whole and for Lots 1, 2, and 3, the Outparcels and the Common Areas. Upon establishment and completion of such drainage patterns and facilities, all of Lots 1, 2, and 3, the Outparcels and the Common Areas shall be and remain subject to such drainage patterns, facilities and easements.

e. No Fences or Barriers. Except as specifically set forth in Exhibit A, no fence, division, rail or obstruction of any type or kind shall ever be placed, kept, permitted or maintained on the Common Area of any Lot, or between any subsequent division thereof, or any expansion of the Shopping Center, or upon or along any of the common property lines or any portion thereof.

5. Development, Maintenance, and Taxes.

a. Development.

i) Arrangement. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Restated E.C.R..

ii) "Parking Area" Ratio. Each Owner(s) of a Lot (except for an Outparcel which shall be controlled by Paragraph 3e(vii) hereof) shall at all times maintain on its respective Lot a parking ratio sufficient to accommodate the following number of car spaces for each one thousand (1,000) square feet of buildings on the Building Area(s) on such Lot:

Lots 1 and 2: Four and five-tenths (4.5), subject to the following provision: Lots 2 and 3 (in the aggregate): Four and one-tenth (4.1), provided, however, in the event of a restaurant operation (including fast food, smorgasbord, sit down or other) on Lot 3 the parking ratio for such restaurant operation shall be not less than six (6) car spaces for each one thousand (1,000) square feet of restaurant operation on Lot 3.

iii) Development Timing. Concurrent with any building being constructed within the Building Areas of any Lot by the Owner or lessee of such Lot (the "Developing Party"), the Common Areas of that Lot shall be developed in accordance with Exhibit A at the expense of such Developing Party. If such construction by the Developing Party occurs prior to the development of any other Lot, the Developing Party shall have the right to grade, pave and use any portion of the Common Areas of other Owners' ("Non-Developing Parties") Lots for access and for construction of drainage structures and utility lines which are necessary to provide essential services to the Developing Party's Lot.

b. Maintenance of Common Areas.

i) Standards. Following completion of the improvements on the Common Areas, each Owner shall maintain or caused to be maintained the Common Areas on its respective Lot in good condition and repair. The maintenance is to include, without limitation, the following:

(A) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(B) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition.

(C) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and liens;

(D) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(E) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair; and

(F) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

ii) Expenses. The Owner(s) of each Lot or at the election of such Owner the tenants or occupants of such Owner's Lot, shall pay all costs and expenses for the maintenance, repair and replacement of Common Area improvements of its Lot, except as otherwise expressly set forth herein.

iii) By Agent. Any of the Owners, as to the respective Common Areas located on the Lots owned by such Owners, may appoint, by agreement amongst themselves, a third party as the agent of such Owners to maintain the Common Areas of the Lots of such Owners or any portions of such Common Areas, in the manner required under the terms of this Restated E.C.R.. Such third party may receive for such services a fee that is mutually acceptable to all such Owners appointing such agent to cover supervision, management, accounting and similar fees, which sums are to be included in a general maintenance expense paid by such respective Owners. Any such agreement shall be effective only as to the Owners executing same and shall only affect Common Areas located on the Lots of the Owners executing such agreement.

iv) Maintenance of Service Drives and Driving Aisles. Each of the Owners of Lots 1, 2 and 3 and Developer shall have the non-exclusive right without limitation (except as expressly set forth herein) to maintain or repair any portion of the Permanent Service Drives and Drive Aisles located on a Lot in the event the Owner of a Lot on which such portion of the Permanent Service Drives and Drive Aisles is located does not maintain or repair, in the reasonable judgment of any Owner of Lot 1, 2, 3 and/or Developer, that portion of the Permanent Service Drives and Drive Aisles located on such Lot to the standards set forth herein, provided, however, that any such Owner or Developer, prior to exercising any such right, shall give written notice to the Owner of the Lot on which that portion of the Permanent Service Drives or Drive Aisles requiring maintenance or repair is located that the same is not being maintained or repaired as required hereunder and the specific maintenance or repairs required, and the Owner receiving such notice does not commence to perform such maintenance or repairs within ten (10) days of receipt of notice and diligently prosecute same to completion, except in the case of the necessity of emergency repairs to prevent damage or injury to persons or property, only such notice as is appropriate under the circumstances need be given, which notice may be less than the ten (10) days notice otherwise specified herein. The cost and expense for such maintenance or repairs shall be reimbursed by the Owner of the Lot that required same to the party performing such maintenance or repair within 30 days after written request.

c. Taxes. Each Owner agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against the Lot and all improvements and personal property owned by such Owner on such Lot.

d. Each Owner shall, at its sole cost and expense, repair and maintain the utility lines of any type underlying such Owner's Lot(s) whether serving such Owner's Lot or any other Lot, provided, however if any such repair is required due to the negligence or willful misconduct of another Owner ("Other Owner"), or any tenant of such Other Owner, then the Other Owner shall reimburse the repairing Owner for all reasonable repair costs incurred within thirty (30) days after submission of a detailed billing therefore, but such repair and maintenance shall be performed only after ten (10) days notice to the Owners of Lots 1, 2, 3 and Developer, except in the case of an emergency, in which case a repair may be commenced immediately. Each Owner shall, at its cost and expense, promptly repair or replace any damage to any portion of the Shopping Center, or any improvements thereon, caused by or resulting from such repair and maintenance activities.

e. In performing any installation, maintenance, repair, relocation or removal of any utility lines after the Shopping Center, or any portion thereof, has been opened for business to the general public, each Owner shall use reasonable efforts to minimize interference with the operation of the Shopping Center and the business of other Owners and/or tenants or occupants therein.

