

RIGHT-OF-WAY PERMIT

KNOW ALL MEN BY THESE PRESENTS: THAT

D. J. Galley, Jr. and Stephanie

YARLETTA D. JACOBSON

*(Handwritten signature)*

hereinafter called Grantor, for and in consideration of the sum of one

Dollars (\$ 1.00 ) and other valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto Bryant Sewer

Improvement District No. 1 hereinafter called Grantee, the right, privilege and easement to build and maintain over, upon and across the land hereinafter described sewer line with any necessary appurtenances. The rights hereby conferred provide for the privilege and authority to enter upon said lands for the purpose of constructing said sewer line maintenance and operation thereof, with the right to clear a right-of-way of needed width and for the repairing, reconstructing, operating and maintaining of such sewer line at all times. After the construction work is completed the area shall be restored, as nearly as possible, to its original condition.

53 766

The said right-of-way conferred shall be 20 feet wide as constructed over, upon and across the following lands located and situated in

The City of Bryant, Saline County, Arkansas To-Wit:

Part of the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Section 22, Township 1 South, Range 14 West, as shown on the attached plat.

MOVE 150' ± EAST AND AVOID TREES WHERE POSSIBLE 90.

and the right to ingress and egress over adjacent land to or from said right-of-way is hereby conferred upon said Grantee, at any time for the purpose recited herein.

The right to cultivate and otherwise use said right-of-way (except for permanent structures) by the Grantor except for the purpose herein granted to the Grantee, is especially reserved, and if the Grantee should ever permanently abandon the use of said right-of-way for the purpose herein conveyed, it shall revert to the Grantor and Assigns.

And I, \_\_\_\_\_ wife of said \_\_\_\_\_

for and in consideration of the cash sum of money paid as a consideration for the foregoing, do hereby release and relinquish unto and in favor of said Grantee, all of my estate of dower and homestead in and to the above described land to the extent of the rights hereinbefore granted and set forth:

IN WITNESS HEREOF we hereto set our hands and affix our signature this:

23 RD DAY OF JUNE, 1978.  
James Dailey, Jr.  
Ruth D. Lightwood  
Stephanie A. Dailey

ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED that on this day came before me the undersigned, a Notary Public, within and for the County of \_\_\_\_\_ and State aforesaid, duly commissioned, and acting \_\_\_\_\_

to me well known as the Grantor in the foregoing permit and acknowledges that \_\_\_\_\_ had executed the same for the consideration, uses and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me said \_\_\_\_\_

wife of said \_\_\_\_\_ to me well known, and in the absence of her said husband declared that she had of her own free will, executed said permit and signed and sealed the relinquishment of dower and homestead in said permit for the consideration, uses and purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such Notary Public this 23 day of June, 1978.



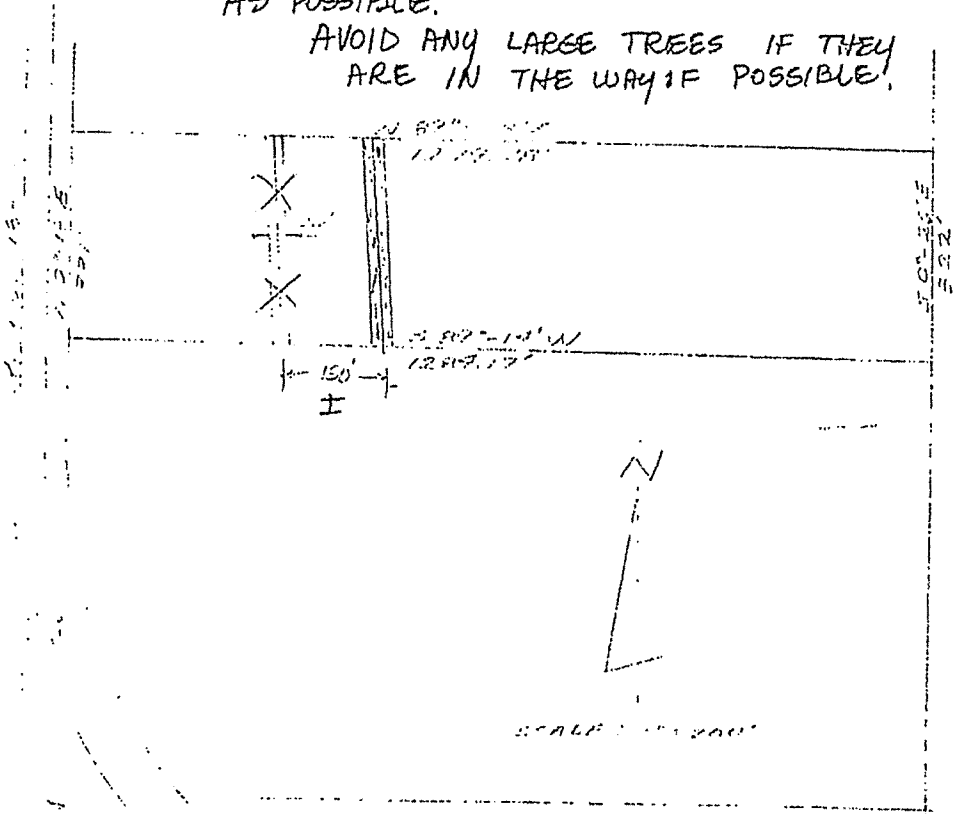
Patricia J. Carter  
Notary Public

1978 JUN 23

NOTICE TO LOCATE LINE  
RECOMMENDED LINE  
AS CLOSE TO 150' EAST OF RECOMMENDED LINE  
AS POSSIBLE.

NOTE: PLEASE LOCATE LINE  
AS CLOSE TO 150' EAST OF RECOMMENDED LINE  
AS POSSIBLE.

AVOID ANY LARGE TREES IF THEY  
ARE IN THE WAY IF POSSIBLE!



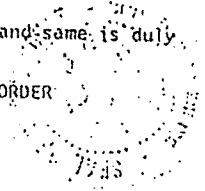
BOOK 53 PAGE 768

Filed for record on this the 7th day of July 1978 at 9:45 A.M. and same is duly recorded in Misc Book 53 Page 766.

BY *Jimmy Seals*

Jimmy Seals  
CIRCUIT CLERK & RECORDER

DC



10 ann. Grant K... Est...

LINE LIST NO. 43  
W. O. NO. A 39815

Form 14A

### EASEMENT

In consideration of the sum of \$ 337.00 receipt of which is hereby acknowledges, and the payment to the undersigned before construction is started of the additional sum of \$ 4.05, the undersigned, undersigned heirs and assigns, hereby grant to the Southwestern Bell Telephone Company, a Missouri Corporation, its associated and allied companies, their respective successors, assigns, lessees, and agents a permanent right of way and easement with the right, privilege and authority to construct, reconstruct, operate, maintain, or remove lines of telephone and telegraph, or other signal or communication circuits, consisting of underground conduits, cables, manholes and of other markers, fixtures and appurtenances as the grantee may from time to time require, upon, across, over and/or under the property which the grantor owns or has an interest in the following described land situated in the County of Saline State of Arkansas, owned by the Grantors, to wit: Part of SW 1/4 SW 1/4 of Section 22, T- 1, R- 14, W- 1 Being 10 FT wide and extending approximately 337 feet across the front of Grantors' property, along Reynolds road, Bryant. AN ADDITIONAL 6 1/2 FT. TEMPORARY EASEMENT FOR CONSTRUCTION USE ONLY.

and upon, along, and/or under the roads, streets or highways adjoining said property. The Grantor, or Grantors' heirs, executors, administrators and assigns hereby covenants that no structure will be erected or permitted on said line. All pipe, conduit or cable laid under this grant shall be laid upon the route selected by the grantee and grantor, and shall be buried to such depth as not to interfere with the ordinary use of said land.

The Grantor, heirs or assigns, shall be entitled to recover from the grantee the reasonable amount of any damage caused to crops, lawns, shrubs or flowers by the grantee or its employees in the construction, reconstruction, operation, maintenance or removal of said communication system.

Grantor will restore said easement to as good or better condition that existed prior to the time of construction.

052-59

WITNESS hand and seal this 23<sup>rd</sup> day of July, 1979.  
at 309 Rock St Little Rock AR 72203  
(Post Office Address)

D. James Dailey, Jr.

Kathleen D. Hightower

Stephanie Dailey Kelley

*D. James Dailey, Jr.*  
*Kathleen D. Hightower*  
*Stephanie Dailey Kelley*

STATE OF ARKANSAS

COUNTY OF Pulaski

SS:

BE IT REMEMBERED, that on this 23<sup>rd</sup> day of July, A.D., 1979, before me, the undersigned, a Notary Public in and for said County and State, came \_\_\_\_\_ who \_\_\_\_\_ personally known to me to be the same person \_\_\_\_\_ who executed the within instrument of writing, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

*Janet H. Grange*  
Notary Public

My Commission Expires:

April 18, 1981

FILED FOR RECORD ON THIS THE 24TH DAY OF JULY, 1979 AT  
4:05 P.M. AND SAME IS DULY RECORDED IN MISC BOOK 59, AT  
PAGE 290.

JIMMY SEALS, CIRCUIT CLERK  
By: *E. W. Wacker*, D.C.

LINE LIST NO. 16  
W. O. NO. 6282

Form 14

### EASEMENT

SOUTHWESTERN BELL TELEPHONE COMPANY 179 SEP 21 PM 2 57

In consideration of the sum of \$ 3,630.00, receipt of which is hereby acknowledged, and the payment to the undersigned before construction is started of the additional sum of \$ \_\_\_\_\_, the undersigned, undersigned heirs and assigns, hereby grant to the Southwestern Bell Telephone Company, a Missouri Corporation, its associated and allied companies, their respective successors, assigns, lessees, and agents a permanent right of way and easement with the right, privilege and authority to construct, reconstruct, operate, maintain, or remove lines of telephone and telegraph, or other signal or communication circuits, consisting of underground conduits, cables, manholes and of other markers, fixtures and appurtenances as the grantee may from time to time require, upon, across, over and/or under the property which the grantor owns or has an interest in the following described land situated in the County of Saline, State of Arkansas, owned by the Grantors, to wit: Part of NW 1/4 SW 1/4 of Section 22, T-1-S. R-14-W. Being ten feet wide and extending approximately 363 feet across the \_\_\_\_\_ of Grantors' property,

and upon, along, and/or under the roads, streets or highways adjoining said property, with the right of ingress and egress over and across said land. The Grantor, or Grantors' heirs, executors, administrators and assigns hereby covenants that no permanent structure will be erected or permitted on said line. All pipe, conduit or cable laid under this grant shall be laid upon the route selected by the grantee and grantor, and shall be buried to such depth as not to interfere with the ordinary use of said land.

The Grantor, heirs or assigns, shall be entitled to recover from the grantee the reasonable amount of any damage caused to crops, fences, trees, lawns, shrubs or flowers by the grantee or its employees in the construction, operation, maintenance or removal of said communication system.

Grantee will restore said easement to as good or better condition that existed prior to the time of construction.

WITNESS Paul hand and seal this 19 day of Sept, 1979

at \_\_\_\_\_  
(Post Office Address)

STATE OF ARKANSAS )  
COUNTY OF PULASKI )

SS:

\_\_\_\_\_  
Bryant Assembly of God Church (SEAL)  
\_\_\_\_\_  
(SEAL)  
\_\_\_\_\_  
(SEAL)

BE IT REMEMBERED, that on this 19 day of Sept, 1979, before me, the undersigned, a Notary Public in and for said County and State, came the above undersigned witnessed to be the same person(s) who executed the within instrument of writing, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

JULY 31, 1987  
My Commission Expires:

\_\_\_\_\_  
Notary Public



FILED FOR RECORD ON THIS THE 21ST DAY OF SEPTEMBER, 1979  
AT 2:57 P.M. AND SAME IS DULY RECORDED IN MISC. BOOK 60,  
PAGE 183.

JIMMY SEALS, CIRCUIT CLERK  
By: Elizabeth L. Litchner D.C.

RETURN TO: Southwestern Bell Telephone Company, Right of Way Supervisor, Room 817, 1111 West Capitol, Little Rock, AR 72201

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188  
188



#12

FILED  
SALINE COUNTY &  
CHANCE CLERK  
'60 FEB 20 11

BY M&A

EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That Lee F. and Thelma Shoemaker, hereinafter called Grantor, for and in consideration of the sum of FIVE HUNDRED DOLLARS AND NO/100 (\$500.00) the receipt whereof is hereby acknowledged, do hereby grant unto Bryant Sewer Improvement District No. 1, hereinafter referred to as Grantee, the right of an easement to build and maintain across the land hereinafter described, a sewer line with any necessary appurtenances. The rights hereby conferred by said easement provide for the Grantee the privilege to construct, maintain and operate such sewer line at all times within the easement area.

The said easement conferred shall be twenty (20) feet wide and one hundred ninety-eight (198) feet in length across the following land of Grantors in the City of Bryant, Saline County, Arkansas, to-wit:

Part of the SW 1/4 SW 1/4, Section 22, Township 1 South, Range 14 West, as shown on the attached plat.

Other conditions of easement:

A manhole to be installed just inside the South property line in the easement area. That easement area begin 482.5 feet from Highway 183 to center of easement strip according to plat attached.

The right to cultivate and otherwise use said right-of-way (except for permanent structures) by the Grantor except for the purpose granted to the Grantee, is especially reserved, and if the Grantee should ever permanently abandon the use of said right-of-way for the purpose herein conveyed, it shall revert to the Grantor and assigns.

That Grantee, in exercising privileges conferred by the easement, shall stay within the easement at all times and the Grantor, his heirs or Assigns, shall be entitled to recover from Grantee the reasonable amount of damages caused to crops, trees, shrubs, or the land by the Grantee in the exercise of his easement rights. After the construction work is completed the area shall be restored, as nearly as possible, to its original condition.

62 PAGE 257



*James R. [Signature]*  
*[Signature]*

That once construction of sewer lines has started on Grantor's land, it be completed in a reasonable time by Grantee. Grantor be allowed damages for any unreasonable delay in completion of the sewer line across his land by Grantee.

And I, Thelma Shoemaker, wife of the said Lee F. Shoemaker, for and in consideration of the said sum of money paid as a consideration for the foregoing, do hereby release and relinquish unto and in favor of said Grantee, all of my estate of dower and homestead in and to the above described land to the extent of the rights hereinbefore granted and set forth:

IN WITNESS HEREOF we hereto set our hands and affix our signature this \_\_\_ day of December, 1979.

Lee F. Shoemaker  
LEE F. SHOEMAKER

Thelma Shoemaker  
THELMA SHOEMAKER

James E. Bennett  
Notary

STATE OF ARKANSAS  
COUNTY OF

BE IT REMEMBERED that on this day came before me the undersigned, a Notary Public, within and for the County of Saline and State aforesaid, duly commissioned, and acting Lee F. Shoemaker and Thelma Shoemaker to me well known as the Grantors in the foregoing permit and acknowledges that they had executed the same for the consideration, uses and purposes therein mentioned and set forth.

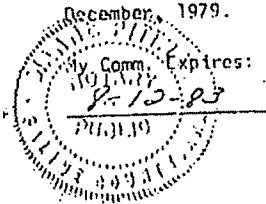
And on the same day also voluntarily appeared before me the said Thelma Shoemaker, wife of the said Lee F. Shoemaker, to me well known, and in the absence of her said husband declared that she had of her own free will, executed said permit and signed and sealed the relinquishment of dower and homestead in said permit for the consideration, uses and purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such Notary Public this \_\_\_ day of

December, 1979.

My Comm. Expires:

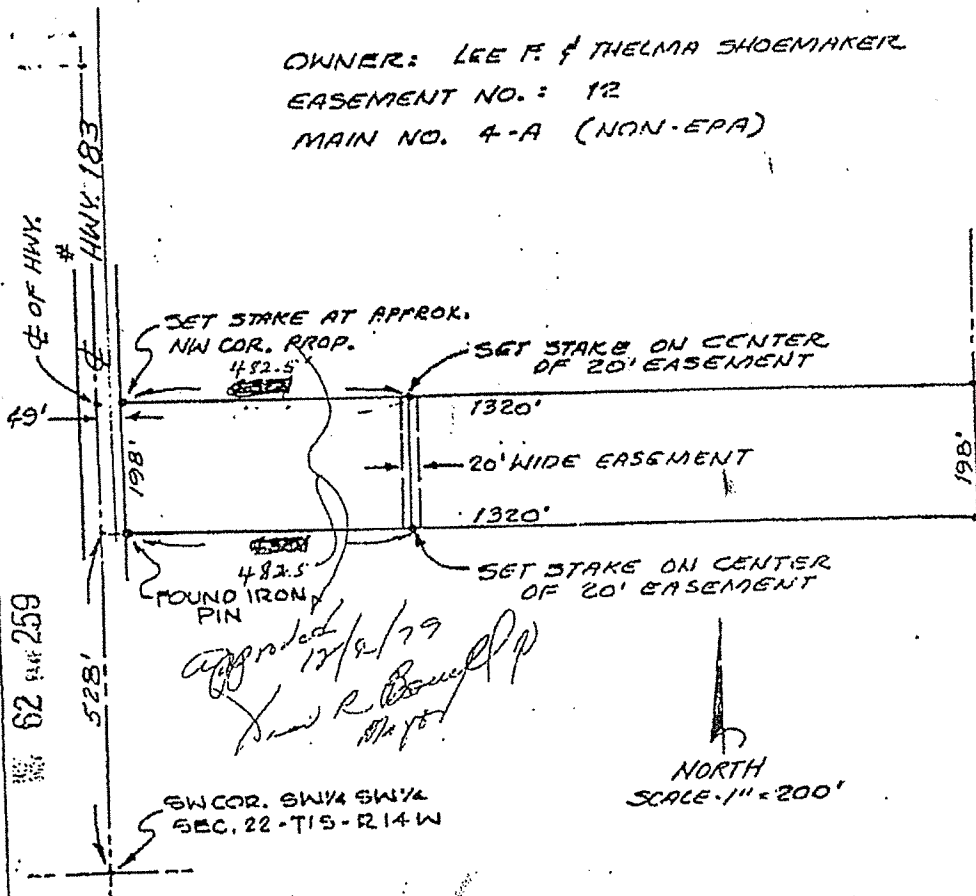
8-15-83



James E. Bennett  
NOTARY PUBLIC

62 258

OWNER: LEE F. & THELMA SHOEMAKER  
 EASEMENT NO.: 12  
 MAIN NO. 4-A (NON-EPA)



*Approved 12/2/79*  
*James R. [Signature]*

SW COR. SW 1/4 SW 1/4  
 SEC. 22-T15-R14W

A TRACT OF LAND LOCATED IN A  
 PART OF THE SW 1/4 SW 1/4 OF SEC. 22, T15P,  
 S SOUTH-RGE. 14 WEST OF SALINE CO.,  
 ARKANSAS, AS SHOWN  
 ON PLAT HEREWITH:

Filed for record on this the 28th day of February, 1980 at 2:11 P.M.  
 and same is duly recorded in Misc. Book 62 page 257.  
 Jimmy Seals, Circuit Clerk and Recorder

WADE SPAINHOUR  
 REGISTERED  
 LAND SURVEYOR  
 STATE OF  
 ARKANSAS  
 NO. 42  
*[Signature]*

by *[Signature]* D.C.  
 EASEMENT LOCATION BY  
 WADE SPAINHOUR.  
 NOV. 21, 1978

City, State: Bryant, Arkansas  
Address: I-30 & Hwy. 183  
L/C: 03-0097 File: # 9478

FILED  
SALINE COUNTY  
CHANCELLERY CLERK

09 JAN 21 PM 12 09

**INGRESS AND EGRESS  
EASEMENT AGREEMENT**

BY 

**THIS EASEMENT AGREEMENT**, dated January 14, 2000, is between Dalton James Dailey, Jr., Kathleen Dailey Hightower, and Stephanie Ann Dailey Kelley, their successors and/or assigns ("Grantor") and SYSTEM CAPITAL REAL PROPERTY CORPORATION nominee of McDONALD'S CORPORATION, a Delaware corporation its successors and/or assigns ("Grantee"). The following statements are a material part of this agreement:

00 03033

A. Grantee is, or will be at the time of recording of this document, the owner of Parcel 1 described in Exhibit A, attached.

B. Grantor is the owner of Parcel 2 described in Exhibit B, which includes Parcel 2A described in Exhibit C, attached.

C. Grantor wishes to grant, and Grantee wishes to receive certain easements for ingress and egress over, under and across Parcel 2A.

D. McDonald's Corporation, entered into a ground lease with Grantor which granted McDonald's (and Grantee, as its successor and assign) certain easement rights for ingress and egress over Parcel 2A as set forth in Memorandum of Lease dated June 20, 1989, filed for record June 28, 1989 in Misc. Book 108 Page 383, records of Saline County, Arkansas, and further provides for the construction maintenance and repair of the road constructed on Parcel 2A that was to become perpetual upon its acquisition of Parcel 1.

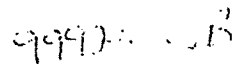
THEREFORE, in consideration of the foregoing recitals and TEN AND NO/100THS DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, the following grants, agreements, covenants and restrictions are made:

**1. INGRESS AND EGRESS EASEMENT**

Grantor grants and conveys to Grantee a perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress to and from Parcel 1, appurtenant to Parcel 1, over, upon and across Parcel 2A described in Exhibit C, attached.

So long as the road constructed on Parcel 2A remains undedicated and is used exclusively by Grantee, Grantee shall maintain and repair the easement area at its sole cost and expense. However, in the event the access easement remains undedicated at such time as a building permit is issued for the development or improvement of all or any part of Parcel 2 or any other appurtenant parcel with access or use of Parcel 2A, then Grantor and Grantee, and any other party subsequently granted the right to use Parcel 2A by the Grantor or Grantor's heirs, successors or assigns, shall share the reasonable cost of maintaining and repairing the easement area which shall not include capital improvements or capital expenditures. The parties respective shares of actual reimbursable costs shall be a percentage calculated based upon the total square footage of all appurtenant parcels with access and use of the easement, divided by the square footage of the individual parcel being billed. Reimbursement from Grantee shall not exceed the sum of \$2,000.00 within any twelve month period. Grantor shall only bill Grantee for maintenance and repair costs in excess of \$2,000.00 upon written approval by Grantee prior to commencement of such maintenance or repair work. Once Grantee no longer has exclusive use of the easement Grantor shall then become responsible for the maintenance and repair of the easement area. If Grantor fails to meet his/her/its responsibilities, Grantee may maintain and repair the easement area and bill Grantor and all other users for its costs. If Grantee is not reimbursed within sixty (60) days from the date of billing for its costs, the parties failing to pay their share may, at the Grantee's discretion, have a lien for unpaid costs placed upon the title to their property by the Grantee recording a lien claim and notice, in addition to all remedies available at law or in equity. Notwithstanding the foregoing, in the event Parcel 2 or any part thereof using the easement is developed for the primary use as a trucking facility, then the owner of the parcel upon which such trucking facility is located shall be obligated to reimburse Grantor for the entire cost

Return to: STEWART TITLE OF ARKANSAS  
11500 Rodney Parham Pk., Suite 200  
Little Rock, AR 72212





The provisions of this paragraph shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time on the land of the defaulting party and the rights of the holder or holders of any mortgages or deeds of trust.

7. CONSTRUCTION

The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Grantee is carried out.

8. NOTICE

Grantor's address is c/o Flake & Kelley 425 W. Capital, Suite 300, Little Rock, AR 72201 and Grantee's address is McDonald's Corporation, Real Estate Practice Group, Legal Department, One McDonald's Plaza, Oak Brook, Illinois 60523, attention: Director, Real Estate Practice Group, Legal Department. Any party may lodge written notice of a change of address. All notices shall be sent by certified mail, return receipt requested, to the addresses provided for in this paragraph and shall be deemed given when placed in the mail.

TO INDICATE THEIR CONSENT TO THIS AGREEMENT, Grantor and Grantee, or their authorized representatives or officers, have signed this document.

00 03035

GRANTOR:

Dalton James Dailey, Jr.  
Dalton James Dailey, Jr.

Kathleen Dailey Hightower  
Kathleen Dailey Hightower

Stephanie Ann Dailey Kelly  
Stephanie Ann Dailey Kelly

WITNESS:

Henry Kelly, Jr.

GRANTEE: System Capital Real Property Corporation

By: Joseph R. Thomas  
Joseph R. Thomas, Director

WITNESS:

J. H. Maloney  
William Buchanan

(ATTACH ACKNOWLEDGMENTS AND EXHIBITS A, B and C)

- Exhibit A: legal description of Parcel 1, Grantee's property
- Exhibit B: legal description of Parcel 2, Grantor's property
- Exhibit C: legal description of Parcel 2A, easement area

Prepared by and Return to:  
Edward J. Krzyminski,  
Counsel, U.S. Legal Department  
McDONALD'S CORPORATION  
One McDonald's Plaza  
Oak Brook, Illinois 60523

ACKNOWLEDGMENT - SYSTEM CAPITAL

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF DUPAGE )

I, **Rosemary Flanigan**, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that **Joseph R. Thomas**, of **SYSTEM CAPITAL REAL PROPERTY CORPORATION**, a Delaware corporation, who are personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized party appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such authorized parties and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 14th day of January, 2000.

*Rosemary Flanigan*  
Notary Public  
Rosemary Flanigan

My commission expires November 3, 2002.



ACKNOWLEDGMENT

00 03036

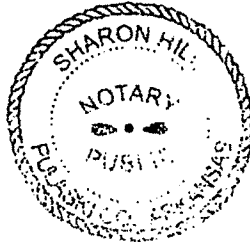
STATE OF Arkansas )  
 ) SS:  
COUNTY OF Pulaski )

I, Sharon A. Hill, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that **DALTON JAMES DAILEY, JR., KATHLEEN DAILEY HIGHTOWER and STEPHANIE ANN DAILEY KELLY**, who are personally known to me to be the same persons whose name are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 18th day of Jan. 2000.

*Sharon A Hill*  
Notary Public

My commission expires 5-16-05



**JOINER, ACKNOWLEDGMENT AND CONSENT  
TO EASEMENT AGREEMENT**

THE UNDERSIGNED, joins in the execution of this Easement Agreement for the purpose of acknowledging the same and evidencing its consent and agreeing to be bound by the terms and conditions of the Easement Agreement as pending successor and assign of Grantor to Parcel 2.

IN WITNESS WHEREOF, the undersigned has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2000.

Phillips Moudy Duke Real Estate, LLC

00 03037

By: [Signature]  
Print Name: DAN E. Moudy  
Title: MEMBER

ATTEST:

\_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

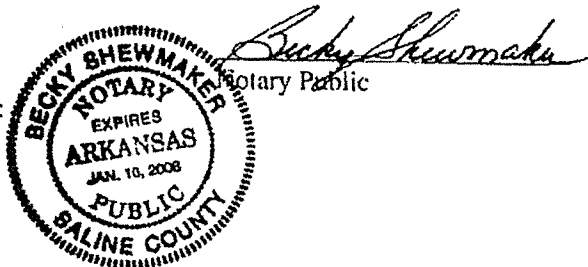
State of Arkansas )  
County of Saline ) SS:

On this, the 19<sup>th</sup> day of January 2000, before a Notary Public, the undersigned officer, personally appeared Dan E. Moudy the \_\_\_\_\_ for \_\_\_\_\_, and that (s)he, as such, \_\_\_\_\_, being authorized to do so, executed this instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

01-16-08



## EXHIBIT A

(Legal Description of Parcel 1, Grantee's property)

Part of the SW 1/4 of the SW 1/4 of Section 22, Township-1-South, Range-14-West, Saline County, Arkansas, being more particularly described as follows:

Commencing at the Southwest corner of said Section 22; thence North 03°12'11" East 1058.06 feet to a point on the East right-of-way line of Arkansas State Highway No. 183 (Reynolds Road) and the POINT OF BEGINNING; thence North 89°37'00" East 499.74 feet; thence South 00°29'39" East 267.31 feet; thence South 89°19'26" West 503.12 feet to a point on the East right-of-way line of Arkansas State Highway No. 183 (Reynolds Road); thence along said right-of-way line, North 00°13'23" East 269.90 feet to the POINT OF BEGINNING, containing 134,681.30 square feet, or, 3.092 acres, more or less.

