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COVENANTS, CONDITIONS AND RESTRICTIONS

BY AND BETWEEN

LOWE'S HIW, INC.

AND

CLINTON CITY CENTER, LLC

Location: Clinton, Utah

Date: October 21, 2007

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EASEMENTS
COVENANTS, CONDITIONS AND RESTRICTIONS

THESE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "ECC&Rs"), are made and entered into as of the date of the last execution hereof, which date is the 21st day of October, 2007, by and between CLINTON CITY CENTER, LLC, a Utah limited liability company ("Developer"); LOWE'S HIW, INC., a Washington corporation ("Lowe's") (individually, a "Party" and collectively, the "Parties");

W I T N E S S E T H :

WHEREAS, Developer is the owner of property located in Clinton, County of Davis, State of Utah (the "Shopping Center"); and

WHEREAS, Developer has entered into a Ground Lease of even date herewith (the "Lowe's Lease"), pursuant to which Developer leases to Lowe's a portion of the Shopping Center (the Lowe's Parcel"), which is more particularly described in Exhibit A-1 attached hereto and made a part hereof for all purposes; and

WHEREAS, the remainder of the Shopping Center is located contiguous with and adjacent to the Lowe's Parcel, which property is more particularly described in Exhibit A-2 attached hereto and made a part hereof for all purposes (the "Developer Parcel"); and

WHEREAS, the Shopping Center is depicted on a site plan attached hereto and made a part hereof as Exhibit B (the "Site Plan").

NOW, THEREFORE, the Developer and Lowe's hereby declare, agree, covenant and consent that all of the property described on Exhibits A-1 and A-2 shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are imposed on the Shopping Center to run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns for the purpose of development and operation of the property in an integrated Shopping Center and to protect the value of property. Further, in consideration of the premises, the agreements and the covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

BASIC DEFINITIONS

Section 1.1 "Anchor 2 Parcel" shall mean that portion of the Developer Parcel designated as such on the Site Plan and more particularly described on Exhibit A-3 attached hereto.

Section 1.2 "Building" shall mean the permanently enclosed structure(s) which has(have) been, will be, or may be constructed within the Permissible Building Areas, but shall not include Common Area Improvements. For purposes of these ECC&Rs, "Building" shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

Section 1.3 "Common Area" shall mean all real property in the Shopping Center for the common use and enjoyment of the Parties and their respective Permittees, including, without limitation, parking areas, access and egress drives, service drives, sidewalks and non-dedicated streets and shall consist of all portions of the Shopping Center not designated as Permissible Building Areas and all portions of any Permissible Building Area upon which no Building is currently constructed. Common Areas do not include drive up or drive through areas and facilities, loading docks, patio areas, or permanent outdoor sales areas.

Section 1.4 "Common Area Improvements" shall mean all improvements constructed from time to time within the Common Area and intended for common use which may include, without limitation, parking areas, access and egress drives, service drives, non-dedicated streets, lighting standards, sidewalks, landscaping, fixtures, and signage. The initial Common Area Improvements are shown on the Site Plan.

Section 1.5 "Consenting Party" shall mean and refer to Lowe's and the Owner of the Developer Parcel. The Parties intend that there shall be only two (2) Consenting Parties for the purposes of these ECC&Rs, consisting of only one Consenting Party representing the Lowe's Parcel and only one Consenting Party representing the Developer Parcel. In the event that Lowe's shall acquire fee simple title to the Lowe's Parcel, the Consenting Party for the Lowe's Parcel shall be the Owner of the Lowe's Parcel. In the event that the Developer Parcel is further subdivided or conveyed to multiple owners, the then current Consenting Party for the Developer Parcel shall designate the particular Parcel whose Owner shall succeed as the Consenting Party.

Section 1.6 “Default Rate” shall mean the rate of interest that is the lesser of (i) twelve percent (12%) per annum, compounded monthly, and (ii) the maximum rate allowed by applicable law.