6. Signs.

a. The Outparcel(s) shall be permitted ground identification sign(s) for the benefit of each Outparcel, which signs shall be located as shown on Exhibit A, and shall be consistent with the master sign program for the Shopping Center approved by the City, provided no sign on the Outparcel(s) shall exceed the height of the free standing Shopping Center identification sign. To the extent any Outparcel permitted ground identification sign as shown on Exhibit A is not located on the Outparcel which it benefits, the Owner of such benefitted Outparcel is hereby granted an easement to construct, install, maintain and repair such permitted ground identification sign on that portion of the Shopping Center property shown on Exhibit A on which such sign is to be located and the non-exclusive right to enter upon such portion of the Shopping Center property to construct, install, maintain and repair such sign.

b. Free standing Shopping Center identification signs shall be located as shown on Exhibit A, only for the benefit of the businesses conducted or to be conducted on Lots 1, 2 and 3, and the Owners of such Lots are hereby each granted an easement to construct and maintain the identification signs on that portion of the Shopping Center property on which such signs are to be located as shown on Exhibit A, and the non-exclusive easement to enter upon such portion of the Shopping Center to construct, install, maintain and repair such identification signs. The Owner of Lot 1, or its tenant, shall occupy 1/3 of the area on each such free standing sign and shall utilize the top portion of such sign. The Owner(s) of Lots 2 and 3, or their respective tenants, shall be permitted to utilize each free standing identification sign, each as to 1/3 of the area of such sign. The Owner of Lot 2 shall utilize the signage panel below that of the Owner or tenant of Lot 1. The Owner of Lot 1 and Developer shall determine at the time of installation which of them shall be responsible for the physical installation and maintenance of the Shopping Center sign. Each Owner having the right to have sign panels located on said signs shall be responsible for thirty-three and one third percent (33-1/3%) of the cost of installation, construction and maintenance and cost of electricity relating to such sign.

7. Damage and Destruction. If any of the buildings or Common Area improvements within the Shopping Center are damaged or destroyed by fire or any other casualty, the Owner of any such

building or buildings or Common Area improvements shall promptly within one hundred and eighty (180) days of the occurrence of the casualty (subject to delays resulting from causes beyond the reasonable control of such Owner), cause the repair, restoration, or rebuilding of the building and improvements so damaged or destroyed, or, as to the buildings only, if the Owner of such buildings does not intend to restore same within such one hundred eighty (180) day period, then such Owner of such building(s), shall promptly cause the razing of any damaged building(s), the filling of any excavations, paving for parking to the same extent as existed prior to the casualty, and performance of any other work necessary to put such portion of the Shopping Center in a clean, sightly, and safe condition. The Owner of each building shall be responsible for such repair, restoration or razing, notwithstanding use of such building by any other person or entity.

8. Indemnification/Insurance. From and after the "Effective Date" (as defined in Paragraph 15) of this Restated E.C.R. :

a. Indemnification. Each Owner of a Lot ("Indemnifying Owner") hereby indemnifies and saves each other Owner of a Lot ("Indemnified Owner") harmless from any and all liability, damage, expense, loss, causes of action, suits, claims, or judgments arising from bodily injury, personal injury, death, or property damage occurring on or from its Lot, or arising out of the use, maintenance, repair or replacement of any building or Common Area on its Lot, except if caused by the act or negligence of the Indemnified Owner, or its agents, representatives, occupants or tenants. Notwithstanding the foregoing, each Indemnifying Owner shall indemnify, defend, protect and hold harmless the other Owners, their occupants, tenants, and their officers, directors, shareholders, employees, contractors and agents from and against all claims, liabilities, suits, actions, demands, costs, damages, losses of any kind, including but not limited to investigation, litigation, and remedial response costs, arising out of any

Hazardous Materials first used or permitted to be used after the Effective Date of this Agreement in or on any portion of the Shopping Center by such Indemnifying Owner, or any of their agents, representatives, contractors, occupants or tenants, whether or not used in the ordinary course of business. For purposes of this Section, the term (i) "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law; and (ii) "Environmental Laws" shall mean: all federal, state, county, municipal, local and other statutes, laws, ordinances, regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

b. Insurance.

i) Each Owner of Lots 1 through 6 for their respective Lots shall procure and maintain or cause to be procured and maintained in full force and effect throughout the term of this Restated E.C.R., comprehensive general public liability insurance and property damage insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in or about its Lot, with such insurance to afford protection to the limit of not less than $5,000,000.00 (including excess or umbrella-type coverage) for injury or death of a single person, and to the limit of not less than $5,000,000.00 for any occurrence, and the limit of not less than $2,000,000.00 for the property damage, with each Owner other than the insured Owner named as an additional insured thereunder. Each Owner shall provide all other Owners with Certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the applicable Owner covering other property in addition to the Lots covered by this Restated E.C.R.. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to each additional insured named therein. Notwithstanding anything to the contrary contained in this Paragraph 8(b), so long as a Lot Owner, or the tenant of such Lot, has a net worth in excess of One Hundred Million Dollars ($100,000,000.00), as shown by then current financial statements, audited by such Owner's or tenant's independent certified accounting firm, the Owner of such Lot shall have the right to self-insure as to such Lot, or cause the tenant of such Lot to self-insure, in whole or in part, for any and all risks for which the Owner is otherwise required to carry insurance under the provisions of this Paragraph 8(b) as to such Lot. The Owner shall, directly, or by and through the tenant's providing such self-insurance, give notice of self-insurance in accordance with the notice provisions of Paragraph 22 hereof to each other Owner. In the event of self-insurance, the Owner, or the tenant if the tenant is providing the self-insurance, shall provide all funds and take any and all action necessary to defend, protect, indemnify and hold the other Owners and other tenants of the Shopping Center and their respective customers, employees and invitees, harmless from any and all claims, damages and losses that would have been covered by the insurance required to be maintained under the provisions of this Paragraph 8(b) but for such self-insurance.