00 03038

## EXHIBIT B

(Legal Description of Parcel 2, Grantor's property)

### TRACT I

00 03039

All that part of the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , Section 22, Township 1 South, Range 14 West, City of Bryant, Saline County, Arkansas, more particularly described as follows: Commencing at an Arkansas Geological Monument and the Southwest corner of said SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 22; thence North 00 degrees 29 minutes 45 seconds East along the West line thereof 1056.09 feet to a point; thence North 89 degrees 41 minutes 10 seconds East 51.27 feet to a rebar in the East right of way line of Arkansas State Highway No. 183; thence continue North 89 degrees 41 minutes 10 seconds East leaving said highway 499.74 feet to a rebar and the point of beginning, thence North 89 degrees 45 minutes 58 seconds East 784.76 feet to a one half inch diameter pipe, in the East line of said SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  said pipe is located 1.96 feet North of the common corner between lots 105 and 106 Pikewood Subdivision Number 2 as filed in Plat Book 109 at Page 314, thence South 00 degrees 30 minutes 41 seconds East along the East line of said SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the West line of said Pikewood Subdivision 321.92 feet to a one and one half inch diameter pipe; thence South 89 degrees 21 minutes 52 seconds West 779.79 feet to a rebar; thence North 00 degrees 22 minutes 31 seconds West 327.36 feet to the point of beginning.

### AND ALSO

#### Tract II:

All that part of the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , Section 22, Township 1 South, Range 14 West, City of Bryant, Saline County, Arkansas, more particularly described as follows: Commencing at an Arkansas Geological Monument and the SW corner of said SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  Section 22, thence North 00 degrees 29 minutes 45 seconds East along the West line thereof 725.91 feet to a point, thence North 89 degrees 23 minutes 57 seconds East 52.15 feet to a rebar in the East right of way line of Arkansas State Highway Number 183 and the point of beginning, thence North 00 degrees 20 minutes 38 seconds East along the East R/W line of said Highway 60.01 feet to a point, thence North 89 degrees 23 minutes 57 seconds East leaving said road 503.13 feet to a point, thence South 00 degrees 22 minutes 31 seconds East 60.00 feet to a rebar, thence South 89 degrees 23 minutes 57 seconds West along a line common with land of M.B. Land Company 503.88 feet to the point of beginning.

# EXHIBIT C

(Legal Description of Parcel 2A, Easement Area)

Part of the SW 1/4 of the SW 1/4 of Section 22, Township-1-South, Range-14-West, Saline County, Arkansas, being more particularly described as follows:

Commencing at the Southwest corner of said Section 22; thence North 03°12'11" East 1058.06 feet to a point on the East right-of-way line of Arkansas State Highway No. 183 (Reynolds Road); thence North 89°37'00" East 499.74 feet; thence South 00°29'39" East 267.31 feet to the POINT OF BEGINNING; thence South 00°17'28" East 59.99 feet; thence South 89°18'06" West 503.85 feet to a point on the East right-of-way line of Arkansas State Highway No. 183 (Reynolds Road); thence along said right-of-way line, North 00°23'45" East 60.19 feet; thence North 89°19'26" East 503.12 feet to the POINT OF BEGINNING, containing 30,251.00 square feet, or, 0.694 acres, more or less.

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FILED FOR RECORD  
ON THIS 21 DAY OF July, 2000  
AT 12:09 O'CLOCK P.M.  
IN BOOK CC PAGE 3023  
JIM CRONE, CLERK  
Jim Crone D.C.

FILED  
SALINE COUNTY  
CIRCUIT CLERK

2005 OCT 21 AM 10:08

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EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS

These Easements, Covenants, Conditions and Restrictions (hereinafter referred to as "this ECCR"), are made and entered into as of the date of the last execution hereof, which date is the ~~10<sup>th</sup>~~ <sup>October</sup> day of ~~September~~, 2005, by and between Reynolds Road Development, LLC, an Arkansas limited liability company ("Developer") and Lowe's Home Centers, Inc., a North Carolina corporation ("Lowe's") (the foregoing parties hereinafter singularly referred to as a "Party" and collectively referred to as the "Parties");

WITNESSETH:

WHEREAS, Lowe's is the owner of that certain tract of real property consisting of approximately 16.366 acres located in Bryant, Saline County, State of Arkansas, as more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "Lowe's Parcel"); and

WHEREAS, Developer is the owner of a certain tract of real property located in Bryant, Saline County, State of Arkansas, comprised of Parcel B, the Outparcels, and Access Road areas which are located contiguous with and adjacent to the Lowe's Parcel, which is more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the "Developer Parcel"); and

WHEREAS, both the Lowe's Parcel and the Developer Parcel are further designated on the site plan of the overall Shopping Center (as hereinafter defined) development, attached hereto and made a part hereof as Exhibit C (the "Site Plan").

NOW, THEREFORE, the Developer and Lowe's hereby declare, agree, covenant and consent that all of the real property described on Exhibit A and Exhibit B shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are imposed on such real property to run with the real property and be binding on and inure to the benefit of all parties having any right, title or interest in the described Parcels (as hereinafter defined) or any part thereof, their heirs, successors and assigns for the purpose of development and operation of the respective Parcels of Lowe's and Developer in an integrated 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:

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ARTICLE I

BASIC DEFINITIONS

Section 1.1 "Access Roads" means those areas of the Shopping Center devoted to driveways and service drives depicted on Exhibit D for ingress into and egress from the various Parcels within the Shopping Center, to the adjoining Parcel(s), for passage of vehicles, and for passage and accommodation of pedestrians.

Section 1.2 "Common Area" shall mean all real property owned by the Parties for the common use and enjoyment of the Owners, including, without limitation, all Access Roads and the Detention Parcel.

Section 1.3 "Consenting Party" shall mean and refer to the Owner of the Lowe's Parcel and the Owner of the Developer Parcel. There shall be only two (2) Consenting Parties for the Shopping Center consisting of only one Consenting Party representing the Developer Parcel and only one Consenting Party representing the Lowe's Parcel. In the event that the Lowe's Parcel or the Developer Parcel are further subdivided, the current Consenting Party shall designate the particular parcel of the subdivided Parcel whose Owner shall succeed as the Consenting Party.

Section 1.4 "Default Rate" shall mean the rate of interest that is the lesser of (i) seven percent (7%) per annum and (ii) the maximum rate allowed by applicable law.

Section 1.5 "Detention Parcel" shall mean the area labeled as the "Detention Parcel" on the Site Plan within which the detention pond will be located.

Section 1.6 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a 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.

Section 1.7 "Parcel" shall mean and refer to any parcel of land shown 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. Notwithstanding anything herein to the contrary, Outparcel 4 will only be subject to Article III and Section 4.3 of this ECCR.

Section 1.8 "Shopping Center" shall mean and refer to the Lowe's Parcel and the Developer Parcel as shown on the Site Plan.

ARTICLE II

EASEMENTS

Section 2.1 Definitions and Documentation. For the purposes of this Article II, the following will apply:

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(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 also its successors and assigns; although not for the direct benefit of permittees and occupants, the Grantee may permit from time to time its occupants and 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 term "Building(s)" means any permanently enclosed structure(s) which has (have) been, will be or may be placed, constructed or located on a Parcel, and which for the purpose of this ECCR shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions, but such term does not include Common Area Improvements (as that term is hereinafter defined in Section 2.1(d)).

(d) The term "Common Area Improvements" means all improvements which will be or may be constructed on a Parcel under the terms of this ECCR within the Common Areas of the Shopping Center, being those areas designated on the Site Plan for the common enjoyment and use of all Owners, their successors, assigns, occupants and permittees, such as parking areas, access and egress drives, service drives, lighting standards, sidewalks, and all other improvements which would be part of the "Common Area" under the above definition, and all improvements constructed from time to time in replacement of the same or in such redesign or reconfiguration of the same as may be agreed to by both of the Consenting Parties.

(e) The term "Common Utility Facilities" means utility systems and 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 both respective Owners or for the service of the Common Area, such as the following: storm drainage, 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 facilities for such common use or service, including, without limitation, those installed under the provisions of this ECCR and as replacements thereto.

(f) The term "Improvement(s)" means the Building(s) and the Common Area Improvements on a Parcel.

(g) 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.

(h) Intentionally Deleted.

(i) The term "Separate Utility Facilities" means any of the following not installed under the terms of this ECCR for use in common by other Owners nor for service of the Common Area:

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storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), 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 facilities reasonably necessary for the use or service of any Improvement (as that term is hereinbefore defined in Section 2.1(f)) situated on any Parcel.

(j) With the exception of the self-help easements set forth in Section 2.6, all easements granted herein are non-exclusive and are irrevocable and perpetual.

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

(l) 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.

(m) 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 request of an Owner, the other Owners will 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. 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. Each Owner hereby grants to the other Owner(s) easements in the Common Area on its (Grantor's) Parcel for:

(a) ingress to and egress from the Grantee's Parcel;

(b) the passage of vehicles (provided, however, the Owner of the Lowe's Parcel and the Owner of Parcel B may conduct parking lot sales, and/or other business, and/or display merchandise in that portion of the Common Areas directly in front of any Building thereon so long as it does not interfere with ingress and egress; and is not in violation of any applicable law or ordinance. Furthermore, notwithstanding anything herein to the contrary, the Owner of the Lowe's Parcel and the Owner of Parcel B shall have the right, but not the obligation, to install and maintain a bank teller machine or similar kiosk type structure(s) in its parking areas;

(c) the passage and accommodation of pedestrians (provided, however, the Owner of the Lowe's Parcel and the Owner of Parcel B may display merchandise, conduct sidewalk sales and

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other business on the sidewalks on its Parcel so long as pedestrian passage is not obstructed and may otherwise enclose and/or redesign its sidewalk areas without the need of obtaining any other Owner's consent); and

(d) the doing of such other things as are authorized or required to be done on the Common Area under this ECCR;

Provided, however, that such easements 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, and provided further that the Owners hereby specifically disclaim any intention to create any reciprocal parking easements between the Lowe's Parcel and the Developer Parcel.

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 completed.

Each Owner hereby reserves the right to eject from the Common Area on its Parcel any person not authorized to use the same. In addition, each Owner reserves the right to close off the Common Area on its Parcel, or portions thereof, for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Area as provided above, such Owner must give at least fifteen (15) days prior written notice to the Consenting Parties of its intention to do so and must coordinate such temporary closing with the activities of the other Owners so that no unreasonable interference with the operation of the Shopping Center occurs.

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. No changes shall be made in the Common Area or in the location, configuration or design of Common Area Improvements without the consent of both Consenting Parties and except as otherwise herein provided.

Section 2.3 Easements for Access Roads. Each Owner hereby grants to the other Owner(s) easements for pedestrian and vehicular traffic in those strips of land (not less than the widths therefor shown on the Site Plan) on its (Grantor's) Parcel which are shown on Site Plan as shaded or cross hatched roadways (hereinafter collectively referred to as the "Access Roads") for the purpose of providing ingress to and egress from the Grantee's Parcel and each of Arkansas State Highway #183 (Reynolds Road) and Ridgecrest Drive, together with the following rights and subject to the following restrictions and reservations:

(a) 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;

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(b) As further provided in Section 2.9 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 Roads, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof (except as set forth in Section 2.3 (e)) or the accrual of any prescriptive rights to any person therein; and

(c) Neither the access and egress points nor the drive lanes as shown on the Site Plan shall be changed without the written permission of the Consenting Parties, which consent shall not be unreasonably withheld, delayed, or conditioned.

(d) Each Owner grants to Lowe's a perpetual easement for the construction, maintenance and use of the Access Roads, including, without limitation, Access Road 1. Lowe's has the right, but is not obligated to, build such Access Roads. If Lowe's builds the Access Roads, Lowe's will maintain them, and the Owners will reimburse Lowe's for their pro-rata share, based on acreage, of such maintenance. If Lowe's builds a store on the Lowe's Parcel, Lowe's will build Access Road 1, at Lowe's cost and expense (including design and construction costs), simultaneously with the building of such store, and Lowe's will complete Access Road 1 within one (1) year after the date the Lowe's store opens for business.

(e) The Owners acknowledge that Access Road 1 may become a publicly dedicated and maintained road, at which time the maintenance provisions and reimbursement pertaining to Access Road 1 as set forth in this ECCR will terminate as they will no longer be necessary.

(f) The Owners further acknowledge that as of the date of this ECCR, Developer does not own the portion of Access Road 1 which is located south of the Developer Parcel. Developer has the option, for 30 days after the date hereof, to acquire such portion or to assist the City of Bryant in acquiring such portion, at Developer's sole cost and expense. If Developer does acquire such portion, Lowe's will build Access Road 1 using all of such acquired portion, and so much of the portion of Access Road 1 which is on Developer's Parcel as is necessary to build a 36 foot wide road in the Access Road Extension Area (as shown on the Site Plan). If Developer does not acquire such portion, Lowe's will build the 36 foot wide Access Road 1 on the portion of the Access Road 1 which is currently owned by Developer in the Access Road Extension Area. In either case, Developer will provide all easements and right-of-way land as required for the 36 foot wide Access Road 1. Notwithstanding anything herein to the contrary, Lowe's will not be required to construct or widen the portion of Access Road 1 which is not in the Access Road Extension Area.

**Section 2.4 Easements for Utility Facilities.** Each Owner hereby grants to the other Owner(s) perpetual easements to its (Grantor's) Parcel, except within such area on such Owner's Parcel where a Building is located, 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.

All Separate Utility Facilities installed in the Common Area, whether installed under this Section 2.4 or otherwise, and all Common Utility Facilities, shall be underground, if reasonably possible,

and the location of the Separate Utility Facilities shall be subject to the approval of the Owner across whose Parcel the same are to be located.

Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section 2.4 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 the easement grant, as well as for all Separate Utility Facilities installed by the Grantee on its own Parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate 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 damages 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. In addition, the Parties agree that all such installation, maintenance, repair and removal 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. No such work or restoration, except emergency repair work, shall be carried on during the period from November 15th through the next succeeding January 5th, or on any weekends.

The Grantee shall defend, indemnify and hold Grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees), incurred in connection with Grantee's use of the Separate Utility Facilities easements under this Section 2.4, except to the extent occasioned by Grantor's grossly negligent or wrongful acts or omissions to act.

The Grantor of any easement for Separate Utility Facilities under this Section 2.4 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 additionally serve Grantor's use shall be borne by such Grantor; and provided further that Grantor gives written notice within the time period called for under subparagraph (a) and otherwise complies with the requirements of subparagraphs (b), (c) and (d) of the following paragraph of this Section 2.4.

Except during the period from November 15th through the following January 5th, the Grantor of any easement under this Section 2.4 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 interferences with and diminutions in utility services shall be permitted if they occur during the

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non-business hours of the Grantee, and Grantee has been so notified under Subsection 2.4(a)). 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.

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.

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

Section 2.5 Construction Easements. 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 Area on its (Grantor's) Parcel where a Building or other Improvements are to be located, 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.

With respect to any Parcels 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.

The location and use of all temporary construction easements under this Section 2.5 shall be subject to the reasonable approval of Grantor.

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.

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 the other Owner, and shall not interfere with or interrupt the business operations conducted by the other Owner in the Shopping Center.

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Furthermore, the Parties agree that once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Parcel or any Common Area access, egress and service drives to the Lowe's Parcel, all construction traffic to or from the Developer Parcel will be limited to the use of Arkansas State Highway #183 (Reynolds Road) or the future road to be constructed from Reynolds Road to Ridgecrest Drive. 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 easements granted under this Section 2.5 and shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) 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 to act.

Any Grantee 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.

Except as reasonably necessary 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 Self-Help Easements. Each Owner hereby grants to the Owner(s) of the Lowe's Parcel and the Developer Parcel an easement and license to enter upon its Parcel for the purpose of exercising the cure rights provided under Article V of this ECCR. Further, each Owner hereby grants to the Consenting Parties easements in the Common Area of its (Grantor's) Parcel for the installation, construction, repair, maintenance, relocation and removal of any and all Separate Utility Facilities and Common Area Improvements, if such installation, construction, repair, maintenance, relocation or removal is required or permitted under the other provisions of this ECCR. Each Grantee of the easements granted under this Section 2.6 shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees) incurred in connection with or arising out of Grantee's use of said easements, except to the extent occasioned by the Grantor's grossly negligent or wrongful acts or omissions to act. The duration of the easements granted under this Section 2.6 shall be coterminous with the respective provisions of this ECCR which give the Grantee the right or the obligation to perform the work described in this Section 2.6.

Section 2.7 Easements to Public Utilities. Any grant or other conveyance of an easement to a public utility 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 to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument.

- (a) The easement is non-exclusive;

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- (b) All facilities installed pursuant to the easement shall be underground, except for manhole and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans approved by Grantor;
- (c) Grantor retains the right to use the surface areas within the easement as Grantor sees fit;
- (d) 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;
- (e) Grantee shall not, in its use or installation, interfere with other installations and easements in the area;
- (f) Grantee shall protect its facilities against uses of the surface made by Grantor and others;
- (g) Grantee shall make adequate provisions for the safety and convenience of all persons using the area;
- (h) 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;
- (i) Grantee shall defend, indemnify and hold harmless Grantor against all loss, liability, and costs (including reasonable attorney's fees) which may result to Grantor from the negligent act or omission of Grantee, Grantee's agents, employees and contractors; and
- (j) Grantee shall not permit any claim, lien or encumbrance to attach against Grantor's Parcel or any interest therein.

Section 2.8 Easement for Storm Water Detention. Outparcels 1, 2 and 3 are hereby granted a perpetual, non-exclusive drainage easement covering the Detention Parcel for the purpose of draining and detaining storm water runoff from such Outparcels. Lowe's will build the detention pond on the Detention Parcel if Lowe's builds a Lowe's store on the Lowe's Parcel. Otherwise, Lowe's may, but is not obligated to, construct the detention pond on the Detention Parcel. If Lowe's builds the detention pond, Lowe's will maintain such pond, and the Owners of Outparcels 1, 2 and 3 who are using the detention pond will reimburse Lowe's for their pro-rata share (based on acreage) of the cost of such maintenance. If Lowe's builds the detention pond, Lowe's will indemnify, defend and hold harmless the other Owners of Outparcels 1, 2 and 3 for any failure to permit, construct and maintain the facility in accordance with all state, federal, local or other laws, regulations and directives. Furthermore, each Owner of Outparcels 1, 2 and 3 will indemnify, defend and hold harmless Lowe's and the other Owners of Outparcels 1, 2 and 3 for any failure to comply with all state, federal, local or other laws, regulations and directives in its use of the Detention Parcel, including, without limitation, such Owner's discharge into the detention pond on the Detention Parcel. In the event that Lowe's fails in its maintenance obligations as set forth in the Section 2.8, which failure continues for a period of thirty (30) days after receipt of written notice thereof specifying

the particulars of such failure, such failure shall constitute a default under this ECCR and the Owners of Outparcels 1, 2 and 3 may thereafter perform such maintenance obligations, in addition to other remedies available under this ECCR. If Lowe's does not build the detention pond, Lowe's grants to the Owners of Outparcels 1, 2 and 3 a non-exclusive easement on the Detention Parcel for the construction and maintenance of the detention pond (to be constructed in a location on the Detention Parcel as is reasonably agreed to by Lowe's and the Owners of Outparcels 1, 2 and 3).

Section 2.9 No Barrier Agreement. No barriers, fences, walls, grade changes or other obstructions shall (i) 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 Lowe's Parcel and the Developer Parcel from time to time devoted to pedestrian access, vehicular roadways or parking area, or (ii) in any manner unreasonably restrict or interfere with the use and enjoyment by the Consenting Parties of the rights and easements created by this Article II. In addition, 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 at least fifteen (15) days prior written notice to the Consenting Party of its intention to do so and must coordinate such temporary closing with the activities of the other Owner(s), 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 and reconstruction.

### ARTICLE III

#### USE

Section 3.1 General Use Requirement. Every Parcel shall be used only for financial institutions, service shops, offices of the type customarily found in retail shopping centers, retail stores selling retail merchandise normally carried in other shopping centers, and restaurants with over fifty percent (50%) of gross revenues from food sales.

Section 3.2 Nuisances. Subject to the provisions of Section 3.1, no Parcel shall be used for anything other than the 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 may be used for any of the following purposes without the prior written consent of the Consenting Parties:

(i) 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 alcoholic beverages therein comprises less than fifty percent (50%) of the restaurant's gross revenues.

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

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

(iv) A health club, gymnasium, health spa, or other type spa (provided, however, that one day spa/hair salon/beauty spa of not more than 5,000 square feet will be permitted in the Shopping Center).

(v) A service station, automotive repair shop or truck stop.

(vi) A flea market or pawn shop.

(vii) 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).

(viii) A school.

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

(x) A medical clinic or office.

(xi) 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 laundry at an offsite location is permitted).

(xii) An establishment for sale of automobiles, trucks, mobile homes, or recreational motor vehicles.

(xiii) A child day care facility.

(xiv) A hotel or motel.

(xv) A storage or mini warehouse facility.

(xvi) Governmental offices.

(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 skating rink.

(iv) A mortuary, crematorium or funeral home.

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

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

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- (vii) A telephone call center.
- (viii) A gambling establishment or betting parlor.
- (ix) A veterinary hospital or any animal raising or keeping facilities.
- (x) An assembling, manufacturing, industrial, distilling, refining or smelting facility.

**Section 3.4 Use Restrictions on the Developer Parcel.** No portion of the Developer Parcel shown on the Site Plan may be used for the following purposes:

- (a) A hardware store containing more than 5,000 square feet of floor area.
- (b) An appliance, home electronics and/or lighting store containing more than 5,000 square feet of floor area (provided, however, that a Best Buy, Circuit City, Fry's, Ultimate Electronics or other nationally recognized electronics retailers which will occupy at least 25,000 square feet of floor area in the Shopping Center will be permitted).
- (c) A nursery and/or lawn and garden store containing more than 3,000 square feet of floor area (including any outdoor areas).
- (d) A paint and/or home decor center containing more than 4,000 square feet of useable floor area (provided, however, that a Linens N Things, Bed, Bath and Beyond, Cost Plus, Pier One or other like-kind nationally recognized retailer will be permitted).
- (e) 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, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply.

These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) when such space exceeds the limitations of subparagraphs (a) through (d).

Notwithstanding anything in the foregoing to the contrary, in the event a retail and/or warehouse home improvement center, lumber yard, building materials supply center, hardware store, lawn and garden store, appliance, home electronics and/or lighting store, and/or paint and/or décor center is not operated in any portion of the Lowe's Parcel for a period in excess of one (1) year (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Parcel), the above stated exclusives shall be of no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall re-open a store on any portion of the Lowe's Parcel for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if such uses were begun during the time that the above exclusive use restrictions were of no force and/or effect.

For purposes of this Article III and of this ECCR, any reference to "nationally recognized" shall mean and refer to only those retail businesses having at least 75 locations within first class shopping

centers throughout the United States, which use a distinctive and recognizable architectural design that is substantially the same at all of such locations (subject to changes in such prototypical architectural design which evolve over time).

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 (i) 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, (ii) 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 (iii) no usage of such marks or names shall be made without the prior written consent of Lowe's and Lowe's legal counsel. 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.

#### ARTICLE IV

##### GENERAL CONSTRUCTION & DEVELOPMENT

Section 4.1 Development Timing. When any Building is constructed on a Parcel, the Common Area on that Parcel shall be developed in accordance with the Site Plan at the expense of the Owner of said Parcel. If one Owner ("Developing Owner") constructs improvements on Developing Owner's Parcel prior to the development of another Parcel, Developing Owner shall have the right to grade, pave and use any portion of the Common Area of the non-developing Owner's Parcel. Developing Owner shall cause all of said work to be separately bid on a competitive basis, and the costs and proposed work shall be approved in advance by the non-developing Owner in writing, provided that such approval shall not be unreasonably withheld, conditioned or delayed. The non-developing Owner agrees to reimburse Developing Owner for such costs when any portion of the non-developing Owner's Parcel is developed or upon the sale of any portion of the non-developing Owner's Parcel, whichever first occurs.

Except as provided in Section 7.6 hereof as to the Lowe's Parcel, no Buildings or structures shall be erected or allowed to remain on any Parcel unless the plans and specifications for such structure, and the architectural renderings describing the exterior elevations of such Buildings and materials to be used for such construction, have been approved by the Consenting Parties, which approval shall not be unreasonably withheld. A complete set of proposed construction plans including a site, foundation, floor plan and elevation drawings of all sides shall be presented to and approved in writing by the Consenting Parties prior to the commencement of clearing, grading, or construction of a Building of any kind on any Parcel. Upon completion of the Building foundation, an actual field survey of the foundation shall be presented to the Consenting Parties to ensure that it has been constructed in accordance with the Site Plan. All Improvements shall comply with the plans as presented by the Owner unless changes are

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approved in writing by the Consenting Parties. The right to make inspections necessary to assure compliance is reserved to the Consenting Parties. 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. Total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year. In the event that a party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations (whether valid or invalid), riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period of performance of any such act shall be extended for a period equivalent to the period of such delay.

Whenever any approval or consent is required under the terms of this Section 4.1, the Developing Owner requesting approval shall provide such request to the non-developing Owner (or the Consenting Parties, as applicable), in accordance with Section 7.3 below. If such Developing Owner has not received a response from the non-developing Owner (or the Consenting Parties, as applicable) within fifteen (15) days of the initial request, the Developing Owner shall provide a second request for approval to the non-developing Owner (or the Consenting Parties, as applicable). Such approval shall be deemed granted unless expressly denied by the developing Owner (or one or both of the Consenting Parties) within fifteen (15) days following the date such second request is given, provided that such request of approval or consent states, in bold, all capitalized letters, the following: **"YOUR FAILURE TO RESPOND TO THIS REQUEST WITHIN FIFTEEN (15) DAYS SHALL CONSTITUTE YOUR APPROVAL OF THIS REQUEST.**

Section 4.2 Developer Improvement Plans. Prior to construction of any Building(s) or other Improvements on the Developer Parcel, Developer must submit architectural renderings describing the exterior elevations of the Building and materials to be used for such construction to the Owner of the Lowe's Parcel for its approval, which approval shall not be unreasonably withheld.

Section 4.3 Parking Requirements. The Lowe's Parcel and Parcel B shall be self-supporting with respect to parking and shall each contain not less than four and one-half (4.5) paved full size automobile parking spaces for each 1,000 square feet of building floor area constructed thereon, or the number of parking spaces required by applicable law, whichever is greater. Every other Parcel, including all Outparcels, shall be self-supporting with respect to parking and shall each contain not less than five (5) paved full size automobile parking spaces for each 1,000 square feet of building floor area constructed thereon, or the number of parking spaces required by applicable law, whichever is greater. Provided however, any restaurant which is 2,550 square feet or less in size located on an Outparcel as part of a multi-tenant building will be required to have seven (7) paved full size automobile parking spaces per each 1,000 square feet of building floor area (or the number of parking spaces required by law, whichever is greater), and any other restaurant (including any fast food restaurants) will be required to have no less

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than ten (10) paved full size automobile parking spaces per each 1,000 square feet of building floor area (or the number of parking spaces required by law, whichever is greater). Notwithstanding anything herein to the contrary, Outparcel 4 will be required to have the number of parking spaces required by applicable law.

**Section 4.4 Pylon Signs.** There shall be two (2) pylon signs in the Shopping Center, one located on Outparcel 1 and one located on the Lowe's Parcel, in the locations shown on the Site Plan (the "Pylon Signs"). No other Owner will have a right to a panel on the Pylon Signs unless Lowe's approves such request and such Owner pays Lowe's for their panel space (at a price to be reasonably determined by Lowe's, based on Lowe's construction costs). If Lowe's approves additional panels, Lowe's shall be entitled to have and maintain the top and most prominent sign panel on each side of both of the Pylon Signs. Developer hereby grants Lowe's a perpetual non-exclusive easement over and upon the Lowe's Pylon Sign Area on Outparcel 1 (as shown on the Site Plan) for the purpose of installing, repairing, maintaining, and renewing its sign panel, and over and upon Parcels for ingress and egress to and from the Lowe's Pylon Sign Area. The maximum number of panels on any given Shopping Center pylon or monument sign shall be four (4). The total square footage of all other sign panels on either Pylon Sign shall not be greater than the square footage of the Lowe's sign panel on such Pylon Sign. Lowe's sign panels shall be of colors, design and content as required by Lowe's own visual sign standards, and shall not be subject to review or approval. Lowe's may construct and maintain the Pylon Signs (subject to pro-rata reimbursement from panel users approved by Lowe's for their share of such construction and maintenance cost).