Section 1.7 “Improvement(s)” shall mean Building(s) and other structures within a Permissible Building Area and Common Area Improvements.

Section 1.8 “Lowe’s” shall mean the tenant under the Lowe’s Lease (which is currently Lowe’s), provided, however that in the event that Lowe’s shall acquire fee simple title to the Lowe’s Parcel, “Lowe’s” shall mean the Owner of the Lowe’s Parcel.

Section 1.9 “Main Access Drives” shall mean those access drives designated on the Site Plan as “Access Drive A”, “Access Drive B”, and “Access Drive C”.

Section 1.10 “Maximum Square Footage” shall mean and refer to the maximum square footage allowed for all Buildings contained within a single Permissible Building Area. The Maximum Square Footage for each Permissible Building Area is shown on the Site Plan. Any change to the Maximum Square Footage shown on the Site Plan shall be subject to the prior written consent of the Consenting Parties, which consent may be withheld in the sole discretion of each of the Consenting Parties and any such change shall be reflected in an amendment to these ECC&Rs.

Section 1.11 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Parcel which is a part of the Shopping Center, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.12 “Parcel” shall mean and refer to any parcel of land shown as a parcel on the Site Plan regardless of whether such Parcel has been legally subdivided from the rest of the Parcels shown on the Site Plan. “Outparcel” shall mean and refer to any and every parcel of land located west of Access Drive B. Each of the Outparcels shall also be considered a Parcel for purposes of these ECC&Rs.

Section 1.13 “Parking Zone” shall mean each of (i) Parking Zone 1, which includes all that area of the Developer Parcel located south of Access Drive A and west of Access Drive B, and (ii) Parking Zone 2, which includes all that area of the Developer Parcel located north of Access Drive A and west of Access Drive B.

Section 1.14 "Parties" shall mean and refer to each owner of fee simple title to any Parcel which is a part of the Shopping Center (but excluding those having such interest merely as security for the performance of any obligation), provided, however, that as to the Lowe's Parcel, "Party" shall mean Lowe's, or if the Ground Lease is terminated in connection with the acquisition of Lowe's Parcel by Lowe's, "Party" shall mean the record Owner of the Lowe's Parcel.

Section 1.15 "Permissible Building Area" shall mean each of the areas designated on the Site Plan within which a Building(s) may be constructed not to exceed the Maximum Square Footage. Any change to the Permissible Building Areas shown on the Site Plan shall be subject to the prior written consent of the Consenting Parties, which consent may be withheld in the sole discretion of each of the Consenting Parties and any such change shall be reflected in an amendment to these ECC&Rs.

Section 1.16 "Permittees" shall mean tenants, subtenants and the occupants, contractors, customers, agents, licensees, guests, and invitees of Party, its tenants, (but shall not include Lowe's as defined in Section 1.8).

ARTICLE II
EASEMENTS

Section 2.1 Definitions and Documentation.

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

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

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

(C) The term "Utility Facilities" means utility systems and utility facilities serving the Shopping Center such as the following: storm drainage, detention, retention and disposal facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems,

underground telephone and television cables and systems, and all other utility systems and utility facilities installed under the provisions of these ECC&RS and as replacements thereto.

(D) The term "Common Utility Facilities" means Utility Facilities from time to time situated on or serving the Shopping Center, up to the building wall of any Building, for use or service in common by two or more Parcels or for the service of the Common Area. 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.

(E) The term "Separate Utility Facilities" means Utility Facilities serving only one Parcel and not for service of the Common Area.

(F) 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.

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

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

(I) In the event a Party transfers or conveys a portion of its Parcel in accordance with the terms of these ECC&RS, 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.

(J) All easements granted hereunder and herein shall exist by virtue of these ECC&Rs, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the reasonable request of a Party, the other Parties shall sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Parties, which approval shall not be

unreasonably withheld. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Party to construct or maintain its Building(s) except as expressly provided in these ECC&Rs.