ii) At all times during the term of this Agreement, each Owner shall keep all improvements on its Lot insured against loss or damage by fire and other perils and events as may be insured against under the broad form Uniform Extended Coverage Clause in effect from time to time in the state in which the Lots are located, with such insurance to be for 90% or a co-insurance basis of the full replacement value of the insured improvements; provided, no Lot Owner shall be required to maintain earthquake coverage, and further so long as a Lot Owner, or the tenant of such Lot, has a net worth in excess of One Hundred Million Dollars ($100,000,000.00) as set forth in Paragraph 8b(i) above, the Owner of such Lot shall have the right to self-insure as to such Lot or cause the tenant of such Lot to self-insure, in whole or in part, for any and all risks which the Owner is otherwise required to carry insurance under this provision.

iii) Policies of comprehensive general public liability insurance provided for in this Paragraph 8 shall name the Owner of Lots 1, 2, 3, 4, 5 and 6 as additional insureds and each of them shall provide to other certificates evidencing the fact that such insurance has been obtained.

iv) Each Owner for itself and its property insurer hereby releases each other Owner from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits of any other Owner resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any agent, associate or employee of the party being released or by an agent, associate or employee of any party being released, this release being to the extent that such damage or loss is covered by the insurance which the releasing party is obligated hereunder to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

9. Eminent Domain.

a. Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting such other Owner's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of Common Areas located on Lots 1 through 6, and the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas.

b. Collateral Claims. All other Owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another Owner.

c. Tenant's Claim. Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and Owner for all or a portion of any such award or payment.

d. Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair, without contribution from any other Owner.

10. Rights and Obligations of Lenders. Any holder of a lien on any of Lots 1 through 6, and any assignee or successor in interest of such lienholder shall be subject to the terms and conditions of this Restated E.C.R.; provided however any lienholder

which acquires title through foreclosure (or deed in lieu) shall have no obligation to pay any sums due under this Agreement arising prior to the date such lienholder acquires title.

11. Expansion of Shopping Center. The Owners agree that in the event Developer, so long as it is an Owner of a Lot, or an "Expanded Area" as defined below, desires to expand the Shopping Center, then upon written notice from Developer to all other Lot Owners for annexation of such Expanded Area, all of the provisions of this Agreement shall apply to the Expanded Area designated by Developer in such notice and the parking to the building ratio in the Expanded Area shall not be less than five (5) car spaces for each one thousand (1,000) square feet of Building Areas on such Expanded Area (all expanded areas are collectively referred to herein as "Expanded Areas" or "Expanded Area", provided, however, such Expanded Areas or Expanded Area must adjoin and abut a portion of the Shopping Center as then existing), and shall constitute part of the Shopping Center. The right to expand the Shopping Center and apply the provisions of this Restated E.C.R. to such Expanded Areas, as set forth in this Paragraph 11, is exclusive to the Developer and may be exercised only by Developer so long as it is a Lot Owner, or owns the Expanded Area and may not be exercised by any other Lot Owner including any successor in interest to any Lot owned by Developer at any time, unless Developer assigns its expansion rights hereunder in a recorded instrument to its successor concurrently with the conveyance of a Lot or any interest in a Lot. Annexation of an Expanded Area to the Shopping Center shall be effective upon the recordation by Developer (or its successor pursuant to recorded assignment as set forth above) of a Declaration of Annexation identifying the Expanded Area. Whenever reference is made in this Restated E.C.R. to Lots 1 thru 6 or the Shopping Center or the Owners of any of the Lots hereto, the same shall be deemed to apply to the Expanded Area and the Owners thereof after annexation as aforesaid.

12. Release of Liability. Anyone acquiring fee or leasehold title to Lots 1 through 6, or any fee or leasehold title to any Expanded Areas pursuant to Paragraph 11, shall be bound by this Restated E.C.R. only during the period such person is the fee or leasehold owner of such lot or portion of the Lot or Expanded Area, except as to obligations, liabilities, or responsibilities that accrue during such period or ownership. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Lots and Expanded Areas running with the land.

13. Breach. In the event of a breach or threatened breach of this Restated E.C.R., the Owners of Lots 1 through 6, and any Expanded Areas covered hereby, shall be entitled to institute proceedings at law or in equity, for full and adequate relief from the consequences of said breach or threatened breach. In the event that suit is brought for the enforcement of this Restated E.C.R., or as a result of any alleged breach hereof, the successful litigant or litigants in such suit, including any Lot Owner, shall be entitled to be paid reasonable attorneys' fees and reasonable out-of-pocket litigation expenses by the losing litigant or litigant, and any judgment or decree rendered shall include an award thereof.

14. Rights or Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Restated E.C.R. shall bind and inure to the benefit of all of the Owners of Lots, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

15. Document Execution, Modification and Cancellation. It is understood and agreed that until this Restated E.C.R. is fully executed by Developer, Lot 1 Owner, and Best Buy (the "Effective Date") there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking

or obligation can be founded. This Restated E.C.R. (including exhibits) may be modified or canceled only by the mutual written and recorded agreement of the Owners of all of the Lots (including those Owners that have designated a "Prime Lessee" as defined and set forth in Paragraph 31 hereof). An Owner of a Lot, as to such Owner's Lot only, shall have the right by separate agreement to grant an exclusive use to another Owner's Lot which exclusive use shall affect and be valid only as to the Lots of the Owners entering into such separate agreement and shall not have any affect on any other Owner's Lot.