**Section 4.5 Outparcel Development.** Any Outparcel sold or developed within the Shopping Center will only be developed under the following guidelines:

- (a) Any Building constructed on any of the Outparcels shall not exceed the maximum size at which such Outparcel will meet the parking requirements of this ECCR.
- (b) Any Building constructed on any of the Outparcels shall not exceed 24 feet in height, as measured from the finished elevation of the parking area of the Shopping Center, with an additional 4 feet in height permitted for architectural features; such Building (including architectural features) shall not exceed 28' in height.
- (c) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to the Consenting Parties.
- (d) No rooftop signs shall be erected on any Building constructed on any Outparcel.
- (e) A freestanding identification sign may be erected on any Outparcel only with the prior written consent of the Owner of the Lowe's Parcel, but in no event shall such freestanding identification sign exceed five (5) feet in height or block the visibility of any signage on any Building located on the Lowe's Parcel or the visibility of any Shopping Center Pylon Signs, and shall be in a location and in accordance with plans approved in writing by the Consenting Parties. Each Outparcel Pylon Sign shall be no more than twenty (20) feet in height. Each Outparcel Pylon Sign shall be used for

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the advertising the Owner(s), tenant(s) or occupant(s) of that Outparcel. Approvals under this section shall not be unreasonably withheld. If an Owner of an Outparcel desires to erect such a freestanding sign, it shall make its request in writing to Lowe's with a copy of the sign plans. The Owner of the Lowe's Parcel shall then have thirty (30) days from receipt of the notice to object to the proposed sign. If the Owner of the Lowe's Parcel does not object within the thirty (30) day period, then the proposed sign shall be conclusively deemed approved, and the Owner of the Lowe's Parcel shall not have the right to any further objection. 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.

(f) Any Outparcel shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.

(g) Any Owner or other party purchasing or leasing from Developer and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the utility facilities described in Section 2.4 of this ECCR which is caused by such Owner or party.

(h) Outparcel 1 may have any curb cuts onto I-30 or Reynolds Road as are approved by applicable governmental authorities, so long as such approvals do not adversely affect the approval of Lowe's curb cuts. Outparcel 2 may have one curb cut onto each of the two (2) Access Roads west of the Lowe's Parcel, and one curb cut into the Lowe's parking lot, and Outparcel 3 may have one curb cut onto the southernmost Access Road west of the Lowe's Parcel to which it adjoins, and one curb cut into the Lowe's parking lot, so long as such curb cuts are approved by applicable governmental authorities, so long as such approvals do not adversely affect the approval of curb cuts on the Lowe's Parcel, and so long as such curb cuts are located not more than 180 feet from the existing right-of-way line of Reynolds Road.

(i) Any of the restrictions or requirements set forth in this Section 4.5 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by the Consenting Parties; provided that neither the Owner of the Lowe's Parcel nor the Owner of the Developer Parcel shall waive, amend, modify, release, or terminate this ECCR without the prior written consent of the other. However, the Consenting Parties shall not amend or modify any of the foregoing restrictions on an Outparcel without the prior written consent of the fee Owner of the Outparcel. The fee Owner of such Outparcel, however, may impose additional restrictions on its Outparcel as such fee Owner shall deem to be appropriate, subject to any exceptions thereto imposed on said fee Owner at the time of conveyance of said Outparcel by the Consenting Parties to said fee Owner.

(j) 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.

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Section 4.6 Fire Protection (in line stores). Any structure constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered insurance rate on the other structures in the Shopping Center.

Section 4.7 Performance of Construction Work Generally. All construction, alteration or repair work undertaken by an Owner 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 occupants; (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) indemnify and hold harmless all other Owners in the Shopping Center against any mechanics' liens for such work, particularly as to Common Areas. Such construction 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. The party performing such work shall limit all construction work and staging areas to its own Parcel and not encroach on any Common Areas on any other Parcel and shall not utilize parking areas of any other Parcel. In connection with construction work performed on a Parcel, 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, 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, limit such access to its own Parcel) and (b) for 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, 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. No work will be performed on the Lowe's Parcel without the prior written consent of the Owner of the Lowe's Parcel, such consent not to be unreasonably withheld. 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.

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Section 4.8 Compliance in Construction. All construction, alteration or repair work which an Owner undertakes pursuant to this Declaration shall comply with plans and specifications therefor, 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. A Consenting Party's approval of any such work, or the plans and specifications therefor, under any provisions of this ECCR shall not constitute such Consenting Party's assumption of responsibility for the accuracy, sufficiency or propriety of such work, or of such plans and specifications, nor shall such approval constitute a representation or warranty by such Consenting Party that such work or plans and specifications call for construction of the most economical improvements or improvements which comply with the law.

Section 4.9 Construction Insurance. Prior to commencing any construction activities within the Shopping Center, each Owner 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:

- (a) Worker's Compensation and Employer's Liability Insurance.
  - (i) Worker's compensation insurance as required by any applicable law or regulation.
  - (ii) Employer's liability insurance in the amount of \$2,000,000 each accident for bodily injury, \$2,000,000 policy limit for bodily injury by disease and \$2,000,000 each employee for bodily injury by disease.
- (b) General Liability Insurance. Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:
  - (i) Required Coverages:
    - (a) Premises and Operations;
    - (b) Products and Completed Operations;
    - (c) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
    - (d) Broad Form Property Damage (including Completed Operations);
    - (e) Explosion, Collapse, and Underground Hazards;
    - (f) Personal Injury Liability:
      - (i) \$2,000,000 each occurrence (for bodily injury and property damage;
      - (ii) \$3,000,000 for Personal Injury Liability;

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- (iii) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work);
- (iv) \$5,000,000 general aggregate.
- (g) Automobile Liability Insurance. Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.
- (h) Umbrella/Excess Liability Insurance
  - (i) The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000.
  - (ii) If the construction activity involves the use of another Parcel, then the Owner and mortgagee of such Parcel shall each be additional insured(s) and such insurance shall provide that the insurance shall not be canceled, or reduced in an amount or coverage below the requirements of this ECCR, without at least 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.

Nothing herein shall be construed from prohibiting an Owner which itself, or in combination with its parent corporation, has a net worth in excess of TWO HUNDRED MILLION DOLLARS (\$200,000,000.00), as determined by generally accepted accounting principles, from self-insuring.

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 operation 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 of 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.

If Lowe's builds the detention pond on the Detention Parcel, Lowe's will maintain the pond. The cost of maintaining the detention pond on the Detention Parcel (including the storm drainage lines connecting to the Detention Parcel), and the taxes on the Detention Parcel shall be prorated between the Owners of Outparcels 1, 2 and 3 based on the acreage of each Parcel. An Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor.

If Lowe's builds Access Road 1, until such time as Access Road 1 (as shown on the Site Plan) is publicly dedicated (if ever), Lowe's will maintain Access Road 1. The cost of maintaining Access Road 1 shall be prorated between the Owners of the Parcels based on the acreage of each Parcel. Each Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor.

If Lowe's builds the Access Roads, Lowe's will maintain the Access Roads. The cost of maintaining the Access Roads shall be prorated between the Owners of the Parcels based on the acreage of each Parcel. Each Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor.

Subject to the mutual agreement of the Consenting Parties, a third party may be appointed as an agent of all the Owners to maintain and repair the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is acceptable to the Consenting Parties to cover supervision, management, accounting and similar fees. The cost of all maintenance and

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repair activities undertaken by the third party agent, together with the agency fee, shall be prorated between the Owners based upon acreage owned. An Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor.

Section 5.2 Damage and Destruction. In the event of the destruction and damage to any extent to the Buildings and Improvements in the Shopping Center, the affected Owner shall (1) diligently commence and pursue completion of the repair or restoration, and/or (2) within ninety (90) days after the destruction or damage clear away the ruins and leave the Parcel in a clean, orderly, sightly and safe condition. Further, in the event that the affected Owner elects not to rebuild its Building(s) and Improvements, the use restrictions placed on the non-affected Owner's site by the effected Owner herein, except for those cited in Sections 3.3 and 3.4 hereof, shall be null and void and of no further force and effect.

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 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.

Section 5.3 Default in Maintenance Responsibilities. In the event that an Owner fails 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 default under this ECCR and the Owner of the Lowe's Parcel and/or the Owner of the Developer Parcel (the "Curing Party") may thereafter perform such maintenance obligations, in addition to such Curing Party's other remedies.

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 default under this ECCR and the Owner of the Lowe's Parcel and/or the Owner of the Developer Parcel (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 bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have ten (10) business days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Party shall be entitled to claim a lien in accordance with Section 6.3 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 the expiration of said ten (10) business day period until paid.

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Section 5.5 Insurance; Indemnification; Waiver of Subrogation. 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 against loss or damage by fire, lightning and other risks customarily covered by an all-risks policy of property insurance for the full replacement cost of the Building(s) and Improvements located thereon and (ii) 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 combined single limit coverage of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence. Nothing herein shall be construed from prohibiting an Owner which itself, or in combination with its parent corporation, has a net worth in excess of TWO HUNDRED MILLION DOLLARS (\$200,000,000.00), as determined by generally accepted accounting principles, from self-insuring for such insurance coverage.

In the event an Owner fails to maintain the insurance 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 Developer Parcel (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 does not so pay, the Curing Party shall be entitled to claim a lien in accordance with Section 6.3 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.

To the extent not covered by the insurance policies described above, each Owner (the "Indemnitor") will pay, and indemnify and save 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, invitees, customers, agents or employees.

Each Owner (the "Releasor") hereby releases the other Owner (the "Releasee") from any and all liability or responsibility to the Releasor or anyone claiming through or under the Releasor by way of subrogation or otherwise for any incurred loss or damage to any person or property caused by fire or other peril or other such loss, damages, or other insured event or negligence of the Releasee, or anyone for whom such Releasee may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the Releasor's policy or policies of insurance shall contain a waiver of subrogation endorsement, to the effect that any such release shall not adversely affect or impair said policy or policies or prejudice the right of the Releasor to recover thereunder.

ARTICLE VI

DEFAULT: REMEDIES

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

(a) The failure to perform any obligation of Article V hereof within the time requirements cited therein;

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

(c) The failure to observe or perform any of the other covenants, conditions or obligations of this ECCR or to abide by the restrictions and requirements herein provided, other than as described in (a) above, within thirty (30) days after the issuance of a notice by another Owner (the "non-defaulting Owner") specifying the nature of the default claimed.

Section 6.2 Right to Cure. With respect to any default under Section 6.1 above, any non-defaulting Owner shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Owner; 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 non-defaulting 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 non-defaulting 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 non-defaulting Owner shall cure a default, the defaulting Owner shall reimburse the non-defaulting 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.

Section 6.3 Liens. Costs and expenses accruing and/or assessed pursuant to Section 6.2 above and the amounts described in Section 6.1 shall constitute a lien against the defaulting Owner's Parcel. The lien shall attach and take effect only 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 Owner making the claim. The claim of lien shall include the following:

- (i) The name and address of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a non-defaulting and/or curing Owner;

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- (iii) 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;
- (iv) A description of the Parcel against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien;
- (vi) A statement itemizing the total amount due, including interest;
- (vii) 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 7.3 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.

The above described liens are expressly subordinate to the lien of any mortgage placed upon a Parcel to secure construction or permanent financing of improvements on such Parcel.

Section 6.4 Other Remedies. Subject to Section 6.8, Each non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any defaulting Owner hereto, or any other person violating or attempting to violate or defaulting upon any of the provisions contained in this ECCR, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this ECCR, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an 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 6.5 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 of 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.

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Section 6.6 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 Owner may have hereunder by reason of any breach of the provisions of this ECCR.

Section 6.7 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 lessee or fee 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 6.7, the easements, covenants and restrictions in this ECCR shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 6.8 Breach. In the event of a breach or threatened breach of this ECCR, only an Owner of (i) more than 25,000 square feet of enclosed building area on the Developer Parcel or 3 acres of the Developer Parcel, or (ii) the Owner of the Lowe's Parcel, or (iii) Developer (but not Developer's successors or assigns, except if such successor or assign acquires more than 51% of the Developer Parcel as it exists on the date hereof) shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In the event of a breach hereof, the non-prevailing Owner shall pay the reasonable attorney's fees of the prevailing Owner.

ARTICLE VII  
MISCELLANEOUS

Section 7.1 Estoppel Certificates. Each Owner shall, upon not less than thirty (30) days written notice from the other Owner, execute and deliver to such requesting Owner a certificate in recordable form stating that (i) either this ECCR is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge the requesting Owner is in default in any respect under this ECCR and if in default, specifying such default.

Section 7.2 Term and Perpetuity. 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, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties until the expiration of sixty (60) years from the date hereof, unless terminated 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, with the exception of the self-help easements set forth in Section 2.6, 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, with the exception of the self-help easements set forth in Section 2.6, shall terminate and have no further force or effect.

Section 7.3 Notices. Any notice 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, Certified Mail, Return Receipt Requested, postage prepaid, 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):

- 05 116477
- Developer: Reynolds Road Development, LLC  
7 Lacelle Court  
Little Rock, Arkansas 72223  
Attention: Mark Middleton
- Copy to: Quattlebaum, Grooms, Tull & Burrow, PLLC  
111 Center Street, Suite 1900  
Little Rock, Arkansas 72201  
Attention: Tim Grooms
- Lowe's: Lowe's Home Centers, Inc.  
P. O. Box 1111  
(Highway 268 East, North Wilkesboro, No. Carolina 28659)  
North Wilkesboro, North Carolina 28656-0001  
Attention: Property Management Dept. (REO)
- Copy to: Lowe's Home Centers, Inc.  
P. O. Box 1111  
(Highway 268 East, North Wilkesboro, No. Carolina 28659)  
North Wilkesboro, North Carolina 28656-0001  
Attention: Real Estate Law Department (REO)
- Copy to: Wilson, Cribbs & Goren, P.C.  
2500 Fannin Street  
Houston, Texas 77002  
Attention: Abe S. Goren

Section 7.4 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.

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Section 7.5 Adjacent Developer Parcel(s). Developer may, in Developer's sole discretion, subject the parcel(s) of real property adjacent to the Shopping Center which are owned by Developer (the "Adjacent Developer Parcel(s)") to the terms, covenants and conditions of this ECCR by recording an appropriate document in the Real Property Records of the county and state where the Adjacent Developer Parcel(s) are located. At that time the Adjacent Developer Parcel(s) shall be subject to the obligations created herein and shall benefit from the rights granted to Developer herein. If such Adjacent Developer Parcel(s) are incorporated in the Shopping Center and made subject to this ECCR and if there are any continuing liabilities of the Owners which are divided between the Owners based on prorations of land area or otherwise, then the prorations shall be adjusted accordingly.

Section 7.6 Harmony. Developer and Lowe's agree to 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 Lowe's may construct improvements similar to its current prototypical store building and improvements. After initial construction of Buildings and other Improvements, no Owner shall make alterations that will substantially change the exterior of its Buildings without the consent of the Owner of the Lowe's Parcel and the Owner of the Developer Parcel, such consents not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Owner of the Lowe's Parcel may make, without the consent of the Owner of the Developer Parcel, changes to its Buildings and Improvements that it may deem appropriate for consistency with changes in the design and appearance of its then current prototypical stores.

Section 7.7 No Covenant to Continuously Operate. 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 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 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. 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 the Owners is an arm's 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.

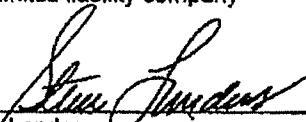
**[SIGNATURE PAGES TO FOLLOW]**

05 116479

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

**DEVELOPER:**

Reynolds Road Development, LLC  
an Arkansas limited liability company

By:   
Name: Steve Landers  
Title: Managing Member

**LOWE'S:**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

05 116480

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

**DEVELOPER:**

Reynolds Road Development, LLC  
an Arkansas limited liability company

By: \_\_\_\_\_  
Name: Steve Landers  
Title: Managing Member

LOWE'S:  
Lowe's Home Centers, Inc.,  
a North Carolina corporation

Approved  
TAD  
10-13-05  
YCB

By: David E Shelton  
Name: David E. Shelton  
Title: Senior Vice President

05 116481

THE STATE OF ARKANSAS

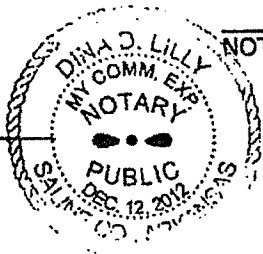
COUNTY OF Searcy

§  
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§

BEFORE ME, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Steve Landers to me personally well known, who stated that he is the Managing Member of Reynolds Road Development, LLC, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 19 day of October, 2005.

Dina D. Lilly  
NOTARY PUBLIC



My Commission Expires:  
12-12-12

05 116482

THE STATE OF NORTH CAROLINA

COUNTY OF WILKES

§  
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BEFORE ME, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named \_\_\_\_\_ to me personally well known, who stated that he is the \_\_\_\_\_ of Lowe's Home Centers, Inc., and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of October, 2005.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

THE STATE OF ARKANSAS

COUNTY OF \_\_\_\_\_

05 116483

BEFORE ME, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Steve Landers to me personally well known, who stated that he is the Managing Member of Reynolds Road Development, LLC, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of October, 2005.

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

THE STATE OF NORTH CAROLINA

COUNTY OF WILKES

05 116483

BEFORE ME, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named David E Shelton to me personally well known, who stated that he is the Senior Vice Pres of Lowe's Home Centers, Inc., and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 14th day of October, 2005.

Carla H. Reavis  
NOTARY PUBLIC

My Commission Expires: 9-22-06

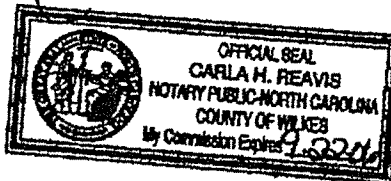


Exhibit "A"

Lowe's Parcel

Part of the Southwest Quarter of Section 22, Township 1 South, Range 14 West of the 5<sup>th</sup> P.M., City of Bryant, Saline County, Arkansas, described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 22; thence North 2°32'00" East, 1217.84 feet along the West line of said Southwest Quarter; thence South 87°28'00" East, 61.88 feet to a point on the East right of way of Arkansas Highway 183 (Reynolds Road) said point being the point of beginning; thence North 14°48'36" East, 79.77 feet along said East right of way; thence South 86°58'15" East, 56.89 feet; thence South 3°48'02" West, 20.39 feet; thence South 76°14'34" East, 56.18 feet; thence 87°05'10" East, 256.52 feet; thence North 2°54'50" East, 252.03 feet; thence North 87°05'10" West, 200.54 feet; thence around a curve to the right having a radius of 257.50 feet, an arc length of 62.28 feet, a chord bearing of North 80°09'26" West and a chord length of 62.13 feet; thence North 73°13'41" West, 43.68 feet to a point on said East right of way of Arkansas Highway 183 (Reynolds Road); thence North 18°56'37" East, 46.03 feet along said right of way; thence South 73°13'41" East, 41.94 feet; thence around a curve to the left having a radius of 211.50 feet, an arc length of 51.16 feet, a chord bearing of South 80°09'26" East and a chord length of 51.03 feet; thence South 87°05'10" East, 206.51 feet; thence North 2°54'50" East, 22.91 feet; thence South 88°44'53" East, 881.44 feet to a point on the West line of Pikewood Subdivision No. 2 to Saline County as recorded in Deed Book 109 at page 314; thence North 2°34'48" East 32.27 feet along said West line to the Northwest corner of Lot 102 of said Subdivision; thence South 88°12'40" East, 288.40 feet along the North line of said Lot 102 to the Northeast corner thereof; thence South 4°55'11" East, 281.00 feet along the East lines of Lots 102 and 103 of said Subdivision to the Southeast corner of said Lot 103; thence North 88°27'16" West, 325.10 feet along the South line of said lot 103 to the Southwest corner thereof; thence South 2°34'48" West, 454.01 feet along the East line of said Pikewood Subdivision No. 2; thence North 87°05'10" West 477.06 feet; thence North 2°54'50" East, 8.84 feet; thence North 87°05'10" West, 305.54 feet to a point on the East line of a tract of land described in Document 04-03029; thence North 1°36'53" East, 149.36 feet along the East line of said tract to the Northeast corner thereof; thence North 88°16'43" West, 105.27 feet along the North line of said tract; thence North 2°54'50" East, 152.74 feet; thence North 87°05'10" West, 384.67 feet to the point of beginning.

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Exhibit "B"

Developer Parcel

OVERALL DESCRIPTION, BRYANT, ARKANSAS

Part of the Southwest Quarter of Section 22, Township 1 South, Range 14 West of the 5<sup>th</sup> P.M., City of Bryant, Saline County, Arkansas, described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 22; thence North 2°32'00" East, 726.83 feet along the West line of said Southwest Quarter; thence South 87°28'00" East, 51.99 feet to a found iron pin on the East right of way of Arkansas Highway 183 (Reynolds Road) said point being the point of beginning; thence North 2°34'12" East, 60.18 feet along said East right of way to the Southeast corner of a tract of land as described in Document 04-03029; thence South 88°34'10" East, 502.98 feet along the South line of said tract to the Southeast corner thereof; thence North 1°38'53" East, 267.38 feet along the West line of said tract to the Northeast corner thereof; thence North 88°16'43" West, 499.88 feet along the North line of said tract to the Northwest corner thereof said point also being on the East right of way of Arkansas Highway 183 (Reynolds Road); thence North 2°32'36" East, 110.60 feet along said East right of way; thence North 14°46'36" East, 261.50 feet along said East right of way; thence North 28°54'26" East, 26.97 feet along said East right of way; thence North 18°56'37" East, 148.25 feet along said East right of way; thence North 15°05'21" East, 114.58 feet along said East right of way; thence North 29°15'56" East, 119.85 feet along said East right of way; thence North 3°11'57" East, 40.21 feet along said East right of way; thence around a curve to the right having a radius of 676.25 feet, an arc length of 148.93 feet, a chord bearing of North 41°24'38" East, and a chord length of 148.63 feet along said East right of way; thence North 59°09'28" East, 160.75 feet along said East right of way to a point on the East line a tract of land as described in Document 02-077390; thence South 2°16'23" West, 469.21 feet along said East line to the Southeast corner thereof; thence South 88°44'53" East, 867.03 feet to a point on the West line of Pikewood Subdivision No. 2 to Saline County as recorded in Deed Book 109 at page 314; thence North 2°34'48" East, 32.27 feet along said West line to the Northwest corner of Lot 102 of said Subdivision; thence South 88°12'40" East, 288.40 feet along the North line of said Lot 102 to the Northeast corner thereof; thence South 4°55'11" East, 281.00 feet along the East lines of Lots 102 and 103 of said Subdivision to the Southeast corner of said Lot 103; thence North 88°27'16" West, 325.10 feet along the South line of said lot 103 to the Southwest corner thereof; thence South 2°34'48" West, 420.77 feet along the West line of said Subdivision to the Northwest corner of Lot 107 of said Subdivision; thence South 88°53'05" East, 380.06 feet along the North line of said Lot 107 to the Northeast corner thereof; thence South 4°55'11" East, 421.87 feet along the East lines of Lots 107, 108 and 109 of said Subdivision to the Southeast corner of said Lot 109; thence North 87°10'33" West, 435.00 feet along the South line of said Lot 109 to the Southwest corner thereof; thence North 2°34'48" East, 27.15 feet along the West line of said Lot 109; thence North 88°46'26" West, 614.38 feet; thence South 2°31'14" West, 25.00 feet; thence North 88°33'53" West, 658.39 feet to a point on the East right of way of Arkansas Highway 183 (Reynolds Road); thence North 2°31'30" East, 26.58 feet along said East right of way; thence South 88°32'07" East, 460.41 feet; thence North 0°46'50" West, 198.06 feet; thence North 88°33'43" West, 459.80 feet to the point of beginning.

LESS AND EXCEPT:

Part of the Southwest Quarter of Section 22, Township 1 South, Range 14 West of the 5<sup>th</sup> P.M., City of Bryant, Saline County, Arkansas, described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 22; thence North 2°32'00" East, 1217.84 feet along the West line of said Southwest Quarter; thence South 87°28'00" East, 61.88 feet to a point on the East right of way of Arkansas Highway 183 (Reynolds Road) said point being the point of beginning; thence North 14°46'36" East, 79.77 feet along said East right of way; thence South

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86°58'15" East, 56.89 feet; thence South 3°48'02" West, 20.39 feet; thence South 78°14'34" East, 56.18 feet; thence 87°05'10" East, 256.52 feet; thence North 2°54'50" East, 252.03 feet; thence North 87°05'10" West, 200.54 feet; thence around a curve to the right having a radius of 257.50 feet, an arc length of 62.28 feet, a chord bearing of North 80°09'26" West and a chord length of 62.13 feet; thence North 73°13'41" West, 43.68 feet to a point on said East right of way of Arkansas Highway 183 (Reynolds Road); thence North 18°56'37" East, 46.03 feet along said right of way; thence South 73°13'41" East, 41.94 feet; thence around a curve to the left having a radius of 211.50 feet, an arc length of 51.16 feet, a chord bearing of South 80°09'26" East and a chord length of 51.03 feet; thence South 87°05'10" East, 206.51 feet; thence North 2°54'50" East, 22.91 feet; thence South 88°44'53" East, 881.44 feet to a point on the West line of Pikewood Subdivision No. 2 to Saline County as recorded in Deed Book 109 at page 314; thence North 2°34'48" East 32.27 feet along said West line to the Northwest corner of Lot 102 of said Subdivision; thence South 88°12'40" East, 288.40 feet along the North line of said Lot 102 to the Northeast corner thereof; thence South 4°55'11" East, 281.00 feet along the East lines of Lots 102 and 103 of said Subdivision to the Southeast corner of said Lot 103; thence North 88°27'16" West, 325.10 feet along the South line of said lot 103 to the Southwest corner thereof; thence South 2°34'48" West, 454.01 feet along the East line of said Pikewood Subdivision No. 2; thence North 87°05'10" West 477.06 feet; thence North 2°54'50" East, 8.84 feet; thence North 87°05'10" West, 305.54 feet to a point on the East line of a tract of land described in Document 04-03029; thence North 1°38'53" East, 149.36 feet along the East line of said tract to the Northeast corner thereof; thence North 88°16'43" West, 105.27 feet along the North line of said tract; thence North 2°54'50" East, 152.74 feet; thence North 87°05'10" West, 384.67 feet to the point of beginning.

