



THE COUNTY OF GALVESTON

RUFUS G. CROWDER, CPPO, CPPB
PURCHASING AGENT

GWEN MCLAREN, CPPB
ASST. PURCHASING AGENT

COUNTY COURTHOUSE
722 Moody (21st Street)
Fifth (5th) Floor
GALVESTON, TEXAS 77550
(409) 770-5371

May 13, 2015

RE: ADDENDUM #1
RFP #B151012, Sale of 3.7595 Acre of Land Tract

To All Prospective Proposers,

As a result of questions received with regard to this solicitation, the following information is being provided to aid in preparation of your proposal submittal(s):

Question #1: *When I enter the date of the recording and the GAC number nothing comes up on the County Clerks Data Base. Could you provide these documents?*

Response: Please see the attached documents.

Question #2: *Last year I visited with Lowes about acquiring their parcel. I have a partial copy of their General Construction and Development Agreement (see the third page of my attachment). It references a Permissible Building Area. Perhaps one of the documents recorded by Lowes in 2011 will include this information. If not, could you provide a site-plan that defines Permissible Building Area?*

Response: Please see the attached documents.

Question #3: *...can I include the Due Diligence time frames that mirror the Lowes purchase in my bid proposal?*

Response: Yes.

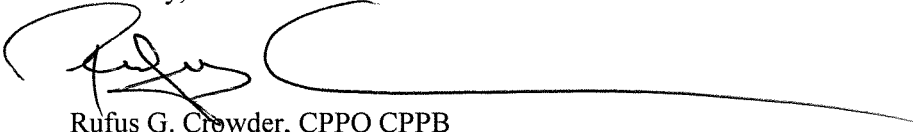
As a reminder, all questions regarding this proposal must be submitted in writing to:

Rufus G. Crowder, CPPO CPPB
Galveston County Purchasing Agent
722 Moody, Fifth (5th) Floor
Galveston, Texas 77550
E-mail: rufus.crowder@co.galveston.tx.us

If you have any further questions regarding this proposal, please address them to the aforementioned address or Rufus Crowder, CPPO CPPB, Purchasing Agent, via e-mail at rufus.crowder@co.galveston.tx.us, or contact the Purchasing Department at (409) 770-5371.

Please excuse us for any inconvenience that this may have caused.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rufus G. Crowder', with a long horizontal flourish extending to the right.

Rufus G. Crowder, CPPO CPPB
Purchasing Agent
Galveston County



2012008452

7 PGS

**FIRST AMENDMENT TO BOTH THE AGREEMENT TO SELL AND PURCHASE
REAL ESTATE AND TO THE EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS AGREEMENT**

By and Between

**LOWE'S HOME CENTERS, INC. A
NORTH CAROLINA CORPORATION**

And

GALVESTON COUNTY, TEXAS

AA

**FIRST AMENDMENT TO BOTH THE AGREEMENT TO SELL AND PURCHASE
REAL ESTATE AND TO THE EASEMENTS, COVENANTS, CONDITIONS AND
RESTRICTIONS AGREEMENT RELATING TO THE USE OF LANDS
OWNED BY LOWE'S HOME CENTERS, INC. AND
GALVESTON COUNTY**

This First Amendment to both that one certain Agreement to Sell and Purchase Real Estate (E.M.K.) between Lowe's and County dated January 19, 2011 and to that one certain dated Easements, Covenants, Conditions, and Restrictions Agreement (E.C.C.R.) between Lowe's and County dated effective October 13, 2011 is by and between Lowe's Home Centers, Inc., a North Carolina Corporation and Galveston County, Texas a political subdivision of the State of Texas.

Witnesseth:

The parties heretofore entered into an Agreement to Sell and Purchase Real Estate (E.M.K.) dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011

Paragraph 39 of the E.M.K. provides as follows

39 RIGHT TO REPURCHASE. Buyer covenants to commence construction (i.e. pouring of footings) of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet on or before one hundred twenty (120) days after the Closing provided Buyer has received all permits and governmental and quasi-governmental approvals for the construction of a 94,000, with minimum square footage in form and substance acceptable to Buyer in Buyer's sole and absolute discretion. If, despite Buyer's best efforts, all permits and governmental and quasi-governmental approvals are not secured in a timely manner, the commencement date may be extended for an additional thirty (30) days. If Buyer fails to commence construction of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet within one hundred twenty days after closing, as may be extended, provided such failure is not caused by force majeure, such event being referred to herein as the "Triggering Event", then Seller shall have the right and option ("the Repurchase Interest") to repurchase the Premises for the Repurchase Price (as hereinafter defined in Exhibit "C"), all subject to and in accordance with the terms and conditions of Exhibit C attached hereto and incorporated herein by reference. This covenant will survive closing.

The parties also heretofore entered in an Easements, Covenants, Conditions and Restrictions Agreement (E.C.C.R.) relating to real properties owned by the parties located between 54th and Broadway and 57th and Broadway and Broadway and Ball Streets. This Agreement, which has an effective date of October 13, 2011 may be found filed of record in the Official Public Records of the County Clerk of Galveston County, Texas on October 20, 2011 under GAC2011053638

Section 7.7 of the E.C.C.R provides as follows:

Section 7.7 Covenant to Open No Covenant to Continuously Operate: As set forth in Paragraphs 39 and 40 of that one certain Agreement to Sell and Purchase Real Estate between Lowe's and the County dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011 the Owner of the Lowe's Parcel has agreed to commence construction of a Lowe's on or before one hundred twenty (120) days after acquisition of the Lowe's Parcel with minimum square footage of 94,000 and to complete construction and open to the public within twenty four (24) months following the commencement of construction, subject to events of force majeure. Thereafter, the Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel. Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to continue to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel

The parties have agreed to extend this 120 day time period until June 30, 2013 In addition, based on the survey of the property conveyed to Lowe's the parties have agreed upon the repurchase price

This **First Amendment** is being entered into to address these two agreements

Now, Therefore, for valuable consideration, including the mutual covenants herein contained, the receipt and sufficiency of which is hereby confessed and acknowledged, the parties desire to amend both the **E.M.K** and the **E.C.C.R.** and to establish the repurchase price as follows.

1. **Amendment of the E.M.K.**

Paragraph 39 of the E M K. is hereby amended to read as follows.

39 **RIGHT TO REPURCHASE** Buyer covenants to commence construction (i.e. pouring of footings) of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet on or before June 30, 2013 provided Buyer has received all permits and governmental and quasi-governmental approvals for the construction of such Store in a form and substance acceptable to Buyer in Buyer's sole and absolute discretion. If, despite Buyer's best efforts, all permits and governmental and quasi-governmental approvals are not secured by June 30, 2013, the commencement date may be extended for an additional thirty (30) days. If Buyer fails to commence construction of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet by no later than June 30, 2013, as may be extended, provided such failure is not caused by force majeure, such event being referred to herein as the "Triggering Event", then Seller shall have the right and option ("the Repurchase Interest") to repurchase the Premises for the Repurchase Price (as hereinafter defined in Exhibit "C"), all subject to and in accordance with the terms and conditions of Exhibit C attached hereto and incorporated herein by reference. This

A

covenant will survive closing

40. Amendment of E.C.C.R.

Section 7.7 of the E.C.C.R. is hereby amended to read as follows:

Section 7.7 Covenant to Open, No Covenant to Continuously Operate. As set forth in Paragraphs 39 and 40 of that one certain Agreement to Sell and Purchase Real Estate between Lowe's and the County dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011 the Owner of the Lowe's Parcel has agreed to commence construction of a Lowe's Home Improvement Store on or before June 30, 2013 with minimum square footage of 94,000 and to complete construction and open to the public within twenty four (24) months following the commencement of construction, subject to events of force majeure. Thereafter, the Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel. Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to continue to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel

41. Establishment of Repurchase Price

The parties agree that should the County decide to exercise its right to repurchase the Lowe's Parcel, the repurchase price is **Three Million, Twenty Five Thousand and Fifty Seven (\$3,025,057) Dollars**. This figure is based on the final survey of the property purchased by Lowe's.

5. The E.M.K. and the E.C.C.R. and this **First Amendment** to these two instruments constitute the complete understanding of the parties and no other representation, oral or written, between the parties shall be of any force and effect unless specifically stated in writing in the E.M.K. and the E.C.C.R. or this **First Amendment**

6. Each party has signed this **First Amendment** on the date specified adjacent to their signature. The effective date of this **First Amendment** will be the date the last signatory has signed

7. Each party has relied on the advice of their own counsel in executing this **First Amendment**.

8. If this **First Amendment** is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one **Agreement**.

9. The effective date of this First Amendment is the date the last party has executed this document



County of Galveston

Mark Henry

Mark Henry
County Judge

Date of Execution: 2/21/12

Dwight D. Sullivan
County Clerk

Brandy Chapman Deputy
Brandy Chapman

Lowe's
Lowe's Home Centers, Inc., a
North Carolina Corporation

Gary E. Wyatt
Name: Gary E. Wyatt
Title: Senior Vice President

[Handwritten initials]

State of Texas §
 §
County of Galveston §

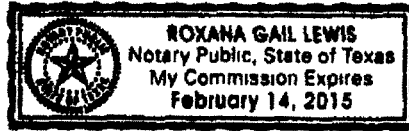
On This 21st day of February, 2012, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **Mark A. Henry**, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the **County Judge of Galveston County**, a political subdivision of the State of Texas, and that he/she executed such instrument on behalf of said political subdivision by authority of its County Commissioners' Court, and said person acknowledged to me that he/she executed such instrument as the act and deed of said political subdivision.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public: Roxana G. Lewis
Printed Name: ROXANA G. LEWIS

My Commission Expires:

2/14/2015

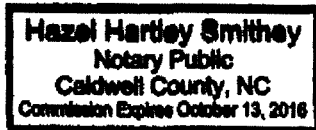


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State of North Carolina §
 §
County of Wilkes §

The foregoing instrument was acknowledged before me this 15th day of February, 2012, by EARLE WYATT, the Senior Vice President of Lowe's Home Centers, Inc., a North Carolina corporation

Witness my hand and official seal.



Hazel Hartley Smithey
Notary Public in and for the State
of North Carolina

Seal

Word/Depts/Facilities/Lowes ECCR First Amendment

After filing please return to:
Harvey Bazaman
Galveston County Legal Dept.
Galveston County
Galveston County Courthouse
722 Moody, 5th Floor
Galveston, Texas 77550

FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

Dwight D. Sullivan 2012008452

February 21, 2012 02 22 54 PM

FEE \$40 00

Dwight D Sullivan, County Clerk
Galveston County, TEXAS

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**SECOND AMENDMENT TO BOTH THE AGREEMENT TO SELL AND PURCHASE
REAL ESTATE AND TO THE EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS AGREEMENT**

By and Between

**LOWE'S HOME CENTERS, INC. A
NORTH CAROLINA CORPORATION**

And

GALVESTON COUNTY, TEXAS

**SECOND AMENDMENT TO BOTH THE AGREEMENT TO SELL AND PURCHASE
REAL ESTATE AND TO THE EASEMENTS, COVENANTS, CONDITIONS AND
RESTRICTIONS AGREEMENT RELATING TO THE USE OF LANDS
OWNED BY LOWE'S HOME CENTERS, INC. AND
GALVESTON COUNTY**

This Second Amendment to that one certain **Agreement to Sell and Purchase Real Estate (E.M.K.)** between **Lowe's and Galveston County** dated January 19, 2011, to that one certain **Agreement entitled Easements, Covenants, Conditions, and Restrictions Agreement (E.C.C.R.)** between **Lowe's and Galveston County** dated effective October 13, 2011 and to that one certain **First Amendment to Both the E.M.K. and the E.C.C.R.** dated effective February 21, 2012 is by and between **Lowe's Home Centers, Inc.**, a North Carolina Corporation and **Galveston County, Texas** a political subdivision of the State of Texas

Witnesseth:

The parties heretofore entered into an **Agreement to Sell and Purchase Real Estate (E.M.K.)** dated January 19, 2011, a copy of which may be found in the minutes of the **Galveston County Commissioners' Court** meeting held on January 19, 2011.

Paragraph 39 of the **E.M.K.** provides as follows:

39 **RIGHT TO REPURCHASE.** Buyer covenants to commence construction (i.e. pouring of footings) of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet on or before one hundred twenty (120) days after the Closing provided Buyer has received all permits and governmental and quasi-governmental approvals for the construction of a 94,000, with minimum square footage in form and substance acceptable to Buyer in Buyer's sole and absolute discretion. If, despite Buyer's best efforts, all permits and governmental and quasi-governmental approvals are not secured in a timely manner, the commencement date may be extended for an additional thirty (30) days. If Buyer fails to commence construction of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet within one hundred twenty days after closing, as may be extended, provided such failure is not caused by force majeure, such event being referred to herein as the "Triggering Event", then Seller shall have the right and option ("the Repurchase Interest") to repurchase the Premises for the Repurchase Price (as hereinafter defined in Exhibit "C"), all subject to and in accordance with the terms and conditions of Exhibit C attached hereto and incorporated herein by reference. This covenant will survive closing.

The parties also heretofore entered in an **Easements, Covenants, Conditions and Restrictions Agreement (E.C.C.R.)** relating to real properties owned by the parties located between 54th and Broadway and 57th and Broadway and Broadway and Ball Streets. This Agreement, which has an effective date of October 13, 2011 may be found filed of record in the **Official Public Records of the County Clerk of Galveston County, Texas** on October 20, 2011 under GAC2011053638.

Section 7.7 of the E.C.C.R. provides as follows

Section 7.7 Covenant to Open. No Covenant to Continuously Operate: As set forth in Paragraphs 39 and 40 of that one certain Agreement to Sell and Purchase Real Estate between Lowe's and the County dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011 the Owner of the Lowe's Parcel has agreed to commence construction of a Lowe's on or before one hundred twenty (120) days after acquisition of the Lowe's Parcel with minimum square footage of 94,000 and to complete construction and open to the public within twenty four (24) months following the commencement of construction, subject to events of force majeure. Thereafter, the Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel. Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to continue to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel

The parties also entered into that one certain **First Amendment to Both the E.M.K. and the E.C.C.R.** dated effective February 21, 2012. This **First Amendment**, among other things, extended the time of commencement of construction set forth in Paragraph 39 of the **E.M.K.** and in Section 7.7 of the **E.C.C.R.** until June 30, 2013.