Section 2.2 Easements for Use of Common Area.

(A) **Grant of Easement.** Each Party hereby grants to the other Parties easements in the Common Area on its (Grantor's) Parcel for:

- (i) ingress to and egress from the Grantee's Parcel;
- (ii) the passage of vehicles;
- (iii) the passage and accommodation of pedestrians; and
- (iv) the doing of such other things as are expressly authorized or required to

be done on the Common Area under these ECC&Rs.

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

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

(i) **No Change Area.** The No Change Area shall be as shown on the Site Plan. All access drives, including without limitation the Main Access Drives, all entrances, and all drive aisles that adjoin the Lowe's Parcel, shall be included in the No Change Area; if such items are not shown on the Site Plan but are later added to the Shopping Center, they shall be included in the No Change Area.

(ii) **Initial Development of the Common Areas.** The Common Area Improvements depicted on the Site Plan are hereby deemed approved by the Consenting Parties. If Common Area Improvements are not shown on the Site Plan for any portion of the Common Area (such as Common Areas to be developed in the future), the initial development of such Common Area and the design, layout, location and configuration of the Common Area Improvements outside the Lowe's Parcel shall be subject to the prior written consent of the Consenting Parties. Consent for elements of the Common Area outside the Lowe's Parcel which impact traffic flow (e.g., location and alignment of drive aisles and access drives, orientation of parking spaces, location of drive through and drive up lanes, location of curb cuts, entrances and exits) may be withheld in the sole discretion of each Consenting Party. Otherwise, the consent required under this Section 2.2(C)(ii) shall not be unreasonably

withheld, conditioned or delayed. The initial development of Common Area and Common Area Improvements on the Lowe's Parcel but not shown on the Site Plan shall not require the consent of the other Consenting Party.

(iii) Changes after Initial Development. No Party may make any change to the Common Area and Common Area Improvements within the area marked "No Change Area" on the Site Plan without the prior written consent of the Consenting Parties, which consent each Consenting Party may withhold in its sole discretion. Lowe's may make changes to the Common Area and the Common Area Improvements on the Lowe's Parcel and not included in the No Change Area, as Lowe's determines in its sole discretion. Changes to any portion of the Common Areas and Common Area Improvements outside the Lowe's Parcel and outside the No Change Area are subject to the prior written consent of the Consenting Parties, not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, (a) the consent of the Consenting Parties shall be required for any change or addition on any Parcel that adversely impacts: (i) access to the rest of the Shopping Center (including changes and additions to entrances or exits that adversely affect access to the rest of the Shopping Center), (ii) vehicular traffic flow to the rest of the Shopping Center (including changes or additions to curb cuts or the orientation of parking spaces or drive aisles that adversely affect traffic flow to the rest of the Shopping Center), or (iii) visibility of any building in the rest of the Shopping Center or any sign on which any other occupant in the Shopping Center has a right to display a sign panel, which consent may be withheld in the sole discretion of each Consenting Party; and (b) except as shown on the Site Plan, no drive through or drive up window or lane may be added to or changed in the Common Areas without the prior written consent of the Consenting Parties, which consent may be withheld in the reasonable discretion of each; provided that in no event shall any drive through or drive up window or lane be allowed in the Shopping Center if it could result in the stacking of cars into an access road or drive aisle in the No Change Area.