Exhibit "C"

Site Plan

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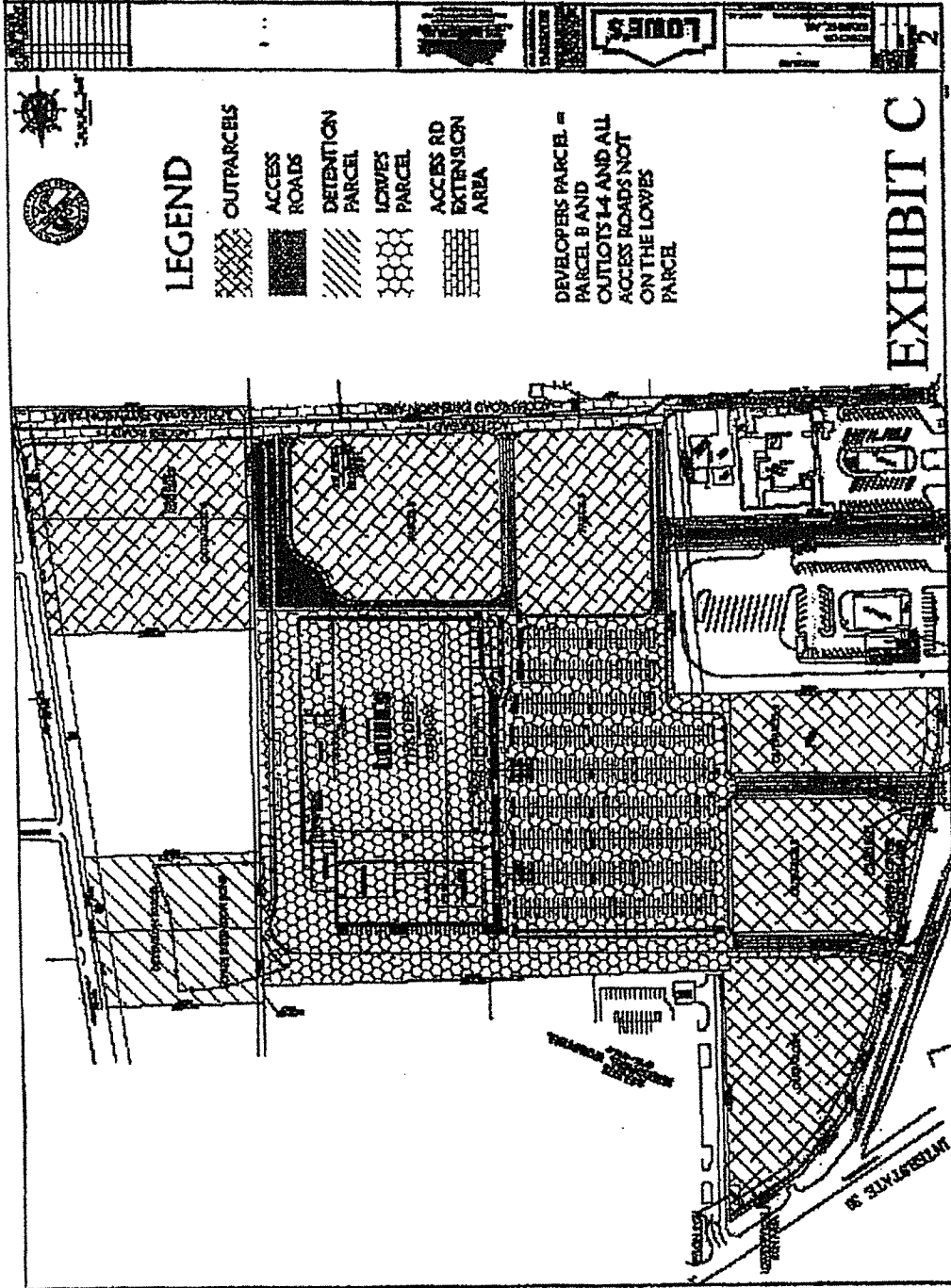


Exhibit "D"

Access Roads

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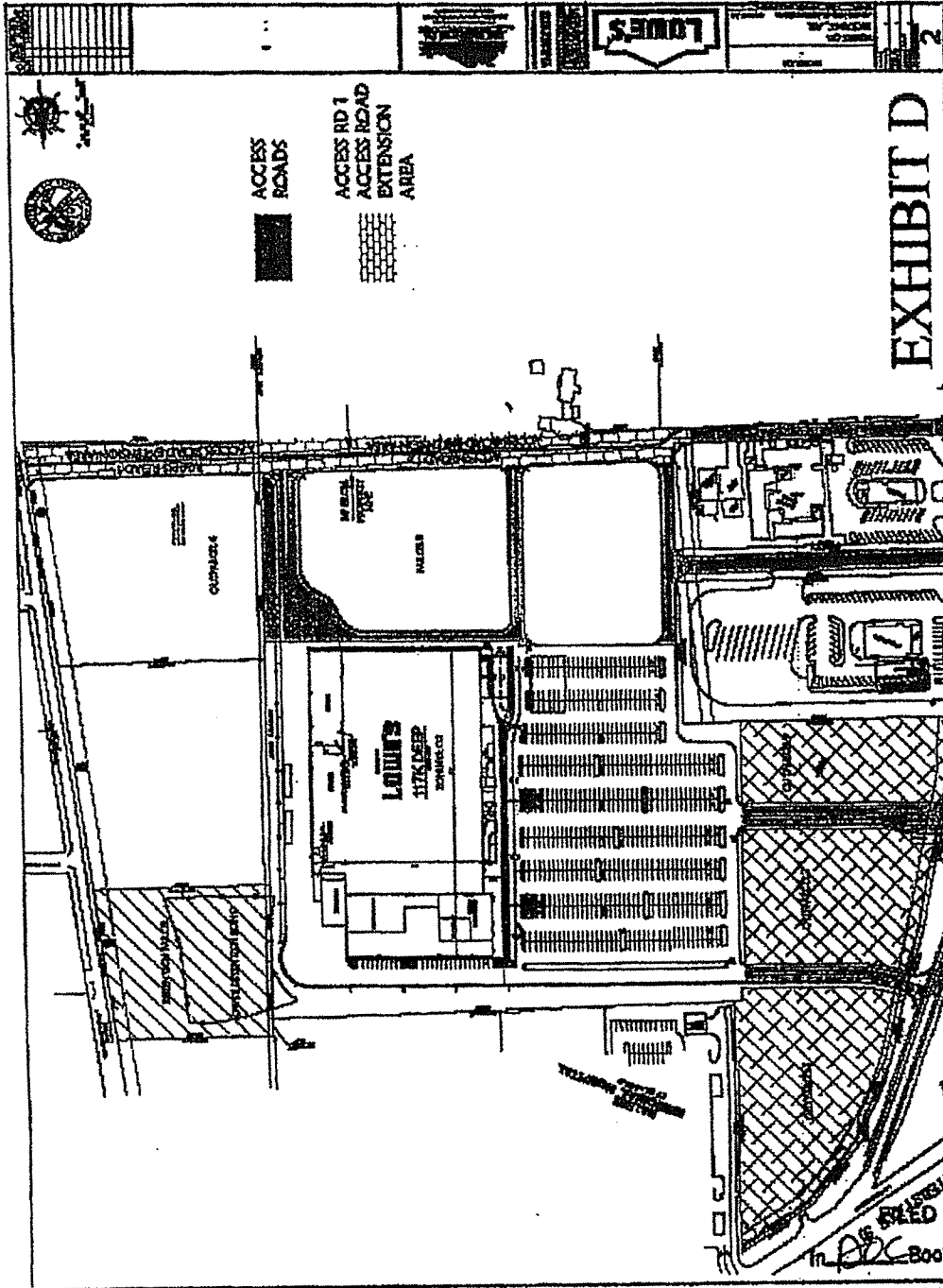


EXHIBIT D



FILED FOR RECORD

In POC Book 05 Page 11645

OCT 21 2005

at 10:08 o'clock  
DORIS KIDD, CIRCUIT CLERK

BY [Signature] DC



for the mutual benefits and advantages accruing to them and to their respective properties;

NOW, THEREFORE, in consideration of the foregoing, the terms and provisions hereof and of the ECCR, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Lowe's and Developer hereby agree as follows:

(1) Amendment.

A. The entire paragraph of Section 6.8 "Breach" of the ECCR is hereby deleted, and the following paragraph is substituted therefor:

In the event of a breach or threatened breach of this ECCR, only an Owner of (i) more than 25,000 square feet of enclosed building area on the Developer Parcel or 3 acres of the Developer Parcel, or (ii) the Owner of the Lowe's Parcel, or (iii) Developer, or (iv) Twin City Bank in the event it becomes the Owner of an Outparcel shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In the event of a breach hereof, the non-prevailing Owner shall pay the reasonable attorney's fees of the prevailing Owner.

(2) Offer and Acceptance Terms. All other conditions, obligations and terms of the ECCR shall remain in full force and effect. In the event any provisions of the ECCR, as modified hereby, shall in any event be declared invalid or unenforceable, the remainder of the ECCR, shall not be affected thereby and each provision of the ECCR shall be valid and enforceable to the fullest extent permitted by law.

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(3) Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(4) Counterparts and Facsimile Execution. This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Amendment and all of which, when taken together, will be deemed to constitute one and the same Amendment. To facilitate execution of this Amendment, the parties agree that the facsimile signature of a party shall be sufficient to bind that party to this Amendment with the original signature to be provided as promptly as possible following execution. The facsimile signature shall be binding to the same extent as an original signature, and no party shall have a defense that the facsimile signature was not authorized.

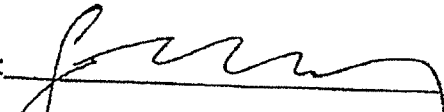
IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date first written above.

**DEVELOPER:**

*Coco Bryant Holdings, LLC*  
~~REYNOLDS ROAD~~  
~~DEVELOPMENT, LLC~~

**LOWE'S:**

LOWE'S HOME CENTERS, INC.,  
a North Carolina Corporation

By:   
Name: *S. Gene Cautley*  
Title: *Manager*

By: *David E Shelton*  
Name: **David E. Shelton**  
**Senior Vice President**  
Title: \_\_\_\_\_

*feb*  
*PL*

ACKNOWLEDGED, AGREED AND APPROVED:

CoCo Bryant Holdings, LLC,  
an Arkansas limited liability company

By: [Signature]  
Name: S. Gene Cauley  
Title: Manager

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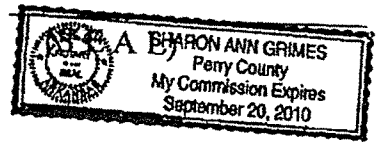
STATE OF ARKANSAS)  
COUNTY OF Pulaski )ss.

On this 21<sup>st</sup> day of February, 2007, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named S. Gene Cauley to me personally well known, who stated that he was the Manager of CoCo Bryant Holdings, LLC, an Arkansas limited liability company, and was duly authorized in that capacity to execute the foregoing First Amendment to Easements, Covenants, Conditions and Restrictions for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered the foregoing Amendment to Easements, Covenants, Conditions and Restrictions for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal  
this 21<sup>st</sup> day of February, 2007.

[Signature]  
Notary Public

My Commission Expires:



STATE OF North Carolina )  
 )ss.  
COUNTY OF Wilkes )

On this 24th day of January, 2007, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named David E. Shelton, to me personally well known, who stated that he was the Senior Vice President of Lowe's Home Centers, Inc., a North Carolina corporation, and was duly authorized in that capacity to execute the foregoing First Amendment to Easements, Covenants, Conditions and Restrictions for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered the foregoing Amendment to Easements, Covenants, Conditions and Restrictions for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 24th day of January, 2007.

Carla H. Reavis  
Notary Public

My Commission Expires:  
9-22-11  
(SEAL)

CARLA H. REAVIS  
Notary Public  
North Carolina - Wilkes County  
My Commission Expires 9-22-11

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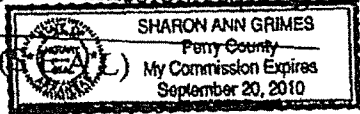
STATE OF ARKANSAS)  
COUNTY OF Pulaski )ss.

On this 21<sup>st</sup> day of February, 2007, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named G. Gene Carley, to me personally well known, who stated that he was the Manager of CoCo Bryant Holdings LLC, an Arkansas limited liability company, and was duly authorized in that capacity to execute the foregoing First Amendment to Easements, Covenants, Conditions and Restrictions for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered the foregoing Amendment to Easements, Covenants, Conditions and Restrictions for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 21<sup>st</sup> day of February, 2007.

Sharon Ann Grimes  
Notary Public

My Commission Expires:



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Exhibit "A"

FILED  
SALINE COUNTY  
CIRCUIT CLERK

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*[Handwritten signature]*

EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS

These Easements, Covenants, Conditions and Restrictions (hereinafter referred to as "this ECCR"), are made and entered into as of the date of the last execution hereof, which date is the ~~10<sup>th</sup>~~ <sup>17<sup>th</sup></sup> day of ~~September~~ <sup>October</sup>, 2005, by and between Reynolds Road Development, LLC, an Arkansas limited liability company ("Developer") and Lowe's Home Centers, Inc., a North Carolina corporation ("Lowe's") (the foregoing parties hereinafter singularly referred to as a "Party" and collectively referred to as the "Parties");

WITNESSETH:

WHEREAS, Lowe's is the owner of that certain tract of real property consisting of approximately 16.366 acres located in Bryant, Saline County, State of Arkansas, as more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "Lowe's Parcel"); and

WHEREAS, Developer is the owner of a certain tract of real property located in Bryant, Saline County, State of Arkansas, comprised of Parcel B, the Outparcels, and Access Road areas which are located contiguous with and adjacent to the Lowe's Parcel, which is more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the "Developer Parcel"); and

WHEREAS, both the Lowe's Parcel and the Developer Parcel are further designated on the site plan of the overall Shopping Center (as hereinafter defined) development, attached hereto and made a part hereof as Exhibit C (the "Site Plan").

NOW, THEREFORE, the Developer and Lowe's hereby declare, agree, covenant and consent that all of the real property described on Exhibit A and Exhibit B shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are imposed on such real property to run with the real property and be binding on and inure to the benefit of all parties having any right, title or interest in the described Parcels (as hereinafter defined) or any part thereof, their heirs, successors and assigns for the purpose of development and operation of the respective Parcels of Lowe's and Developer in an integrated 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:

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ARTICLE I

BASIC DEFINITIONS

Section 1.1 "Access Roads" means those areas of the Shopping Center devoted to driveways and service drives depicted on Exhibit D for ingress into and egress from the various Parcels within the Shopping Center, to the adjoining Parcel(s), for passage of vehicles, and for passage and accommodation of pedestrians.

Section 1.2 "Common Area" shall mean all real property owned by the Parties for the common use and enjoyment of the Owners, including, without limitation, all Access Roads and the Detention Parcel.

Section 1.3 "Consenting Party" shall mean and refer to the Owner of the Lowe's Parcel and the Owner of the Developer Parcel. There shall be only two (2) Consenting Parties for the Shopping Center consisting of only one Consenting Party representing the Developer Parcel and only one Consenting Party representing the Lowe's Parcel. In the event that the Lowe's Parcel or the Developer Parcel are further subdivided, the current Consenting Party shall designate the particular parcel of the subdivided Parcel whose Owner shall succeed as the Consenting Party.

Section 1.4 "Default Rate" shall mean the rate of interest that is the lesser of (i) seven percent (7%) per annum and (ii) the maximum rate allowed by applicable law.

Section 1.5 "Detention Parcel" shall mean the area labeled as the "Detention Parcel" on the Site Plan within which the detention pond will be located.

Section 1.6 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a 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.

Section 1.7 "Parcel" shall mean and refer to any parcel of land shown 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. Notwithstanding anything herein to the contrary, Outparcel 4 will only be subject to Article III and Section 4.3 of this ECCR.

Section 1.8 "Shopping Center" shall mean and refer to the Lowe's Parcel and the Developer Parcel as shown on the Site Plan.

ARTICLE II

EASEMENTS

Section 2.1 Definitions and Documentation. For the purposes of this Article II, the following will apply:

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(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 also its successors and assigns; although not for the direct benefit of permittees and occupants, the Grantee may permit from time to time its occupants and 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 term "Building(s)" means any permanently enclosed structure(s) which has (have) been, will be or may be placed, constructed or located on a Parcel, and which for the purpose of this ECCR shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions, but such term does not include Common Area Improvements (as that term is hereinafter defined in Section 2.1(d)).

(d) The term "Common Area Improvements" means all improvements which will be or may be constructed on a Parcel under the terms of this ECCR within the Common Areas of the Shopping Center, being those areas designated on the Site Plan for the common enjoyment and use of all Owners, their successors, assigns, occupants and permittees, such as parking areas, access and egress drives, service drives, lighting standards, sidewalks, and all other improvements which would be part of the "Common Area" under the above definition, and all improvements constructed from time to time in replacement of the same or in such redesign or reconfiguration of the same as may be agreed to by both of the Consenting Parties.

(e) The term "Common Utility Facilities" means utility systems and 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 both respective Owners or for the service of the Common Area, such as the following: storm drainage, 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 facilities for such common use or service, including, without limitation, those installed under the provisions of this ECCR and as replacements thereto.

(f) The term "Improvement(s)" means the Building(s) and the Common Area Improvements on a Parcel.

(g) 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.

(h) Intentionally Deleted.

(i) The term "Separate Utility Facilities" means any of the following not installed under the terms of this ECCR for use in common by other Owners nor for service of the Common Area:

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storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, under ground electric power, cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities reasonably necessary for the use or service of any Improvement (as that term is hereinbefore defined in Section 2.1(f)) situated on any Parcel.

(j) With the exception of the self-help easements set forth in Section 2.6, all easements granted herein are non-exclusive and are irrevocable and perpetual.

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

(l) 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.

(m) 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 request of an Owner, the other Owners will 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. 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. Each Owner hereby grants to the other Owner(s) easements in the Common Area on its (Grantor's) Parcel for:

(a) ingress to and egress from the Grantee's Parcel;

(b) the passage of vehicles (provided, however, the Owner of the Lowe's Parcel and the Owner of Parcel B may conduct parking lot sales, and/or other business, and/or display merchandise in that portion of the Common Areas directly in front of any Building thereon so long as it does not interfere with ingress and egress; and is not in violation of any applicable law or ordinance. Furthermore, notwithstanding anything herein to the contrary, the Owner of the Lowe's Parcel and the Owner of Parcel B shall have the right, but not the obligation, to install and maintain a bank teller machine or similar kiosk type structure(s) in its parking areas;

(c) the passage and accommodation of pedestrians (provided, however, the Owner of the Lowe's Parcel and the Owner of Parcel B may display merchandise, conduct sidewalk sales and

other business on the sidewalks on its Parcel so long as pedestrian passage is not obstructed and may otherwise enclose and/or redesign its sidewalk areas without the need of obtaining any other Owner's consent); and

(d) the doing of such other things as are authorized or required to be done on the Common Area under this ECCR;

Provided, however, that such easements 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, and provided further that the Owners hereby specifically disclaim any intention to create any reciprocal parking easements between the Lowe's Parcel and the Developer Parcel.

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 completed.

Each Owner hereby reserves the right to eject from the Common Area on its Parcel any person not authorized to use the same. In addition, each Owner reserves the right to close off the Common Area on its Parcel, or portions thereof, for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Area as provided above, such Owner must give at least fifteen (15) days prior written notice to the Consenting Parties of its intention to do so and must coordinate such temporary closing with the activities of the other Owners so that no unreasonable interference with the operation of the Shopping Center occurs.

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. No changes shall be made in the Common Area or in the location, configuration or design of Common Area Improvements without the consent of both Consenting Parties and except as otherwise herein provided.

**Section 2.3 Easements for Access Roads.** Each Owner hereby grants to the other Owner(s) easements for pedestrian and vehicular traffic in those strips of land (not less than the widths therefor shown on the Site Plan) on its (Grantor's) Parcel which are shown on Site Plan as shaded or cross hatched roadways (hereinafter collectively referred to as the "Access Roads") for the purpose of providing ingress to and egress from the Grantee's Parcel and each of Arkansas State Highway #183 (Reynolds Road) and Ridgecrest Drive, together with the following rights and subject to the following restrictions and reservations:

(a) 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;

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(b) As further provided in Section 2.9 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 Roads, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof (except as set forth in Section 2.3 (e)) or the accrual of any prescriptive rights to any person therein; and

(c) Neither the access and egress points nor the drive lanes as shown on the Site Plan shall be changed without the written permission of the Consenting Parties, which consent shall not be unreasonably withheld, delayed, or conditioned.

(d) Each Owner grants to Lowe's a perpetual easement for the construction, maintenance and use of the Access Roads, including, without limitation, Access Road 1. Lowe's has the right, but is not obligated to, build such Access Roads. If Lowe's builds the Access Roads, Lowe's will maintain them, and the Owners will reimburse Lowe's for their pro-rata share, based on acreage, of such maintenance. If Lowe's builds a store on the Lowe's Parcel, Lowe's will build Access Road 1, at Lowe's cost and expense (including design and construction costs), simultaneously with the building of such store, and Lowe's will complete Access Road 1 within one (1) year after the date the Lowe's store opens for business.

(e) The Owners acknowledge that Access Road 1 may become a publicly dedicated and maintained road, at which time the maintenance provisions and reimbursement pertaining to Access Road 1 as set forth in this ECCR will terminate as they will no longer be necessary.

(f) The Owners further acknowledge that as of the date of this ECCR, Developer does not own the portion of Access Road 1 which is located south of the Developer Parcel. Developer has the option, for 30 days after the date hereof, to acquire such portion or to assist the City of Bryant in acquiring such portion, at Developer's sole cost and expense. If Developer does acquire such portion, Lowe's will build Access Road 1 using all of such acquired portion, and so much of the portion of Access Road 1 which is on Developer's Parcel as is necessary to build a 36 foot wide road in the Access Road Extension Area (as shown on the Site Plan). If Developer does not acquire such portion, Lowe's will build the 36 foot wide Access Road 1 on the portion of the Access Road 1 which is currently owned by Developer in the Access Road Extension Area. In either case, Developer will provide all easements and right-of-way land as required for the 36 foot wide Access Road 1. Notwithstanding anything herein to the contrary, Lowe's will not be required to construct or widen the portion of Access Road 1 which is not in the Access Road Extension Area.

**Section 2.4 Easements for Utility Facilities.** Each Owner hereby grants to the other Owner(s) perpetual easements to its (Grantor's) Parcel, except within such area on such Owner's Parcel where a Building is located, 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.

All Separate Utility Facilities installed in the Common Area, whether installed under this Section 2.4 or otherwise, and all Common Utility Facilities, shall be underground, if reasonably possible,

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and the location of the Separate Utility Facilities shall be subject to the approval of the Owner across whose Parcel the same are to be located.

Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section 2.4 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 the easement grant, as well as for all Separate Utility Facilities installed by the Grantee on its own Parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate 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 damages 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. In addition, the Parties agree that all such installation, maintenance, repair and removal 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. No such work or restoration, except emergency repair work, shall be carried on during the period from November 15th through the next succeeding January 5th, or on any weekends.

The Grantee shall defend, indemnify and hold Grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees), incurred in connection with Grantee's use of the Separate Utility Facilities easements under this Section 2.4, except to the extent occasioned by Grantor's grossly negligent or wrongful acts or omissions to act.

The Grantor of any easement for Separate Utility Facilities under this Section 2.4 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 additionally serve Grantor's use shall be borne by such Grantor, and provided further that Grantor gives written notice within the time period called for under subparagraph (a) and otherwise complies with the requirements of subparagraphs (b), (c) and (d) of the following paragraph of this Section 2.4.

Except during the period from November 15th through the following January 5th, the Grantor of any easement under this Section 2.4 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 interferences with and diminutions in utility services shall be permitted if they occur during the

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non-business hours of the Grantee, and Grantee has been so notified under Subsection 2.4(a)). 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.

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.

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

Section 2.5 Construction Easements. 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 Area on its (Grantor's) Parcel where a Building or other Improvements are to be located, 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 EGCR.

With respect to any Parcels 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.

The location and use of all temporary construction easements under this Section 2.5 shall be subject to the reasonable approval of Grantor.

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.

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 the other Owner, and shall not interfere with or interrupt the business operations conducted by the other Owner in the Shopping Center.

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Furthermore, the Parties agree that once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Parcel or any Common Area access, egress and service drives to the Lowe's Parcel, all construction traffic to or from the Developer Parcel will be limited to the use of Arkansas State Highway #183 (Reynolds Road) or the future road to be constructed from Reynolds Road to Ridgecrest Drive. 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 easements granted under this Section 2.5 and shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) 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 to act.

Any Grantee 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.

Except as reasonably necessary 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 Self-Help Easements. Each Owner hereby grants to the Owner(s) of the Lowe's Parcel and the Developer Parcel an easement and license to enter upon its Parcel for the purpose of exercising the cure rights provided under Article V of this ECCR. Further, each Owner hereby grants to the Consenting Parties easements in the Common Area of its (Grantor's) Parcel for the installation, construction, repair, maintenance, relocation and removal of any and all Separate Utility Facilities and Common Area Improvements, if such installation, construction, repair, maintenance, relocation or removal is required or permitted under the other provisions of this ECCR. Each Grantee of the easements granted under this Section 2.6 shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees) incurred in connection with or arising out of Grantee's use of said easements, except to the extent occasioned by the Grantor's grossly negligent or wrongful acts or omissions to act. The duration of the easements granted under this Section 2.6 shall be coterminous with the respective provisions of this ECCR which give the Grantee the right or the obligation to perform the work described in this Section 2.6.

Section 2.7 Easements to Public Utilities. Any grant or other conveyance of an easement to a public utility 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 to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument.

- (a) The easement is non-exclusive;

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(b) All facilities installed pursuant to the easement shall be underground, except for manhole and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans approved by Grantor;

(c) Grantor retains the right to use the surface areas within the easement as Grantor sees fit;

(d) 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;

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

(f) Grantee shall protect its facilities against uses of the surface made by Grantor and others;

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

(h) 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;

(i) Grantee shall defend, indemnify and hold harmless Grantor against all loss, liability, and costs (including reasonable attorney's fees) which may result to Grantor from the negligent act or omission of Grantee, Grantee's agents, employees and contractors; and

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

Section 2.8 Easement for Storm Water Detention. Outparcels 1, 2 and 3, are hereby granted a perpetual, non-exclusive drainage easement covering the Detention Parcel for the purpose of draining and detaining storm water runoff from such Outparcels. Lowe's will build the detention pond on the Detention Parcel if Lowe's builds a Lowe's store on the Lowe's Parcel. Otherwise, Lowe's may, but is not obligated to, construct the detention pond on the Detention Parcel. If Lowe's builds the detention pond, Lowe's will maintain such pond, and the Owners of Outparcels 1, 2 and 3 who are using the detention pond will reimburse Lowe's for their pro-rata share (based on acreage) of the cost of such maintenance. If Lowe's builds the detention pond, Lowe's will indemnify, defend and hold harmless the other Owners of Outparcels 1, 2 and 3 for any failure to permit, construct and maintain the facility in accordance with all state, federal, local or other laws, regulations and directives. Furthermore, each Owner of Outparcels 1, 2 and 3 will indemnify, defend and hold harmless Lowe's and the other Owners of Outparcels 1, 2 and 3 for any failure to comply with all state, federal, local or other laws, regulations and directives in its use of the Detention Parcel, including, without limitation, such Owner's discharge into the detention pond on the Detention Parcel. In the event that Lowe's fails in its maintenance obligations as set forth in the Section 2.8, which failure continues for a period of thirty (30) days after receipt of written notice thereof specifying

the particulars of such failure, such failure shall constitute a default under this ECCR and the Owners of Outparcels 1, 2 and 3 may thereafter perform such maintenance obligations, in addition to other remedies available under this ECCR. If Lowe's does not build the detention pond, Lowe's grants to the Owners of Outparcels 1, 2 and 3 a non-exclusive easement on the Detention Parcel for the construction and maintenance of the detention pond (to be constructed in a location on the Detention Parcel as is reasonably agreed to by Lowe's and the Owners of Outparcels 1, 2 and 3).

Section 2.9 No Barrier Agreement. No barriers, fences, walls, grade changes or other obstructions shall (i) 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 Lowe's Parcel and the Developer Parcel from time to time devoted to pedestrian access, vehicular roadways or parking area, or (ii) in any manner unreasonably restrict or interfere with the use and enjoyment by the Consenting Parties of the rights and easements created by this Article II. In addition, 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 at least fifteen (15) days prior written notice to the Consenting Party of its intention to do so and must coordinate such temporary closing with the activities of the other Owner(s), 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 and reconstruction.

### ARTICLE III

#### USE

Section 3.1 General Use Requirement. Every Parcel shall be used only for financial institutions, service shops, offices of the type customarily found in retail shopping centers, retail stores selling retail merchandise normally carried in other shopping centers, and restaurants with over fifty percent (50%) of gross revenues from food sales.

Section 3.2 Nuisances. Subject to the provisions of Section 3.1, no Parcel shall be used for anything other than the 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 may be used for any of the following purposes without the prior written consent of the Consenting Parties:

(i) 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 alcoholic beverages therein comprises less than fifty percent (50%) of the restaurant's gross revenues.

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- (ii) A bowling alley, billiard parlor, bingo parlor, arcade, game room or other amusement center.
  - (iii) A theater (motion picture or live performance).
  - (iv) A health club, gymnasium, health spa, or other type spa (provided, however, that one day spa/hair salon/beauty spa of not more than 5,000 square feet will be permitted in the Shopping Center).
  - (v) A service station, automotive repair shop or truck stop.
  - (vi) A flea market or pawn shop.
  - (vii) 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).
  - (viii) A school.
  - (ix) A car wash, except on an Outparcel which shall have constructed and shall use sanitary sewer, water and storm water drainage lines entirely separate from those utilized by the Lowe's Parcel.
  - (x) A medical clinic or office.
  - (xi) 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 laundry at an offsite location is permitted).
  - (xii) An establishment for sale of automobiles, trucks, mobile homes, or recreational motor vehicles.
  - (xiii) A child day care facility.
  - (xiv) A hotel or motel.
  - (xv) A storage or mini warehouse facility.
  - (xvi) Governmental offices.
- (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 skating rink.
  - (iv) A mortuary, crematorium or funeral home.
  - (v) A mobile home or trailer court, labor camp, junkyard or stockyard.
  - (vi) A landfill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage.

- (vii) A telephone call center.
- (viii) A gambling establishment or betting parlor.
- (ix) A veterinary hospital or any animal raising or keeping facilities.
- (x) An assembling, manufacturing, industrial, distilling, refining or smelting facility.