16. Definition of Owner.

a. The term Owner(s) as used herein means any person or entity who from time to time holds fee title to a Lot located within the Shopping Center, including any Expanded Area, provided, however, in the case of a ground lease of a Lot, the Lot Owner may assign to such ground lessee/tenant all the rights and obligations of the Owner of such Lot as to such Lot only.

b. The approval rights granted herein as to the Owners of Lots 1, 2 and 3 may not be cast in a fractional basis. Where there is more than one record Owner of a Lot, only one of such co-Owners shall be entitled to exercise the voting, approval, or disapproval rights to which an Owner of the Lot is entitled hereunder. Such co-Owners shall from time to time designate to all other Lot Owners in writing one of their number who is authorized to act on behalf of all other co-Owners in exercising any voting approval or disapproval of rights hereunder. Where no voting co-Owner is designated, or if such designation has been revoked by any other co-Owner, any requirement of approval or disapproval hereunder shall not be required and any approval or disapproval of any action may be taken or given by the other Lot Owners acting alone. If any Owner exercises the rights to vote or approve or disapprove any action hereunder as to a particular Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other co-Owners of the same Lot. In the event of the subdivision of Lots 1 or 2 or 3 as now existing, the approval rights granted herein to the Owner of such subdivided Lot shall be vested in and exercised only by the Owner of the largest square footage portion of the subdivided Lot.

17. Consent Required by Developer. If pursuant to the terms of this Restated E.C.R., the consent of the Developer or notice to Developer is required and in the event the Developer is no longer an Owner of a Lot, the consent of and notice to the Owners of Lots 1, 2, and 3 and if any such lot is subdivided, the Owner of any such resubdivided portion of such Lots having an area of greater than five (5) acres must be given and/or obtained, which consent shall not be unreasonably withheld or delayed.

18. Non-Merger. This Agreement shall not be subject to the doctrine of merger.

19. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminated and be of no further force and effect after ninety-nine (99) years from the date hereof.

20. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

21. Entire Agreement. This Restated E.C.R. constitutes the entire agreement between the Owners with respect to the subject matter hereof. The Owners do not rely upon any statement, promise or representation not herein expressed, and this Restated E.C.R.

once executed and delivered shall not be modified or altered in any respect by a writing executed and delivered in the same manner as required by this Restated E.C.R.

22. Notice. Any notice, request, demand, instruction or other communication (collectively, "Notices") required by this Restated E.C.R. to be given to any Owner or third party, including, but not limited to, a notice of assessment, shall be in writing and shall be either (a) personally delivered to each Owner, or the party otherwise entitled hereto, by a commercial messenger service regularly retaining receipts for such delivery, (b) sent by registered mail, return receipt requested, or (c) delivered by the courier services known as Federal Express, Express Mail, Airborne, and Emery Air, or equivalent courier service, and such notice shall be effective upon delivery thereof to the Owner or third party being given notice. Any such Notices, shall be addressed to the Owners as listed below, until such time as each ceases to be an Owner:

Developer:	c/o Rothbart Development Corporation 2450 Broadway, Suite 550 Santa Monica, California 90404
With copies to:	Laura K. McAvoy, Esq. Nordman, Cormany, Hair & Compton 1000 Town Center Drive Sixth Floor Oxnard, California 93031-9100
	Richard Hambelton, Esq. Hoffman, Vance & Worthington 1000 South Seaward Avenue Ventura, California 93001
To Best Buy:	Best Buy Co., Inc. 7075 Flying Cloud Drive Eden Prairie, Minnesota 55344 Attention: Legal Department - Real Estate
With copy to:	Robins, Kaplan, Miller & Ceresi 2800 LaSalle Plaza 800 LaSalle Avenue South

Minneapolis, Minnesota 55402-2015
Attention: Steven A. Schumeister, Esq.

To Lot 1 Owner: Alan F. Horn and Cynthia Harrell-Horn
c/o American Capital Management Corporation
115 South La Cubre, Suite 302
Santa Barbara, California 93105

With copy to: Hugh M. Boss, Esq.
Kindel & Anderson, LLP
5959 Topanga Canyon Boulevard
Suite 244
Woodland Hills, California 91367

Any Owner of a Lot may designate its address for service of Notices, as aforesaid, or may designate a change of address, by Notice to all Owners in the manner specified herein. The successors and assigns of Owners shall be substituted for prior Owners upon notice as provided above. However, unless and until such written notice is actually received, the last address and addressee as stated by written notice, or provided for herein if no written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. This notice provision shall be inapplicable to any judicial or nonjudicial proceeding where California law governs the manner and timing of notice, commencing and prosecuting an action, commencing and prosecuting a foreclosure, or seeking the appointment of a receiver.