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

(D) Common Area Sales and Displays. Notwithstanding the grant of easements under Section 2.2(A), sales and displays may be located within the Common Area but only as follows:

(i) Each of Lowe's and an occupant of the Anchor 2 Parcel occupying at least 90,000 square feet of floor area (an "Anchor 2 Occupant") may conduct parking lot sales, conduct other business and/or display merchandise in the "Outdoor Sales Area" (as shown on the Site Plan) on the Lowe's Parcel or the Anchor 2 Parcel, respectively, so long as such activity does not materially interfere with ingress and egress to the rest of the Shopping Center and is not in violation of any applicable law or ordinance. Occupants of Parking Zone 2 may conduct outdoor sales in the "Outdoor Sales Area" (as shown on the Site Plan) in Parking Zone 2, so long as such sales do not unreasonably interfere with ingress and egress to the rest of the Shopping Center and are not in violation of any applicable law or ordinance. There shall be no other sale or display of merchandise within the parking fields in the Shopping Center. Additionally, all other tenants within the Shopping Center other than Lowe's and an Anchor 2 Occupant may conduct sidewalk sales to the side of or in front of any Building so long as such activity does not occur within fifty (50) feet between the parcel line between the Lowe's Parcel and the Anchor 2 Parcel and further provided that such activity does not materially interfere with ingress and egress to the rest of the Shopping Center and is not in violation of any applicable law or ordinance.

(ii) Each of Lowe's and an Anchor 2 Occupant shall have the right, but not the obligation, to install and maintain a bank teller machine or similar kiosk type structure(s) in the parking field of the Lowe's Parcel or the Anchor 2 Parcel, respectively.

(iii) Each of Lowe's and the Anchor 2 Occupant may display merchandise, conduct sidewalk sales and/or conduct other business on the sidewalks on the Lowe's Parcel or the Anchor 2 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 Party's consent.

(iv) Lowe's may park vehicles or equipment in the parking field of the Lowe's Parcel in connection with Lowe's leasing of vehicles and/or equipment; provided that such vehicles or equipment must be parked at least one hundred (100) feet from the parcel line between the Lowe's Parcel and the Anchor 2 Parcel.

(E) Easements for Access Drives. Each Party hereby grants to the other Party(s) easements for pedestrian and vehicular traffic in the Main Access Drives (not less than the widths

therefor shown on the Site Plan) on its (Grantor's) Parcel for the purpose of providing ingress to and egress from the Grantee's Parcel and each of 1800 North and 2000 West, together with the following rights and subject to the following restrictions and reservations:

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

(ii) As further provided in Section 2.2(F) herein, Grantors of the Main Access Drive 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 Main Access Drives, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein.

(F) General Provisions for Common Area Easements.

(i) No barriers, fences, walls, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Shopping Center from time to time devoted to pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Parties of the rights and easements created by this Article II. In addition, each Party 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 no Party shall close or block traffic on its Parcel during a weekend or during the periods from November 15th through the next succeeding January 15th and from April 1st through July 1st (collectively, the "Blackout Periods"); and provided further that, prior to closing off any portion of the Common Area, as herein provided, such Party shall give fifteen (15) days written notice to each other Party of its intention to do so and shall attempt to coordinate such closing with each other Party, 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.

(ii) The easements granted under this Section 2.2 are limited to such portions of the Common Area of the Grantor's Parcel as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under these ECC&Rs, specifically including those portions of the Common Area shown on the Site Plan.

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

(iv) The easements provided for in this Section 2.2 are subject to the rights to use and the restrictions on use of the Common Area provided for in these ECC&Rs.

Section 2.3 Easements for Utility Facilities.

(A) **Grant of Easement.** Each Party hereby grants to the other Party(s) perpetual easements to its (Grantor's) Parcel, except within such Party's Permissible Building Area, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Parcel of the Grantee.

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

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

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

(iii) Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair and removal at Grantee's cost of all Separate Utility Facilities installed by the Grantee pursuant to this grant of easement, as well as for all Separate Utility Facilities installed by the Grantee on its own Parcel. The Grantee of any easement for Common Utility Facilities shall be responsible for the installation, maintenance, repair and removal at Grantee's cost of all Common Utility Facilities installed by the Grantee pursuant to this grant of easement; Grantee may or may not be reimbursed by Parties pursuant to a separate agreement, however nothing in these ECC&Rs shall obligate the

Party of a Parcel to pay for the costs of installing, maintaining, repairing or removing Common Utility Facilities on its Parcel (other than relocation at Grantor's request pursuant to Section 2.3(E)).