**Section 3.4 Use Restrictions on the Developer Parcel.** No portion of the Developer Parcel shown on the Site Plan may be used for the following purposes:

- (a) A hardware store containing more than 5,000 square feet of floor area.
- (b) An appliance, home electronics and/or lighting store containing more than 5,000 square feet of floor area (provided, however, that a Best Buy, Circuit City, Fry's, Ultimate Electronics or other nationally recognized electronics retailers which will occupy at least 25,000 square feet of floor area in the Shopping Center will be permitted).
- (c) A nursery and/or lawn and garden store containing more than 3,000 square feet of floor area (including any outdoor areas).
- (d) A paint and/or home decor center containing more than 4,000 square feet of useable floor area (provided, however, that a Linens N Things, Bed, Bath and Beyond, Cost Plus, Pier One or other like-kind nationally recognized retailer will be permitted).
- (e) 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, McCoy's, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply.

These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) when such space exceeds the limitations of subparagraphs (a) through (d).

Notwithstanding anything in the foregoing to the contrary, in the event a retail and/or warehouse home improvement center, lumber yard, building materials supply center, hardware store, lawn and garden store, appliance, home electronics and/or lighting store, and/or paint and/or décor center is not operated in any portion of the Lowe's Parcel for a period in excess of one (1) year (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Parcel), the above stated exclusives shall be of no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall re-open a store on any portion of the Lowe's Parcel for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if such uses were begun during the time that the above exclusive use restrictions were of no force and/or effect.

For purposes of this Article III and of this ECCR, any reference to "nationally recognized" shall mean and refer to only those retail businesses having at least 75 locations within first class shopping

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centers throughout the United States, which use a distinctive and recognizable architectural design that is substantially the same at all of such locations (subject to changes in such prototypical architectural design which evolve over time).

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 (i) 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, (ii) 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 (iii) no usage of such marks or names shall be made without the prior written consent of Lowe's and Lowe's legal counsel. 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.

#### ARTICLE IV

##### GENERAL CONSTRUCTION & DEVELOPMENT

Section 4.1 Development Timing. When any Building is constructed on a Parcel, the Common Area on that Parcel shall be developed in accordance with the Site Plan at the expense of the Owner of said Parcel. If one Owner ("Developing Owner") constructs Improvements on Developing Owner's Parcel prior to the development of another Parcel, Developing Owner shall have the right to grade, pave and use any portion of the Common Area of the non-developing Owner's Parcel. Developing Owner shall cause all of said work to be separately bid on a competitive basis, and the costs and proposed work shall be approved in advance by the non-developing Owner in writing, provided that such approval shall not be unreasonably withheld, conditioned or delayed. The non-developing Owner agrees to reimburse Developing Owner for such costs when any portion of the non-developing Owner's Parcel is developed or upon the sale of any portion of the non-developing Owner's Parcel, whichever first occurs.

Except as provided in Section 7.8 hereof as to the Lowe's Parcel, no Buildings or structures shall be erected or allowed to remain on any Parcel unless the plans and specifications for such structure, and the architectural renderings describing the exterior elevations of such Buildings and materials to be used for such construction, have been approved by the Consenting Parties, which approval shall not be unreasonably withheld. A complete set of proposed construction plans including a site, foundation, floor plan and elevation drawings of all sides shall be presented to and approved in writing by the Consenting Parties prior to the commencement of clearing, grading, or construction of a Building of any kind on any Parcel. Upon completion of the Building foundation, an actual field survey of the foundation shall be presented to the Consenting Parties to ensure that it has been constructed in accordance with the Site Plan. All Improvements shall comply with the plans as presented by the Owner unless changes are

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approved in writing by the Consenting Parties. The right to make inspections necessary to assure compliance is reserved to the Consenting Parties. 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. Total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year. In the event that a party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations (whether valid or invalid), riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period of performance of any such act shall be extended for a period equivalent to the period of such delay.

Whenever any approval or consent is required under the terms of this Section 4.1, the Developing Owner requesting approval shall provide such request to the non-developing Owner (or the Consenting Parties, as applicable), in accordance with Section 7.3 below. If such Developing Owner has not received a response from the non-developing Owner (or the Consenting Parties, as applicable) within fifteen (15) days of the initial request, the Developing Owner shall provide a second request for approval to the non-developing Owner (or the Consenting Parties, as applicable). Such approval shall be deemed granted unless expressly denied by the developing Owner (or one or both of the Consenting Parties) within fifteen (15) days following the date such second request is given, provided that such request of approval or consent states, in bold, all capitalized letters, the following: **YOUR FAILURE TO RESPOND TO THIS REQUEST WITHIN FIFTEEN (15) DAYS SHALL CONSTITUTE YOUR APPROVAL OF THIS REQUEST.**

Section 4.2 Developer Improvement Plans. Prior to construction of any Building(s) or other improvements on the Developer Parcel, Developer must submit architectural renderings describing the exterior elevations of the Building and materials to be used for such construction to the Owner of the Lowe's Parcel for its approval, which approval shall not be unreasonably withheld.

Section 4.3 Parking Requirements. The Lowe's Parcel and Parcel B shall be self-supporting with respect to parking and shall each contain not less than four and one-half (4.5) paved full size automobile parking spaces for each 1,000 square feet of building floor area constructed thereon, or the number of parking spaces required by applicable law, whichever is greater. Every other Parcel, including all Outparcels, shall be self-supporting with respect to parking and shall each contain not less than five (5) paved full size automobile parking spaces for each 1,000 square feet of building floor area constructed thereon, or the number of parking spaces required by applicable law, whichever is greater. Provided however, any restaurant which is 2,550 square feet or less in size located on an Outparcel as part of a multi-tenant building will be required to have seven (7) paved full size automobile parking spaces per each 1,000 square feet of building floor area (or the number of parking spaces required by law, whichever is greater), and any other restaurant (including any fast food restaurants) will be required to have no less

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than ten (10) paved full size automobile parking spaces per each 1,000 square feet of building floor area (or the number of parking spaces required by law, whichever is greater). Notwithstanding anything herein to the contrary, Outparcel 4 will be required to have the number of parking spaces required by applicable law.

Section 4.4 Pylon Signs. There shall be two (2) pylon signs in the Shopping Center, one located on Outparcel 1 and one located on the Lowe's Parcel, in the locations shown on the Site Plan (the "Pylon Signs"). No other Owner will have a right to a panel on the Pylon Signs unless Lowe's approves such request and such Owner pays Lowe's for their panel space (at a price to be reasonably determined by Lowe's, based on Lowe's construction costs). If Lowe's approves additional panels, Lowe's shall be entitled to have and maintain the top and most prominent sign panel on each side of both of the Pylon Signs. Developer hereby grants Lowe's a perpetual non-exclusive easement over and upon the Lowe's Pylon Sign Area on Outparcel 1 (as shown on the Site Plan) for the purpose of installing, repairing, maintaining, and renewing its sign panel, and over and upon Parcels for ingress and egress to and from the Lowe's Pylon Sign Area. The maximum number of panels on any given Shopping Center pylon or monument sign shall be four (4). The total square footage of all other sign panels on either Pylon Sign shall not be greater than the square footage of the Lowe's sign panel on such Pylon Sign. Lowe's sign panels shall be of colors, design and content as required by Lowe's own visual sign standards, and shall not be subject to review or approval. Lowe's may construct and maintain the Pylon Signs (subject to pro-rata reimbursement from panel users approved by Lowe's for their share of such construction and maintenance cost).

Section 4.5 Outparcel Development. Any Outparcel sold or developed within the Shopping Center will only be developed under the following guidelines:

- (a) Any Building constructed on any of the Outparcels shall not exceed the maximum size at which such Outparcel will meet the parking requirements of this ECCR.
- (b) Any Building constructed on any of the Outparcels shall not exceed 24 feet in height, as measured from the finished elevation of the parking area of the Shopping Center, with an additional 4 feet in height permitted for architectural features; such Building (including architectural features) shall not exceed 28' in height.
- (c) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to the Consenting Parties.
- (d) No rooftop signs shall be erected on any Building constructed on any Outparcel.
- (e) A freestanding identification sign may be erected on any Outparcel only with the prior written consent of the Owner of the Lowe's Parcel, but in no event shall such freestanding identification sign exceed five (5) feet in height or block the visibility of any signage on any Building located on the Lowe's Parcel or the visibility of any Shopping Center Pylon Signs, and shall be in a location and in accordance with plans approved in writing by the Consenting Parties. Each Outparcel Pylon Sign shall be no more than twenty (20) feet in height. Each Outparcel Pylon Sign shall be used for

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the advertising the Owner(s), tenant(s) or occupant(s) of that Outparcel. Approvals under this section shall not be unreasonably withheld. If an Owner of an Outparcel desires to erect such a freestanding sign, it shall make its request in writing to Lowe's with a copy of the sign plans. The Owner of the Lowe's Parcel shall then have thirty (30) days from receipt of the notice to object to the proposed sign. If the Owner of the Lowe's Parcel does not object within the thirty (30) day period, then the proposed sign shall be conclusively deemed approved, and the Owner of the Lowe's Parcel shall not have the right to any further objection. 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.

(f) Any Outparcel shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.

(g) Any Owner or other party purchasing or leasing from Developer and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the utility facilities described in Section 2.4 of this ECCR which is caused by such Owner or party.

(h) Outparcel 1 may have any curb cuts onto I-30 or Reynolds Road as are approved by applicable governmental authorities, so long as such approvals do not adversely affect the approval of Lowe's curb cuts. Outparcel 2 may have one curb cut onto each of the two (2) Access Roads west of the Lowe's Parcel, and one curb cut into the Lowe's parking lot, and Outparcel 3 may have one curb cut onto the southernmost Access Road west of the Lowe's Parcel to which it adjoins, and one curb cut into the Lowe's parking lot, so long as such curb cuts are approved by applicable governmental authorities, so long as such approvals do not adversely affect the approval of curb cuts on the Lowe's Parcel, and so long as such curb cuts are located not more than 180 feet from the existing right-of-way line of Reynolds Road.

(i) Any of the restrictions or requirements set forth in this Section 4.5 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by the Consenting Parties; provided that neither the Owner of the Lowe's Parcel nor the Owner of the Developer Parcel shall waive, amend, modify, release, or terminate this ECCR without the prior written consent of the other. However, the Consenting Parties shall not amend or modify any of the foregoing restrictions on an Outparcel without the prior written consent of the fee Owner of the Outparcel. The fee Owner of such Outparcel, however, may impose additional restrictions on its Outparcel as such fee Owner shall deem to be appropriate, subject to any exceptions thereto imposed on said fee Owner at the time of conveyance of said Outparcel by the Consenting Parties to said fee Owner.

(j) 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.

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Section 4.6 Fire Protection (in line stores). Any structure constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered insurance rate on the other structures in the Shopping Center.

Section 4.7 Performance of Construction Work Generally. All construction, alteration or repair work undertaken by an Owner 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 occupants; (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) indemnify and hold harmless all other Owners in the Shopping Center against any mechanics' liens for such work, particularly as to Common Areas. Such construction 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. The party performing such work shall limit all construction work and staging areas to its own Parcel and not encroach on any Common Areas on any other Parcel and shall not utilize parking areas of any other Parcel. In connection with construction work performed on a Parcel, 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, 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, limit such access to its own Parcel) and (b) for 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, 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. No work will be performed on the Lowe's Parcel without the prior written consent of the Owner of the Lowe's Parcel, such consent not to be unreasonably withheld. 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.

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**Section 4.8 Compliance in Construction.** All construction, alteration or repair work which an Owner undertakes pursuant to this Declaration shall comply with plans and specifications therefor, 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. A Consenting Party's approval of any such work, or the plans and specifications therefor, under any provisions of this ECCR shall not constitute such Consenting Party's assumption of responsibility for the accuracy, sufficiency or propriety of such work, or of such plans and specifications, nor shall such approval constitute a representation or warranty by such Consenting Party that such work or plans and specifications call for construction of the most economical improvements or improvements which comply with the law.

**Section 4.9 Construction Insurance.** Prior to commencing any construction activities within the Shopping Center, each Owner 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:

(a) **Worker's Compensation and Employer's Liability Insurance.**

- (i) Worker's compensation insurance as required by any applicable law or regulation.
- (ii) Employer's liability insurance in the amount of \$2,000,000 each accident for bodily injury, \$2,000,000 policy limit for bodily injury by disease and \$2,000,000 each employee for bodily injury by disease.

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

- (i) Required Coverages:
  - (a) Premises and Operations;
  - (b) Products and Completed Operations;
  - (c) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
  - (d) Broad Form Property Damage (including Completed Operations);
  - (e) Explosion, Collapse, and Underground Hazards;
  - (f) Personal Injury Liability:
    - (i) \$2,000,000 each occurrence (for bodily injury and property damage;
    - (ii) \$3,000,000 for Personal Injury Liability;

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- (iii) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work);
- (iv) \$5,000,000 general aggregate.
- (g) Automobile Liability Insurance. Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.
- (h) Umbrella/Excess Liability Insurance
  - (i) The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000.
  - (ii) If the construction activity involves the use of another Parcel, then the Owner and mortgagee of such Parcel shall each be additional insured(s) and such insurance shall provide that the insurance shall not be canceled, or reduced in an amount or coverage below the requirements of this ECCR, without at least 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.

Nothing herein shall be construed from prohibiting an Owner which itself, or in combination with its parent corporation, has a net worth in excess of TWO HUNDRED MILLION DOLLARS (\$200,000,000.00), as determined by generally accepted accounting principles, from self-insuring.

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 operation 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 of 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.

If Lowe's builds the detention pond on the Detention Parcel, Lowe's will maintain the pond. The cost of maintaining the detention pond on the Detention Parcel (including the storm drainage lines connecting to the Detention Parcel), and the taxes on the Detention Parcel shall be prorated between the Owners of Outparcels 1, 2 and 3 based on the acreage of each Parcel. An Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor.

If Lowe's builds Access Road 1, until such time as Access Road 1 (as shown on the Site Plan) is publicly dedicated (if ever), Lowe's will maintain Access Road 1. The cost of maintaining Access Road 1 shall be prorated between the Owners of the Parcels based on the acreage of each Parcel. Each Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor.

If Lowe's builds the Access Roads, Lowe's will maintain the Access Roads. The cost of maintaining the Access Roads shall be prorated between the Owners of the Parcels based on the acreage of each Parcel. Each Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor.

Subject to the mutual agreement of the Consenting Parties, a third party may be appointed as an agent of all the Owners to maintain and repair the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is acceptable to the Consenting Parties to cover supervision, management, accounting and similar fees. The cost of all maintenance and

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repair activities undertaken by the third party agent, together with the agency fee, shall be prorated between the Owners based upon acreage owned. An Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor.

**Section 5.2 Damage and Destruction.** In the event of the destruction and damage to any extent to the Buildings and Improvements in the Shopping Center, the affected Owner shall (1) diligently commence and pursue completion of the repair or restoration, and/or (2) within ninety (90) days after the destruction or damage clear away the ruins and leave the Parcel in a clean, orderly, sightly and safe condition. Further, in the event that the affected Owner elects not to rebuild its Building(s) and Improvements, the use restrictions placed on the non-affected Owner's site by the affected Owner herein, except for those cited in Sections 3.3 and 3.4 hereof, shall be null and void and of no further force and effect.

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 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.

**Section 5.3 Default in Maintenance Responsibilities.** In the event that an Owner fails 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 default under this ECCR and the Owner of the Lowe's Parcel and/or the Owner of the Developer Parcel (the "Curing Party") may thereafter perform such maintenance obligations, in addition to such Curing Party's other remedies.

**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 default under this ECCR and the Owner of the Lowe's Parcel and/or the Owner of the Developer Parcel (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 bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have ten (10) business days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Party shall be entitled to claim a lien in accordance with Section 6.3 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 the expiration of said ten (10) business day period until paid.

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Section 5.5 Insurance; Indemnification; Waiver of Subrogation. 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 against loss or damage by fire, lightning and other risks customarily covered by an all-risks policy of property insurance for the full replacement cost of the Building(s) and Improvements located thereon and (ii) 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 combined single limit coverage of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence. Nothing herein shall be construed from prohibiting an Owner which itself, or in combination with its parent corporation, has a net worth in excess of TWO HUNDRED MILLION DOLLARS (\$200,000,000.00), as determined by generally accepted accounting principles, from self-insuring for such Insurance coverage.

In the event an Owner fails to maintain the insurance 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 Developer Parcel (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 does not so pay, the Curing Party shall be entitled to claim a lien in accordance with Section 6.3 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.

To the extent not covered by the insurance policies described above, each Owner (the "Indemnitor") will pay, and indemnify and save 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, invitees, customers, agents or employees.

Each Owner (the "Releasor") hereby releases the other Owner (the "Releasee") from any and all liability or responsibility to the Releasor or anyone claiming through or under the Releasor by way of subrogation or otherwise for any incurred loss or damage to any person or property caused by fire or other peril or other such loss, damages, or other insured event or negligence of the Releasee, or anyone for whom such Releasee may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the Releasor's policy or policies of insurance shall contain a waiver of subrogation endorsement, to the effect that any such release shall not adversely affect or impair said policy or policies or prejudice the right of the Releasor to recover thereunder.

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ARTICLE VI

DEFAULT: REMEDIES

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

(a) The failure to perform any obligation of Article V hereof within the time requirements cited therein;

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

(c) The failure to observe or perform any of the other covenants, conditions or obligations of this ECCR or to abide by the restrictions and requirements herein provided, other than as described in (a) above, within thirty (30) days after the issuance of a notice by another Owner (the "non-defaulting Owner") specifying the nature of the default claimed.

Section 6.2 Right to Cure. With respect to any default under Section 6.1 above, any non-defaulting Owner shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Owner, 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 non-defaulting 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 non-defaulting 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 non-defaulting Owner shall cure a default, the defaulting Owner shall reimburse the non-defaulting 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.

Section 6.3 Liens. Costs and expenses accruing and/or assessed pursuant to Section 6.2 above and the amounts described in Section 6.1 shall constitute a lien against the defaulting Owner's Parcel. The lien shall attach and take effect only 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 Owner making the claim. The claim of lien shall include the following:

- (i) The name and address of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a non-defaulting and/or curing Owner;

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- (iii) 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;
- (iv) A description of the Parcel against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien;
- (vi) A statement itemizing the total amount due, including interest;
- (vii) 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 7.3 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.

The above described liens are expressly subordinate to the lien of any mortgage placed upon a Parcel to secure construction or permanent financing of improvements on such Parcel.

Section 6.4 Other Remedies. Subject to Section 6.8, Each non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any defaulting Owner hereto, or any other person violating or attempting to violate or defaulting upon any of the provisions contained in this ECCR, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this ECCR, or to obtain a decree to compel performance of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an 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 6.5 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 of 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.

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Section 6.6 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 Owner may have hereunder by reason of any breach of the provisions of this ECCR.

Section 6.7 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 lessee or fee 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 6.7, the easements, covenants and restrictions in this ECCR shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 6.8 Breach. In the event of a breach or threatened breach of this ECCR, only an Owner of (i) more than 25,000 square feet of enclosed building area on the Developer Parcel or 3 acres of the Developer Parcel, or (ii) the Owner of the Lowe's Parcel, or (iii) Developer (but not Developer's successors or assigns, except if such successor or assign acquires more than 51% of the Developer Parcel as it exists on the date hereof) shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In the event of a breach hereof, the non-prevailing Owner shall pay the reasonable attorney's fees of the prevailing Owner.

#### ARTICLE VII MISCELLANEOUS

Section 7.1 Estoppel Certificates. Each Owner shall, upon not less than thirty (30) days written notice from the other Owner, execute and deliver to such requesting Owner a certificate in recordable form stating that (i) either this ECCR is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge the requesting Owner is in default in any respect under this ECCR and if in default, specifying such default.

Section 7.2 Term and Perpetuity. 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, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties until the expiration of sixty (60) years from the date hereof, unless terminated 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

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ECCR or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein.

Notwithstanding the foregoing, with the exception of the self-help easements set forth in Section 2.6, 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, with the exception of the self-help easements set forth in Section 2.6, shall terminate and have no further force or effect.

**Section 7.3 Notices.** Any notice 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, Certified Mail, Return Receipt Requested, postage prepaid, 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):

- Developer: Reynolds Road Development, LLC  
7 Lacelle Court  
Little Rock, Arkansas 72223  
Attention: Mark Middleton
- Copy to: Quattlebaum, Grooms, Tull & Burrow, PLLC  
111 Center Street, Suite 1900  
Little Rock, Arkansas 72201  
Attention: Tim Grooms
- Lowe's: Lowe's Home Centers, Inc.  
P. O. Box 1111  
(Highway 268 East, North Wilkesboro, No. Carolina 28659)  
North Wilkesboro, North Carolina 28658-0001  
Attention: Property Management Dept. (REO)
- Copy to: Lowe's Home Centers, Inc.  
P. O. Box 1111  
(Highway 268 East, North Wilkesboro, No. Carolina 28659)  
North Wilkesboro, North Carolina 28658-0001  
Attention: Real Estate Law Department (REO)
- Copy to: Wilson, Cribbs & Goren, P.C.  
2500 Fannin Street  
Houston, Texas 77002  
Attention: Abe S. Goren

**Section 7.4 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.

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Section 7.5 Adjacent Developer Parcel(s). Developer may, in Developer's sole discretion, subject the parcel(s) of real property adjacent to the Shopping Center which are owned by Developer (the "Adjacent Developer Parcel(s)") to the terms, covenants and conditions of this ECCR by recording an appropriate document in the Real Property Records of the county and state where the Adjacent Developer Parcel(s) are located. At that time the Adjacent Developer Parcel(s) shall be subject to the obligations created herein and shall benefit from the rights granted to Developer herein. If such Adjacent Developer Parcel(s) are incorporated in the Shopping Center and made subject to this ECCR and if there are any continuing liabilities of the Owners which are divided between the Owners based on prorations of land area or otherwise, then the prorations shall be adjusted accordingly.

Section 7.6 Harmony. Developer and Lowe's agree to 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 Lowe's may construct improvements similar to its current prototypical store building and improvements. After initial construction of Buildings and other improvements, no Owner shall make alterations that will substantially change the exterior of its Buildings without the consent of the Owner of the Lowe's Parcel and the Owner of the Developer Parcel, such consents not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Owner of the Lowe's Parcel may make, without the consent of the Owner of the Developer Parcel, changes to its Buildings and Improvements that it may deem appropriate for consistency with changes in the design and appearance of its then current prototypical stores.

Section 7.7 No Covenant to Continuously Operate. 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 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 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. 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.

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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 the Owners is an arm's 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.

[SIGNATURE PAGES TO FOLLOW]

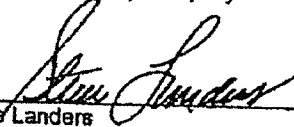
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IN WITNESS WHEREOF, the Parties hereto have executed and delivered this ECCR as of the day and year first written above.

DEVELOPER:

Reynolds Road Development, LLC  
an Arkansas limited liability company

By:   
Name: Steve Landers  
Title: Managing Member

LOWE'S:

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

DEVELOPER:

Reynolds Road Development, LLC  
an Arkansas limited liability company

By: \_\_\_\_\_  
Name: Steve Landers  
Title: Managing Member

LOWE'S:  
Lowe's Home Centers, Inc.,  
a North Carolina corporation

Approved  
TAD  
10-13-05  
YOB

By: David E Shelton  
Name: David E. Shelton  
Title: Senior Vice President

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THE STATE OF ARKANSAS

COUNTY OF Saline

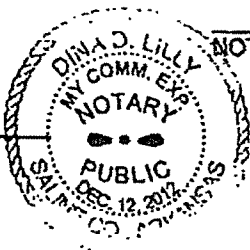
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BEFORE ME, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Steve Landers to me personally well known, who stated that he is the Managing Member of Reynolds Road Development, LLC, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 19 day of October, 2005.

05 116482

My Commission Expires: 12-12-12



Dina D. Lilly  
NOTARY PUBLIC

THE STATE OF NORTH CAROLINA

COUNTY OF WILKES

§  
§  
§

BEFORE ME, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named \_\_\_\_\_ to me personally well known, who stated that he is the \_\_\_\_\_ of Lowe's Home Centers, Inc., and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of October, 2005.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

07 019233

THE STATE OF ARKANSAS

§  
§  
§

COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Steve Landers to me personally well known, who stated that he is the Managing Member of Reynolds Road Development, LLC, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of October, 2005.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

THE STATE OF NORTH CAROLINA

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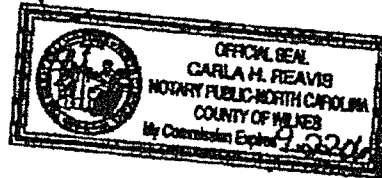
COUNTY OF WILKES

BEFORE ME, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named David E. Shelton to me personally well known, who stated that he is the Senior Vice Pres of Lowe's Home Centers, Inc., and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 14<sup>th</sup> day of October, 2005.

Carla H. Reavis  
NOTARY PUBLIC

My Commission Expires:  
9-22-06



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Exhibit "A"

Lowe's Parcel

Part of the Southwest Quarter of Section 22, Township 1 South, Range 14 West of the 5<sup>th</sup> P.M., City of Bryant, Saline County, Arkansas, described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 22; thence North 2°32'00" East, 1217.84 feet along the West line of said Southwest Quarter; thence South 87°28'00" East, 61.88 feet to a point on the East right of way of Arkansas Highway 183 (Reynolds Road) said point being the point of beginning; thence North 14°48'36" East, 79.77 feet along said East right of way; thence South 86°58'15" East, 56.89 feet; thence South 3°48'02" West, 20.39 feet; thence South 76°14'34" East, 56.18 feet; thence 87°05'10" East, 256.52 feet; thence North 2°54'50" East, 252.03 feet; thence North 87°05'10" West, 200.54 feet; thence around a curve to the right having a radius of 257.50 feet, an arc length of 62.28 feet, a chord bearing of North 80°09'26" West and a chord length of 62.13 feet; thence North 73°13'41" West, 43.68 feet to a point on said East right of way of Arkansas Highway 183 (Reynolds Road); thence North 18°56'37" East, 46.03 feet along said right of way; thence South 73°13'41" East, 41.94 feet; thence around a curve to the left having a radius of 211.50 feet, an arc length of 51.16 feet, a chord bearing of South 80°09'26" East and a chord length of 51.03 feet; thence South 87°05'10" East, 206.51 feet; thence North 2°54'50" East, 22.91 feet; thence South 88°44'53" East, 881.44 feet to a point on the West line of Pikewood Subdivision No. 2 to Saline County as recorded in Deed Book 109 at page 314; thence North 2°34'48" East 32.27 feet along said West line to the Northwest corner of Lot 102 of said Subdivision; thence South 88°12'40" East, 288.40 feet along the North line of said Lot 102 to the Northeast corner thereof; thence South 4°55'11" East, 281.00 feet along the East lines of Lots 102 and 103 of said Subdivision to the Southeast corner of said Lot 103; thence North 88°27'16" West, 325.10 feet along the South line of said lot 103 to the Southwest corner thereof; thence South 2°34'48" West, 454.01 feet along the East line of said Pikewood Subdivision No. 2; thence North 87°05'10" West 477.06 feet; thence North 2°54'50" East, 8.84 feet; thence North 87°05'10" West, 305.54 feet to a point on the East line of a tract of land described in Document 04-03029; thence North 1°38'53" East, 149.36 feet along the East line of said tract to the Northeast corner thereof; thence North 88°16'43" West, 106.27 feet along the North line of said tract; thence North 2°54'50" East, 152.74 feet; thence North 87°05'10" West, 384.87 feet to the point of beginning.