The parties have agreed to extend this time period from June 30, 2013 to September 30, 2013

This **Second Amendment** is being entered into to address this extension of time.

Now, Therefore, for valuable consideration, including the mutual covenants herein contained, the receipt and sufficiency of which is hereby confessed and acknowledged, the parties desire to amend both the **E.M.K** and the **E.C.C.R.** as follows:

1. **Amendment of the E.M.K.**

Paragraph 39 of the E.M K is hereby amended to read as follows.

39 **RIGHT TO REPURCHASE.** Buyer covenants to commence construction (i.e. pouring of footings) of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet on or before September 30, 2013 provided Buyer has received all permits and governmental and quasi-governmental approvals for the construction of such Store in a form and substance acceptable to Buyer in Buyer's sole and absolute discretion. If, despite Buyer's best efforts, all permits and governmental and quasi-governmental approvals are not secured by September 30, 2013, the commencement date may be extended for an additional thirty (30) days. If Buyer fails to commence construction of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet by no later than September 30, 2013, as may be extended, provided such failure is not caused

by force majeure, such event being referred to herein as the "Triggering Event", then Seller shall have the right and option ("the Repurchase Interest") to repurchase the Premises for the Repurchase Price (as hereinafter defined in Exhibit "C"), all subject to and in accordance with the terms and conditions of Exhibit C attached hereto and incorporated herein by reference This covenant will survive closing

2. **Amendment of E.C.C.R.**

Section 7 7 of the E.C.C.R. is hereby amended to read as follows

Section 7 7 Covenant to Open No Covenant to Continuously Operate: As set forth in Paragraphs 39 and 40 of that one certain Agreement to Sell and Purchase Real Estate between Lowe's and the County dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011 the Owner of the Lowe's Parcel has agreed to commence construction of a Lowe's Home Improvement Store on or before September 30, 2013 with minimum square footage of 94,000 and to complete construction and open to the public within twenty four (24) months following the commencement of construction, subject to events of force majeure. Thereafter, the Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to continue to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel

3. The E.M.K., the E.C.C.R., the **First Amendment** and the **Second Amendment** to these two instruments constitute the complete understanding of the parties and no other representation, oral or written, between the parties shall be of any force and effect unless specifically stated in writing in the E.M.K., the E.C.C.R , the **First Amendment** or this **Second Amendment**.

4 Each party has signed this **Second Amendment** on the date specified adjacent to their signature. The effective date of this **Second Amendment** will be the date the last signatory has signed.

5. Each party has relied on the advice of their own counsel in executing this **Second Amendment**

6. If this **Second Amendment** is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one **Agreement**.

7 The effective date of this **Second Amendment** is the date the last party has executed this document

County of Galveston



Mark A. Henry

County Judge

Date of Execution: 5/14/13

Attest:



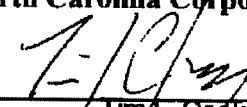
Dwight J. Sullivan

County Clerk

By:  Deputy
Brandy Chapman

**Lowe's
Lowe's Home Centers, Inc., a
North Carolina Corporation**

ASJ
RSP



Name: Tim L. Cooksey

Title: Vice President

Date of Execution: 5/20/13

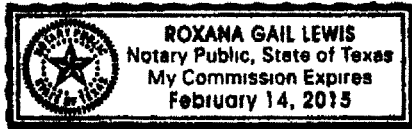
State of Texas

§
§
§

County of Galveston

On This 14th day of May, 2013, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **Mark A. Henry**, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the **County Judge of Galveston County**, a political subdivision of the State of Texas, and that he/she executed such instrument on behalf of said political subdivision by authority of its County Commissioners' Court, and said person acknowledged to me that he/she executed such instrument as the act and deed of said political subdivision

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.



Notary Public: Roxana G. Lewis
Printed Name: Roxana G. Lewis

My Commission Expires:

Feb. 14, 2015

State of North Carolina §
 §
County of Wilkes §

³ The foregoing instrument was acknowledged before me this 26th day of April, 2017, by Tim L. Cooksey, the VP of Lowe's Home Centers, Inc., a North Carolina corporation.

Witness my hand and official seal.



Anneliese Miller
Notary Public in and for the State
of North Carolina
My commission expires: 08-10-2015

Seal

Word/Depts/Facilities/Lowes ECCR Second Amendment

After filing please return to:
Harvey Bazaman
Galveston County Legal Dept.
Galveston County
Galveston County Courthouse
722 Moody, 5th Floor
Galveston, Texas 77550

FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

Dwight D. Sullivan
2013029882

May 14, 2013 04 56 10 PM

FEE \$0 00

Dwight D Sullivan, County Clerk
Galveston County, TEXAS



CHICAGO TITLE - WEST BEACH
GFF# CH 11507804

Recording Requested By and
When Recorded, Return To:
Angie T. Houlemard
Lowe's Home Centers, Inc.
1000 Lowe's Blvd.
 Mooresville, NC 28117

CHICAGO TITLE - WEST BEACH
13655 FM 3005, SUITE B
BOX 4032 - PIRATES BEACH
GALVESTON, TX 77554

**EASEMENTS
COVENANTS, CONDITIONS AND RESTRICTIONS**

BY AND BETWEEN

**LOWE'S HOME CENTERS, INC. A
NORTH CAROLINA CORPORATION**

AND

**GALVESTON COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
TEXAS**

RECORDER'S MEMORANDUM

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

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EXHIBITS

Schedules I and I-A	Legal Description Lowe's Parcel
Schedule II	Legal Description County's Parcel(s)
Exhibit A	Site Plan
Exhibit B	Sign Program
Exhibit C	Duplantis Design Group, P C and Davidson Landscape Architects L L C Plans

EASEMENTS
COVENANTS, CONDITIONS AND RESTRICTIONS

THESE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "ECCR"), are made and entered into as of the date of the last execution hereof, which date is the ___ day of _____, 2011, by and between GALVESTON COUNTY, a political subdivision of the State of Texas, acting by and through its County Commissioners' Court, ("County") and LOWE'S HOME CENTERS, INC , North Carolina corporation ("Lowe's") (the foregoing, individually each as a "Party", and collectively referred to as the "Parties"),

W I T N E S S E T H

WHEREAS, Lowe's is the owner of that certain tract or tracts of real property consisting of approximately 10 1640 acres or 442,742 square feet located in the City of Galveston, County of Galveston, State of Texas as more particularly described on Schedule I attached hereto and made a part hereof for all purposes (the "Lowe's Parcel"), and

WHEREAS, Lowe's is also the owner of that certain tract or tracts of real property consisting of approximately 0 7552 acres or 32,896 square feet also located in the City of Galveston, County of Galveston, State of Texas as more particularly described on Schedule I-A also attached hereto and made a part hereof for all purposes (also the "Lowe's Parcel"); and

WHEREAS, County is the owner of that certain tract or tracts of real property consisting of approximately 3 7595 acres or 163,766 square feet located contiguous with and adjacent to the Lowe's Parcel, which is more particularly described in Schedule II attached hereto and made a part hereof for all purposes (the "County's Parcel(s)"), and

WHEREAS, both the Lowe's Parcel and the County's Parcel(s) are further designated on the site plan of the overall shopping center development, attached hereto and made a part hereof as Exhibit A (the "Site Plan")

NOW, THEREFORE, the County and Lowe's hereby declare, agree, covenant and consent that all of the Parcels, such term being hereinafter defined in Section 1 10 and more fully described on Schedule I and Schedule II shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are imposed on such Parcels to run with the land and be binding on and inure to the benefit of all parties having any right, title

or interest in the described Parcels or any part thereof, their successors and assigns for the purpose of development and operation of the Parcels in an integrated shopping center or other endeavors in which either the County or Lowe's or their successors or assigns might lawfully engage, subject to the terms of this ECCR, collectively called "Shopping Center", and to protect the value of such respective Parcels. Further, in consideration of the premises, the agreements and the covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows

ARTICLE I

BASIC DEFINITIONS

Section 1.1. "Building" shall mean the permanently enclosed structure(s) which has (have) been, will be or may be constructed within the Permissible Building Areas, which for the purpose of this Declaration shall include any garden center, appurtenant canopies, supports, loading docks, truck ramps and other outward extensions, drive up or drive-through areas and facilities, loading docks, patio areas, or permanent outdoor sales and storage areas but such term does not include Common Area Improvements (as that term is hereinafter defined in Section 1.3)

Section 1.2. "Common Area" shall mean all real property owned by the Parties for the common use and enjoyment of the Owners and shall consist of all portions of the Shopping Center not designated as Permissible Building Areas and all portions of any Permissible Building Area upon which no Building, fenced or gated area is currently constructed. For purposes of this ECCR, "Common Area" shall not include any garden center, appurtenant canopies, supports, loading docks, truck ramps and other outward extensions, drive up or drive-through areas and facilities, loading docks, patio areas, or permanent outdoor sales and storage areas.

Section 1.3. "Common Area Improvements" shall mean all improvements constructed from time to time within the Common Area and intended for common use which may include, without limitation, parking areas, access and egress drives, service drives, non-dedicated streets, lighting standards, sidewalks, landscaping, fixtures, and signage. The initial Common Area Improvements are shown on the Site Plan.

Section 1.4. "Common Utility Facilities" shall mean Utility Facilities from time to time situated on or serving the Shopping Center, up to the building wall of any Building, for use or

service in common by all Owners. All Common Utility Facilities lying within any Common Area shall for all purposes be deemed to be included within the definition of Common Area Improvements

Section 1 5 "Consenting Owner" shall mean and refer to Lowe's, so long as Lowe's is the Owner or lessee of the Lowe's Parcel and the County, so long as it is the Owner or lessee of one or more of the County's Parcel(s). At such time that Lowe's is no longer Owner or lessee of the Lowe's Parcel, the current Owner of the Lowe's Parcel shall be the Consenting Owner of the Lowe's Parcel. At such time that the County is no longer Owner of one or more of the County's Parcel(s), the current Owner of one or more of the County's Parcel(s) shall be the Consenting Owner of the County's Parcel(s). The Parties intend that there shall be only a maximum of two (2) Consenting Owners for the Shopping Center consisting of only one (1) Consenting Owner representing the County's Parcel(s) and only one (1) Consenting Owner representing the Lowe's Parcel. In the event that the Lowe's Parcel or the County's Parcel(s) are further subdivided, the current Consenting Owner shall designate the particular parcel of the subdivided Parcel(s) whose Owner shall succeed as the Consenting Owner

Section 1 6 "Default Rate" shall mean the rate of interest that is the lesser of (i) twelve percent (12%) per annum, compounded monthly, and (ii) the maximum rate allowed by applicable law

Section 1 7 "Improvement(s)" shall mean Building(s) and other structures within a Permissible Building Area and Common Area Improvements

Section 1 8 Intentionally Omitted

Section 1 9 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Parcel which is a part of the Shopping Center, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation. Notwithstanding the foregoing, in the event Lowe's is a lessee of all or a portion of the Lowe's Parcel, whenever the consent of the Owner of the Lowe's Parcel is required under this ECCR, the Owner of the Lowe's Parcel will give such consent only after obtaining Lowe's written consent

Section 1 10. "Parcel" shall mean and refer to any parcel of land shown as a parcel on the Site Plan. "Outparcel" shall mean and refer to any and every parcel of land identified as a numbered or lettered outparcel on the Site Plan. Every Outparcel shall be a Parcel from the date

of recording of a subdivision map showing the Outparcel, so that all references herein to Parcels shall apply with equal force to Outparcels, however, references to Outparcels shall be specific to Outparcels as herein defined. For purposes of this ECCR, the entire County's Parcel(s) shall be deemed an Outparcel.

Section 1.11 "Permissible Building Area" shall mean the entire area of the Lowe's Parcel and the entire area of the County's Parcel(s) that may, subject to governmental laws, codes or ordinances, be built upon.

Section 1.12 "Permittees" shall mean tenants and subtenants and the occupants, contractors, customers, employees, agents, licensees, guests, and invitees of an Owner, its tenants and subtenants.

Section 1.13 "Separate Utility Facilities" shall mean Utility Facilities not installed under the terms of this ECCR for use in common by other Owners and not for service of the Common Area.

Section 1.14 "Shopping Center" shall mean and refer to the Lowe's Parcel and the County's Parcel(s) (the future development of which includes whatever endeavors in which the County or Lowe's, as well as their successors or assigns, might lawfully engage, subject to the terms of this ECCR), as shown on the Site Plan and being more particularly described in Schedule I and Schedule II.

Section 1.15 "Utility Facilities" shall mean utility systems and utility facilities serving the Shopping Center such as the following: storm drainage, detention, retention and disposal facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and utility facilities installed under the provisions of this ECCR and as replacements thereto.

ARTICLE II

EASEMENTS

Section 2.1 Easements Definitions and Documentation:

For the purposes of this Article II, the following will apply:

(A) An Owner granting an easement is called the "Grantor", it being intended that the grant shall thereby bind and include not only such Owner but also its successors and assigns.

(B) An Owner to whom the easement is granted is called the "Grantee", it being intended that the grant shall benefit and include not only such Owner but its successors, assigns, and Permittees, although not for the direct benefit of Permittees, the Grantee may permit from time to time its Permittees to use such easements; provided, however, that no such permission nor the division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of the creation of such easement.

(C) The word "in" with respect to an easement granted "in" a particular Parcel means, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and "under", or any one or more of the foregoing.

(D) All easements granted herein are non-exclusive and are irrevocable and perpetual

(E) All easements granted herein shall be easements appurtenant and not easements in gross

(F) In the event an Owner transfers or conveys a portion of its Parcel in accordance with the terms of this ECCR, those easements granted under this Article II which benefit, bind, and burden the remainder of the Parcel not transferred or conveyed shall benefit, bind, and burden the portion of the Parcel so transferred or conveyed, and those easements granted under this Article II which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Parcel of which it was a part

(G) All easements granted hereunder and herein shall exist by virtue of this ECCR, without the necessity of confirmation by any other document Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document However, upon the reasonable request of an Owner, the other Owners shall sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Owners, which approval shall not be unreasonably conditioned, delayed or withheld No grant of an easement pursuant to this Article II shall impose any greater obligation on any Owner to construct or maintain its Building(s) except as expressly provided in this ECCR

Section 2.2 Easements for Use of Common Area

(A) **Grant of Easement** Each Owner hereby grants to the other Owner(s) easements in the Common Area, as shown on the Site Plan on its (Grantor's) Parcel for

- (i) ingress to and egress from the Grantee's Parcel,
- (ii) the passage of vehicles;
- (iii) the passage and accommodation of pedestrians, and
- (iv) the doing of such other things as are expressly authorized or required to be done on the Common Area under this ECCR.