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

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

(vi) After the Building on the Lowe's Parcel has opened for business, no installation, repair or removal of Utility Facilities, except emergency repair work, shall be carried on during any weekend or during the Blackout Periods.

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

(i) The easement is non-exclusive;

(ii) All Utility Facilities installed pursuant to the easement shall be underground, except for manholes and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed;

(iii) The right to use the surface areas for the purposes allowed under these ECC&Rs is reserved;

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

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

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

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

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

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

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

(D) Indemnification. 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 and reasonable attorney's fees on appeal), incurred in connection with Grantee's use of the Utility Facilities easements under this Section 2.3, except to the extent occasioned by Grantor's negligent or willful wrongful act or omission to act.

(E) Grantee's Rights as to Utility Facilities.

(i) Use of Separate Utility Facilities. The Grantor of any easement for Separate Utility Facilities under this Section 2.4 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 serve Grantor's additional use shall be borne by such Grantor; and provided, further, that Grantor gives written notice within the time period called for under, and otherwise complies with, the requirements of Section 2.4(E)(ii).

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

(a) may be performed only after Grantor has given Grantee thirty (30) days' written notice of its intention to relocate such facilities;

(b) shall not interfere with or diminish the utility services to the Grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantee has been so notified under Subsection 2.3(D)(ii)(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.

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

Section 2.4 Drainage and Storm Water Detention Pond.

(A) Each Party hereby grants to the other Party easements to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on any Parcel, together with the right to discharge surface water runoff across portions of any Parcel in accordance with the design of the Storm Drainage System; provided, however, that use, maintenance and repair of any Utility Facilities for the Storm Drainage System shall comply with Section 2.2. All Storm Drainage Systems shall be subject to the prior written consent of the Consenting Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of any Party's Improvements substantially as shown on

the Site Plan (including, without limitation, Buildings, curbs, drives and paving) shall be permitted, provided that the same is in accordance with a drainage plan approved by the Consenting Parties and which does not cause water to settle or pool within another Party's Parcel.

(B) Developer hereby grants to Lowe's and to the Owner of each Parcel in the Shopping Center, for the benefit of each Parcel in the Shopping Center, an easement to discharge surface water runoff into all those portions of the Storm Drainage System, including but not limited to a stormwater detention pond, to be constructed by Developer on that certain property adjacent to the Shopping Center and more particularly described on Exhibit C attached hereto (the "Detention Pond Parcel"). Developer shall not grant easements to use the detention pond or any other portion of the Storm Drainage System to benefit any property outside the Shopping Center. Maintenance of those portions of the Storm Drainage System located on the Detention Pond Parcel shall be in accordance with Section 5.1(A).

Section 2.5 Construction Easements.

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

(B) 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.

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

(D) Each Grantee agrees to pay the Grantor any additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by Grantor which may arise on account of or due to Grantee's exercise of its temporary construction

easement rights under this Section 2.5. Each Grantee further agrees to use due care in the exercise of the rights granted under this Section 2.5 and, in the event the exercise of the rights granted under this Section 2.5 requires Grantee to enter upon the Parcel of Grantor, to first obtain the consent of Grantor as to the specific activities, methods and timing in the exercise of such rights so as to avoid cost or damage to Grantor.