23. Election of Remedies. In addition to the rights, powers and remedies given in this Restated E.C.R. to the Lot Owners, each of them may, in their own absolute discretion, at any time, and from time to time, exercise any and all rights and powers, and pursue any and all remedies now or hereafter given at law or in equity, including but not limited to any rights or remedies granted herein or by California or Federal case, statutory or regulatory law. The failure to exercise any right or remedy shall not be deemed a waiver of that right or remedy unless the Owner entitled to that right or remedy has so agreed, expressly and in writing,

and the failure to so exercise any right or remedy shall not preclude such Owner entitled thereto from later exercising any such right or remedy. The written waiver of any default hereunder given by a Lot Owner shall not be binding upon any other Lot Owner that does not consent in writing to such waiver. Any written waiver of default shall not constitute a continuing waiver or waiver of any other same, similar or different events of defaults on any future occasion, unless such a waiver of such future defaults is expressed, in writing, with precision. No courses of dealing between any Owner, or any tenant, occupant, lessee, or user of any of the Lots, or any encumbrancer thereof, in exercising any rights under this Restated E.C.R. shall operate as a waiver of such rights, nor shall any such delay, unless agreed to in writing by the Owner entitled to enforce this Restated E.C.R., constitute a waiver of any obligation or default. No waiver or default shall extend to or impair any other obligation not expressly waived, nor impair any right otherwise consequent on such covenant, provision or obligation. Any waiver may be given subject to satisfaction of condition stated therein. No power or remedy herein conferred is exclusive of or shall prejudice any other power or remedy given by law or by the terms of this Restated E.C.R., nor shall any Owner hereto be forced to make any election of remedies.

24. Waiver of Setoff/Counterclaim. Each Owner hereto, for its own benefit and for the benefit of all of its successors and assigns, including but not limited to all Owners with interests in the Shopping Center or any lot or building which forms a portion therefor, hereby waive any and all rights of setoff, recoupment, and counterclaim with respect to assessments and obligations due under the terms of this Restated E.C.R., including rights of setoff, recoupment, and counterclaim with respect to the Shopping Center which may arise from claims, transaction or occurrences heretofore or in the future unknown to the claimant.

25. Time of Essence. Time is of the essence with regard to

performance under the terms and provisions of this Restated E.C.R., and any amendment, modification or revisions thereof, with respect to the actions and obligations of each person bound by the terms hereof. No extension of time for payment of any sum due hereunder shall operate or release, discharge, modify, change or affect the original liability as established hereunder, either in whole or in part. In accepting an interest in any Lot in the Shopping Center, each Owner, tenant, occupant, lessee, user, mortgagee, and trust deed beneficiary shall be deemed to take its interest knowingly and willingly subject to this time of the essence clause.

26. Severability. Invalidation of any of the provisions contained in this Restated E.C.R., or the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

27. Negation of Partnership. None of the terms or provisions of this Restated E.C.R. shall be deemed to create a partnership between or among the Owners or any of their tenants or occupants, in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. Each Owner shall be considered a separate Owner and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to so herein by a separate written instrument signed by the Owner to be charged.

28. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Lot or portion thereof to the general public, or for any public use or purpose whatsoever. Except herein specifically provided, no right, privileges or immunities of any Owner shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein except as otherwise expressly

set forth in this Restated E.C.R..

29. Estoppel Certificates. Any Owner shall, from time to time upon not less than thirty (30) days notice from any other party, execute and deliver to the Owner requesting same, a certificate in recordable form stating that this Restated E.C.R. is unmodified and in full force and effect or, if modified, that this Restated E.C.R. is in full force and effect, as modified, and stating the modification and stating whether or not, to the best of its knowledge, any Owner is in default in any respect under this Restated E.C.R., and if in default, specifying the nature of such default.

30. Developer Rights. All rights of Developer shall cease when Developer is no longer the Owner or "Prime Lessee" (as defined in Paragraph 31) of any Lot, at which time all approval rights reserved to Developer hereunder shall inure to and may be exercised only by the Owners of Lot 1, 2, and 3 with each such Lot Owner having one vote.

31. Prime Lessee Constituting "Owner":

a. Notwithstanding anything to the contrary contained in this Restated E.C.R., it is expressly agreed that if an Owner sells, transfers or conveys its Lot to an unaffiliated third party and thereafter enters into a lease or sublease for all of such Lot such transferring Owner shall become a "Prime Lessee" as defined below, and such third party purchaser shall be a "Prime Lessor" (as defined below). So long as such transferring Owner remains as a Prime Lessee, it shall have all of the rights and obligations of the Owner of such Lot as to such Lot only, and the other Owners shall look solely to such Prime Lessee for the performance of any obligations by the Owner of the Lot so leased (as to such Lot only), and the Prime Lessor (the then Owner of such Lot) shall be relieved of any obligation for the performance of or liability for the covenants, obligations and restrictions set forth herein relating to either such Owner (as to such leased Lot only) or the Lot leased by the Prime Lessee. The creation of the status of Prime Lessee shall be effective only on and after the transferring Owner records an instrument designating itself as a Prime Lessee and designating the name and address of the Prime Lessor with the Ventura County Recorder and gives notice thereof to all other Owners, except that the parties hereby acknowledge that the Lot 1 Owner has designated Best Buy as the Prime Lessee of Lot 1 pursuant to this Paragraph 31a, and that Best Buy hereby accepts such designation, and no further notice is required as to such designation.

b. Further, any Owner of a Lot, as to such Owner's Lot, may designate an unaffiliated third party tenant of all, or a portion, of such Lot as a Prime Lessee as to such leased Lot, in which event, by written instrument executed by such Owner and such tenant and recorded in Official Records of Ventura County Recorder, such tenant shall agree to have and perform all rights and obligations of the Owner as to such Lot, provided, however, the Owner of such Lot shall remain primarily liable for the obligations of the Owner as to such Lot in the event the Prime Lessee thereof fails to perform such obligations in accordance with the terms hereof.

c. For purposes of this Restated E.C.R., "Prime Lessee" means (1) an Owner of a Lot who sells, transfers or conveys, its Lot to any unaffiliated third party and thereafter enters into a lease for all of said Lot with such third party or its lessee or sublessee, or (2) any unaffiliated third party tenant of a Lot designated by the Owner of such Lot as a Prime Lessee. Prime Lessee includes the successors and assigns of a Prime Lessee but does not include the sub-lessee, licensees or concessionaires of a Prime Lessee.