(B) **No Cross Parking** The Owners hereby specifically disclaim any intention to create any reciprocal parking easements between the Lowe's Parcel and any other Parcel in the Shopping Center or between any other Parcel in the Shopping Center and the Lowe's Parcel.

(C) **Design of the Common Areas.**

(i) **Initial Development of the Common Areas.** The Common Area Improvements depicted on the Site Plan are hereby deemed approved by the Consenting Owners

(ii) **Changes after Initial Development.** Any Owner may add Common Areas and Common Area Improvements not shown on the Site Plan or make changes to the Common Areas and the Common Area Improvements shown on the Site Plan on such Owner's Parcel, as such Owner determines in its sole discretion; provided, however, that the consent of each Consenting Owner shall be required for any change or addition that adversely impacts (a) access to an Owner's Parcel (including changes and additions to entrances or exits that adversely affect access to an Owner's Parcel), (b) vehicular traffic flow to any other Parcel in the Shopping Center (including changes or additions to curb cuts or the orientation of parking spaces or drive aisles that adversely affect traffic flow to any other Parcel in the Shopping Center), or (c) visibility of any other Owner's building or any sign on which any other Owner has a right to display a sign panel, and such consent may be withheld in the sole discretion of each Consenting Owner. No change may (a) reduce parking spaces below the minimum required under this ECCR, (b) alter the location of free standing signs as provided in Section 4.3 of this ECCR, or (c) relocate Utility Facilities except as provided in Section 2.3 of this ECCR. There shall be no drive-through windows or lanes of traffic installed in an Outparcel unless areas within which such windows or lanes are permitted as shown initially

on the Site Plan or are (a) approved in writing by Lowe's, which approval will not unreasonably be withheld, (b) include sufficient distance provided for the stacking of a minimum of five (5) car lengths (of twenty feet each) from the order station to the drive entrance of such parcel, and (c) provide a minimum of three car lengths from the order station to the first service window

(iii) Enjoyment and use of the Common Area easements granted by this Section 2.2 shall commence on the date the Common Area Improvements with respect to the Common Area in question are substantially complete.

(D) Common Area Sales and Displays. Notwithstanding the grant of easements under Section 2.2(A)

(i) The Owner or occupant of the Lowe's or the County's Parcel(s) may use the Common Area on their Parcel for the display, storage and sale of new and reconditioned merchandise that has been reconditioned to the equivalent of new merchandise so long as such activity does not materially interfere with ingress and egress to the rest of the Shopping Center and so long as the reconditioned merchandise is not the primary item(s) for sale.

(ii) The Owner or occupant of the Lowe's or the County's Parcel(s) shall have the right, but not the obligation, to install and maintain a bank teller machine or similar kiosk type structure(s) in their parking field, provided that the stacking of cars does not extend into any access drives

(iii) The Owner or occupant of the County's or Lowe's Parcel may display merchandise, conduct sidewalk sales and/or conduct other business on the sidewalks on their Parcel so long as such activity does not materially interfere with pedestrian passage to the rest of the Shopping Center and may otherwise enclose and/or redesign its sidewalk areas without the need of obtaining any other Owner's consent

(iv) The Owner or occupant of the County's or Lowe's Parcel may park vehicles or equipment in the parking field of their Parcel in connection with the leasing of vehicles and/or equipment

(E) Easements for Access Roads. Each Owner hereby grants to the other Owner(s) easements for pedestrian and vehicular traffic in those drive aisles and access roads (not less than the widths therefor shown on the Site Plan) on each Owner's Parcel that are shown on the Site Plan as Access Roads (hereinafter collectively referred to as the "Access Roads") for the purpose of

providing ingress to and egress from each Owner's Parcel and from Broadway (Avenue J), Ball (Avenue H), 54th Street (the location of that portion of the east/west Access Road that crosses the County's Parcel(s) is currently shown on the Site Plan and may change, depending on the future sale of County's Parcel(s), provided that the east end of such location aligns with the 54th Street median break to allow full access and the west end of such location aligns with the Access Road that crosses the Lowe's Parcel, provided, however, if the County desires to shift either the current location of the Access Road that crosses the County's Parcel or the west end alignment, the Parties shall work in good faith to determine a reasonably acceptable location, but in no event shall the west end alignment be aligned with the Lowe's lumber canopy driveway, or other configuration/alignment that will disrupt Lowe's operations or the general traffic flow of the Shopping Center), and to be built 57th Street, together with the following rights and subject to the following restrictions and reservations

(i) The use of the Access Road easements by any person entitled to the use thereof shall be in common with all other such persons. The Access Road easements and the land upon which they are located shall be considered in all respects part of the Common Area, and the improvements thereon shall be considered in all respects part of the Common Area Improvements; and

(ii) As further provided in Section 2.2(F) herein, Grantors of the Access Road easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Road, except to the extent necessary for construction, reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein

(F) General Provisions for Common Area Easements

(i) No barriers, fences, walls, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Shopping Center from time to time devoted to pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Owners of the rights and easements created by this Article II. But, each Owner may temporarily close or block traffic on its Parcel for the time necessary for the purpose of protecting ownership rights and preventing creation of easements

to the public and unrelated third parties (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give fifteen (15) days written notice to each other Owner of its intention to do so and shall attempt to coordinate such closing with each other Owner, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction, maintenance and reconstruction

(ii) The easements granted under this Section 2 2 are limited to such portions of the Common Area of the Grantor's Parcel as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under this ECCR, specifically including those portions of the Common Area shown on the Site Plan

(iii) Each Owner hereby reserves the right to eject from the Common Area on its Parcel any person not authorized to use the same.

(iv) The easements provided for in this Section 2 2 are subject to the rights to use and the restrictions on use of the Common Area provided for in this ECCR

Section 2 3 Easements for Utility Facilities.

(A) **Grant of Easement** Each Owner hereby grants to the other Owner(s) perpetual easements to its (Grantor's) Parcel, except within such Owner's Permissible Building Area, as it presently exists or hereafter may be modified as set forth in Section 1 11, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Parcel of the Grantee

(B) **Installation, Repair and Maintenance**

(i) All Separate Utility Facilities installed in the Common Area, whether installed under this Section 2.3 or otherwise, and all Common Utility Facilities, shall be underground, if reasonably possible

(ii) The location of the Utility Facilities shall be subject to the prior written consent of the Owner across whose Parcel the same are to be located, which consent shall not be unreasonably withheld, conditioned or delayed

(iii) Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair and removal at Grantee's cost of all Separate Utility Facilities installed by the Grantee pursuant to this grant of easement, as well

as for all Separate Utility Facilities installed by the Grantee on its own Parcel. Each Owner shall maintain the Common Utility Facilities on such Owners' Parcel, provided that the Owners may separately provide for the responsibility and cost of installing the Common Utility Facilities.

(iv) Any installation, maintenance, repair, replacement, relocation and removal of Utility Facilities shall be performed by Grantee only after thirty (30) days advance notice to Grantor of Grantee's intention to do such work. However, in the case of an emergency (whereby either persons or property are in immediate danger of substantial damage and/or harm), any such work may be immediately performed after giving such advance notice to Grantor as is practicable and reasonable under the circumstances.

(v) All installation, maintenance, repair, replacement, relocation and removal of Utility Facilities shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as existed prior to the commencement of any such work.

(vi) After the Building on the Lowe's Parcel has opened for business and after the Building(s) on the County's Parcel(s) have been opened for business, no installation, repair or removal of Utility Facilities, except emergency repair work or other work previously approved by the affected Grantor shall be carried on during the period from November 15th through the next succeeding January 15th, and April 1st through July 4th, or on any weekends or as otherwise mutually agreed upon by the parties.

(C) Easements to Public Utilities. Any grant or other conveyance of an easement to a public utility, as Grantee, by a Grantor on its Parcel shall, without necessity of further recital in the conveyancing instrument, be deemed to include the following conditions, covenants and restrictions, in addition to the other provisions of Section 2.3, to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument:

(i) The easement is non-exclusive,

(ii) All Utility Facilities installed pursuant to the easement shall, unless otherwise required by the public utility or the City of Galveston's building and/or zoning codes, be underground, except for manholes and manhole covers which shall be flush with

adjacent grade, and except as otherwise shown on plans subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed,

(iii) The right to use the surface areas for the purposes allowed under this ECCR is reserved,

(iv) Grantor reserves the right to require Grantee to relocate its facilities (and vacate the easement) to another location on Grantor's Parcel, subject to the conveyance of a similar easement, all at Grantor's cost and expense,

(v) Grantee shall not, in its use or installation, interfere with other installations and easements in the area,

(vi) Grantee shall protect its Utility Facilities against uses of the surface made by Grantor and others,

(vii) Grantee shall make adequate provisions for the safety and convenience of all persons using the area,

(viii) Grantee, following installation or other work, shall replace and restore the areas and improvements to the condition in which they were immediately prior to performance of such installation and work,

(ix) Grantee, to the extent permitted by the Constitution and laws of the State of Texas, shall indemnify, defend and hold harmless Grantor against all loss, liability, and costs (including reasonable attorney's fees and reasonable attorneys' fees on appeal) which may result to Grantor from the negligent or willful wrongful act or omission of Grantee, its agents, employees and contractors; and

(x) Grantee shall not permit any claim, lien or encumbrance to attach against Grantor's Parcel or any interest therein.

(D) Grantee's Rights as to Utility Facilities

(i) Use of Separate Utility Facilities: The Grantor of any easement for Separate Utility Facilities under this Section 2.3 may use the utility facilities installed pursuant to such easement; provided, however, that any increase in costs incurred in order to make such utility facilities adequate to serve Grantor's additional use shall be borne by such Grantor; and provided, further, that Grantor gives written notice within the time period called for under, and otherwise complies with, the requirements of Section 2 3(D) (ii)

(ii) Relocation of Utility Facilities on Grantor's Parcel. Except during the period from November 15th through the following January 15th and the period from April 1st through July 4th, or except as otherwise mutually agreed, the Grantor of any easement under this Section 2.3 may relocate on its Parcel any Separate Utility Facilities or Common Utility Facilities installed thereon under any easement granted by it, provided, however, that such relocation

- (a) may be performed only after Grantor has given Grantee thirty (30) days' written notice of its intention to relocate such facilities,
- (b) shall not interfere with or diminish the utility services to the Grantee however, temporary, reasonable interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantee has been so notified in accordance with this Subsection. Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interferences or diminutions, or both;
- (c) shall not reduce or unreasonably impair the usefulness or function of the facilities in question,
- (d) shall be located underground, if reasonably possible, and
- (e) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities or Separate Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee.

(iii) Limitation on Rights. Nothing herein shall be construed to grant any Owner the right to utilize, drain into, or otherwise alter natural water flow into any detention or retention facilities located on or exclusively serving any other Owner's Parcel.

Section 2.4 Drainage. Each Owner hereby grants to the other Owner(s) easements to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on any Parcel, together with the right to discharge surface water runoff across portions of any Parcel in accordance with the design of the Storm Drainage System, provided,

however, that use, maintenance and repair of any Utility Facilities for the Storm Drainage System shall comply with Section 2.2. All Storm Drainage Systems shall be subject to the prior written consent of the Consenting Owners, which consent shall not be unreasonably withheld, conditioned or delayed. 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 the Site Plan (including, without limitation, Buildings, curbs, drives and paving) shall be permitted, provided that the same is in accordance with a drainage plan approved by the Consenting Owners and which does not cause water to settle or pool within another Owner's Parcel.

Section 2.5 Construction Easements

(A) Each Owner hereby grants to the other Owner(s) temporary construction related easements in the Common Area of its (Grantor's) Parcel, and where appropriate and necessary in the Permissible Building Area on its (Grantor's) Parcel, but only prior to the commencement of construction by Grantor of Improvements on its own (Grantor's) Parcel, for the purpose of facilitating the initial construction of the Grantee Improvements contemplated within this ECCR.

(B) With respect to any Parcel on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Shopping Center or any public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property or in accordance with a grading plan approved by the Grantor, which approval shall not be unreasonably withheld, conditioned or delayed. But, nothing in this paragraph shall be construed to violate any current or future FEMA flood plain elevation requirements.

(C) The location and use of all temporary construction easements under this Section 2.5 shall be subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.

(D) Each Grantee agrees to pay the Grantor any additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by Grantor which may arise on account of or due to Grantee's exercise of its temporary construction easement rights under this Section 2.5. Each Grantee further agrees to use due care in the exercise of the rights granted under this Section 2.5 and, in the event the exercise of the rights granted under this Section 2.5 requires Grantee to enter upon the Parcel of Grantor, to first obtain

the consent of Grantor as to the specific activities, methods and timing in the exercise of such rights so as to avoid cost or damage to Grantor

(E) Each Owner covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the Building(s) or other Improvements of any other Owner, and shall not interfere with or interrupt the business operations conducted by any other Owner in the Shopping Center. Each Grantee shall keep access, egress and service drives utilized by exercise of such easements clean and shall wash them down daily. Furthermore, once the final topcoat of asphalt or concrete paving has been placed on the Lowe's or the County's Parcel(s) or any Common Area access, egress and service drives to the Lowe's or the County's Parcel(s), all construction traffic to or from the Lowe's or the County's Parcel(s) will be limited to the use of the following roadways. Broadway (Avenue J), Ball Street (Avenue H), 54th Street, to be built 57th Street or such other roadways to which the parties mutually agree. In addition, each Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed in the exercise by Grantee of the temporary construction easements granted under this Section 2.5 and, to the extent permitted by the Constitution and laws of the State of Texas, shall indemnify, defend and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of Grantee's exercise of said temporary construction easements, except to the extent occasioned by Grantor's grossly negligent or wrongful acts or omissions.