(E) Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the Building(s) or other Improvements of any other Party, and shall not interfere with or interrupt the business operations conducted by any other Party in the Shopping Center. Furthermore, once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Parcel or the Anchor 2 Parcel, or any Common Area access, egress and service drives to the Lowe's Parcel or the Anchor 2 Parcel, construction traffic to the Outparcels shall access the Outparcels only from 2000 West or from 1800 North, construction traffic to the Anchor 2 Parcel shall access the Anchor 2 Parcel only from 1800 North and no construction traffic to the Developer Parcel shall use any portion of the Lowe's Parcel, and construction traffic to the Lowe's Parcel shall access the Lowe's Parcel only from 2000 West. In addition, each Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed in the exercise by Grantee of the temporary construction easements granted under this Section 2.5 and shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of Grantee's exercise of said temporary construction easements, except to the extent occasioned by Grantor's grossly negligent or wrongful acts or omissions. Grantee's Improvements made within such temporary construction easements shall, for purposes of cost allocation due to maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under these ECC&Rs, 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 for and during the construction of any Building, no structure of a temporary character shall be erected or allowed to remain on any Parcel.

Section 2.6 Sign Easement.

The Owner of the Developer Parcel hereby grants to the other Parties entitled under Section 4.3(A) of these ECC&Rs the right to display a sign panel on the Center Pylon Sign(s), and an easement for maintenance, repair and replacement of such sign panel.

Section 2.7 Cure Right Easements.

Each Party hereby grants to the Consenting Parties an easement and license to enter upon its Parcel, and Developer grants to each other Consenting Party an easement and license to enter upon the Detention Pond Parcel, for the purpose of exercising the cure rights provided under Article V of these ECC&Rs. Each Grantee of the easements granted under this Section 2.7 shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of Grantee's use of said easements, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act. The duration of the easements granted under this Section shall be coterminous with the respective provisions of the ECC&RS which give the Grantee the right or the obligation to perform the work described in this Section 2.7

ARTICLE III

USE RESTRICTIONS

Section 3.1 Permitted Uses.

Every Parcel shall be used only for banks and financial institutions, service shops, Retail Offices, restaurants, a service station (subject to the provisions of Section 3.3(v) below) and retail and/or discount stores selling, renting and/or providing merchandise, goods and/or services normally carried or provided in other shopping centers, all as subject to the further restrictions of this Article III. "Retail Offices" shall mean insurance offices, real estate offices, travel agents offices, accountants offices, escrow and/or title insurance offices, medical offices (subject to Section 3.3(x) below), and such other offices customarily found in retail shopping centers, but Retail Offices shall not include educational or training facilities or, except as otherwise expressly provided herein, medical offices. Retail Office uses in the Shopping Center shall not exceed in the aggregate 15,000 square feet.

Section 3.2 Nuisances.

No Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations. Nothing shall be done on any Parcel which is a public nuisance to the community.

Section 3.3 Use Restrictions.

(A) During the term of these ECC&Rs no portion of the Shopping Center may be used for any of the following purposes without the prior written consent of the Consenting Parties, which consent may be withheld in the sole discretion of a Consenting Party:

(i) A tavern, bar, nightclub, cocktail lounge, discotheque, dance hall, or any other establishment selling alcoholic beverages for on-premises consumption or a liquor store; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than forty (40%) percent of the restaurant's gross revenues.

(ii) A bowling alley, billiards parlor, bingo parlor, arcade, game room or other amusement center (including but not limited to businesses such as Boondocks and 49th Street Galleria); provided, however, that such restriction shall not prohibit up to five (5) mechanical and/or video games that are incidental to an otherwise acceptable use in the Shopping Center.

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

(iv) A health club, gymnasium or spa, except that one health club or day spa, not to exceed 5,000 square feet, may be located in the Shopping Center.