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Exhibit "B"

Developer Parcel

OVERALL DESCRIPTION, BRYANT, ARKANSAS

Part of the Southwest Quarter of Section 22, Township 1 South, Range 14 West of the 5<sup>th</sup> P.M., City of Bryant, Saline County, Arkansas, described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 22; thence North 2°32'00" East, 726.83 feet along the West line of said Southwest Quarter; thence South 87°28'00" East, 51.99 feet to a found iron pin on the East right of way of Arkansas Highway 183 (Reynolds Road) said point being the point of beginning; thence North 2°34'12" East, 80.18 feet along said East right of way to the Southeast corner of a tract of land as described in Document 04-03029; thence South 88°34'10" East, 502.98 feet along the South line of said tract to the Southeast corner thereof; thence North 1°38'53" East, 267.38 feet along the West line of said tract to the Northeast corner thereof; thence North 88°16'43" West, 499.88 feet along the North line of said tract to the Northwest corner thereof said point also being on the East right of way of Arkansas Highway 183 (Reynolds Road); thence North 2°32'36" East, 110.60 feet along said East right of way; thence North 14°46'36" East, 261.50 feet along said East right of way; thence North 28°54'26" East, 26.97 feet along said East right of way; thence North 18°56'37" East, 148.25 feet along said East right of way; thence North 15°05'21" East, 114.58 feet along said East right of way; thence North 29°15'56" East, 119.85 feet along said East right of way; thence North 3°11'57" East, 40.21 feet along said East right of way; thence around a curve to the right having a radius of 676.25 feet, an arc length of 148.93 feet, a chord bearing of North 41°24'38" East, and a chord length of 148.83 feet along said East right of way; thence North 58°08'28" East, 160.75 feet along said East right of way to a point on the East line a tract of land as described in Document 02-077390; thence South 2°15'23" West, 489.21 feet along said East line to the Southeast corner thereof; thence South 88°44'53" East, 867.03 feet to a point on the West line of Pikewood Subdivision No. 2 to Saline County as recorded in Deed Book 109 at page 314; thence North 2°34'48" East, 32.27 feet along said West line to the Northwest corner of Lot 102 of said Subdivision; thence South 88°12'40" East, 288.40 feet along the North line of said Lot 102 to the Northeast corner thereof; thence South 4°55'11" East, 281.00 feet along the East lines of Lots 102 and 103 of said Subdivision to the Southeast corner of said Lot 103; thence North 88°27'16" West, 325.10 feet along the South line of said lot 103 to the Southwest corner thereof; thence South 2°34'48" West, 420.77 feet along the West line of said Subdivision to the Northwest corner of Lot 107 of said Subdivision; thence South 88°53'05" East, 380.06 feet along the North line of said Lot 107 to the Northeast corner thereof; thence South 4°55'11" East, 421.87 feet along the East lines of Lots 107, 108 and 109 of said Subdivision to the Southeast corner of said Lot 109; thence North 87°10'33" West, 435.00 feet along the South line of said Lot 109 to the Southwest corner thereof; thence North 2°34'48" East, 27.15 feet along the West line of said Lot 109; thence North 88°46'26" West, 614.38 feet; thence South 2°31'14" West, 25.00 feet; thence North 88°33'53" West, 858.39 feet to a point on the East right of way of Arkansas Highway 183 (Reynolds Road); thence North 2°31'30" East, 26.58 feet along said East right of way; thence South 88°32'07" East, 460.41 feet; thence North 0°46'50" West, 198.06 feet; thence North 88°33'43" West, 459.80 feet to the point of beginning.

LESS AND EXCEPT:

Part of the Southwest Quarter of Section 22, Township 1 South, Range 14 West of the 5<sup>th</sup> P.M., City of Bryant, Saline County, Arkansas, described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 22; thence North 2°32'00" East, 1217.84 feet along the West line of said Southwest Quarter; thence South 87°28'00" East, 61.88 feet to a point on the East right of way of Arkansas Highway 183 (Reynolds Road) said point being the point of beginning; thence North 14°46'36" East, 79.77 feet along said East right of way; thence South

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86°58'15" East, 56.89 feet; thence South 3°48'02" West, 20.39 feet; thence South 78°14'34" East, 56.18 feet; thence 87°05'10" East, 256.52 feet; thence North 2°54'50" East, 252.03 feet; thence North 87°05'10" West, 200.54 feet; thence around a curve to the right having a radius of 257.50 feet, an arc length of 62.28 feet, a chord bearing of North 80°09'26" West and a chord length of 62.13 feet; thence North 73°13'41" West, 43.68 feet to a point on said East right of way of Arkansas Highway 183 (Reynolds Road); thence North 18°56'37" East, 46.03 feet along said right of way; thence South 73°13'41" East, 41.84 feet; thence around a curve to the left having a radius of 211.50 feet, an arc length of 51.16 feet, a chord bearing of South 80°09'26" East and a chord length of 51.03 feet; thence South 87°05'10" East, 206.51 feet; thence North 2°54'50" East, 22.91 feet; thence South 88°44'53" East, 881.44 feet to a point on the West line of Pikewood Subdivision No. 2 to Saline County as recorded in Deed Book 109 at page 314; thence North 2°34'48" East 32.27 feet along said West line to the Northwest corner of Lot 102 of said Subdivision; thence South 88°12'40" East, 288.40 feet along the North line of said Lot 102 to the Northeast corner thereof; thence South 4°55'11" East, 281.00 feet along the East lines of Lots 102 and 103 of said Subdivision to the Southeast corner of said Lot 103; thence North 88°27'16" West, 325.10 feet along the South line of said lot 103 to the Southwest corner thereof; thence South 2°34'48" West, 454.01 feet along the East line of said Pikewood Subdivision No. 2; thence North 87°05'10" West 477.06 feet; thence North 2°54'50" East, 8.84 feet; thence North 87°05'10" West, 305.54 feet to a point on the East line of a tract of land described in Document 04-03029; thence North 1°38'53" East, 149.38 feet along the East line of said tract to the Northeast corner thereof; thence North 88°16'43" West, 105.27 feet along the North line of said tract; thence North 2°54'50" East, 152.74 feet; thence North 87°05'10" West, 384.67 feet to the point of beginning.

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Exhibit "C"

Site Plan

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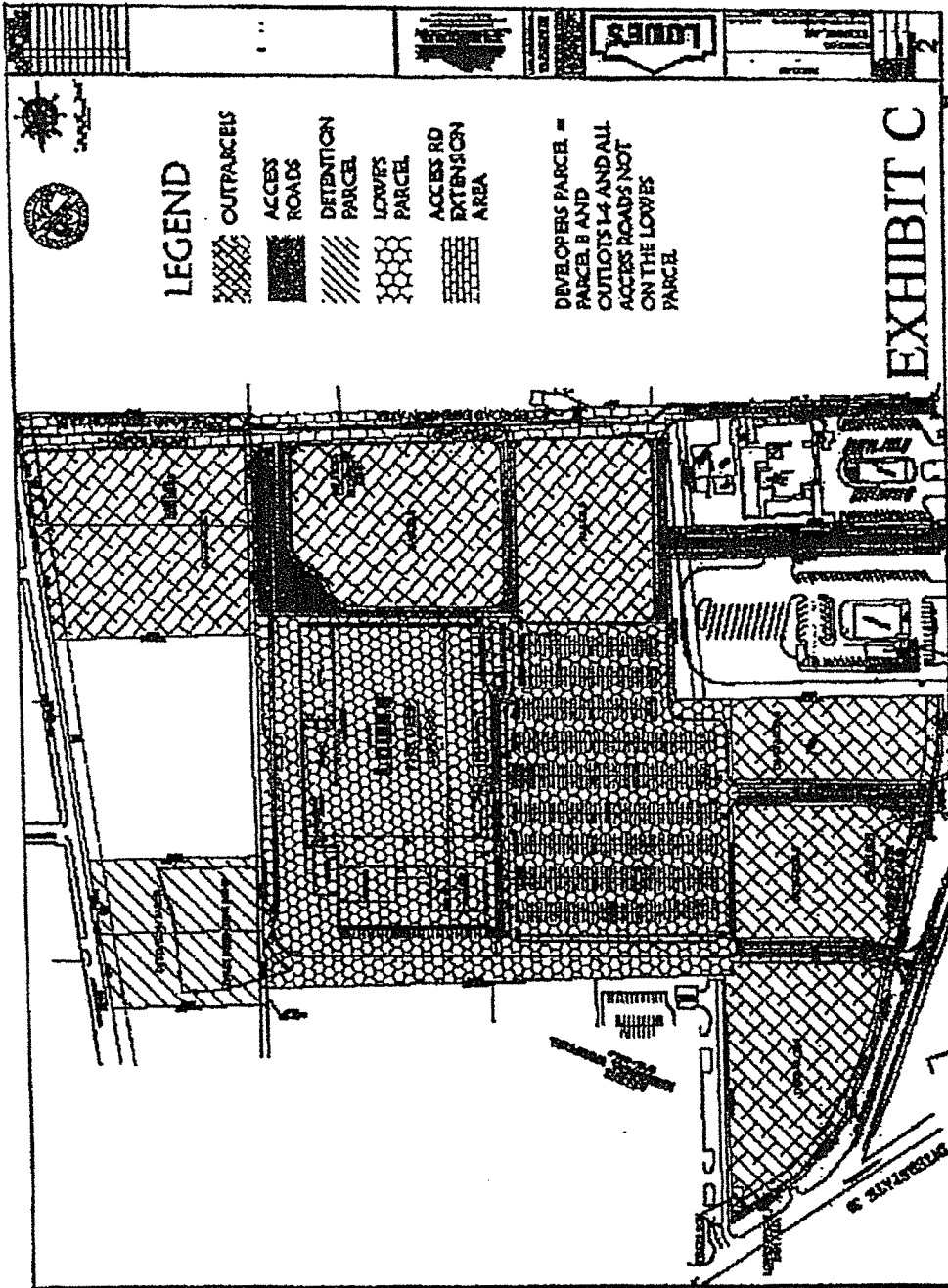
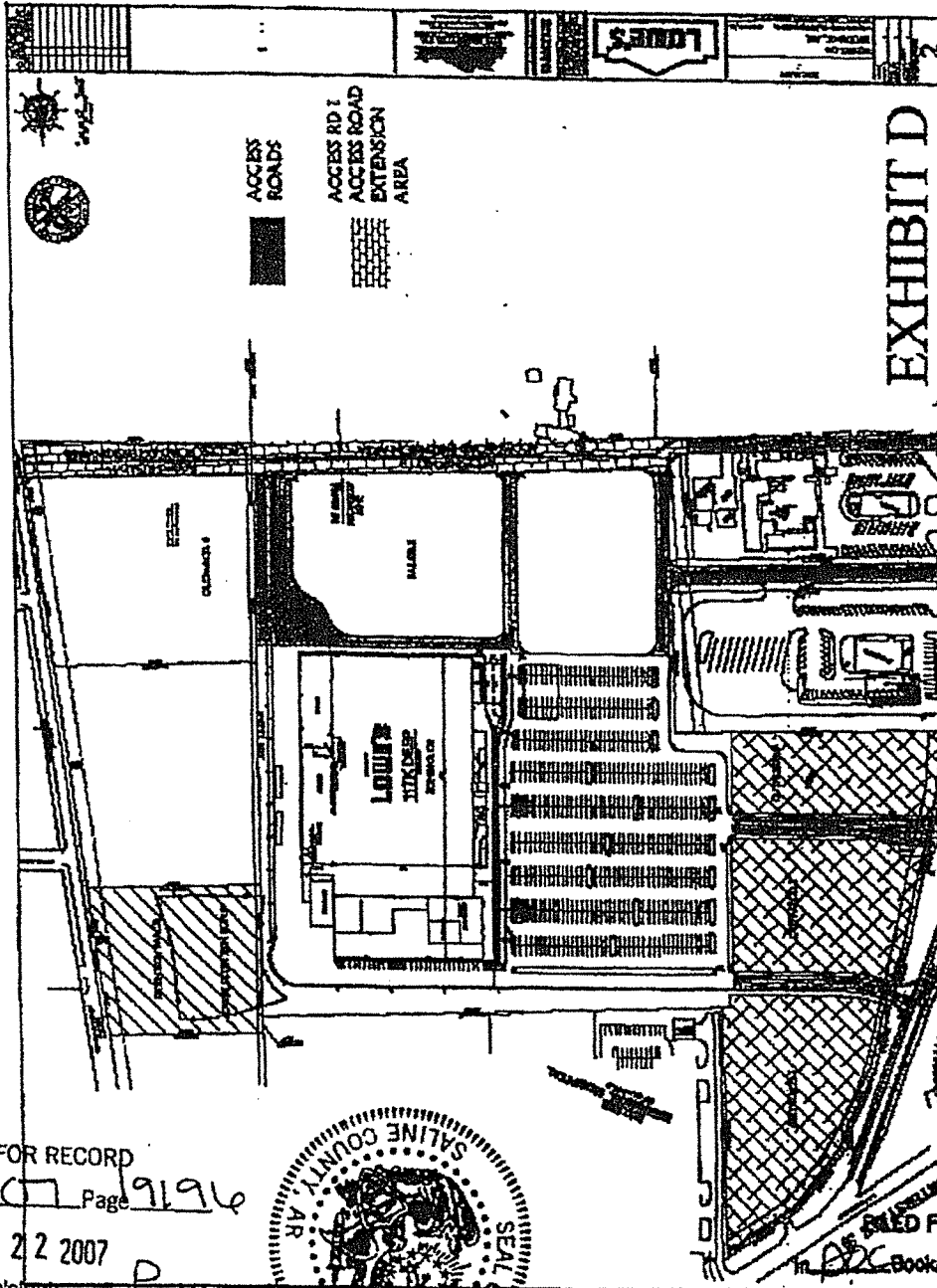


Exhibit "D"

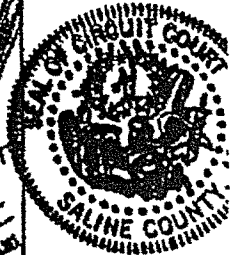
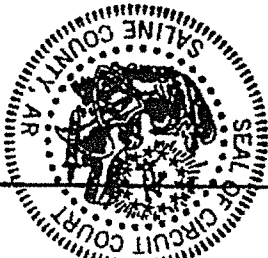
Access Roads



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FILED FOR RECORD  
 In DOC Book 07 Page 9196  
 FEB 22 2007  
 at 2:08 o'clock P M  
 DOUG KIDD, CIRCUIT CLERK  
 BY [Signature] DC



FILED FOR RECORD  
 In DOC Book 05 Page 11645  
 OCT 21 2005  
 at 10:08 o'clock P M  
 DOUG KIDD, CIRCUIT CLERK  
 BY [Signature] DC

PREPARED BY AND  
MAIL RECORDED ORIGINAL TO:  
Murphy Mahon Keffler & Farrier, LLP  
Attn: Chris Baker  
Tindall Square - Building No. 2  
505 Pecan Street, Suite 101  
Fort Worth, Texas 76102

FILED  
SALINE COUNTY  
CIRCUIT CLERK

2015 JAN 21 PM 1:54

BY: \_\_\_\_\_

KS

**SECOND AMENDMENT TO  
EASEMENTS WITH COVENANTS AND RESTRICTIONS**

This Second Amendment to Easements with Covenants and Restrictions ("Second Amendment") is made on the 12<sup>th</sup> day of January, 2015 by First Tennessee Bank National Association ("Developer") and Lowe's Home Centers, LLC, a North Carolina limited liability company, formerly known as Lowe's Home Centers, Inc., a North Carolina corporation ("Lowe's") and is as follows:

**RECITALS**

WHEREAS, on October 19, 2005, that certain Easements with Covenants and Restrictions (the "ECCR") was entered into and was recorded on October 21, 2005 as Saline County Document Number 05 116451, by Reynolds Road Development, LLC, an Arkansas limited liability company, predecessor to Developer with respect to that certain tract of real property located in Bryant, Saline County, Arkansas (the "Land") as shown as more particularly described in the ECCR, as modified by that certain First Amendment to Easements, Covenants, Conditions and Restrictions by and between Lowe's and Developer, filed of record February 22, 2007 as Saline County Document Number 07 019196. Unless otherwise specified herein, the term "ECCR" shall hereinafter include the original document and its subsequent agreements and amendments;

WHEREAS, Developer and Lowe's, desire to amend or modify the ECCR, as amended, in order to provide for the development of the remainder of the Land.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Developer and Lowe's hereby amend and modify the ECCR as follows:

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1. Nothing in the ECCR or First Amendment to ECCR shall prohibit the use or operation of a retail dental service center, office and laboratory, and the providing of support services by Aspen Dental Management, Inc. (or a parent, subsidiary or affiliate of Aspen Dental Management, Inc. so long as such use is operated under the Aspen Dental name) on Outparcel 1 of the Shopping Center, provided that such use and operation is consistent with the other provisions of the ECCR.

2. Section 3.4 of the ECCR is hereby deleted in its entirety and replaced with the following:

Section 3.4 Use Restrictions on the Developer Parcel: No portion of the Developer Parcel shall be used for the following purposes:

- (a) A hardware store or center.
- (b) An appliance, home electronics, and/or lighting store or center.
- (c) A nursery and/or lawn and garden store or center (including without limitation a store selling grills and/or barbecues).
- (d) A paint store or center, wall paper store or center, tile store or center, flooring store or center, carpeting store or center, and/or home decor store or center (e.g., a store selling lighting and fans, rugs and floor treatments, household hardware and window treatments).
- (e) 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, McCoy's, 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/or Orchard Supply.

These restrictions or exclusive rights shall also apply to prohibit a business having space in its store devoted to selling the merchandise described in Sections 3.4(a) through 3.4(d). In the event a retail and/or warehouse home improvement center, lumber yard, building materials supply center, hardware store, lawn and garden store, appliance store, home electronics store, lighting store, paint store, wall paper store, tile store, flooring store, carpeting store, or décor store or center or any combination of the foregoing is not operated in any portion of the Lowe's Parcel for a period in excess of three (3) consecutive years (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Parcel), then the restrictions set forth in Section 3.4 shall be of no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall thereafter open or re-open a store on any portion of the Lowe's Parcel for any one of the

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foregoing uses, which opening or reopening shall not prohibit uses in violation of such exclusives if such uses were begun during such time as the above exclusive use restrictions were of no force and/or effect.

3. If any term of this Second Amendment or the application to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Second Amendment, or the application of such term or provision to persons whose circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.
4. The ECCR, as amended herein, shall run with the Land and be binding upon and inure to the benefit of all future owners, tenants and/or occupants of all or any portion of the Developer's Tract, and the Lowe's Parcel, and their respective heirs, executors, successors and assigns.
5. Except as expressly modified herein, the terms of the ECCR, as amended, shall remain in full force and effect, and Developer and Lowe's hereby ratify such terms, as herein amended.
6. All terms used herein shall have the same meaning given such terms in the ECCR, unless a contrary meaning is set forth in this Second Amendment.
7. This Second Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

*[Signatures on following page]*

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EXECUTED to be effective as of the date first written above.

FIRST TENNESSEE BANK NATIONAL ASSOCIATION

By: [Signature]  
Name: KEVA ROBINSON  
Title: Vice President

STATE OF TENNESSEE §  
COUNTY OF SHELBY §

This instrument was acknowledged before me on this 12<sup>th</sup> day of January, 2015, by KEVA ROBINSON, VICE PRESIDENT of First Tennessee Bank National Association, on behalf of said entity.



[Signature]  
Notary Public in and for the State of TENNESSEE

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LOWE'S HOME CENTERS, LLC,  
a North Carolina limited liability company

By: [Signature]  
Name: Tim L. Cooksey  
Title: Vice President

STATE OF North Carolina  
COUNTY OF Iredell §

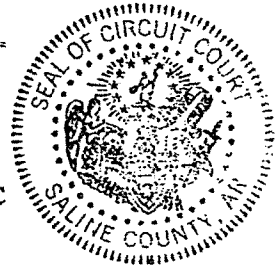
This instrument was acknowledged before me on this 9<sup>th</sup> day of January,  
2015, by Tim L. Cooksey, Vice President of Lowe's Home Centers, Inc., a  
North Carolina limited liability company, on behalf of said company. LLC

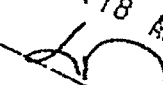
[Signature: Debra A. Marshall]  
Notary Public in and for the  
State of North Carolina

**DEBRA A. MARSHALL**  
Notary Public  
Iredell County, NC  
My Commission Expires 6-3-2018

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Document Filed for Record  
In BK 2015 DC 4777  
JAN 21 2015  
at 1:54 PM  
Myka Sample, Circuit Clerk  
By [Signature] DC



SALINE COUNTY  
2007 APR 18 AM 9:32  
BY: 

#3

Please return documents to:  
LENDERS TITLE CO.  
P.O. Box 13701  
Maumelle, AR 72113  
06-063806-100  
LB

07 041576

Prepared by and when recorded  
return to:  
Molly Shasteen, Esq.  
Troutman Sanders LLP  
Suite 5200  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216

Cross Reference to:  
Book 5, Page 116451,  
Saline County, Arkansas  
Records

**RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS AND RESTRICTIONS**

This RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS AND RESTRICTIONS (the "Agreement") is made this 26 day of March, 2007 by and between COCO BRYANT HOLDINGS, LLC, an Arkansas limited liability company (hereinafter referred to as "Developer"), and CHICK-FIL-A, INC., a Georgia corporation (hereinafter referred to as "CFA").

**WITNESSETH:**

WHEREAS, Developer is the owner of that certain tract or parcel of land lying and being in Saline County, Arkansas, being more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference (hereinafter referred to as the "Developer Tract"); and

WHEREAS, contemporaneously herewith, Developer has conveyed a certain tract or parcel of land to CFA, such land being contiguous to the Developer Tract and lying and being in Saline County, Arkansas, and being more particularly described on Exhibit "B" attached hereto and made a part hereof by this reference (hereinafter referred to as the "CFA Tract"; the Developer Tract and the CFA Tract each being herein sometimes referred to individually as a "Tract" and collectively as the "Tracts"); and

WHEREAS, Developer and CFA desire to establish certain easements and rights benefiting and burdening the Tracts, as hereinafter provided in this Agreement;

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the premises, the mutual benefits to be derived by the provisions of this Agreement, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby

acknowledged by the parties hereto, Developer and CFA do hereby covenant and agree as follows:

1. Benefitted Parties/Binding Effect. The rights, easements, covenants and obligations established in this Agreement shall run with the land and be for the benefit of and binding upon the Tracts. The owner of the Tracts shall have the right to delegate the right to use the easements granted for the benefit of its Tract in this Agreement to its tenants, customers, invitees, employees, agents, contractors and licensees, successors and assigns.

2. Reciprocal Access Easement. (a) Developer, as the owner of that certain portion of the Developer Tract which lies to the north of and abuts the CFA Tract (such portion of the Developer Tract being depicted on Exhibit "C-1" and being hereinafter referred to as the "Adjoining Outparcel"), hereby grants and conveys to CFA, for the benefit of and as an appurtenance to the CFA Tract, a perpetual, non-exclusive easement upon, over, through and across the driveways, accessways and sidewalks located from time to time on the Adjoining Outparcel, including, without limitation, the portion of that certain driveway (hereinafter referred to as the "Joint Driveway"), located on the Adjoining Outparcel and being more particularly described in Exhibit "C" and depicted on Exhibit "C-1" attached hereto and made a part hereof by this reference, for the purposes of pedestrian and vehicular access, ingress and egress, together with the right, but not the obligation, of constructing, installing, using, maintaining and repairing the Joint Driveway.

(b) CFA hereby grants and conveys to Developer, for the benefit of and as an appurtenance to the Adjoining Outparcel, a perpetual, non-exclusive easement upon, over, through and across the driveways, accessways and sidewalks located from time to time on the CFA Tract, including, without limitation, the portion of the Joint Driveway located on the CFA Tract for the purposes of pedestrian and vehicular access, ingress and egress, together with the right, but not the obligation, of constructing, installing, using, maintaining and repairing the Joint Driveway, subject to subsection (d) of this Paragraph 2.

(c) Developer and CFA covenant and agree that the Joint Driveway shall not be altered or changed in any manner.

(d) CFA shall, in connection with the construction of its improvements upon the CFA Tract, construct the Joint Driveway in accordance with Paragraph 4 hereof. Upon the commencement of construction of improvements on the Adjoining Outparcel, the owner of the Adjoining Outparcel shall reimburse CFA, no later than thirty (30) days after receipt of a billing therefor from CFA, for fifty percent (50%) of the actual costs incurred by CFA to perform and complete such work. From and after the time that the owner of the Adjoining Outparcel commences construction of improvements on the Adjoining Outparcel, the owner of the Adjoining Outparcel shall reimburse CFA, no later than thirty (30) days after receipt of a billing therefor from CFA, for fifty percent (50%) of the actual costs incurred by CFA to maintain, at CFA's sole cost and expense, the Joint Driveway in good order condition and state of repair. If the owner of the Adjoining Outparcel fails to reimburse CFA within the time periods set forth above, CFA shall be entitled to pursue any remedies available to it at law or in equity, including without limitation, the filing of a lien pursuant to Paragraph 3 hereof.

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3. Liens. Any claim for reimbursement made by CFA hereunder shall constitute a lien against the Adjoining Outparcel and the improvements thereon; provided, however, that such lien shall not attach or take effect until such time as a claim of lien has been filed for recordation in the Public Records of Saline County, Arkansas, specifying therein at a minimum (i) the name of the lien claimant, (ii) the basis for the claim and the amount thereof, (iii) the name of the owner of, and a description of, the property against which the lien is claimed, and (iv) a statement that the lien is claimed pursuant to this Agreement and reciting the book and page of recordation of this Agreement. Any lien so claimed shall attach from the date of recordation solely in the amount claimed therein 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 laws of the State of Arkansas.

4. Manner of Performing Work. Whenever a party shall perform any construction, maintenance, repairs or replacements required or permitted hereunder, such work shall be done expeditiously and in a good and workmanlike manner and in accordance with all applicable laws, codes, rules, statutes and regulations of governmental authorities having jurisdiction thereof. Such work shall be carried out in such manner so as to cause the least amount of disruption to any business operations being conducted on the surrounding land as is reasonably practicable.

5. Restrictions on Developer Tract. (a) Developer and CFA acknowledge that the CFA Tract and the Developer Tract are subject to that certain Easements, Covenants, Conditions and Restrictions dated October 19, 2005 between Reynolds Road Development, LLC and Lowe's Home Centers, Inc., recorded in Book 5, Page 116451, as amended by that First Amendment recorded as Instrument Number 07 019196, Saline County, Arkansas records (the "ECCR"). The CFA Tract is a part of the "Developer Parcel" (as such term is defined in the ECCR). Pursuant to Section 1.3 of the ECCR, there shall be only one Consenting Party (as such term is defined in the ECCR) for the Developer Parcel. Developer expressly represents and warrants that Developer is the current Consenting Party for the Developer Parcel under the ECCR and has the sole right to designate the Consenting Party for the Developer Parcel in the event the Developer Parcel is subdivided. Accordingly, in consideration of CFA's acquisition of the CFA Tract, Developer has agreed, for itself as the current Consenting Party for the Developer Parcel and as a covenant on behalf of any successor Consenting Party for the Developer Parcel, to obtain the consent of the owner of the CFA Tract to certain actions by the Consenting Party under the ECCR as set forth herein. Developer covenants and agrees that the Consenting Party for the Developer Parcel shall not consent to or make any other approvals or modifications under or to the ECCR including, but not limited to, modifying the location of any Access Roads (as such term is defined in the ECCR), changing the access and egress points and drive lanes shown on the site plan attached the ECCR, consenting to a use that is otherwise prohibited under the ECCR, changing required parking ratios, or increasing assessments without first obtaining the written consent of the owner of the CFA Tract to the same, which consent shall not be unreasonably withheld, delayed or charged for. Upon written request by the owner of the CFA Tract, Developer covenants and agrees that the Consenting Party for the Developer Parcel shall take any action necessary to enforce the terms of the ECCR.

(b) Developer covenants and agrees that (i) the Developer Tract shall only be used for financial institutions, service shops, offices of the type customarily found in retail shopping centers,

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retail stores selling merchandise normally carried in other shopping centers, and restaurants with over fifty (50%) percent of gross revenues from food sales; (ii) the Developer Tract shall not be used for any of the prohibited uses set forth in Section 3.3(a) or Section 3.3(b) of the ECCR regardless of whether both Consenting Parties (as such term is defined in the ECCR) of the ECCR consent to such use; and (iii) the Consenting Party for the Developer Parcel shall not consent to the use of the Lowe's Parcel (as such term is defined in the ECCR) for any of the prohibited uses set forth in Section 3.3(a) or Section 3.3(b) of the ECCR without the prior written consent of the owner of the Land.

The foregoing covenants and obligations set forth in subsection (a) and (b) of this Paragraph 4 shall benefit and run with title to the CFA Tract and shall burden and run with title to the Developer Tract. Any breach of one or more of the foregoing covenants set forth in this Paragraph 4 shall entitle the owner of the CFA Tract to injunctive relief and any other appropriate relief as may be available at law or in equity.