(F) Grantee's Improvements made within such temporary construction easements shall, for purposes of cost allocation due to maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under this ECCR, be deemed to be part of the Grantee's Parcel and Building and shall be deemed not to be part of the Grantor's Parcel or Building for such purposes

(G) Except as reasonably necessary for and during the construction of any Building, no structure of a temporary character shall be erected or allowed to remain on any Parcel

Section 2.6 **Indemnification:** To the extent permitted by the Constitution and laws of the State of Texas each Grantee shall indemnify, defend and hold its Grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees and reasonable attorney's fees on appeal), incurred in connection with

Grantee's use of the Easements in Sections 2.3, 2.4 and 2.5, except to the extent occasioned by Grantor's negligent or willful wrongful act or omission to act.

Section 2 7 Sign Easement The Owner of any Parcel containing a Center Sign hereby grants to the other Owners entitled under Section 4.3 of this ECCR the right to display a sign panel on the Center Sign, an easement for the access to, install, maintain, repair and replace such sign panel and to the Owner of the Lowe's Parcel and to the Owner of the County's Parcel(s) an easement for construction of the Center Sign(s), as the case may be

Section 2 8 Cure Right Easements. Each Owner hereby grants to the Consenting Owners an easement and license to enter upon its Parcel for the purpose of exercising the cure rights provided under Article VI of this ECCR. **Each Grantee of the easements granted under this Section 2.8 shall, to the extent permitted by the Constitution and laws of the State of Texas, indemnify, defend and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of Grantee's use of said easements, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act.** The duration of the easements granted under this Article II- shall be coterminous with the respective provisions of the ECCR which give the Grantee the right or the obligation to perform the work described in this Section 2 8

ARTICLE III

USE RESTRICTIONS

Section 3 1 Permitted Uses: Every Parcel shall be used only for federal, state or local governmental purposes except as provided otherwise herein, financial institutions, service shops, Retail Offices, retail stores selling retail merchandise normally carried in other shopping centers and restaurants with over fifty-one (51%) percent of gross revenues from food sales, all as subject to the further restrictions of this Article III. "Retail Offices" shall mean offices of the type customarily found in retail shopping centers for use primarily with customers or clients including, without limitation, insurance offices, real estate offices, banks and financial institutions, travel agents, educational or training facilities, medical or dental offices, attorney offices, accountant offices or other professional services offices, subject to the terms of this ECCR. Space used by non-Retail Office users for office and administrative purposes in support

of retail operations, and which is not open to the general public, shall not be considered Retail Office

Section 3 2. Nuisances: Subject to the provisions of Section 3.1, no Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations, nor shall anything be done on any Parcel which shall constitute a public nuisance to the community

Section 3 3 Use Restrictions:

(A) During the term of this ECCR no portion of the Shopping Center on either the Lowe's or the County's Parcel(s) may be used for any of the following purposes without the prior written consent of the Consenting Owners which consent will not be unreasonably withheld

(i) A liquor store, or a tavern, bar, nightclub, cocktail lounge, discotheque, dance hall, or any other establishment selling alcoholic beverages for on-premises consumption, provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of food therein comprises at least fifty one (51%) percent of the restaurant's gross revenues

(ii) A bowling alley, billiards parlor, bingo parlor, arcade, game room or other amusement center.

(iii) A theater (motion picture or live performance).

(iv) A health club, gymnasium or spa

(v) A gas station, automobile fueling station, service station, automotive repair shop or truck stop Notwithstanding the foregoing, a gas station or automobile fueling station shall be allowed on the Lowe's parcel. Also, this restriction shall not be construed to prohibit either the County or Lowe's from fueling, servicing or otherwise maintaining vehicles belonging to or leased by County or Lowe's

(vi) A flea market, open air market, or pawn shop

(vii) A child day care facility

(viii) A car wash, except on an Outparcel and where the same shall have been constructed and shall use sanitary sewer, water and storm water drainage lines entirely separate from those solely utilized by the Lowe's Parcel

(ix) A medical clinic or medical office, including a hospital or an emergency services clinic; provided, however, that such restriction against a medical office shall not prohibit

dental, dermatology, chiropractic, osteopathic, ophthalmology, or optician clinics or offices or any general family practice office or clinic (but not a specialized clinic such as a family planning clinic, cosmetic surgery, immunology clinic, gynecology/obstetrics clinic, or indigent services clinic, other than those specific uses allowed in the previous clause) on the condition that the combined floor area for all such offices and clinics cannot exceed 4,000 square feet.

(x) A storage or mini-warehouse facility.

(xi) An establishment for the sale or rental of automobiles, trucks, mobile homes, boats or recreational motor vehicles, however, Lowe's shall have the right to rent or allow rental of delivery trucks and similar vehicles as an incidental part of its use of the Lowe's Parcel

(xii) A dry cleaning plant, central laundry or Laundromat (provided, however, an establishment where laundry, dry cleaning, and the like is dropped off and picked up for cleaning and/or laundering at another location is permitted)

(xiii) A hotel or motel

(xiv) A training or educational facility (including, without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers); provided that such restrictions shall not prohibit (i) the incidental use by Lowe's of an otherwise permitted business for training or classes, such as "how to" classes taught in conjunction with the sale of retail items from an otherwise permitted retail use, (ii) a Kumon, Sylvan Learning Center or a similar nationally recognized educational center providing tutoring services to K-12 students and operating at least fifty (50) centers under the same trade name, or (iii) a governmental training or educational facility

(xv) Veterinary hospital or animal raising or boarding facilities, except in connection of a Petsmart or PetCo as such stores are operated throughout the country as of the date hereof, or a similar nationally recognized pet supply store operating at least fifty (50) stores under the same trade name, provided (a) such activities are incidental to such operation and consistent with such services provided at the other locations, (b) any kennels, runs and pens shall be located inside the Building, and (c) the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the total square feet of the pet supply store. Such Owner shall use or require its tenant to use reasonable efforts not to permit its customers to

allow their pets to urinate or defecate in the Common Area and will promptly clean up, at its sole cost and expense, and prevent the accumulation of any pet stains, pet odors or pet droppings

(B) During the term of this ECCR no portion of the Shopping Center may at any time, be used for any of the following uses whatsoever

(i) An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts)

(ii) A massage parlor

(iii) A Sexually Oriented Business

(iv) A skating rink

(v) A mortuary, crematorium or funeral home

(vi) A mobile home or trailer court, labor camp, junkyard or stockyard.

(vii) A landfill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage

(viii) A telephone call center

(ix) A gambling establishment or betting parlor

(x) Assembling, manufacturing, industrial, distilling, refining, or smelting facility.

(xi) Any mining, oil, gas or other natural resource drilling, extraction or operation, except to the most restrictive extent permitted to be legally exercised by any owner or holder of any existing mineral rights reservation or royalties

Section 3 4 Exclusive Use Restriction for the Benefit of the Lowe's Parcel.

(A) No portion of the Shopping Center other than the Lowe's Parcel may be used for the following purposes

(i) A hardware store or center

(ii) An appliance store and/or lighting store or center

(iii) A home electronics store or center, provided, however, a Best Buy (provided that it shall not allow any area of its store to be used as a

Pacific Sales), Fry's or Radio Shack or similar regional or national chain establishment shall be permitted

- (iv) A nursery and/or lawn and garden store and/or for the sale of Christmas trees
- (v) A paint store or center, wall paper or wall covering store or center, tile store or center, flooring store or center, carpeting store or center, and/or home decor store or center
- (vi) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, stores operating under the Sears name (including, without limitation, Sears Hardware and Sears Home Appliance Showroom) or selling Sears branded goods (e.g. Craftsman, Kenmore), Great Indoors, Pacific Sales, hhgregg, Conn's, Sutherlands, Scotty's and Orchard Supply.

(B) These restrictions or exclusive rights shall also apply to prohibit a business having space in its store devoted to selling the merchandise described in subparagraphs (A)(1) through (A)(vi) when the aggregate of such space (including any outdoor areas) for all such items exceeds the lesser of (i) five percent (5%) of the floor area of such building (which shall include an allocable portion of the aisle space adjacent to the floor area of such use) or (ii) 1,000 square feet of floor area (which shall include an allocable portion of the aisle space adjacent to the floor area of such use)

Section 3.5 Proprietary Rights of Lowe's:

Any owner, occupant or person owning, leasing or otherwise making use of any portion of the Shopping Center shall be deemed, by virtue of accepting such ownership, leasehold interest or making such use, to have covenanted and agreed that (1) the trade names, trademarks, service marks (including, without limitation, all logos, emblems, designs or designating words or names) utilized by Lowe's Home Centers, Inc. or its affiliated companies ("Lowe's"), in connection with the Shopping Center or the conduct of its business thereat are registered and/or

the proprietary property of Lowe's or its affiliates, (11) except as provided below, no usage of those marks or names will be made in naming or referring to any activity within or without the Shopping Center and (111) no usage of such marks or names shall be made without the prior written consent of Lowe's and Lowe's legal counsel, which consent Lowe's may withhold in its sole discretion. Lowe's reserves the right to require any person or entity to whom it may grant a written right to use a given name or mark to enter into a formal written license agreement with Lowe's and to charge a fee or royalty therefor. But, nothing in this Section 3.5 will be construed to prohibit any such owner, occupant or person leasing or otherwise making use of any portion of the Shopping Center from advertising in any form of media or newspaper or other advertising flyer that they are located in the same Shopping Center as Lowe's as long as they do not portray that they are associated with Lowe's.

ARTICLE IV

GENERAL CONSTRUCTION & DEVELOPMENT

Section 4.1 Development Parameters:

(A) Permissible Building Areas: All Buildings must be constructed within a Permissible Building Area. No Building can exceed the Maximum Square Footage shown for each Permissible Building Area on the Site Plan. No building, structure or improvements (other than Common Area Improvements) shall be erected or maintained outside of a Permissible Building Area. The Permissible Building Areas and Maximum Square Footages as shown on the Site Plan cannot be changed without the prior written consents of the Consenting Owners, which changes shall be reflected in an amendment to this ECCR.

(B) Parking Requirements. The County's Parcel(s) and all Outparcels shall be self-supporting with respect to parking and shall each contain not less than twelve (12) paved full size automobile parking spaces per each 1,000 square feet of building floor area for restaurant use (including fast food restaurants) and five (5) paved full size automobile parking spaces for each 1,000 square feet of building floor area for any other permitted use constructed thereon or the number of parking spaces required by applicable law or City granted variance, whichever is greater. The Lowe's Parcel shall contain no fewer than 3.5 parking spaces per each 1,000 square feet of heated building floor area on the Lowe's Parcel or the number of parking spaces required by applicable law or City granted variance whichever is greater. To be self-supporting, the parking spaces must be located on each such parcel so that parking spaces available on other Parcels or

available through easements with other Parcels cannot be counted in meeting the requirements of this Section

(C) Fire Protection. Any building, structure or similar improvements constructed in the Shopping Center shall be constructed and operated in such a manner that will preserve the sprinklered rate on the other Buildings, structures or similar improvements in the Shopping Center. The Parties acknowledge that Lowe's initially proposes to construct on the Lowe's Parcel a Building which is classified as an "unlimited area building" under certain building codes. The term "unlimited area building" as used in this ECCR refers to a building that is allowed to exceed area limitations stipulated in the applicable building code, not by virtue of its construction type, but as a condition of its isolation on the property and by its inclusion of a sprinkler system. To facilitate the construction and continuing fulfillment of such requirements, no Permissible Building Area, Buildings or other Structures shall be located within sixty (60) feet of any existing or proposed Building on the Lowe's Parcel. In addition, Lowe's agrees that it will not build any building or other structure on its Permissible Building Area that is located closer than sixty (60) feet of any boundary line

(D) Condition Prior to Construction. After the Building on the Lowe's Parcel has initially opened for business, each Parcel shall be kept neat, orderly, mowed as necessary and trimmed (or improved as Common Area) until improved and constructed

Section 4.2 Building Design, Harmony

(A) All structures (including Common Area Improvements such as lighting) erected within the Shopping Center shall be architecturally harmonious (including, without limitation, harmonious colors, materials and designs). The Consenting Owners shall cooperate in creating a reasonably harmonious exterior appearance for the Buildings and Improvements to be constructed by them within the Shopping Center, acknowledging however that the Owner of the Lowe's Parcel may, construct its initial Building and improvements as shown on the plans prepared by Duplantis Design Group, P C and Davidson Landscape Architects L L C listed on Exhibit C as approved by the County on May 24, 2011. All Buildings within the Shopping Center, with the exception of governmental or professional office buildings, shall be single story. Modifications of initial structures as well as construction of subsequent structures (including Common Area Improvements such as lighting) erected within the Shopping Center shall also be required to be architecturally harmonious (including, without limitation, harmonious colors, materials and designs) and subject

to approval by all Consenting Owners as set forth in this Section 4.2(A) regardless of whether or not such modifications of such initial structures or such subsequent structures are constructed by Lowes, the County or their successors or assigns and which approval shall not be unreasonably withheld, conditioned or delayed

(B) Approvals Except as provided in Section 4.2(A) (i.e. the construction of Lowe's initial building) no buildings or structures shall be erected or allowed to remain on any Parcel unless a set of proposed civil plans, including overall site plan, utility plan, grading and drainage plan, elevation drawings and architectural renderings (depicting the exterior elevations of all sides, materials, colors and dimensions), in electronic and/or 11' by 17" format plan (collectively, the "Plans"), have been presented to and approved in writing by the Consenting Owners prior to commencing clearing, grading, or construction of a building of any kind on any Parcel, which approval shall not be unreasonably withheld, conditioned or delayed. Upon completion of the Building foundation, an actual field survey of the foundation shall be presented to the Consenting Owners to ensure that it has been constructed in accordance with the Plans. All improvements shall comply with the Plans as approved by the Consenting Owners unless changes are approved in writing by the Consenting Owners. The right to make inspections necessary to assure compliance is reserved to the Consenting Owners. After initial construction of Buildings and other Improvements, except as provided in Section 4.2(A) (i.e. the construction of Lowe's initial building), no Owner shall make alterations (including, without limitation, harmonious colors, materials and designs) that will substantially change the exterior of its Buildings without the consent of the Consenting Owners, such consents not to be unreasonably withheld, conditioned or delayed

(C) Construction Timing Weather permitting, all paving and landscaping will be finished upon completion of the Building, but in no event shall it be installed later than ninety (90) days after the Building is occupied

Section 4.3 Signage

(A) The parties agree that there will be no Shopping Center pylon or multiple occupant monument sign ("Center Sign") unless otherwise subsequently agreed to by the Consenting Owners

(B) Single occupant monument signs ("Monument Sign") may be located at the location(s) shown on the Site Plan as "Monument Sign". Each Owner shall be entitled to use the

Monument Sign, if any, shown on such Owner's Parcel, and shall be solely responsible for all costs of construction, maintenance and repair of such Monument Sign. The Owner of the Lowe's Parcel shall be allowed to use the Monument Sign shown as "Lowe's Monument Sign" on the Site Plan

(C) The locations of the initial Lowe's Monument Signs are shown on the plans prepared by Duplantis Design Group, P.C and Davidson Landscape Architects L.L.C attached hereto as Exhibit C that have been approved by the County on May 24, 2011. The location of any other Monument Sign and the design of any Monument Sign shall be subject to the prior written consent of the Consenting Owners. If an Owner desires to erect a Monument Sign (other than the initial Lowe's Monument Signs), it shall make its request in writing to the Consenting Owners with a copy of the sign plans. The Consenting Owners shall then have thirty (30) days from receipt of the notice to object to the proposed sign and to state the reason for the objection. Consents under this section shall not be unreasonably withheld, conditioned or delayed and, in the event of an objection, the parties agree to use their best efforts to mutually resolve the objection in an expeditious, diligent and speedy manner.