(v) A service station, automotive repair shop or truck stop; provided, however, that the foregoing shall not prohibit, in that portion of the Shopping Center which is south of Access Drive A and west of Access Drive B, the operation of one gasoline service station (along with a car wash that meets the requirements of Section 3.3(ix) and/or a convenience store, if and to the extent such uses are otherwise permitted at such location under these ECC&Rs), so long as the following conditions are met: (1) all outdoor storage of personal property or inventory, all refuse containers and areas, and the rear of such facilities are screened from public view in a manner acceptable to Lowe's, (2) no portion of the Lowe's Parcel shall be utilized for parking of customer or employee vehicles related to the operation of such facility, (3) the automotive bays and customer entrances for the facility do not face the building on the Lowe's Parcel, (4) any such business shall be operated by a national or

regional chain of facilities having at least twenty-five (25) other locations under a national or regional trade name, and (5) any such facility must comply with all local, state and federal storage and disposal regulations, rules, laws and ordinances for petroleum products or petrochemicals, batteries and tires and have in place and functioning adequate facilities and programs for monitoring and preventing any release of petroleum products or chemicals into the environment.

(vi) A flea market, open air market, tent sale 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; provided that (i) such restriction shall not prohibit the incidental use of an otherwise permitted business for training or classes such as "how to" classes taught in conjunction with the sale of retail items from an otherwise permitted retail use; and (ii) one educational facility that provides tutoring for children and teenagers, such as a Sylvan Learning Center, not to exceed 5,000 square feet of floor area, shall be allowed in the Shopping Center).

(viii) A child day care facility.

(ix) A car wash, except on an Outparcel and where the same 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 medical office; provided however, that medical clinics and/or offices may be located in the Shopping Center so long as: (a) such offices are not used for a specialized clinic or specialized practice (e.g., family planning clinic, blood donation center, cosmetic surgery, immunology, gynecology/obstetrics, or indigent services clinic etc.) unless used for the following specialized clinics or practices: pediatrics, cardiac care, orthopedics, dental, podiatrist, ophthalmology/opticians; dermatology, endocrinology, family medicine, gastroenterology, neurology, audiology, chiropractic medicine, clinical counseling, marriage and family therapy, physical rehabilitation, psychiatry, psychology, pulmonary medicine, radiology, rheumatology, and urology, and (b) so long as the aggregate of all medical office uses and all other Retail Offices within the Shopping Center does not exceed 15,000 square feet.

(xi) A storage or mini-warehouse facility.

(xii) An establishment for the sale of automobiles, trucks, mobile homes, boats or recreational motor vehicles (provided that such restriction shall not prohibit the lease of vehicles or equipment from the Lowe's Parcel so long as such vehicles or equipment are parked at least one hundred (100) feet from the Anchor 2 Parcel).

(xiii) A dry cleaning plant, central laundry or Laundromat; except that these restrictions shall not prohibit: (a) a drop-off and pick-up facility where dry cleaning and/or laundry (so long as the laundry is not self-service) is performed offsite, (b) a retail dry cleaning facility that does not use perchloroethylene ("PERC") or any other chemical or substance that is considered to be hazardous or toxic under any environmental law, that is in compliance with environmental laws, and that uses sanitary sewer lines that are entirely separate from those utilized by the Lowe's Parcel, and/or (c) a retail laundry (so long as the laundry is not self-service) that uses sanitary sewer lines that are entirely separate from those utilized by the Lowe's Parcel.

(xiv) An establishment for sale of automobiles, trucks, mobile homes, recreational motor vehicles (provided that such restriction shall not prohibit the lease of vehicles or equipment from the Lowe's Parcel).

(xv) A child care facility.

(xvi) A hotel or motel or other temporary or permanent living facility.

(xvii) Governmental offices such as offices of welfare, social security, unemployment or indigent services, motor vehicles, drivers' license or license plate agencies, a post office, or any governmental office that typically uses more parking spaces than allowed under these ECC&Rs; notwithstanding the foregoing, armed forces recruiting centers, satellite city halls and police sub-stations, and offices of elected legislative offices shall be permitted in the building designated as "Existing Office Building" on the Site Plan.