6. Covenant Not To Compete. Developer further covenants and agrees that the portion of the Developer Tract labeled "Chicken Exclusive Applicable" on Exhibit "D" shall not be leased, used or occupied as a quick-service restaurant selling or serving chicken as a principal menu item. For purposes hereof, "a restaurant selling or serving chicken as a principal menu item" means a restaurant deriving twenty-five percent (25%) or more of its gross sales from the sale of chicken. Developer further covenants and agrees that no portion of the Developer Tract shall be leased, used or occupied by or for any of the following: Boston Market, Kenny Roger's, Kentucky Fried Chicken, Popeye's, Church's, Bojangle's, Mrs. Winner's, Tanner's, Chicken Out, Willie May's Chicken, Biscuitville, Zaxby's, Ranch One, El Pollo Loco, Koo-Koo Roo, Pollo Campero, Raising Cane's or Chester's.

The foregoing covenants set forth in this Paragraph 5 shall benefit and run with title to the CFA Tract and shall burden and run with title to the Developer Tract. Any breach of one or more of the foregoing covenants set forth in this Paragraph 5 shall entitle the owner of the CFA Tract to injunctive relief and any other appropriate relief as may be available at law or in equity.

7. Electrical Easement. Developer and CFA hereby acknowledge that the utility provider providing electrical service to the CFA Tract will require an electric line easement ("Electric Easement") extending under, over and across a portion of the Adjoining Outparcel to the CFA Tract in the location shown on Exhibit "E" attached hereto and made a part hereof by this reference. Developer hereby consents to the location of and the granting of the Electric Easement and covenants and agrees to promptly execute the form of easement agreement required by the applicable utility company or authority when so requested in order to provide electrical services to the CFA Tract.

8. Extent of Liability. Notwithstanding any other provision contained in this Agreement to the contrary, Developer and CFA hereby expressly agree that the obligations and liability of each of them shall be limited solely to such party's interest in its respective Tract, as such interest is constituted from time to time. Developer and CFA agree that any claim against a party hereto shall be confined to and satisfied only out of, and only to the extent of, such party's interest in its Tract, as such interest is constituted from time to time. Nothing contained in this

paragraph shall limit or affect any right that any party might otherwise have to seek or to obtain injunctive relief or to specifically enforce the rights and agreements herein set forth, provided that such injunctive relief or specific performance does not involve the payment of money from a source other than such party's interest in its Tract, as such interest may be constituted from time to time.

9. Duration. The provisions of this Agreement shall run with and bind the land described herein and shall be and remain in effect perpetually to the extent permitted by law.

10. Miscellaneous. This Agreement shall be governed in accordance with the laws of the State of Arkansas. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers. No party hereto shall be obligated to take any action to enforce the terms of this Agreement or to exercise any easement, right, power, privilege or remedy granted, created, conferred or established hereunder. This Agreement may be amended, modified or terminated only in writing, executed and acknowledged by all parties to this Agreement or their respective successors or assigns. Time is of the essence of this Agreement.

[Signatures commence on the following page]

IN WITNESS WHEREOF, Developer and CFA have set their hands and seals as of the day, month and year first above written.

DEVELOPER:

COCO BRYANT HOLDINGS, LLC, an Arkansas limited liability company

By: [Signature] [SEAL]  
Name: S. Gene Cauley  
Title: Manager

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STATE OF ARKANSAS

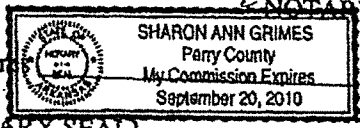
COUNTY OF Pulaski

On this 20th day of March, 2007, before me Sharon Ann Grimes, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named S. Gene Cauley to me personally well known, who stated that he is the Manager of Coco Bryant Holdings, LLC, an Arkansas limited liability company, and is duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

20th TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of March, 2007.

Sharon Ann Grimes  
NOTARY PUBLIC

My commission expires



[NOTARY SEAL]

[Signatures continue on following page]

07 041582

CFA:

CHICK-FIL-A, INC., a Georgia corporation

By: [Signature]  
Name: Bureau Ledbetter  
Title: Senior Vice President

By: [Signature]  
Name: Erwin Reid  
Title: Vice President

(CORPORATE SEAL)

STATE OF GEORGIA

COUNTY OF FULTON

On this 21 day of March, 2007, before me Sharon K. Phelps, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named Bureau Ledbetter and Erwin Reid to me personally well known, who stated that he/she is the Senior Vice President and Vice President of Chick-fil-A, Inc., a Georgia corporation, and is duly authorized in his/her respective capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 21 day of March, 2007.

Sharon K. Phelps  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

[NOTARY SEAL]



**CONSENT AND SUBORDINATION  
TO RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS AND RESTRICTIONS**

07 04/583

First Tennessee Bank ("Lender"), as holder of that certain Mortgage and Security Agreement and Absolute Assignment of Leases and Rents from Coco Bryant Holdings, LLC dated July 26, 2006 and recorded as Saline County Document No. 06-083581, official records of Saline County, Arkansas; and UCC Financing Statement recorded as Saline County Document No. 06-083623, aforesaid records (collectively, the "Mortgage") does hereby consent to, approve and acknowledge the execution, delivery and recording of the Reciprocal Easement Agreement with Covenants and Restrictions by and between Coco Bryant Holdings, LLC and Chick-fil-A, Inc. (the "Agreement") Lender does hereby further agree that the Mortgage, the security interest and the liens created thereby and Lender's interest in the property encumbered by the Mortgage are and shall be subject and subordinate to terms and conditions of the Agreement, and to the rights, covenants and restrictions created thereby. Lender does hereby further agree that if Lender, or its successors and assigns, shall succeed to title in and to any property affected by the Agreement, whether by way of foreclosure (judicial or otherwise) under the Mortgage, deed in lieu of foreclosure or otherwise, Lender shall recognize the rights, covenants and restrictions created by the Agreement in favor of the parties thereto, or their respective successors or assigns, and shall not disturb, impair or otherwise interfere with the exercise, use and enjoyment of such rights, covenants and restrictions pursuant to the terms of the Amendment. This Consent shall inure to the benefit of Chick-fil-A, Inc. and its successors-in-title, successors and assigns, and shall be binding upon Lender and its successors and assigns.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Lender has caused its duly authorized officers to execute this Consent and affix its seal hereto this \_\_\_\_ day of \_\_\_\_\_, 2007.

**LENDER:**

FIRST TENNESSEE BANK

By: David House

Print Name: David House

Title: Vice President

[BANK SEAL]

07 041584

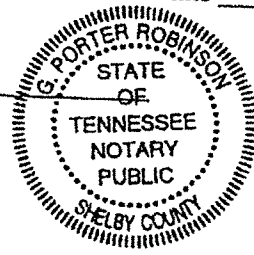
STATE OF TN

COUNTY OF Shelby

On this 22 day of March, 2007, before me Porter Robinson a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, appeared in person the within named David House to me personally well known, who stated that he is the VP of First Tennessee Bank, a TN Corp., and is duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said Bank, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes herein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 22 day of March, 2007.

Porter Robinson  
NOTARY PUBLIC



My commission expires 4/28/09

[NOTARY SEAL]

EXHIBIT "A"

Legal Description of Developer Tract

(OUTPARCEL 1)

07 041585

All that part of the Southwest quarter of Section 22, Township 1 South, Range 14 West, City of Bryant, Saline County, Arkansas, more particularly described as follows: commencing at an Arkansas geological monument marking the Southwest corner of said Section 22, thence North 02 degrees 32 minutes 00 seconds east along the West line thereof 1571.50 feet to a point; thence North 90 degrees 00 minutes 00 seconds East crossing Reynolds Road (also known as Arkansas State Highway Number 183) for 157.19 feet to the east right-of-way line of Interstate 30 Access Road and the POINT OF BEGINNING: The following (5) courses and distances are along the access road R-O-W line thence North 15 degrees 26 minutes 26 seconds East 126.06 feet to a 5/8 inch rebar; thence North 29 degrees 15 minutes 56 seconds East 119.85 feet to a 5/8 inch rebar; thence North 03 degrees 11 minutes 57 seconds East 40.21 feet to a 5/8 inch rebar; thence along a curve to the right, having a radius of 676.25 feet and chord of North 41 degrees 24 minutes 38 seconds East 148.63 feet to a 5/8 inch rebar; thence North 59 degrees 09 minutes 28 seconds East 160.75 feet to a 5/8 inch rebar; thence South 02 degrees 15 minutes 25 seconds West leaving said Interstate 30 for 469.21 feet to a 5/8 inch rebar; thence North 88 degrees 44 minutes 53 seconds West 14.41 feet to a 5/8 inch rebar; thence South 02 degrees 54 minutes 50 seconds West 22.91 feet to a 5/8 inch rebar; thence North 87 degrees 05 minutes 10 seconds West 206.51 feet to a 5/8 inch rebar; thence along a curve to the right, having a radius of 211.50 feet and chord of North 80 degrees 09 minutes 26 seconds West 51.03 feet to a 5/8 inch rebar; thence North 73 degrees 13 minutes 41 seconds West 41.94 feet to the POINT OF BEGINNING, containing 105,121 square feet. (2.413 acres) of land, more or less.

(OUTPARCEL 2)

All that part of the Southwest quarter of Section 22, Township 1 South, Range 14 West, City of Bryant, Saline County, Arkansas, more particularly described as follows: commencing at an Arkansas geological monument marking the Southwest corner of said Section 22, thence North 02 degrees 32 minutes 00 seconds East along the West line thereof 1292.31 feet to a point; thence North 90 degrees 00 minutes 00 seconds East crossing Reynolds Road (also known as Arkansas State Highway Number 183) for 78.87 feet to a 5/8 rebar and the POINT OF BEGINNING; the following three (3) courses and distances are along the east R-O-W line of said state highway; thence North 14 degrees 46 minutes 36 seconds East 130.27 feet to a 5/8 inch rebar; thence North 28 degrees 54 minutes 26 seconds East 26.97 feet to a 5/8 inch rebar; thence North 18 degrees 56 minutes 37 seconds East 90.71 feet to a 5/8 inch rebar; thence South 73 degrees 13 minutes 41 seconds East leaving said road 43.68 feet to a 5/8 inch rebar; thence along a curve to the left, having a radius of 257.50 feet and chord of South 80 degrees 09 minutes 26 seconds East 62.13 feet to a 5/8 inch rebar; thence South 87 degrees 05 minutes 10 seconds East 200.54 feet to a 5/8 inch rebar; thence South 02 degrees 54 minutes 50 seconds West 252.03 feet to a 5/8 inch rebar; thence North 87 degrees 05 minutes 10 seconds West 256.52 feet to a 5/8 inch rebar; thence North 76 degrees 14 minutes 34 seconds West 56.18 feet to a 5/8 inch rebar; thence North 03 degrees 48 minutes 02 seconds East 20.39 feet to a 5/8 inch rebar; thence North 86 degrees 58 minutes 15 seconds West 56.89 feet to the POINT OF BEGINNING, containing 85,646 square feet. (1.966 acres) of land, more or less.

07 041586

(OUTPARCEL 4)

All that part of the Southwest quarter of Section 22, Township 1 South, Range 14 West, City of Bryant, Saline County, Arkansas, more particularly described as follows: commencing at an Arkansas geological monument marking the Southwest corner of said Section 22, thence North 02 degrees 32 minutes 00 seconds East along the West line thereof 501.52 feet to a point; thence South 88 degrees 33 minutes 53 seconds East crossing Reynolds Road (also known as Arkansas State Highway Number 183) for 62.85 feet to the East right-of-way line of Reynolds Road and the Southwest corner of Dell Drive; thence North 02 degrees 31 minutes 30 seconds East along said Reynolds Road R-O-W 26.58 feet to the Northwest corner of Dell Drive; thence South 88 degrees 32 minutes 07 seconds East along said Dell Drive R-O-W 460.41 feet to a two inch pipe; thence North 00 degrees 46 minutes 50 seconds West 4.42 feet to a 5/8 inch rebar and the POINT OF BEGINNING; thence North 00 degrees 46 minutes 50 seconds West 193.64 feet to a 5/8 inch rebar; thence North 88 degrees 33 minutes 43 seconds West 459.80 feet to a 5/8 inch rebar in the east right-of-way line of Arkansas State Highway Number 183; thence North 02 degrees 34 minutes 12 seconds East along said highway r-o-w 60.18 feet to a 5/8 inch rebar; thence South 88 degrees 34 minutes 10 seconds East leaving said highway 502.98 feet to a 5/8 inch rebar; thence North 01 degree 38 minutes 53 seconds East 118.02 feet to a 5/8 inch rebar and the Southwest corner of Land of Lowes; thence South 87 degrees 05 minutes 10 seconds East along a line common with Land of Lowes 305.54 feet to a 5/8 inch rebar thence South 02 degrees 54 minutes 50 seconds west along a line common with Land of Lowes 8.84 feet to a 5/8 inch rebar; thence South 87 degrees 05 minutes 10 seconds East along a line common with Land of Lowes 477.06 feet to a 5/8 inch rebar and the Southeast corner of said Land of Lowes; thence South 02 degrees 34 minutes 48 seconds West along a line common with the West line of Pikewood Subdivision Number 2, as filed in Deed Book 109 at page 314, for 342.19 feet to a 5/8 inch rebar, said rebar is located North 02 degrees 34 minutes 48 seconds East 4.12 feet from a 5/8 inch rebar with a Ben Kittler, Jr. cap marking the Northeast corner of Raymond Evans Land as shown in Deed Book 169 at page 22; thence North 88 degrees 36 minutes 25 seconds West along the north right-of-way line of Dell Drive 812.58 feet to the POINT OF BEGINNING, containing 315,531 square feet. (7.244 acres) of land, more or less.

(OUTPARCEL 5)

All that part of the Southwest quarter of Section 22, Township 1 South, Range 14 West, City of Bryant, Saline County, Arkansas, more particularly described as follows: commencing at an Arkansas geological monument marking the Southwest corner of said Section 22, thence North 02 degrees 32 minutes 00 seconds East along the West line thereof 501.52 feet to a point; thence South 88 degrees 33 minutes 53 seconds East crossing Reynolds Road (also known as Arkansas State Highway Number 183) for 62.85 feet to the east right-of-way line of Reynolds Road and the Southwest corner of Dell Drive; thence North 02 degrees 31 minutes 30 seconds East along said Reynolds Road R-O-W 26.58 feet to the Northwest corner of Dell Drive; thence South 88 degrees 32 minutes 07 seconds east, along said Dell Drive R-O-W 460.41 feet to a two inch pipe; thence North 00 degrees 46 minutes 50 seconds West 4.42 feet to a 5/8 inch rebar; thence South 88 degrees 36 minutes 25 seconds East along the North R-O-W line of Dell Drive 812.58 feet to a 5/8 inch rebar and the POINT OF BEGINNING; thence North 02 degrees 34 minutes 48 seconds East along a line common with the West line of Pikewood Subdivision Number 2, as filed in Deed Book 109 at page 314 for 375.43 feet to a 5/8 inch rebar; thence South 88 degrees 53 minutes 05 seconds East 380.06 feet to a 5/8 inch rebar in the West R-O-W line of Ridgecrest Drive; thence South 04 degrees 55 minutes 11 seconds East along said Ridgecrest Drive r-o-w 216.78

feet to a 5/8 inch rebar; thence South 04 degrees 55 minutes 11 seconds East along said road r-o-w 205.09 feet to a 5/8 inch rebar; thence North 87 degrees 10 minutes 33 seconds West leaving said road 435.00 feet to a 1- 1/2 inch crimped head pipe; thence North 02 degrees 34 minutes 48 seconds East 31.27 feet to the POINT OF BEGINNING, containing 168,180 square feet, (3.861 acres) or land, more or less.

LESS AND EXCEPT:

All that part of the Southwest quarter of Section 22, Township 1 South, Range 14 West, City of Bryant, Saline County, Arkansas, also being known as part of Outparcel #2, Reynolds Road Development (an unplatted subdivision), said tract being more particularly described as follows:

Commencing at an Arkansas geological monument marking the Southwest corner of said Section 22, thence North 02 degrees 32 minutes 00 seconds East along the West line thereof 1292.31 feet to a point; thence North 90 degrees 00 minutes 00 seconds East crossing Reynolds Road (also known as Arkansas State Highway Number 183) for 78.87 feet to a 5/8 inch rebar on the East right-of-way line of said highway and the POINT OF BEGINNING; thence North 14 degrees 46 minutes 36 seconds East, along said East right-of-way line, 114.94 feet to a set 1/2 inch rebar; thence South 75 degrees 14 minutes 58 seconds East, departing said East right-of-way line, 73.95 feet to a set 1/2 inch rebar; thence North 15 degrees 13 minutes 14 seconds East 30.26 feet to a set 1/2 inch rebar; thence South 87 degrees 05 minutes 10 seconds East 265.81 feet to a set 1/2 inch rebar on the East line of said Outparcel #2; thence along the boundary of said Outparcel #2 the following courses: South 02 degrees 54 minutes 50 seconds West 157.96 feet to a set 1/2 inch rebar, North 87 degrees 05 minutes 10 seconds West 256.52 feet to a set 1/2 inch rebar, North 76 degrees 14 minutes 34 seconds West 56.18 feet to a set 1/2 inch rebar, North 03 degrees 48 minutes 02 seconds East 20.39 feet to a set 1/2 inch rebar, North 86 degrees 58 minutes 15 seconds West 56.89 feet back to the POINT OF BEGINNING. Said tract containing 52,768 square feet or 1.211 acres of land, more or less, according to a survey by Global Surveying Consultants, Inc. Project Number 06-1048.00/02, dated September 13, 2006, and revised November 3, 2006.

07 041587

EXHIBIT "B"

Legal Description of CFA Tract

All that part of the Southwest quarter of Section 22, Township 1 South, Range 14 West, City of Bryant, Saline County, Arkansas, also being known as part of Outparcel #2, Reynolds Road Development (an unplatted subdivision), said tract being more particularly described as follows:

Commencing at an Arkansas geological monument marking the Southwest corner of said Section 22, thence North 02 degrees 32 minutes 00 seconds East along the West line thereof 1292.31 feet to a point; thence North 90 degrees 00 minutes 00 seconds East crossing Reynolds Road (also known as Arkansas State Highway Number 183) for 78.87 feet to a 5/8 inch rebar on the East right-of-way line of said highway and the POINT OF BEGINNING; thence North 14 degrees 46 minutes 36 seconds East, along said East right-of-way line, 114.94 feet to a set 1/2 inch rebar; thence South 75 degrees 14 minutes 58 seconds East, departing said East right-of-way line, 73.95 feet to a set 1/2 inch rebar; thence North 15 degrees 13 minutes 14 seconds East 30.26 feet to a set 1/2 inch rebar; thence South 87 degrees 05 minutes 10 seconds East 265.81 feet to a set 1/2 inch rebar on the East line of said Outparcel #2; thence along the boundary of said Outparcel #2 the following courses: South 02 degrees 54 minutes 50 seconds West 157.96 feet to a set 1/2 inch rebar, North 87 degrees 05 minutes 10 seconds West 256.52 feet to a set 1/2 inch rebar, North 76 degrees 14 minutes 34 seconds West 56.18 feet to a set 1/2 inch rebar, North 03 degrees 48 minutes 02 seconds East 20.39 feet to a set 1/2 inch rebar, North 86 degrees 58 minutes 15 seconds West 56.89 feet back to the POINT OF BEGINNING.

Said tract containing 52,768 square feet or 1.211 acres of land, more or less, according to a survey by Global Surveying Consultants, Inc. Project Number 06-1048.00/02, dated September 13, 2006, and revised November 3, 2006.

07 041588

EXHIBIT "C"

Legal Description of Joint Driveway

25' DRIVE EASEMENT DESCRIPTION:

A 25 FOOT WIDE DRIVE EASEMENT, BEING 12.5 FEET EITHER SIDE OF A CENTERLINE ACROSS A PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 14 WEST, CITY OF BRYANT, SALINE COUNTY, ARKANSAS, ALSO BEING KNOWN AS PART OF OUTPARCEL #2, REYNOLDS ROAD DEVELOPMENT (AN UNPLATTED SUBDIVISION), SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT AN ARKANSAS GEOLOGICAL MONUMENT MARKING THE SOUTHWEST CORNER OF SAID SECTION 22, THENCE NORTH 02 DEGREES 32 MINUTES 00 SECONDS EAST ALONG THE WEST LINE THEREOF 1292.31 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST CROSSING REYNOLDS ROAD (ALSO KNOWN AS ARKANSAS STATE HIGHWAY NUMBER 183) FOR 78.87 FEET TO A 5/8 INCH REBAR ON THE EAST RIGHT OF WAY LINE OF SAID HIGHWAY AND THE SOUTHWEST CORNER OF SAID OUTPARCEL #2; THENCE ALONG THE BOUNDARY OF SAID OUTPARCEL #2 THE FOLLOWING COURSES: SOUTH 86 DEGREES 58 MINUTES 15 SECONDS EAST 56.89 FEET; SOUTH 03 DEGREES 48 MINUTES 02 SECONDS WEST 20.39 FEET; SOUTH 76 DEGREES 14 MINUTES 34 SECONDS EAST 56.18 FEET; SOUTH 87 DEGREES 05 MINUTES 10 SECONDS EAST 256.52 FEET; NORTH 02 DEGREES 54 MINUTES 50 SECONDS EAST 157.96 FEET TO THE POINT OF BEGINNING OF THE CENTERLINE BEING DESCRIBED; THENCE NORTH 87 DEGREES 05 MINUTES 10 SECONDS WEST 281.85 FEET TO THE POINT OF TERMINATION, SAID EASEMENT CONTAINING 7,046 SQUARE FEET OF LAND, MORE OR LESS.

07 041589



EXHIBIT "D"

Chicken Exclusive

07 041591

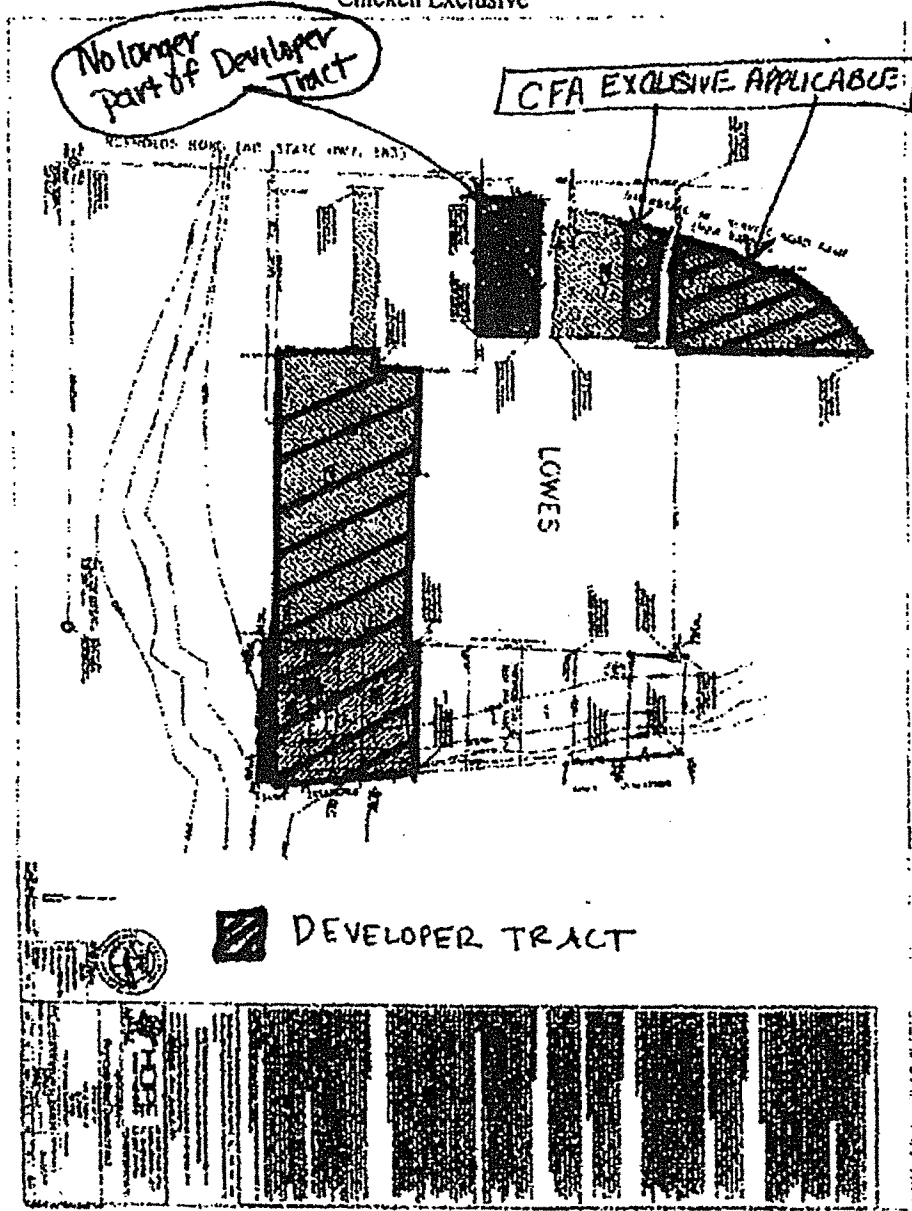
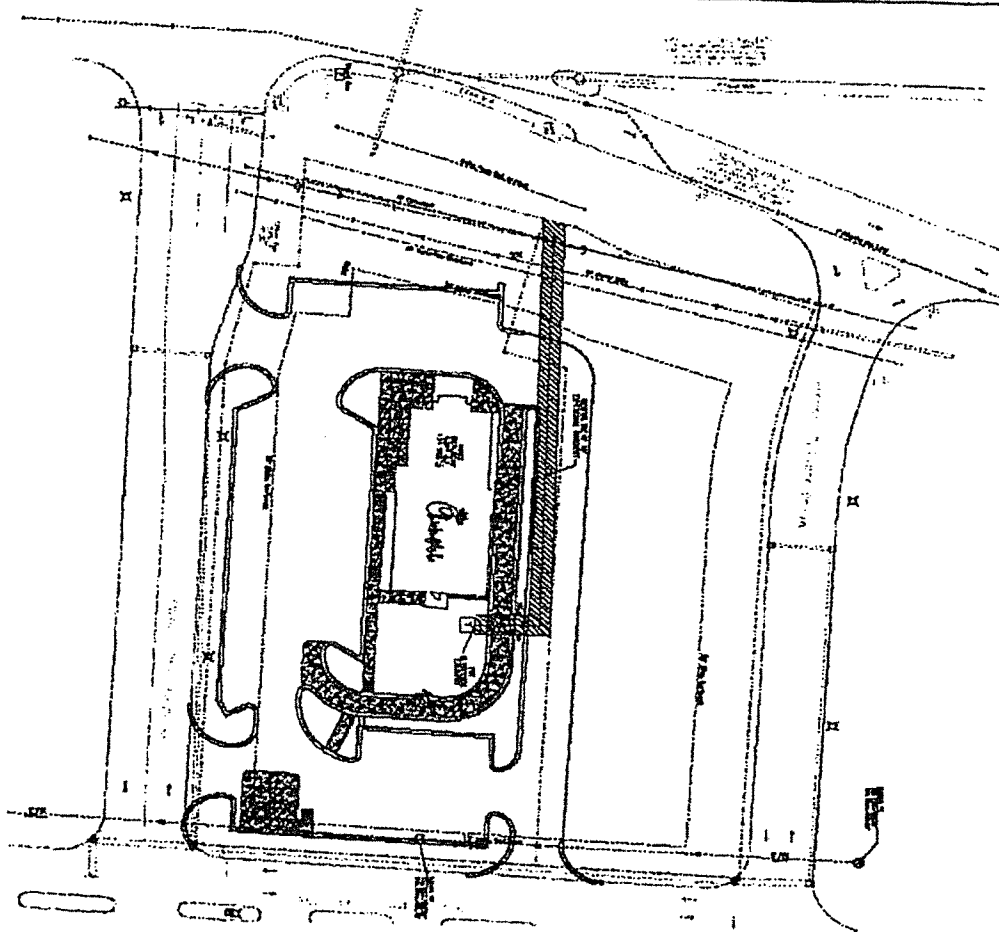
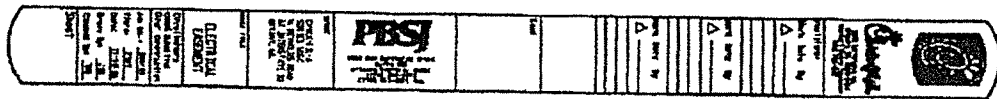


EXHIBIT "E"

Electric Basement

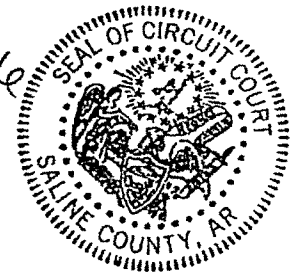


07 041592



1762887\_3.DOC

FILED FOR RECORD  
 In DC Book 07 Page 41576  
 at 9:32 APR 18 2007 A M  
 DOUG KIDD, CIRCUIT CLERK  
 BY [Signature] DC



BOOK 109 PAGE 312

FILED  
SALINE CIRCUIT &  
CHANCERY CLERK

1962 SEP 24 AM 11:06

BY *Edna Crouch*

D E D I C A T I O N   D E E D

KNOW ALL MEN BY THESE PRESENTS:

That whereas, LaVerne G. Anderson, Lora Cowan,  
and Edith W. Raper, are the owners of the following  
described land situated in Saline County, Arkansas, to-wit:

A part of the Southwest Quarter of Section 22,  
Township 1 South, Range 14 West, more particularly  
described as follows: Beginning at the Northwest  
corner of the Northeast Quarter of the Southwest  
Quarter of Section 22; thence South 670 feet to the  
point of beginning proper; thence East along the  
South boundary line of Pikewood Sub-Division, 1029  
feet to a point; thence South 4 deg. and 09 min.  
East 694 feet to a point; thence East 200 feet  
to a point; thence South 812 feet to a point;  
thence West 1305 feet to a point; thence North 1484.5  
feet to the point of beginning proper.