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

BEST BUY CO., INC.

By: ______________________

Its: Sr. VP Finance

____

Alan F. Horn

____

Cynthia Harrell-Horn

Developer

____

TIMOTHY S. McGRATH, as Successor Trustee of the Survivors Trust created under the John Francis McGrath and Elizabeth E. McGrath Trust dated October 29, 1982, as to an undivided 23.8% interest

____

MARIAN E. GRAHAM, as Trustee of the Marian E. Graham Trust dated September 8, 1982, as to an undivided 23.8% interest

____

SEAN H. McGRATH, as Trustee of the Marital Trust created under the Frank and Lee McGrath Trust u/t/i August 27, 1982, as to an undivided 23.8% interest

____

CHRIS J. COOLURIS, as Trustee of the Ann Cooluris and Helen Mary Cooluris Trust dated March 12, 1982, as to an undivided 23.8% interest

____
JURGEN GRAMCKOW, as Successor Co-Trustee of the M.L. Trust of the Helen M. McGrath Trust dated December 6, 1973, as to undivided 4.8% interest

____
TIMOTHY S. McGRATH, as Co-Trustee of the M.L. Trust of the Helen M. McGrath Trust dated December 6, 1973, as to an undivided 4.8% interest

JURGEN CRANCKOW, as Successor Co-Trustee of the M.L. Trust of the Helen M. McGrath Trust dated December 6, 1973, as to undivided 4.8% interest

TIMOTHY S. McGRATH, as Co-Trustee of the M.L. Trust of the Helen M. McGrath Trust dated December 6, 1973, as to an undivided 4.8% interest

BEST BUY CO., INC.

State of Minnesota)
)
County of Hennepin)

On July 31, 1996, before me, Denise K Heinbuch,
(insert name of notary)
notary public in and for said State, personally appeared Robert S. Fox, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

DENISE K. [illegible]
Notary Public-[illegible]
[illegible] County
My Comm. Expires Jan 31, 2000

Signature Denise K Heinbuch (Seal)

CAPACITY CLAIMED BY SIGNER:

[ ] Individual(s)
[ ] Partner(s)
[ ] Trustee(s)
[X] Corporate Officer(s) Senior V.P. Finance
Title(s)
[ ] Attorney-In-Fact
[ ] Subscribing Witness
[ ] Guardian/Conservator
[ ] Other: ____________

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies): Best Buy Co., Inc., a Minnesota corporation

State of California)
)
County of Los Angeles)

On August 12, 1996, before me, Elizabeth Ann England, (insert name of notary)
notary public in and for said State, personally appeared ALAN F. HORN, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person~~(s)~~ whose name~~(s)~~ is~~/are~~ subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in his~~/her/their~~ authorized capacity~~(ies)~~, and that by his~~/her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Signature Elizabeth Ann England (Seal)

CAPACITY CLAIMED BY SIGNER:

[x]	Individual(s)	[ ]	Attorney-In-Fact
[ ]	Partner(s)	[ ]	Subscribing Witness
[ ]	Trustee(s)	[ ]	Guardian/Conservator
[ ]	Corporate Officer(s) ______ Title(s)	[ ]	Other: ______

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies): ______

State of California)
)
County of Los Angeles)

On August 12, 1996, before me, Elizabeth Ann England,
(insert name of notary)
notary public in and for said State, personally appeared CYNTHIA HARRELL-HORN, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

[illegible]
Commission # [illegible]
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires [illegible]

WITNESS my hand and official seal.

Signature Elizabeth Ann England (Seal)

CAPACITY CLAIMED BY SIGNER:

[x] Individual(s)
[ ] Partner(s)
[ ] Trustee(s)
[ ] Corporate Officer(s) ____________
Title(s)
[ ] Attorney-In-Fact
[ ] Subscribing Witness
[ ] Guardian/Conservator
[ ] Other: ____________

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies): ____________________

State of California)
County of Ventura)

On August 1, 1996, before me, Susan B Haynes,
(insert name of notary)
notary public in and for said State, personally appeared TIMOTHY S. McGRATH, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Susan B. Haynes
Comm. #1059358
NOTARY PUBLIC - CALIFORNIA
VENTURA COUNTY
Comm. Exp. May 21, 1999

WITNESS my hand and official seal.

Signature Susan B Haynes (Seal)

CAPACITY CLAIMED BY SIGNER:

[ ]	Individual(s)	[ ]	Attorney-In-Fact
[ ]	Partner(s)	[ ]	Subscribing Witness
[X]	Trustee(s)	[ ]	Guardian/Conservator
[ ]	Corporate Officer(s) ____________ Title(s)	[ ]	Other: ____________

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies): TIMOTHY S. McGRATH, as Successor Trustee of the Survivors Trust created under the John Francis McGrath and Elizabeth E. McGrath Trust dated October 29, 1982, as to an undivided 23.8% interest and as Co-Trustee of the M.L. Trust of the Helen M. McGrath Trust dated December 6, 1973, as to an undivided 4.8% interest.