(D) Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3' 3" in height, the type and location of such signs to be approved by the Consenting Owners.

(E) There shall be no other free standing signs allowed in the Shopping Center and there shall be no rooftop signs allowed in the Shopping Center.

Section 4.4 Outparcel Development. Any Outparcel sold or developed within Shopping Center will only be developed under the following guidelines:

(A) Buildings constructed on any of the Outparcels shall not exceed one (1) story, except that a governmental or professional office building not exceeding four (4) stories shall be permitted on the Parcel, provided that such governmental or professional office building shall (i) front on Ball or 54th Street and (ii) only be constructed in the "Multi-Story Area" as shown on the Site Plan.

(B) There shall be no more than three (3) buildings constructed on the County's Parcel(s).

(C) With the exception of governmental or professional office buildings, buildings constructed on any of the Outparcels shall not exceed twenty one (21) feet on roofline and twenty four (24) to twenty six (26) feet on architectural features in height, as measured from the finished floor elevation of the parking area of the Shopping Center

(D) No building constructed on any Outparcel shall have a metal exterior

(E) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to the Consenting Owners

(F) No rooftop signs shall be erected on any building constructed on any Outparcel

(G) A Monument Sign may be erected on any Outparcel only with the prior written consent of the Consenting Owners (as provided in Section 4.3(D) above), but in no event shall such Monument Sign block the visibility of any signage on any Building located on the Lowe's Parcel or the visibility of any initial Lowe's Monument Sign

(H) Any Owner or other party purchasing or leasing from County and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the Utility Facilities, as described in Section 2.3 of this ECCR, serving the Shopping Center and the Outparcel which is caused by such Owner or party, to the extent the Outparcel benefits from any of the Utility Facilities serving the Shopping Center and the Outparcel

(I) The foregoing restrictions and agreements are imposed on each of the Outparcels for the benefit of the entire Shopping Center. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon each of the Outparcels and any person who may from time to time own, lease, or otherwise have an interest in any of the Outparcels

Section 4.5 Performance of Construction Work Generally All construction, alteration or repair work ("Work") undertaken by an Owner that began prior to, or is continuing after, the Building on the Lowe's Parcel has opened for business shall be accomplished in an expeditious, diligent and speedy manner. The person or entity undertaking such Work shall: (i) pay all costs and expenses associated with such Work; (ii) take necessary measures to minimize disruption and inconvenience caused by such Work, (iii) make adequate provisions for the safety and convenience of the Owners and their Permittees, (iv) control dust, noise and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area, (v) repair any and all

damage which may be caused by or result from such Work; (vi) restore all affected portions of any Parcel to a condition equal to or better than the condition existing prior to beginning such Work; (vii) to the extent permitted by the Constitution and laws of the State of Texas, indemnify, defend and hold harmless all other Owners in the Shopping Center against any mechanics liens for such Work, particularly as to Common Areas; and (viii) obtain all necessary governmental approvals. Such Work shall not unreasonably interfere with the business operations on any other Parcel and shall not block or impede the Shopping Center ingress or egress from public streets without the prior written consent of the impacted party. The party performing such Work shall limit all construction work and staging areas to its own Parcel and, except as otherwise may be permitted by an adjacent Parcel Owner in writing, not encroach on any Common Areas on any other Parcel and shall not utilize parking areas of any other Parcel. In connection with Work performed within the Permissible Building Areas of the constructing Owner, incidental encroachment upon the Common Area of the party performing such work may occur in the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of such Common Area, if such encroachment is kept within reasonable requirements of such Work expeditiously pursued. For construction purposes, ingress and egress from public streets and the Common Areas may be utilized. (a) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with such Work (but each Owner performing Work shall, to the extent reasonably possible and subject to Section 2.5, limit such access to its own Parcel) and (b) temporary storage and parking on the constructing Owner's Parcel of materials and vehicles in connection with such Work. All such Work for which a license is granted above (i) which will be performed by an Owner on another Owner's Parcel (subject to Section 2.5), or (ii) which would adversely affect the ingress and egress to the Shopping Center, the availability of parking and/or circulation of traffic in the Shopping Center, or the operation and supply of common utility facilities to or in the Shopping Center shall be undertaken only after giving the other Owners thirty (30) days prior written notice of the Work to be undertaken, and the scope, nature, duration, location and extent of the Work. Such notice shall include any plans and specifications for the Work ("Plans"). No such Work shall be performed in the Common Areas without the prior written consent of the Owner of the Lowe's Parcel or the County's Parcel(s), whichever is appropriate, such consent not to be unreasonably withheld,

conditioned or delayed. In the event of any emergency involving an immediate and imminent threat of substantial harm or injury to persons or property, only such notice as may be reasonable under the circumstance shall be required.

Section 4.6 Compliance in Construction: All work which an Owner undertakes pursuant to this ECCR shall comply with the Plans, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations, including procurement of all licenses and permits required for such Work. The consent by the Owner of the Lowe's Parcel or the consent by the Owner of the County's Parcel(s) of any such Work or Plans, under any provisions of this ECCR, shall not constitute any assumption of responsibility for the accuracy, sufficiency or propriety of such Work or Plans, nor shall such consent constitute a representation or warranty that such Work or Plans will be economic to construct or will comply with law.

Section 4.7 Construction Insurance:

(A) Prior to commencing any construction activities within the Shopping Center, each Owner/Occupant shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverage set forth below:

(i) **Worker's Compensation and Employer's Liability Insurance:** The general contractor and each of its subcontractors shall carry workers' compensation and employer's liability coverage as outlined below:

- (a) Worker's compensation insurance as required by any applicable law or regulation with statutory limits.
- (b) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

(ii) **Commercial General Liability Insurance:** Commercial General Liability insurance covering all operations by or on behalf of the general contractor and any subcontractors, which shall include the following minimum limits of liability:

- (a) \$2,000,000 each occurrence for bodily injury, death and property damage,

(b) \$5,000,000 per project aggregate for products and completed operations (which shall be maintained for a three (3) year period following final completion of work)

The commercial general liability policy shall include coverage for contractual liability and shall be endorsed to include coverage for Explosion, Collapse and Underground (XCU) hazard, if applicable. If the commercial general liability policy does not provide for per project aggregate limits as required herein, then the insuring party shall carry coverage sufficient to bring the aggregate limits for the general aggregate and the products/completed operations aggregate to not less than \$10,000,000 each (may include excess liability coverage)

(iii) Automobile Liability Insurance Automobile liability insurance covering any auto with minimum combined single limit of \$1,000,000 for bodily injury, death and property damage. The general contractor shall require each of its subcontractors to maintain automobile liability insurance covering any auto with minimum combined single limit of \$1,000,000 for bodily injury, death and property damage.

(iv) Builders Risk Insurance Builder's Risk insurance with limits up to the maximum coverage obtainable through National Flood Insurance and the Texas Wind Pool Association or the replacement costs of the improvements on a completed value basis, whichever is lesser, including coverage for on-site materials and materials in-transit or stored off-site, naming the County, Owner, the general contractor and subcontractors as additional insureds.

(B) If the construction activity involves the use of another Parcel, then the Owner and mortgagee of such Parcel shall each be additional insured(s) under the commercial general liability required herein and such insurance shall provide that the insurance shall not be canceled without endeavoring to provide thirty (30) days prior written notice to the additional insureds. If such insurance is canceled or expires, then the constructing party shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. Each Owner or occupant, as the case may be, shall supply or cause its general contractor to supply each Owner with certificates with respect to all insurance required by this Section. The insurance required pursuant to this Section 4.7 shall be primary for any claims resulting from the performance by or on behalf of general contractor of the services herein

(C) All insurance required herein shall be procured from either companies authorized to do business in the United States and the State of Texas and shall be rated by A. M. Best at not less than A-/VII or, in the event the insured is a governmental entity, governmental insurance pools available to that entity, e.g. Texas Municipal League or Texas Association of Counties. The commercial general liability insurance may be provided under (i) an individual policy covering this location with per project minimum limits of \$2,000,000 per occurrence and aggregate limits of \$5,000,000 each general aggregate and products/completed operations aggregate, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such party (provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$10,000,000, then such insuring party shall also maintain excess liability coverage necessary to establish a total aggregate limit of \$10,000,000 each for the general aggregate and the products/completed operations aggregate), (iii) a plan of self-insurance, provided that any party so self-insuring notifies the other parties of its intent to self-insure and agrees that upon request it shall deliver to such other parties each calendar year a copy of its annual report or its CAFR (Comprehensive Annual Financial Report) that is audited by an independent certified public accountant which discloses that such party (as to Lowe's such party shall consist of Lowe's and its parent corporation and as to County such party shall consist of the County of Galveston, a political subdivision of the State of Texas) has a net worth in excess of \$125,000,000 as determined by generally accepted accounting principles consistently applied, or (iv) a combination of any of the foregoing insurance programs. A party is excused from the requirement to deliver a copy of its annual report or its CAFR provided a copy is publicly available through the internet or similar means. To the extent of any deductible carried by a party, such party shall be deemed to be covering the amount thereof under an informal plan of self-insurance, provided, however, that in no event shall any deductible exceed \$250,000 unless such party complies with the requirements regarding self-insurance pursuant to (iii) above. Each party agrees to furnish to any party requesting in writing the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such party is in full force and effect.

(D) The insurance required above shall provide that except with respect to the limits of insurance, the coverage applies separately to each insured against whom claim is made or suit is brought and contains no cross-claim exclusions. All insurance required pursuant to this

Section 4 6 shall be written on an occurrence form utilizing the most current ISO policy form (or equivalent).

Section 4.8 Damage and Destruction: In the event of the destruction or damage to any extent to any Buildings or Improvements located in the Shopping Center, the affected Owner shall, (unless, due to no fault of the affected Owner, it is unable to obtain the necessary Building Permits from the City of Galveston,) either (1) diligently commence and pursue completion of the repair or restoration of such Building or Improvement, or (2) within ninety (90) days after the destruction or damage, level such Building or Improvement, remove the debris and keep the Parcel neat, orderly, planted in grass or other natural vegetation and mowed/trimmed(or otherwise treated for dust and weed control) so that the Parcel is in a clean, orderly, sightly and safe condition until it is subsequently improved, constructed upon and operated In the event any Building, structure or other Improvement on an Outparcel shall be damaged or destroyed by any fire or other casualty, the Owner, lessee or user of the Outparcel shall, (unless, due to no fault of the affected Owner it is unable to obtain the necessary Building Permits from the City of Galveston,) within thirty (30) days of such damage or destruction (a) commence to repair and/or reconstruct such improvements to the condition required by this Section; or (b) level such Building or improvement, remove the debris from the Outparcel and keep the Outparcel neat, orderly, planted in grass and mowed/trimmed until subsequently improved, constructed upon and operated so that the Parcel is in a clean, orderly, sightly and safe condition

Section 4 9 Eminent Doman

(A) Owner's Right to Award Nothing herein shall be construed to give any Party any interest in any award or payment made to any other Party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Party's Parcel giving the public or any government any rights in said Parcel In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Area located in the Shopping Center, 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 Area, except that (i) if the taking includes a Sign Easement or improvements benefitting more than one Party, including but not limited to any Utility Facilities or Common Area Improvements, the parties agree to cooperate to reasonably relocate such improvements and the portion of the award allocable thereto shall be used to relocate, replace or

restore such improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this ECCR, the portion of the award allocable to each such easement right shall be paid to the respective grantees thereof

(B) Collateral Claims All other Owners of the Common Area 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 Section 4.9 shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment.

(D) Restoration of Common Area. The Owner of any portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area within its respective Parcel 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 and without contribution from any other Owner.

ARTICLE V

MAINTENANCE, TAXES AND INSURANCE

Section 5.1 Maintenance. Each Owner hereto shall maintain the Building(s) and the Common Areas on its Parcel in good order and condition and state of repair in accordance with the standards of good shopping center operations including (but not limited to) sweeping and removal of trash, litter and refuse, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair or lighting standards and signs. Each Owner covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its buildings clean, will maintain its buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests, will not permit accumulation of garbage, trash, rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed, and will keep the Common Areas on its Parcel clear of accumulations of ice and snow. The maintenance and repair of the Buildings and Improvements on each Parcel should be

of such a character that their appearance will be that of a unified shopping center and, accordingly, the Parties agree to cooperate with each other in good faith with respect to said maintenance and repair and, to the extent reasonably possible, coordinate such repair and maintenance

(A) Lighting: Each Owner shall cause the Common Area on its Parcel to be adequately lit for at least the hours during which the business on the Lowe's Parcel is open for business and for one (1) hour after Closing. In addition, at all other times, sufficient lighting shall be required so as to enable law enforcement personnel to adequately patrol the Common Area without the need for additional lighting. Each Owner shall be solely responsible for the payment of all electricity bills for lighting located on the Common Area on its Parcel. In the event an Owner wishes to have the Common Area lights on another Owner's Parcel, more brightly illuminated before or after the required time period, an Owner shall have the right, at any time, to require the Owner that controls the lighting on such Parcel to keep the Common Area lights it controls operating as stipulated by the requesting Owner, provided that the requesting Owner provides written notice to the other Owner not less than fifteen (15) days in advance and agrees to reimburse the other Owner 110% of the reasonable cost for such additional operation, including electrical power and bulbs, within forty-five (45) days of receipt of an invoice with reasonable documentation of the costs.