Whereas they caused a survey and plat of said land to  
be made and divided said land into lots as shown on said plat  
which is hereto attached and made a part thereof.

Whereas the dimensions of each lot are shown on said  
plat and they desire that said land as above described be  
designated as Pikewood Sub-division No. 2, Saline County,  
Arkansas.

Now Therefore, we the said LaVerne G. Anderson,  
Lora Cowan, and Edith W. Raper, for and in consideration of  
the sum of ONE DOLLAR (\$1.00) and in consideration of the  
purposes herein stated, do hereby designate the above described  
land as shown on said plat as lots, which plat is hereto  
attached and made a part hereof as Pikewood Sub-division No. 2,  
Saline County, Arkansas, and that any conveyance by the owners  
of said land by the number of said lots shall forever be held  
to be a good and valid and legal description thereof, and  
that the roads as shown on said plat is hereby dedicated to  
the public for the use and benefit of the public as such  
forever.

BOOK 109 313

That said land is hereby made subject to the following protective and restrictive covenants, to-wit:

1. That no dwelling shall be located nearer than twenty-five feet to the front property line.
2. That no dwelling shall be located nearer than five feet to an interior lot line.
3. That no outside toilet facilities shall be permitted on said property.

WITNESS our hands on this 20TH day of September, 1962.

LaVerne O. Anderson

Lora Cowan

Edith W. Raper

STATE OF ARKANSAS )  
COUNTY OF SALINE )

ss.

ACKNOWLEDGEMENT

BE IT REMEMBERED, That on this day came before me, the undersigned, a Notary Public, within and for the County aforesaid, duly commissioned and acting, LaVerne O. Anderson, Lora Cowan, and Edith W. Raper, to me well known as the grantors in the foregoing Dedication Deed and stated that they had executed the same for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public on this 20TH day of September, 1962.

LaVerne O. Anderson  
Notary Public

My Commission Expires:

Nov. 4, 1963

Filed for record on this the 24th day of September, 1962 at 11:06 A.M., and same is duly recorded in Deed Record Book 109, at page 312.



Marshall Gipson  
Circuit Clerk & Recorder.

By Marshall Gipson D.C.



NO. 44

LAVERN O. ANDERSON,  
LAURA COWAN AND  
EDITH W. RAPER,

TO

ARKANSAS POWER & LIGHT COMPANY,

INSTRUMENT EASEMENT AND RIGHT OF WAY  
DATED 9/14/1962  
FILED 9/24/1962  
RECORDED IN MISC BOOK 5 PAGE 62

ACKNOWLEDGED 9/14/1962  
BEFORE DARRELL L. WOODCOCK  
AS H. P. OF SALINE COUNTY  
STATE OF ARKANSAS  
WHO CERTIFIES: As to LaVerne O. Anderson  
Laura Cowan and Edith W. Raper, grantors.  
Statutory form. Seal.

RECITES:

That in consideration of the sum of \$ 1.00 and other valuable considerations, and the receipt of which is hereby acknowledged, hereby grant, and convey the right, privilege authority, easement, and right of way to build, rebuild, renew, remove, maintain, and operate electric circuits, including poles, conductors, equipment, necessary guys and anchors, and other facilities for the purposes of transmitting and distributing electric current and the supplying of electric services, with the further right of ingress and egress at any and all times for such purposes upon, over, under, and across the public ways, streets, and spaces designated and reserved for utility easements in the following lands situated in Saline County, Arkansas, and described as follows, to-wit:

PIKEWOOD SUBDIVISION NO. 2 to Saline County, being a part of the SW 1/4, Sec. 22, T 1, S 1, R 1, Saline County, Arkansas. The streets, public ways, and spaces designated and reserved for utilities easements are shown by the Plat of the said Subdivision which Plat appears of record in the office of the Saline County

NO. 45

Continued

5/62

Recorded in Deed Record Book 109 at page 312.

Grantee is given the further right to install and maintain service wires and facilities on any Lot in the said Subdivision where necessary to supply electric service to any residence, structure, or customer located in the said lot.

Grantee is given the further right to trim and keep trimmed the trees near the electric circuits and service wires and to maintain and have maintained adequate, safe, and required clearances around the said electric circuits and service wires.

Grantee is given the further right to authorize the Telephone Company supplying service in this area to erect and maintain the poles or pole lines in the easements hereinabove described for the joint uses of both Companies. Grantee is also given the right to permit the use of its poles and pole lines by the Company supplying telephone and communication service in this area.

Grantee is also authorized to remove any trees and growths upon the lands which will conflict with the original location and construction of the said electric circuits and service wires.

LaVerne O. Anderson  
Lora Cowan  
Edith W. Raper.

SALINE COUNTY ABSTRACT

AND  
GUARANTY CO.

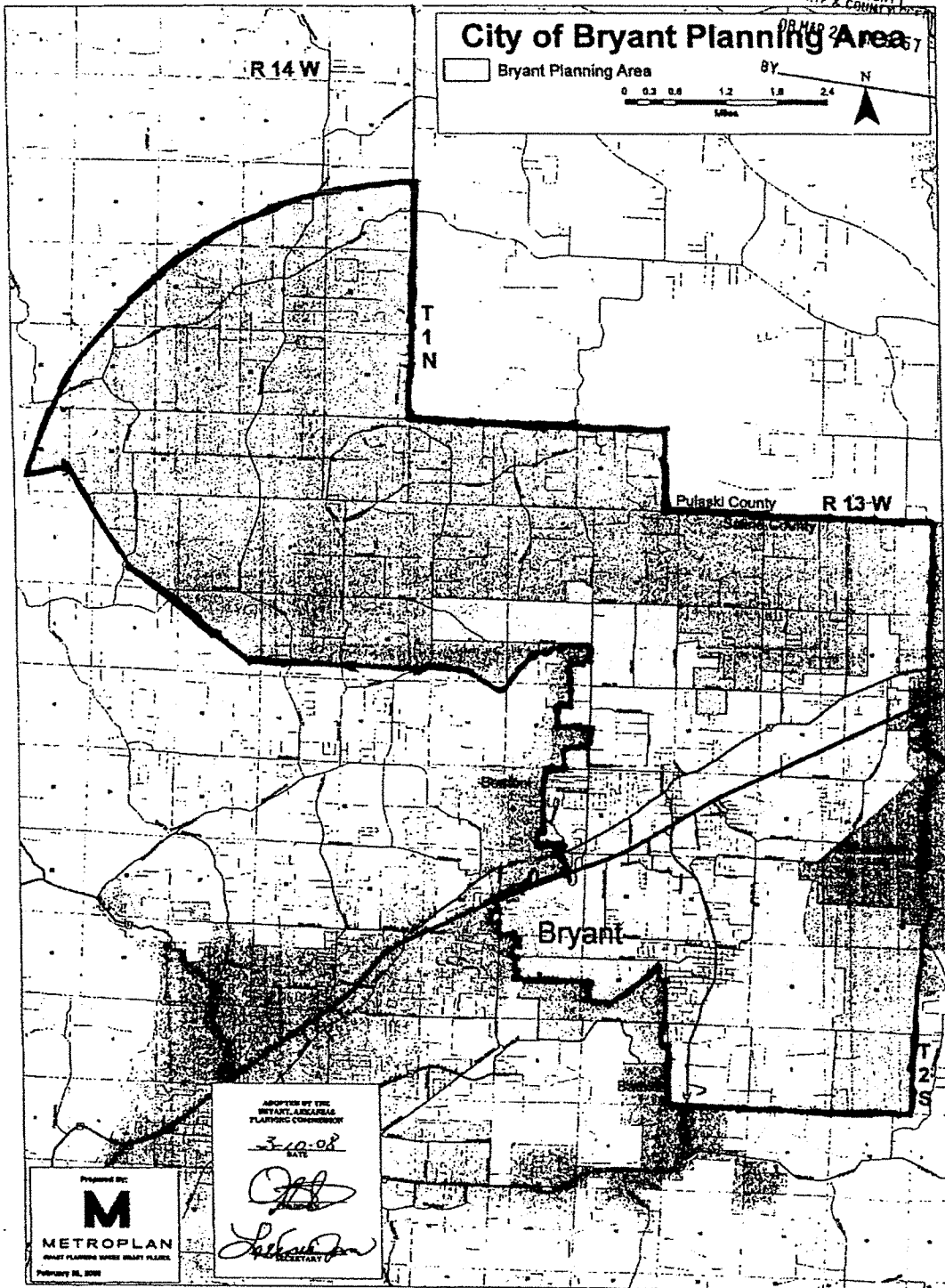
FILED  
SALINE COUNTY  
STATE & COUNTY

# City of Bryant Planning Area

BY

0 0.3 0.6 1.2 1.8 2.4 Miles

N



ADOPTED BY THE  
BRYANT AREA  
PLANNING COMMISSION

3-10-08

DATE

*[Signature]*

SECRETARY

Prepared by:

**M**

**METROPLAN**

URBAN PLANNING ENGINEERING ARCHITECTS

February 26, 2008

461

IN THE COUNTY COURT OF SALINE COUNTY, ARKANSAS  
IN THE MATTER OF THE FORMATION OF SALEM  
FIRE PROTECTION DISTRICT NO 1

ORDER 59

FILED  
SALINE COUNTY  
CLERK  
OS DECEMBER 13 2005

Comes now the Court on the date set forth below and pursuant to the provisions of Act 35 of 1979, as amended, states:

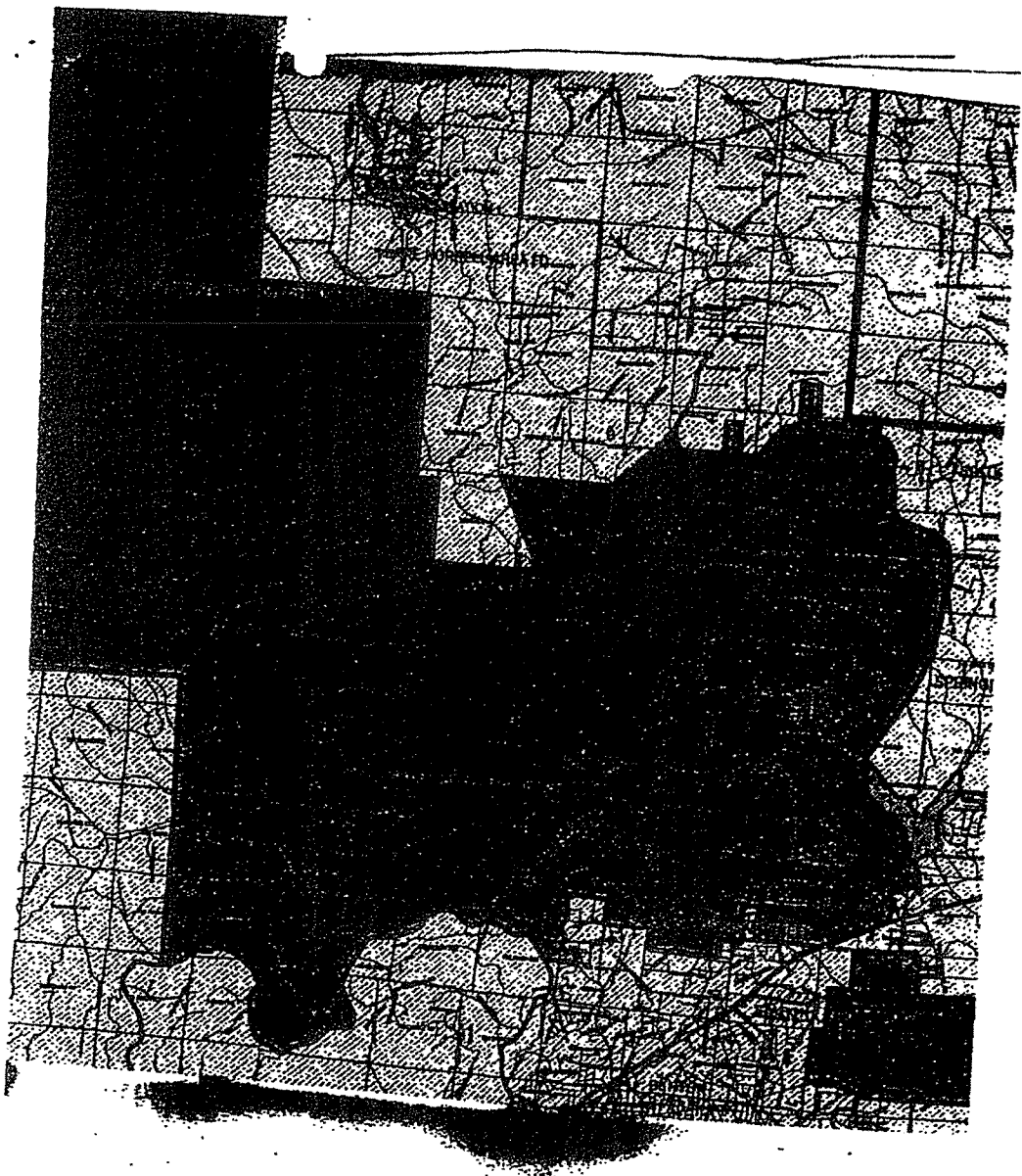
1. That more than ten percent (10%) of the qualified electors within the boundaries of the fire protection district have properly petitioned the Court for the establishment of the Salem Fire Protection District.
2. That a description of the territory of the fire protection district is described on "Exhibit A" attached hereto and made a part hereof.
3. That an accurate map of the fire protection district boundaries is attached hereto as "Exhibit B" and made a part hereof.
4. That the fire protection district is established for the primary purpose of providing fire protection in rural areas for buildings, structures, and other man-made improvements. In addition, the fire protection district may provide other emergency services, like hazardous and toxic materials response, search and rescue services, emergency medical, ambulance, and patient transport services, and such other functions as may be assigned to or reasonably expected of a fire protection district and which it is trained and qualified to perform.
5. That the Saline County Quorum Court, after required notice being given, and a public hearing on the petition being held on October 13, 2005, did establish by ordinance the proposed fire protection district.

6. That after required notice being given, a public hearing was held on the Ordinance in the Salem Fire Department building a large building located within the proposed district on December 19, 2005. That no one appeared to oppose the ordinance.
7. That the district shall be known as the Salem Fire Protection District No. 1

IT IS SO ORDERED.

  
LANNY FITE, SALINE COUNTY JUDGE

DATED: 12-20-2005



IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS.  
IN THE MATTER OF THE ESTABLISHMENT  
OF THE SALINE WATERSHED REGIONAL WATER  
DISTRIBUTION DISTRICT

FILED  
SALINE COUNTY  
CIRCUIT CLERK  
2003 DEC 19 PM 1:26  
NO. CV 2003-436-2  
BY \_\_\_\_\_

ORDER ESTABLISHING THE SALINE  
REGIONAL WATER DISTRIBUTION DISTRICT

Comes on now for hearing the petition to establish a regional water distribution district and the Court, after considering the petition, the testimony presented and the evidence adduced hereby finds:

1. By authority of the United States Congress, a reservoir has been constructed by and under the supervision and direction of the Corps of Engineers, Department of the Army, on the Ouachita River, in Montgomery County, Arkansas and Garland County, Arkansas. That reservoir is Lake Ouachita.

2. That a regional water distribution district is hereby established in the area involved for the purpose of engaging in the activities contemplated by Act 114, Ark. Acts of 1957, as amended (Arkansas Statutes Sections 14-116-101 thru 14-116-608), including but not limited to the following:

- (a) Acquisition of water from wells, lakes, rivers, tributaries, or streams of or bordering this state or from existing reservoirs heretofore created by the construction of dams by or under the direction and supervision of the United States Army Corps of Engineers;
- (b) Acquisition of water, water storage facilities, and the storage of the water in reservoirs created by the construction of multipurpose dams by or under the direction and supervision of the United State Army Corps of Engineers, or by the

water district with federal financial or other assistance furnished by the United States Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act or any other federal law;

- (c) Purification, treatment and processing of the water;
  - (d) Furnishing the water to persons desiring it;
  - (e) Assisting in the installation and operation of the water and transportation facilities of persons who are furnished water by the water district and the acquisition, supply, or installation of equipment necessary therefor;
  - (f) Transportation and delivery of the water to persons furnished it by the water district;
  - (g) Carrying out the functions as may be related and appropriate to the accomplishment of purposes enumerated in this section; and,
  - (h) To form and engage in contracts and/or partnerships with other water distribution districts and/or water purveyors to accomplish the above purposes.
3. The area which it is proposed shall be embraced within the district is described as follows:

All of Saline County, Arkansas, and certain overlapping areas in Grant, Hot Springs and Garland Counties, all as more fully set forth in a map of this area that is attached hereto as "Exhibit A."

4. Only a limited quantity of water is available in the area involved. The establishment and operation of the proposed district will provide an abundant and dependable supply of high quality water in the area at reasonable cost for the use of rural and municipal areas of the county for both residential and business customers and property owners and will thereby

promote the population maintenance, growth and economic development of the area. To accomplish these goals the district is authorized to use project improvement plans and assessments and the district shall have the power under the above referred to statutes to levy taxes to accomplish said goals.

5. The district shall be named the Saline Watershed Regional Water Distribution District.

6. The principal offices of the district should be located temporarily at 202 Main Street, Benton, Arkansas, 72015.

7. In order to provide adequate representation of the customers of the district the board of directors shall be comprised of one member from each justice of the peace district in the county, to be elected by the qualified voters in each such district. In the event water is furnished to customers outside Saline county, then representation on the board of directors shall also include one member from each area of service outside Saline County at such time as that area reaches the then current justice of the peace population requirements. Each such additional board member shall be elected by the qualified voters in the service area located outside Saline County. Each director shall serve for a term of six (6) years and until his successor is duly elected and qualified, except that to provide staggered terms of the members, the initial board shall be comprised of the following members to serve the following terms:

Justice of the Peace District Number	Board Member	Term Length
1	Roger Moren	6 years
2	Mike Kemp	4 years
3	Lex Dobbins	2 years
4	Robert Berry	2 years

5	Bruce Watson	4 years
6	Dickie Kentner	6 years
7	Vernon Williams	4 years
8	Ray Gabbard	6 years
9	Wilma Raney	2 years
10	Bobby Westbrook	6 years
11	Nina Huzy	2 years
12	Bob McKeon	6 years
13	Larry Morgan	4 years
Garland County	Gordon Behnke	2 years

The term of office of the directors shall expire on December 31 of the year which constitutes the last year of the term of each director.

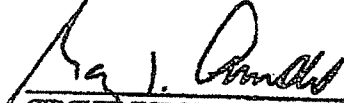
8. The board members may be removed by their respective electors for just cause, including but not limited to malfeasance and/or misfeasance in office.

9. The Court is satisfied and specifically finds that the Petition is sufficient in all respects and that these proceedings are in compliance with the Regional Water Distribution Act, No. 114 of 1957, as amended. Further, the Court finds that it is in the best interests of the persons residing or owning land within the boundaries of the proposed water district that the water district be established pursuant to and subject to all of the terms and provisions of the said Regional Water Distribution Act.

IT IS THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the petition is

hereby granted and that the Saline Watershed Regional Water Distribution District is hereby created.

DATED: 12-19-03

  
CIRCUIT JUDGE



*Deed  
Drive*

FILED  
SALINE COUNTY  
CIRCUIT CLERK

2005 DEC 14 AM 8:16

**DEDICATION DEED**

*M*

WYATT GLEASON and LINDA GLEASON, husband <sup>BY:</sup> and wife, ~~DICKIE HOLIMAN AND MELINDA HOLIMAN, HUSBAND AND WIFE,~~ and MARY GLEASON, an individual (collectively, the "Grantor"), for and in consideration of the sum of Ten and No/100 United States Dollars (\$10.00) and other good and valuable consideration in hand paid by the CITY OF BRYANT, ARKANSAS, an Arkansas municipal entity ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, does hereby quitclaim unto Grantee, and unto Grantee's successors and assigns, all Grantor's right, title, interest and claim in and to the real property situated in Saline County, Arkansas, depicted on Exhibit A and described in Exhibit B attached hereto and incorporated herein (the "Property"). The undersigned do hereby subordinate to and waive all dower, curtesy, homestead, redemption or other rights available under the Arkansas Constitution or by statute, and especially under the Act of May 8, 1899, and Acts amendatory thereof, to the rights created by this Dedication Deed. Any future transactions, including without limitation any amendments or extensions, relating to the Premises shall not be subject to the consent of the undersigned, and this waiver will remain in full force and effect for such transactions.

**TO HAVE AND TO HOLD** the same unto Grantee, and unto its heirs, successors and assigns forever, with all appurtenances thereunto belonging.

[SIGNATURES ON FOLLOWING PAGES]

05 139448





05 139451

Husband: Dickie L. Holiman  
DICKIE HOLIMAN, an individual

Wife: \_\_\_\_\_  
\_\_\_\_\_, an individual

By checking this box, I, DICKIE HOLIMAN, hereby certify I am not married.

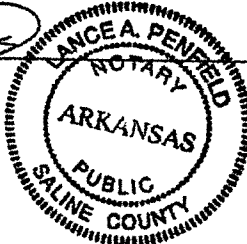
STATE OF ARKANSAS )  
COUNTY OF SALINE )ss:

ACKNOWLEDGMENT

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named DICKIE HOLIMAN, an individual, and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 19<sup>th</sup> day of October, 2005.

[Signature]  
Notary Public



My Commission Expires:  
7-8-09  
(SEAL)

STATE OF ARKANSAS )  
COUNTY OF \_\_\_\_\_ )ss.

ACKNOWLEDGMENT

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named \_\_\_\_\_, to me well known, who stated and acknowledged she signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_  
(SEAL)

05 139452

Wife: Melinda Holiman  
MELINDA HOLIMAN, an individual

Husband: \_\_\_\_\_  
\_\_\_\_\_, an individual

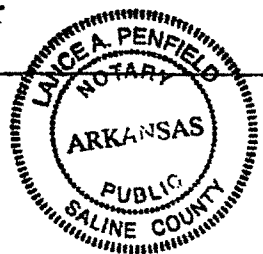
By checking this box, I, MELINDA HOLIMAN, hereby certify I am not married.

STATE OF ARKANSAS )  
 )ss: ACKNOWLEDGMENT  
COUNTY OF SALINE )

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named MELINDA HOLIMAN, an individual, and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 19 day of OCTOBER, 2005.

[Signature]  
Notary Public



My Commission Expires:  
7-8-09  
(SEAL)

STATE OF ARKANSAS )  
 )ss. ACKNOWLEDGMENT  
COUNTY OF \_\_\_\_\_ )

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named \_\_\_\_\_, to me well known, who stated and acknowledged he signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_  
(SEAL)

05 139453

Wife: Mary Gleason  
MARY GLEASON, an individual

Husband: \_\_\_\_\_  
\_\_\_\_\_, an individual

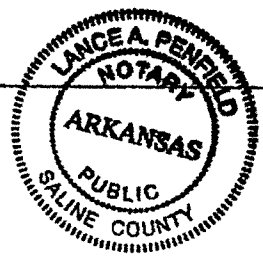
By checking this box, I, MARY GLEASON, hereby certify I am not married.

STATE OF ARKANSAS )  
  )ss: ACKNOWLEDGMENT  
COUNTY OF Saline )

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named MARY GLEASON, an individual, and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 19<sup>th</sup> day of December, 2005.

[Signature]  
Notary Public



My Commission Expires:  
7/8/09  
(SEAL)

STATE OF ARKANSAS )  
  )ss: ACKNOWLEDGMENT  
COUNTY OF \_\_\_\_\_ )

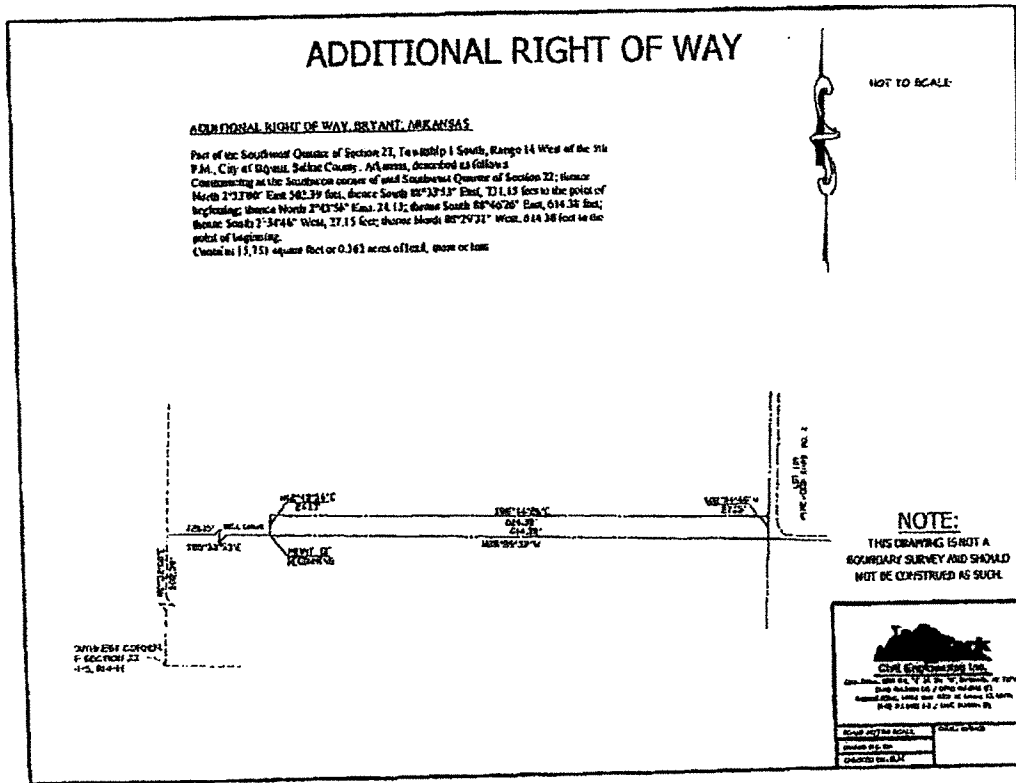
On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named \_\_\_\_\_, to me well known, who stated and acknowledged he signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_  
(SEAL)

EXHIBIT A  
[DEPICTION OF DEDICATION AREA]



05 139454

EXHIBIT B

[LEGAL DESCRIPTION OF DEDICATION AREA]

ADDITIONAL RIGHT OF WAY, BRYANT, ARKANSAS

Part of the Southwest Quarter of Section 22, Township 1 South, Range 14 West of the 5th P.M., City of Bryant, Saline County, Arkansas, described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 22; thence North 2°32'00" East 502.39 feet; thence South 88°33'53" East, 721.15 feet to the point of beginning; thence North 2°43'56" East, 24.13; thence South 88°46'26" East, 614.38 feet; thence South 2°34'48" West, 27.15 feet; thence North 88°29'32" West, 614.38 feet to the point of beginning.

Contains 15,751 square feet or 0.362 acres of land, more or less.

05 139455

FILED FOR RECORD

In DC Book 05 Page 139448

DEC 14 2005

at 8:11 o'clock AM  
BY DOUG KIBB CIRCUIT CLERK DC