State of California)
County of Ventura)

On August 2, 1996, before me, Sandra R. Kurtz, (insert name of notary)
notary public in and for said State, personally appeared MARIAN E. GRAHAM, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Sandra R. Kurtz
Comm. #[illegible]
NOTARY PUBLIC - CALIFORNIA
VENTURA COUNTY
Comm. Exp. Jan. [illegible]

WITNESS my hand and official seal.

Signature Sandra R. Kurtz (Seal)

CAPACITY CLAIMED BY SIGNER:

[ ] Individual(s)
[ ] Partner(s)
[X] Trustee(s)
[ ] Corporate Officer(s) ______ Title(s)
[ ] Attorney-In-Fact
[ ] Subscribing Witness
[ ] Guardian/Conservator
[ ] Other: ______

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies): MARIAN E. GRAHAM, as Trustee of the Marian E. Graham Trust dated September 8, 1982, as to an undivided 23.8% interest.

State of California)
)
County of Ventura)

On August 2, 1996, before me, Susan B Haynes,
(insert name of notary)
notary public in and for said State, personally appeared SEAN H. McGRATH, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Susan B. Haynes
Comm. #1000000
NOTARY PUBLIC - CALIFORNIA
VENTURA COUNTY
Comm. Exp. May 22, 1999

WITNESS my hand and official seal.

Signature Susan B Haynes (Seal)

CAPACITY CLAIMED BY SIGNER:

[ ] Individual(s)
[ ] Partner(s)
[X] Trustee(s)
[ ] Corporate Officer(s) ____________ Title(s)
[ ] Attorney-In-Fact
[ ] Subscribing Witness
[ ] Guardian/Conservator
[ ] Other: ____________

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies): SEAN H. McGRATH, as Trustee of the Marital Trust created under the Frank and Lee McGrath Trust u/t/i August 27, 1982, as to an undivided 23.8% interest.

State of California)
)
County of Ventura)

On August 2, 1996, before me, Susan B. Haynes,
(insert name of notary)
notary public in and for said State, personally appeared CHRIS J. COOLURIS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Susan B. Haynes
Comm. #1059366
NOTARY PUBLIC - CALIFORNIA
VENTURA COUNTY
Comm. Exp. May 23, 1999

WITNESS my hand and official seal.

Signature Susan B. Haynes (Seal)

CAPACITY CLAIMED BY SIGNER:

[ ] Individual(s)
[ ] Partner(s)
[X] Trustee(s)
[ ] Corporate Officer(s) ____________
Title(s)

[ ] Attorney-In-Fact
[ ] Subscribing Witness
[ ] Guardian/Conservator
[ ] Other: ____________

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies): CHRIS J. COOLURIS, as Trustee of the Ann Cooluris and Helen Mary Cooluris Trust dated March 12, 1982, as to an undivided 23.8% interest.

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

BEST BUY CO., INC.

By: ______________________
Its: ______________________

____
Alan F. Horn

____
Cynthia Harrell-Horn

Developer

TIMOTHY S. McGRATH, as Successor Trustee of the Survivors Trust created under the John Francis McGrath and Elizabeth E. McGrath Trust dated October 29, 1982, as to an undivided 23.8% interest

MARIAN E. GRAHAM, as Trustee of the Marian E. Graham Trust dated September 8, 1982, as to an undivided 23.8% interest

SEAN H. MCGRATH, as Trustee of the Marital Trust created under the Frank and Lee McGrath Trust u/t/i August 27, 1982, as to an undivided 23.8% interest

CHRIS J. COOLURIS, as Trustee of the Ann Cooluris and Helen Mary Cooluris Trust dated March 12, 1982, as to an undivided 23.8% interest

State of California)
County of Ventura)

On August 1, 1996, before me, Susan B. Haynes, (insert name of notary) notary public in and for said State, personally appeared JURGEN GRANCKOW, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Susan B. Haynes
Comm. #1050369
NOTARY PUBLIC - CALIFORNIA
VENTURA COUNTY
Comm. Exp. May 21, 1999

Signature Susan B Haynes (Seal)

CAPACITY CLAIMED BY SIGNER:

[ ]	Individual(s)	[ ]	Attorney-In-Fact
[ ]	Partner(s)	[ ]	Subscribing Witness
[x]	Trustee(s)	[ ]	Guardian/Conservator
[ ]	Corporate Officer(s) ________ Title(s)	[ ]	Other: ________

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies): JURGEN GRANCKOW, as Successor Co-Trustee of the M.L. Trust of the Helen M. McGrath Trust dated December 6, 1973, as to an undivided 4.8% interest.