Section 5.2 Maintenance Director: Subject to the mutual agreement of each of the Consenting Owners, a third party may be appointed to maintain and repair the Common Areas in the manner as above outlined (the "Maintenance Director"). The Maintenance Director may receive for such agency a fee that is mutually acceptable to the Consenting Owners to cover supervision, management, accounting and similar fees. The cost of all maintenance and repair activities undertaken by the Maintenance Director, together with the agency fee, shall be prorated between all Owners based upon acreage owned. An Owner shall pay its proportional share of all such costs and fees within forty five (45) days following its receipt of a detailed invoice thereafter. In addition, if the Owner is the County, the provisions of the Texas Prompt Payment Act will apply and supersede other provisions contained herein.

Section 5.3 Failure in Performing Maintenance Responsibilities: In the event that an Owner fails or defaults in its maintenance obligations as set forth in Section 5.1, which failure continues for a period of thirty (30) days (ten [10] business days in the event of a failure to pay

money) after receipt of written notice thereof specifying the particulars of such failure, such failure shall constitute a breach under the ECCR and either Consenting Owner (the "Curing Party") may thereafter perform such maintenance obligations, in addition to such Owner's other remedies. The Curing Party shall then invoice the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days to pay the Curing Party after receipt of the invoice. If the defaulting Owner is the County, the provisions of the Texas Prompt Payment Act will apply and supersede other provisions contained herein. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid

Section 5 4 Taxes: The Owner of each Parcel shall 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 such Owner's Parcel. In the event an Owner fails to pay when due all taxes and assessments described herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a breach under this ECCR and either Consenting Owner (the "Curing Party") may, in addition to such Owners' other remedies, thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Party shall then invoice the defaulting Owner for the expenses incurred. The defaulting Owner shall have ten (10) business days after receipt of the invoice to pay the Curing Party. If the defaulting party is the County, the provisions of the Texas Prompt Payment Act will apply and supersede other provisions contained herein. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said ten (10) business day period until paid

Section 5 5 Insurance. Each Owner will at all times maintain or cause to be maintained with respect to its Parcel and all Buildings and Improvements thereon (i) commercial property insurance insuring against risk of direct physical loss or damage, including the perils of fire, wind, flood and earthquake, for the full replacement cost of the Building(s) and Improvements located thereon or to the maximum amount of coverage that is available through the National Flood Insurance Program and the Texas Wind Pool Association,

whichever is lesser, and (ii) except as otherwise pertains to the County as stated below, commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Owner's Parcel with minimum limits of not less than TWO MILLION DOLLARS (\$2,000,000 00) per occurrence and FIVE MILLION DOLLARS (\$5,000,000) general aggregate (may include excess liability policies) Nothing herein shall be construed from prohibiting an Owner which has a net worth in excess of ONE HUNDRED TWENTY FIVE MILLION DOLLARS (\$125,000,000) as determined by generally accepted accounting principles consistently applied, from self-insuring for such insurance coverage (as to Lowe's, the net worth requirement may be met through the combined net worth of the contracting Owner and its parent corporation) All insurance required pursuant to this Section 5.5 shall be written on an occurrence form utilizing the most current ISO policy form (or equivalent) Each Owner agrees to furnish to any other Owner requesting in writing, a certificate(s) of insurance evidencing that the insurance required to be carried by such Owner is in full force and effect In the event the Owner is the County, the County may self insure against general liability and the limits of the commercial general liability insurance required of the County shall be those prescribed by what is commonly called the Texas Tort Claims Act as it currently exists or may hereafter be amended

Section 5.6 **Failure to Carry Insurance:** In the event an Owner fails to maintain the insurance or to self insure itself as described above, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a default under this ECCR and the Owner of the Lowe's Parcel and/or the Owner of the County's Parcel(s) (the "Curing Party") may, in addition to such Owners' other remedies, thereafter obtain and pay for such insurance The Curing Party shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill If the defaulting Owner is the County, the provisions of the Texas Prompt Payment Act shall apply and supersede other provisions contained herein If the defaulting Owner does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) days period until paid

Section 5.7 **Cross Indemnity:** To the extent not covered by the insurance policies described above, and to the extent permitted by the Constitution and laws of the State of

Texas each Owner (the "Indemnitor") will pay, and indemnify, defend and hold harmless the other Owner (the "Indemnitee") from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from: (i) any injury to or death of a person or loss of or damage to property occurring on the Indemnitor's Parcel; (ii) any use or condition of the Indemnitor's Parcel; and (iii) any negligence or tortious acts of the Indemnitor or any of his tenants, licensees, agents or employees.

Section 5.8 Waiver of Subrogation. Each Owner (the "Releasor") hereby releases the other Owners (the "Releasees"), to the extent of their agreed insurance coverage or any amounts covered under a program of self insurance pursuant to Section 5.5, from any and all liability for any loss or damage caused by fire or any of the losses covered by the releasing party's property insurance or loss covered by the releasing party's commercial general liability insurance, even if such property or casualty loss shall be brought about by the fault or negligence of the other Owner. The Owners agree to include in their insurance a clause permitting such release. Failure by any Owner to include this release in their insurance policies shall relieve all other Owners from the obligation to grant the release as to such failing Owner. Except as provided herein, nothing contained in this agreement shall be deemed to release any party from liability for damages resulting from the fault or negligence of that party or its agents, contractors or employees.

ARTICLE VI

DEFAULT, REMEDIES

Section 6.1 Default. The occurrence of any one or more of the following events shall constitute a breach of this ECCR by the non-performing party (the "defaulting Owner")

(A) The failure to perform any obligation of Article V hereof and to cure such failure within the time requirements cited therein which shall be a breach under this ECCR without necessity of any further notice to the defaulting party other than as provided for in Article V,

(B) The failure to make any payment required to be made hereunder within ten (10) business days of the due date which shall be a breach under this ECCR without necessity of any notice to the defaulting party, or

(C) The failure to observe or perform any other of the covenants, conditions or obligations of this ECCR or to abide by the restrictions and requirements herein provided, other

than as described in (A) above, which shall be a breach under this ECCR after expiration of thirty (30) days after the issuance of a notice by a non-defaulting Owner ("Non-Defaulting Owner") specifying the nature of the default claimed.

Section 6.2 Remedies for all Owners: Each non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any Owner or any other person for breach of any easement or restriction benefiting such non-defaulting Owner. Such proceeding shall include the right to restrain by injunction any such violation or threatened violation and to obtain a decree to compel performance of any such easements or restrictions. No Permittee shall have the right to bring any action to enforce any provision of this ECCR and no enforcing Owner shall have the obligation to join any Permittee in any action to enforce this ECCR.

Section 6.3 Right to Cure: With respect to any default under Section 6.1, any Non-Defaulting Owner who is a Consenting Owner (the "Curing Owner") shall have the right, but not the obligation, in addition to any remedy available at law or equity, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Owner (except as otherwise limited in Article V), provided, however, that in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the Curing Owner, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Curing Owner shall have the right to enter upon the Parcel of the defaulting Owner (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Owner. Each Owner shall be responsible for the non-performance or default of its Occupants and lessees. In the event any Curing Owner shall cure a default, the defaulting Owner shall reimburse the Curing Owner for all costs and expenses incurred in connection with such curative action, plus interest at the Default Rate, within ten (10) business days of receipt of demand, together with reasonable documentation supporting the expenditures made. If the defaulting Owner is the County, the provisions of the Texas Prompt Payment Act shall apply and supersede other provisions contained herein.

Section 6.4 Liens: Costs and expenses accruing and/or assessed pursuant to Section 6.3 above and the amounts described in Section 6.1 shall constitute a lien against the

defaulting Owner's Parcel. A lien under this Section 6 4 or under Article V shall attach and take effect upon recordation of a claim of lien in the applicable real estate records office of the county in which the said Parcel is located, by the Curing Owner or Curing Party making the claim or upon such earlier date or event specified in this ECCR. If a claim of lien is recorded, it shall include the following:

- (A) The name and address of the lien claimant;
- (B) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Curing Owner and/or Curing Party;
- (C) An identification by name and address (if known) of the Owner or reputed Owner of the Parcel or interest therein against which the lien is claimed,
- (D) A description of the Parcel against which the lien is claimed,
- (E) A description of the work performed which has given rise to the claim of lien,
- (F) A statement itemizing the total amount due, including interest, and
- (G) A statement that the lien is claimed pursuant to the provisions of this ECCR, reciting the date, book and page of recordation hereof.

The notice shall be duly acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 7 5 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

Section 6 5 Cumulative Remedies: All of the remedies permitted or available to a Consenting Owner under this ECCR or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy

Section 6 6 No Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of

such default. No waiver by any Owner of any default under this ECCR shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this ECCR shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this ECCR.

Section 6.7 No Termination for Breach: No breach, whether or not material, of the provisions of this ECCR shall entitle any Owner to cancel, rescind or otherwise terminate this ECCR, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of this ECCR.

Section 6.8 Limitation of Liability: Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Parcel, or any portion thereof, shall be bound by this ECCR only as to the Parcel or portion of the Parcel acquired or possessed by such person. In addition, such person shall be bound by this ECCR only during the period such person is the fee leasehold Owner or occupant of such Parcel or portion of the Parcel, and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section 6.8, the easements, covenants and restrictions in this ECCR shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 6.9 Attorneys Fees. In the event of a breach hereof, the non-prevailing Owner shall pay the reasonable attorney's fees (and the reasonable attorneys' fees on appeal) of the prevailing Owner.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Estoppel Certificates. Each Owner shall upon not less than thirty (30) days from receipt of written notice from the requesting Owner execute and deliver to the requesting Owner, not more often than once in any calendar year for no charge, an estoppel certificate stating that (1) either this ECCR is unmodified and in full force and effect or has been modified

(and stating the modification), and (ii) whether or not such Owner has sent any notice of any default to any other Owner under this ECCR.

Section 7.2 Term and Perpetuity Except as otherwise set forth herein, the agreements, conditions, covenants, and restrictions created and imposed herein shall be effective upon the date hereof and shall continue in full force and effect, to the benefit of and being binding upon all Owners, their heirs, executors, administrators, successors, successors-in-title, and assigns for a term of sixty (60) years from the date hereof, and shall be renewed automatically for successive ten (10) year periods, unless the Owners terminate or affirmatively elect not to renew this ECCR by the consent of all the Owners pursuant to a writing recorded in the real property records of the county and state in which the Shopping Center is located. Said agreements and restrictions shall be unaffected by any change in the ownership of any real property covered by this ECCR or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Notwithstanding the foregoing, the easements contained herein binding and benefiting the Parcels shall be perpetual and shall run with the land. Upon termination of the agreements, conditions, covenants and restrictions of this ECCR, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this ECCR, except as related to the easements cited and mentioned herein, shall terminate and have no further force or effect.

Section 7.3 Entire Agreement. This ECCR, together with any Exhibits referred to herein, constitute the entire agreement between the parties hereto. The Parties do not rely upon any statement, promise or representation not herein expressed.

Section 7.4 Amendment. This ECCR may not be amended except by agreement of the Consenting Owners in writing.

Section 7.5 Transfer of Interests, Notices.

(A) In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any Parcel subject to this ECCR, or any portion thereof, the Acquiring Party shall execute and file in the land records of Galveston County, State of Texas, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this ECCR may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, or

deposit with a nationally recognized overnight delivery service, a copy of such Notice Statement to all other Owners of any Parcel subject to this ECCR, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Galveston County, State of Texas (the "Existing Interest Holders") Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Section, it shall not be entitled to receive any notice required or permitted to be given under this ECCR, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. Until such time as the Notice Statement for such change of address is effective pursuant to the terms of this Section, the last address of said party shall be deemed to be the proper address of said party It is understood and agreed that the provisions of this Section 7 5 regarding the recordation of the Notice Statement are satisfied with respect to County and Lowe's

(B) Any notice or invoice required or permitted to be given under this ECCR shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as certified mail, return receipt requested, postage prepaid or deposit with a nationally recognized overnight delivery service, and addressed to the Party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other Party)

County Hon Mark Henry
 County Judge
 County of Galveston
 722 Moody, 2nd Floor
 Galveston, Texas 77550

with a copy to Harvey Bazaman
 Director, County Legal
 County of Galveston
 722 Moody, 5th Floor
 Galveston, Texas 77550

Lowe's Lowe's Home Centers, Inc
 Box 1111
 North Wilkesboro NC 28656
 1605 Curtis Bridge Road, Wilkesboro, NC 28697
 Attention. Real Estate Director- South/South Central Region

with a copy to: Lowe's Home Centers, Inc.
 Box 1000
 Mooresville NC 28115
 1000 Lowe's Blvd , Mooresville, NC 28117
 Attention: Legal Department (NB6LG)

Section 7.6 Ground Lessee Assignment: The rights and obligations of any Owner hereunder may be assigned in whole or in part to one or more ground lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or leases between such Owner and such ground lessee or lessees

Section 7.7 Covenant to Open No Covenant to Continuously Operate: As set forth in Paragraphs 39 and 40 of that one certain Agreement to Sell and Purchase Real Estate between Lowe's and the County dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011 the Owner of the Lowe's Parcel has agreed to commence construction of a Lowe's on or before one hundred twenty (120) days after acquisition of the Lowe's Parcel with minimum square footage of 94,000 and to complete construction and open to the public within twenty four (24) months following the commencement of construction, subject to events of force majeure. Thereafter, the Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel. Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to continue to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel