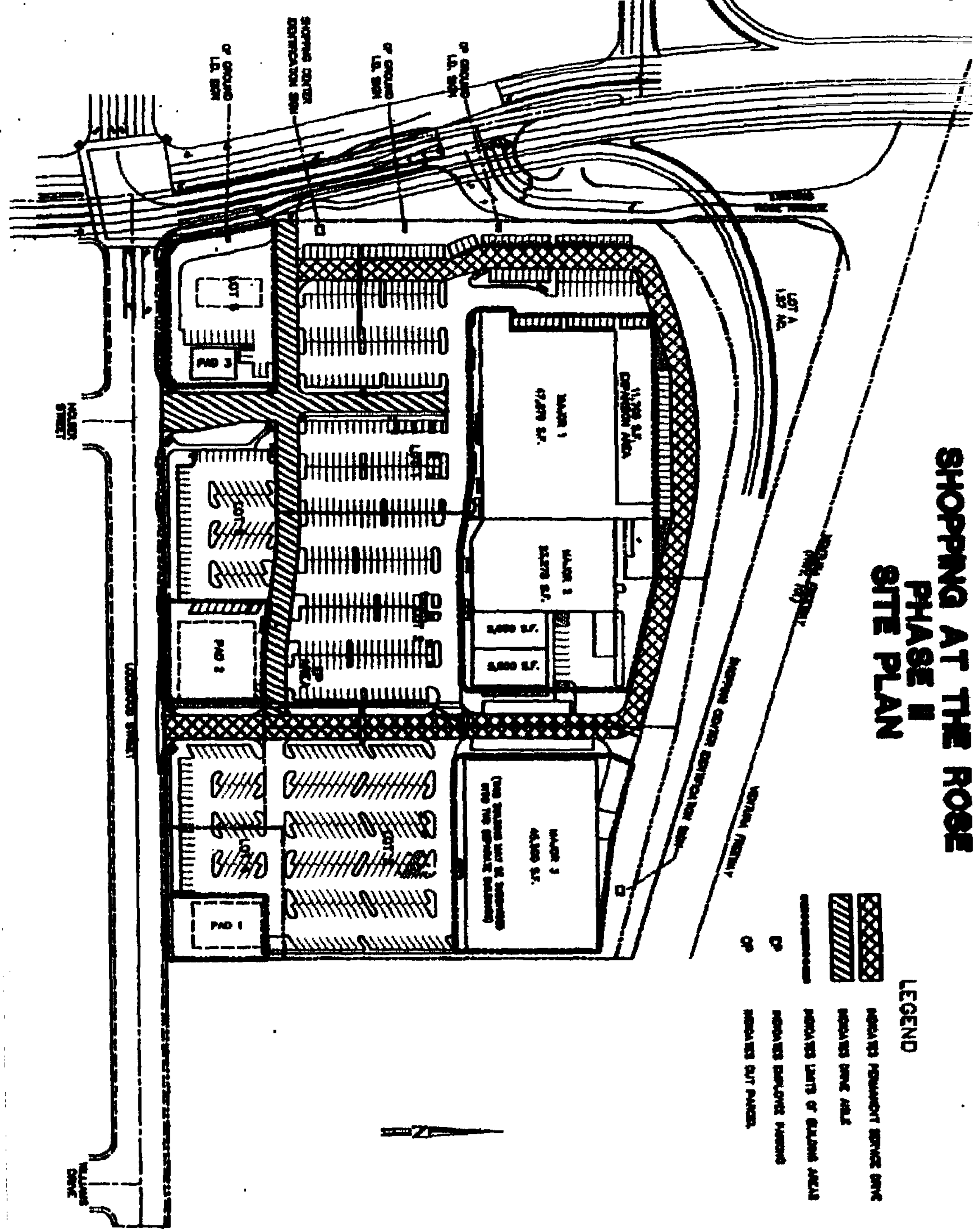
SHOPPING AT THE ROSE
PHASE II
SITE PLAN
LEGEND
PAD 1
PAD 2
PAD 3

EXHIBIT A

EXHIBIT B

Lots 1, 2, 3, 4, 5 and 6 of Tract 4983, in the City of Oxnard, County of Ventura, State of California, as per map thereof recorded in Book 127, Page 75, of Miscellaneous Records in the Office of the County Recorder of the County of Ventura, State of California.

EXHIBIT 2

MusickPeeler

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LOS ANGELES
ORANGE COUNTY
SAN DIEGO
SAN FRANCISCO
SANTA BARBARA COUNTY
VENTURA COUNTY

May 27, 2020

Via Email and U.S. Mail: mariav@damanagementgroup.com

FGH, LLC
Attn: Ms. Maria Valdez
1650 E. Gonzales Road, #296
Oxnard, CA 93036

Re: Potential Cannabis Use at 2320 N. Rose Avenue, Oxnard

Dear Ms. Valdez:

The undersigned acts as general counsel to a number of members of the McGrath family who are the owners of the property located at 2330 N. Rose Avenue, Oxnard, California, and also that certain parcel known as Lot 4, a vacant parcel located directly east of the parcel occupied by Golden Corral on Lockwood Avenue. These two parcels are collectively referred to as the "Neighboring Property."

By letter dated April 24, 2020, you were notified by Seena M. Samimi of the law firm of the Jeffer Mangels Butler & Mitchell of the opposition of their client, Oxnard Place, LLC, which owns the property located at 2340 N. Rose Avenue, Oxnard, California, to any proposed cannabis business located at 2320 N. Rose Avenue (the "Cannabis Property").

On behalf of my clients, we also express strong concurrence with the position taken by the owners of 2340 N. Rose Avenue and my clients likewise inform you that we believe that any proposed cannabis business would be in violation of the Restated E.C.R. as defined and as detailed in the referenced April 24, 2020 letter.

Likewise, we urge that you also conclude that the Cannabis Property cannot and may not be used for any proposed cannabis business.

We look forward to hearing from you regarding your position relating to the Restated E.C.R. and your plans as to the Cannabis Property.

Very truly yours,

Laura K. McAvoy
for MUSICK, PEELER & GARRETT LLP

LKM:srk

cc: Seena M. Samimi, Esq. (sxs@jmbm.com)
Ms. Vanessa Hernandez (vanessa.hernandez246@gmail.com)
Mr. Keith Fuller (keithlfuller@yahoo.com)
Mr. Stan Rothbart (stan@rothbartdev.com)
Mr. Mark Perlmutter mark@dmpproperties.com
Mr. Brian Martini brian@dmpproperties.com
Ms. Shawna Pierno shawna@dmpproperties.com
Ms. Beverly Gutierrez (bevg@hvwonline.com)

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