Section 7.8 Severability. In the event any provision or portion of this ECCR is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof

Section 7.9 No Public Dedication. Nothing contained herein shall be deemed or implied to be a gift, grant or dedication of the Shopping Center or any portions thereof, to the general public, or for any public use or purpose whatsoever with the exception that the parties agree that sufficient Right of Way will be dedicated and conveyed to the City of Galveston by Lowe's and

other third parties to enable the construction of an extension of 57th Street from Avenue H (Ball) to Avenue J (Broadway) provided, however that Lowe's shall not be required to dedicate and convey any portion of the Lowe's Parcel unless the other third parties agree to do the same. Except as may be specifically provided herein, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed or considered to be a beneficiary of any of the provisions herein contained

Section 7.10 Counterparts. This ECCR may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

Section 7.11 Relationship of the Parties. Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Parties hereto or the Owners. It is understood that the relationship between the Parties hereto and Owners is an arms length one that shall at all times be and remain that of separate owners of real property. No Party hereto nor any Owner shall have the right to act for or on behalf of another Party or Owner, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Party or Owner to be charged or bound, except as otherwise specifically provided herein

Section 7.12 Construction of Documents. Each of the Parties has participated in negotiations in the drafting of the terms and conditions of this ECCR, the Parties agree that this ECCR shall be construed without regard to the identity of the person or Party who drafted the various provisions and any rule of construction that a document is to be construed against the drafting party shall not be applicable. Whenever required by the context of this ECCR, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa

Section 7.13 Governing Law. As long as the County of Galveston is the Owner of all or any portion of the County's Parcel(s), this ECCR shall be governed by and construed in accordance with the laws of the State of Texas and venue shall lie in Galveston County. Upon sale by the County of one hundred percent (100%) of its interest in the County's Parcel(s) to a third party(ies), other than the federal government or another political subdivision of the State of Texas, this ECCR shall be governed by and construed in accordance with the laws of the state of North Carolina. In addition, upon sale by the County of one hundred percent (100%) of its

interest in the County's Parcel(s) to a third party(ies), other than the federal government or another political subdivision of the State of Texas, the Parties hereby consent and submit to the jurisdiction and forum of the state and federal courts in the State of North Carolina in all questions and controversies arising out of this Agreement. In the event the federal government or another political subdivision of the State of Texas becomes an Owner of all or any portion of the County's Parcel(s), this ECCR shall continue to be governed by and construed in accordance with the laws of the State of Texas and venue shall continue to lie in Galveston County

Section 7 14 Waiver of Jury Trial. WITH THE EXCEPTION OF THE COUNTY OF GALVESTON THE PARTIES AND ALL PERSONS WHOSE RIGHTS DERIVE BY, THROUGH OR UNDER SUCH PARTIES, HEREBY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY CLAIM, ACTION, PROCEEDING OR COUNTERCLAIM ON ANY MATTERS ARISING OUT OF OR IN ANY WAS CONNECTED WITH THIS ECCR. BUT, THE PARTIES FURTHER AGREE THAT AS A PRECONDITION TO FILING SUIT AGAINST EACH OTHER THAT THEY WILL FIRST ATTEMPT TO RECONCILE THEIR DIFFERENCES VIA NON-BINDING MEDIATION THAT WILL TAKE PLACE IN THE CITY OF GALVESTON WITH ALL EXPENSES OF SUCH MEDIATION BEING EQUALLY SHARED BY THE PARTIES

Section 7 15 Non-Merger: So long as Lowe's is Owner or lessee of the Lowe's Parcel, this ECCR shall not be subject to the doctrine of Merger

Section 7 16 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 ECCR nor in any way affect the terms and provisions hereof

Section 7.17. No Waiver of Governmental Immunity Nothing in this ECCR shall be construed to constitute a waiver of the County's sovereign or governmental immunity against any claim or cause of action filed by any other Party to this ECCR, to such Parties' successors or assigns, or by any third party.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this ECCR as of the day and year first written above

[Remainder of Page Left Intentionally Blank; Signatures on Following Pages]

Signature Page for Lowe's (ECCR)

Lowe's:
Lowe's Home Centers, Inc.,
North Carolina Corporation

By: *Gary E Wyatt*
Name: Gary E Wyatt
Title: Senior Vice President

State of North Carolina

County of Wilkes

On this 13th day of October, 2011, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Gary E Wyatt, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he is the Sr. Vice Pres of Lowe's Home Centers, Inc., a North Carolina Corporation, and that he executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he executed such instrument as the act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written

Notary Public

Tanya C. Benfield

Printed Name:

Tanya C. Benfield

My Commission Expires:

Tanya C. Benfield
Notary Public
Surry County, NC
Commission Expires October 9, 2016

Signature Page for County (ECCR)

County:

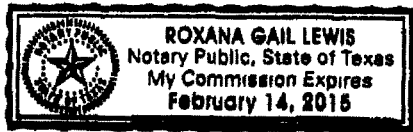
Galveston County

By: Mark Henry
Mark Henry
County Judge

State of Texas §
County of Galveston §

On this 4th day of October, 2011, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **Mark Henry**, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the County Judge of Galveston County, a political subdivision of the State of Texas, and that he/she executed such instrument on behalf of said political subdivision by authority of its County Commissioners' Court, and said person acknowledged to me that he/she executed such instrument as the act and deed of said political subdivision.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written



Notary Public

Roxana G. Lewis

Printed Name:

Roxana G. Lewis

My Commission Expires:

Feb. 14, 2015

EXHIBITS

Schedule I

**DESCRIPTION OF
10.1640 ACRES OR 442,472 SQ. FT.**

A TRACT OR PARCEL CONTAINING 10 1640 ACRES OR 442,742 SQUARE FEET OF LAND SITUATED IN THE MICHAEL B MENARD SURVEY, ABSTRACT NO 628, GALVESTON COUNTY, TEXAS, BEING OUT OF RESERVE "B" OF THE GALVESTON COUNTY JUSTICE CENTER AMENDING PLAT AS RECORDED UNDER PLAT RECORD 2004A, MAP NOS 200 AND 201 OF THE GALVESTON COUNTY MAP RECORDS, WITH SAID 10 1640 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83)

COMMENCING AT A CAPPED 5/8" IRON ROD "STAMPED WINDROSE LAND SERVICES" FOUND AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF BROADWAY BOULEVARD (AVENUE "J" - 150' WIDTH) AND THE WESTERLY RIGHT-OF-WAY LINE OF 54TH STREET (100' WIDTH),

THENCE SOUTH 71 18' 10" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF BROADWAY BOULEVARD, A DISTANCE OF 280 00 FEET TO THE POINT OF BEGINNING AND SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE SOUTH 71 18' 10" WEST CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF BROADWAY BOULEVARD, A DISTANCE OF 730 00 FEET TO A POINT FOR A SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE NORTH 63 41' 50" WEST, A DISTANCE OF 28 28 FEET TO AN ANGLE POINT,

THENCE NORTH 18 41' 50" WEST, A DISTANCE OF 606 96 FEET TO AN ANGLE POINT,

THENCE NORTH 31 12' 25" EAST, A DISTANCE OF 25 76 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET (AVENUE "H" - 100' WIDTH), FOR A NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE NORTH 81 18' 10" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET, A DISTANCE OF 345 53 FEET TO A 5/8" IRON ROD FOUND MARKING A POINT OF CURVATURE,

THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET, WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 556 50 FEET, A CENTRAL ANGLE OF 10 00' 00", AN ARC LENGTH OF 97 13 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 76 18' 10" EAST - 97 00 FEET TO A CAPPED 5/8" IRON ROD "STAMPED WINDROSE LAND SERVICES" FOUND MARKING A POINT OF TANGENCY,

THENCE NORTH 71 18' 10" EAST CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET, A DISTANCE OF 297 38 FEET TO A POINT FOR THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE SOUTH 18 41' 50" EAST, A DISTANCE OF 348 94 FEET TO A POINT FOR AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT,

Schedule I

THENCE SOUTH 71 18' 10" WEST, A DISTANCE OF 24 00 FEET TO A POINT FOR CORNER,

THENCE SOUTH 18 41' 50" EAST, A DISTANCE OF 206 17 FEET TO AN ANGLE POINT,

THENCE SOUTH 63 41' 50" EAST, A DISTANCE OF 28 28 FEET TO THE PLACE OF BEGINNING AND
CONTAINING 10 1640 ACRES OR 442,742 SQUARE FEET OF LAND, AS SHOWN ON JOB NO 46163WC,
PREPARED BY WINDROSE LAND SERVICES INC

Schedule I-A

**DESCRIPTION OF
0.7552 ACRES OR 32,896 SQ. FT.**

A TRACT OR PARCEL CONTAINING 0.7552 ACRES OR 32,896 SQUARE FEET OF LAND SITUATED IN THE MICHAEL B MENARD SURVEY, ABSTRACT NO. 628, GALVESTON COUNTY, TEXAS, BEING OUT OF RESERVE "B" OF THE GALVESTON COUNTY JUSTICE CENTER AMENDING PLAT AS RECORDED UNDER PLAT RECORD 2004A, MAP NOS 200 AND 201 OF THE GALVESTON COUNTY MAP RECORDS (G C M R.), WITH SAID 0.7552 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83)

COMMENCING AT A CAPPED 5/8" IRON ROD "STAMPED WINDROSE LAND SERVICES" FOUND AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF BROADWAY BOULEVARD (AVENUE "J" - 150' WIDTH) AND THE WESTERLY RIGHT-OF-WAY LINE OF 54TH STREET (100' WIDTH),

THENCE SOUTH 71 18' 10" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF BROADWAY BOULEVARD, A DISTANCE OF 1010.00 FEET TO THE POINT OF BEGINNING AND SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE SOUTH 71 18' 10" WEST CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF BROADWAY BOULEVARD, A DISTANCE OF 70.00 FEET TO A 5/8" IRON ROD FOUND MARKING THE COMMON SOUTHERLY CORNER OF SAID RESERVE "B" AND LOT 2 OF THE 59TH STREET PROPERTIES SUBDIVISION AS RECORDED UNDER PLAT RECORD 18, MAP NO 686 OF THE G C M R., FOR THE SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE NORTH 18 41' 50" WEST ALONG THE COMMON LINE OF SAID RESERVE "B", SAID LOT 2 AND LOT 7 OF THE REPLAT OF LOT 1 OF 59TH STREET PROPERTIES SUBDIVISION AS RECORDED UNDER PLAT RECORD 18 MAP NO 1094 OF THE G C M R., A DISTANCE OF 652.00 FEET TO A 5/8" IRON ROD FOUND ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET (AVENUE "H" - 100' WIDTH), FOR THE NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET, WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 443.50 FEET, A CENTRAL ANGLE OF 07 29' 29", AN ARC LENGTH OF 57.99 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 77 33' 25" EAST - 57.95 FEET TO A CAPPED 5/8" IRON ROD "STAMPED WINDROSE LAND SERVICES" FOUND MARKING A POINT OF TANGENCY,

THENCE NORTH 81 18' 10" EAST CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET, A DISTANCE OF 12.29 FEET TO A POINT FOR THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE SOUTH 31 12' 25" WEST, A DISTANCE OF 25.76 FEET TO AN ANGLE POINT,

THENCE SOUTH 18 41' 50" EAST, A DISTANCE OF 606.96 FEET TO AN ANGLE POINT,

THENCE SOUTH 63 41' 50" EAST, A DISTANCE OF 28.28 FEET TO THE PLACE OF BEGINNING AND CONTAINING 0.7552 ACRES OR 32,896 SQUARE FEET OF LAND, AS SHOWN ON JOB NO 46163WC, PREPARED BY WINDROSE LAND SERVICES INC

Schedule II

Legal Description County's Parcel(s)

**DESCRIPTION OF
3.7595 ACRES OR 163,766 SQ. FT.**

A TRACT OR PARCEL CONTAINING 3 7595 ACRES OR 163,766 SQUARE FEET OF LAND SITUATED IN THE MICHAEL B MENARD SURVEY, ABSTRACT NO 628, GALVESTON COUNTY, TEXAS, BEING OUT OF RESERVE "B" OF THE GALVESTON COUNTY JUSTICE CENTER AMENDING PLAT AS RECORDED UNDER PLAT RECORD 2004A, MAP NOS 200 AND 201 OF THE GALVESTON COUNTY MAP RECORDS, WITH SAID 3 7595 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83)

BEGINNING AT A CAPPED 5/8" IRON ROD "STAMPED WINDROSE LAND SERVICES" FOUND AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF BROADWAY BOULEVARD (AVENUE "J" - 150' WIDTH) AND THE WESTERLY RIGHT-OF-WAY LINE OF 54TH STREET (100' WIDTH), FOR THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE SOUTH 71° 18' 10" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF BROADWAY BOULEVARD, A DISTANCE OF 280 00 FEET TO A POINT FOR A SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE NORTH 63° 41' 50" WEST, A DISTANCE OF 28 28 FEET TO AN ANGLE POINT,

THENCE NORTH 18° 41' 50" WEST, A DISTANCE OF 206 17 FEET TO A POINT FOR CORNER,

THENCE NORTH 71° 18' 10" EAST, A DISTANCE OF 24 00 FEET TO A POINT FOR AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT,

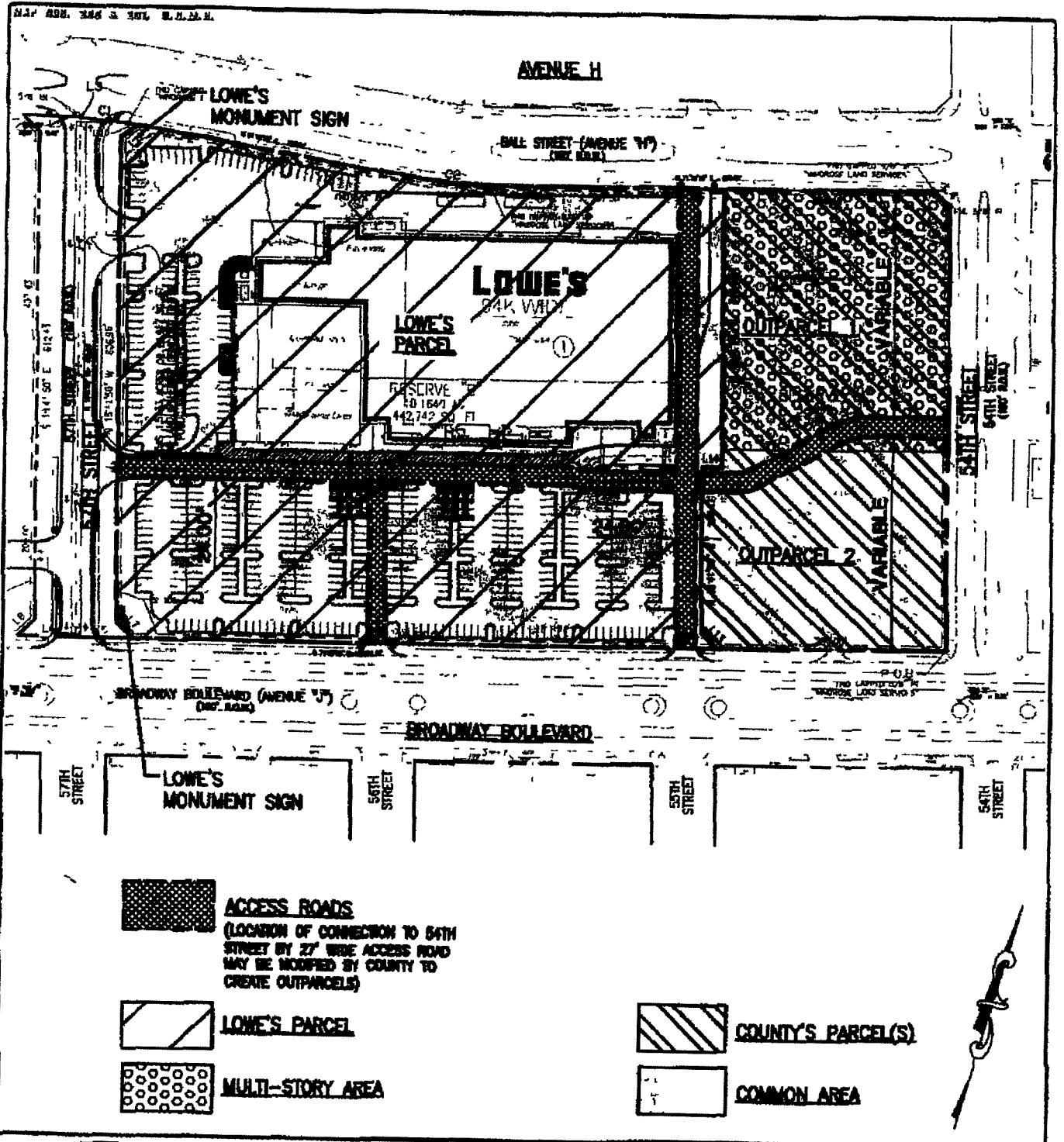
THENCE NORTH 18° 41' 50" WEST, A DISTANCE OF 348 94 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET (AVENUE "H" - 100' WIDTH), FOR THE NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE NORTH 71° 18' 10" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET, A DISTANCE OF 256 46 FEET TO A CAPPED 5/8" IRON ROD "STAMPED WINDROSE LAND SERVICES" FOUND MARKING THE NORTHWESTERLY CUT BACK CORNER AT THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF BALL STREET AND SAID WESTERLY RIGHT-OF-WAY LINE OF 54TH STREET, FOR A NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE SOUTH 63° 44' 54" EAST ALONG SAID CUT BACK, A DISTANCE OF 27 62 FEET TO A 5/8" IRON ROD FOUND MARKING THE SOUTHEASTERLY CORNER OF SAID CUT BACK,

THENCE SOUTH 18° 41' 50" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF 54TH STREET, A DISTANCE OF 555 59 FEET TO THE PLACE OF BEGINNING AND CONTAINING 3 7595 ACRES OR 163,766 SQUARE FEET OF LAND, AS SHOWN ON JOB NO 46163WC, PREPARED BY WINDROSE LAND SERVICES INC

EXHIBIT A



DDG DUPLANTIS DESIGN GROUP, PC
 CIVIL ENGINEERING & ARCHITECTURE
 14650 HEATHROW FOREST PARKWAY,
 SUITE 160 HOUSTON, TX 77064
 PHONE: 832.369.8170 || FAX: 832.369.8165
 WWW.DDGPC.COM
 THEWOODLARK | COVINGTON | HOUSTON | BATON ROUGE | HOUMA

ECCR EXHIBIT A - SITE PLAN
LOWE'S OF GALVESTON
GALVESTON, TEXAS
 DATE: 8/3/11

EXHIBIT B
Sign Program
No Sign Program
Intentionally Left Blank

EXHIBIT C

Duplantis Design Group, P.C and Davidson Landscape Architects L L C Plans

- A-2 Exterior Elevations prepared by Duplantis Design Group criteria issue date 11 1 10
- C-1 Site Plan prepared by Duplantis Design Group original issue date 4/4/11
- L1 0 Overall Planting Plan by Davidson Landscape Architecture permit set issue date 4/1/11
- L1 1 Planting Plan – Area A by Davidson Landscape Architecture permit set issue date 4/1/11
- L1 2 Planting Plan – Area B by Davidson Landscape Architecture permit set issue date 4/1/11
- L1.3 Planting Plan – Area C by Davidson Landscape Architecture permit set issue date 4/1/11
- L1 4 Planting Plan – Area D by Davidson Landscape Architecture permit set issue date 4/1/11
- L2 0 Planting Details and Notes by Davidson Landscape Architecture permit set issue date 4/1/11
- PH-1 Site Photometric Plan by Page Interworks original issue date 4/1/11

FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

Dwight D. Sullivan
2011053638

October 20, 2011 01 10 23 PM

FEE \$228 00

Dwight D Sullivan, County Clerk
Galveston County, TEXAS



2012008452

7 PGS

**FIRST AMENDMENT TO BOTH THE AGREEMENT TO SELL AND PURCHASE
REAL ESTATE AND TO THE EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS AGREEMENT**

By and Between

**LOWE'S HOME CENTERS, INC. A
NORTH CAROLINA CORPORATION**

And

GALVESTON COUNTY, TEXAS

AA

**FIRST AMENDMENT TO BOTH THE AGREEMENT TO SELL AND PURCHASE
REAL ESTATE AND TO THE EASEMENTS, COVENANTS, CONDITIONS AND
RESTRICTIONS AGREEMENT RELATING TO THE USE OF LANDS
OWNED BY LOWE'S HOME CENTERS, INC. AND
GALVESTON COUNTY**

This First Amendment to both that one certain Agreement to Sell and Purchase Real Estate (E.M.K.) between Lowe's and County dated January 19, 2011 and to that one certain dated Easements, Covenants, Conditions, and Restrictions Agreement (E.C.C.R.) between Lowe's and County dated effective October 13, 2011 is by and between Lowe's Home Centers, Inc., a North Carolina Corporation and Galveston County, Texas a political subdivision of the State of Texas.

Witnesseth:

The parties heretofore entered into an Agreement to Sell and Purchase Real Estate (E.M.K.) dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011

Paragraph 39 of the E.M.K. provides as follows

39 RIGHT TO REPURCHASE. Buyer covenants to commence construction (i.e. pouring of footings) of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet on or before one hundred twenty (120) days after the Closing provided Buyer has received all permits and governmental and quasi-governmental approvals for the construction of a 94,000, with minimum square footage in form and substance acceptable to Buyer in Buyer's sole and absolute discretion. If, despite Buyer's best efforts, all permits and governmental and quasi-governmental approvals are not secured in a timely manner, the commencement date may be extended for an additional thirty (30) days. If Buyer fails to commence construction of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet within one hundred twenty days after closing, as may be extended, provided such failure is not caused by force majeure, such event being referred to herein as the "Triggering Event", then Seller shall have the right and option ("the Repurchase Interest") to repurchase the Premises for the Repurchase Price (as hereinafter defined in Exhibit "C"), all subject to and in accordance with the terms and conditions of Exhibit C attached hereto and incorporated herein by reference. This covenant will survive closing.

The parties also heretofore entered in an Easements, Covenants, Conditions and Restrictions Agreement (E.C.C.R.) relating to real properties owned by the parties located between 54th and Broadway and 57th and Broadway and Broadway and Ball Streets. This Agreement, which has an effective date of October 13, 2011 may be found filed of record in the Official Public Records of the County Clerk of Galveston County, Texas on October 20, 2011 under GAC2011053638

Section 7.7 of the E.C.C.R provides as follows:

Section 7.7 Covenant to Open No Covenant to Continuously Operate: As set forth in Paragraphs 39 and 40 of that one certain Agreement to Sell and Purchase Real Estate between Lowe's and the County dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011 the Owner of the Lowe's Parcel has agreed to commence construction of a Lowe's on or before one hundred twenty (120) days after acquisition of the Lowe's Parcel with minimum square footage of 94,000 and to complete construction and open to the public within twenty four (24) months following the commencement of construction, subject to events of force majeure. Thereafter, the Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel. Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to continue to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel

The parties have agreed to extend this 120 day time period until June 30, 2013 In addition, based on the survey of the property conveyed to Lowe's the parties have agreed upon the repurchase price

This **First Amendment** is being entered into to address these two agreements

Now, Therefore, for valuable consideration, including the mutual covenants herein contained, the receipt and sufficiency of which is hereby confessed and acknowledged, the parties desire to amend both the E.M.K and the E.C.C.R. and to establish the repurchase price as follows.

1. **Amendment of the E.M.K.**

Paragraph 39 of the E M K. is hereby amended to read as follows.

39 **RIGHT TO REPURCHASE** Buyer covenants to commence construction (i.e. pouring of footings) of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet on or before June 30, 2013 provided Buyer has received all permits and governmental and quasi-governmental approvals for the construction of such Store in a form and substance acceptable to Buyer in Buyer's sole and absolute discretion. If, despite Buyer's best efforts, all permits and governmental and quasi-governmental approvals are not secured by June 30, 2013, the commencement date may be extended for an additional thirty (30) days. If Buyer fails to commence construction of a Lowe's Home Improvement Store with minimum square footage of 94,000 square feet by no later than June 30, 2013, as may be extended, provided such failure is not caused by force majeure, such event being referred to herein as the "Triggering Event", then Seller shall have the right and option ("the Repurchase Interest") to repurchase the Premises for the Repurchase Price (as hereinafter defined in Exhibit "C"), all subject to and in accordance with the terms and conditions of Exhibit C attached hereto and incorporated herein by reference. This

A

covenant will survive closing

40. Amendment of E.C.C.R.

Section 7.7 of the E.C.C.R. is hereby amended to read as follows:

Section 7.7 Covenant to Open. No Covenant to Continuously Operate. As set forth in Paragraphs 39 and 40 of that one certain Agreement to Sell and Purchase Real Estate between Lowe's and the County dated January 19, 2011, a copy of which may be found in the minutes of the Galveston County Commissioners' Court meeting held on January 19, 2011 the Owner of the Lowe's Parcel has agreed to commence construction of a Lowe's Home Improvement Store on or before June 30, 2013 with minimum square footage of 94,000 and to complete construction and open to the public within twenty four (24) months following the commencement of construction, subject to events of force majeure. Thereafter, the Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel. Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to continue to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel

41. Establishment of Repurchase Price

The parties agree that should the County decide to exercise its right to repurchase the Lowe's Parcel, the repurchase price is **Three Million, Twenty Five Thousand and Fifty Seven (\$3,025,057) Dollars**. This figure is based on the final survey of the property purchased by Lowe's.

5. The E.M.K. and the E.C.C.R. and this **First Amendment** to these two instruments constitute the complete understanding of the parties and no other representation, oral or written, between the parties shall be of any force and effect unless specifically stated in writing in the E.M.K. and the E.C.C.R. or this **First Amendment**
6. Each party has signed this **First Amendment** on the date specified adjacent to their signature. The effective date of this **First Amendment** will be the date the last signatory has signed
7. Each party has relied on the advice of their own counsel in executing this **First Amendment**.
8. If this **First Amendment** is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one **Agreement**.



9. The effective date of this First Amendment is the date the last party has executed this document



County of Galveston

Mark Henry
Mark Henry
County Judge
Date of Execution: 2/21/12

Dwight D. Sullivan
County Clerk
By: Brandy Chapman Deputy
Brandy Chapman

Lowe's
Lowe's Home Centers, Inc., a
North Carolina Corporation

Gary E. Wyatt
Name: Gary E. Wyatt
Title: Senior Vice President

[Handwritten initials]
SAM
WPC

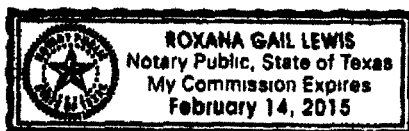
State of Texas §
 §
County of Galveston §

On This 21st day of February, 2012, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **Mark A. Henry**, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the **County Judge of Galveston County**, a political subdivision of the State of Texas, and that he/she executed such instrument on behalf of said political subdivision by authority of its County Commissioners' Court, and said person acknowledged to me that he/she executed such instrument as the act and deed of said political subdivision.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public: Roxana G. Lewis
Printed Name: Roxana G. Lewis

My Commission Expires:
2/14/2015

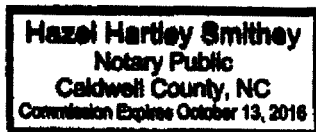


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State of North Carolina §
 §
County of Wilkes §

The foregoing instrument was acknowledged before me this 15th day of February, 2012, by GARY E. WYATT, the Senior Vice President of Lowe's Home Centers, Inc., a North Carolina corporation

Witness my hand and official seal.



Hazel Hartley Smithey
Notary Public in and for the State
of North Carolina

Seal

Word/Depts/Facilities/Lowes ECCR First Amendment

After filing please return to:
Harvey Bazaman
Galveston County Legal Dept.
Galveston County
Galveston County Courthouse
722 Moody, 5th Floor
Galveston, Texas 77550

FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

Dwight D. Sullivan 2012008452

February 21, 2012 02 22 54 PM

FEE \$40 00

Dwight D Sullivan, County Clerk
Galveston County, TEXAS

AA