(xviii) A social or political club or place of worship;

(xix) A fire sale, going out of business sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(xx) Any use of the sidewalks and parking areas of a Parcel for traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fireworks, or sales by transient merchants using vehicles or booths and other promotions of any nature; provided, however, that all tenant's, including Lowe's and the Anchor 2 Occupant, within the Shopping Center

may conduct sidewalk sales and Lowe's and the Anchor 2 Occupant may conduct parking lot sales in connection with the businesses then operating on the Lowe's Parcel and the Anchor 2 Parcel as permitted under these ECC&Rs.

(B) During the term of these ECC&Rs 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 land fill, 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) Veterinary hospital or animal raising or keeping facilities except as part of a national or regional chain pet or pet supply store.

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

(C) No Owner shall use or permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in its Parcel, or the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws (as hereinafter defined). Each Owner shall indemnify, defend, protect, and hold harmless the other Owners from and against all Claims, including, but not limited to, costs of investigations, litigation and remedial response arising out of any Hazardous Materials used or permitted to be used by such Owner, whether or not in the ordinary course of business. "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous

pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. "Environmental Laws" shall mean all Laws which relate to or deal with human health or the environment, all as may be amended from time to time.

Section 3.4 Exclusive Use Restriction for the Benefit of the Lowe's Parcel.

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

(i) A hardware store or center containing more than 4,000 square feet of floor area.

(ii) An appliance and/or lighting store or center containing more than 4,000 square feet of floor area.

(iii) A nursery and/or lawn and garden store or center containing more than 3,000 square feet of floor area (including any outdoor areas).

(iv) 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 containing more than 4,000 square feet of floor area.

(v) 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.

(B) 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)(i) through (A)(v) when such space exceeds the limitations of subparagraphs (A)(i) through (A)(v).

(C) Notwithstanding anything to the contrary in this Section 3.4, in the event the Lowe's Parcel is not used as a retail home improvement store for a period of twenty-four (24) consecutive months (as extended by force majeure, remodeling, remerchandising, renovation or repairs, alterations and improvements, restoration due to casualty or condemnation, labor disputes or due to the actions of Developer or its agents or employees), the exclusive rights of Lowe's set forth in this Section 3.4 shall terminate; provided, however, that if a home improvement store should thereafter commence or recommence operations in the Lowe's Parcel, the exclusive rights of Lowe's set forth in this Section 3.4 shall be revived and shall again apply

to the Shopping Center to prohibit any use prohibited in this Section 3.4, except as to any use which commenced in the Shopping Center during the time such exclusive rights were not in effect.

Section 3.5 Exclusive Use for the Benefit of the Anchor 2 Parcel.

In the event that Kohl's Department Stores, Inc. should become the occupant of the Anchor 2 Parcel and should use the Anchor 2 Parcel as a Kohl's retail department store, then no Outparcel may be used for the following purposes:

- (A) The operation of a department store occupying over 40,000 square feet; or
- (B) The operation of any other business occupying over 40,000 square feet if more than twenty percent (20%) of such square footage is used for the sale of apparel.

Notwithstanding anything to the contrary in this Section 3.5, in the event that a Kohl's retail department store should be opened on the Anchor 2 Parcel and thereafter the Anchor 2 Parcel is not used as a department store for a period of twenty-four (24) consecutive months (as extended by force majeure, remodeling, remerchandising, renovation or repairs, alterations and improvements, restoration due to casualty or condemnation, labor disputes or due to the actions of Developer or its agents or employees), the exclusive rights of Kohl's set forth in this Section 3.5 shall terminate; provided, however, that if a department store should thereafter commence or recommence operations in the Anchor 2 Parcel, the exclusive rights of Kohl's set forth in this Section 3.5 shall be revived and shall again apply to the Outparcels to prohibit any use prohibited in this Section 3.5, except as to any use which commenced in the Shopping Center during the time such exclusive rights were not in effect.

Section 3.6 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 in connection with the Shopping Center or the conduct of its business thereat are registered and/or the proprietary property of Lowe's, (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 or its

legal counsel as applicable, which consent may be withheld in their sole discretion. Lowe's reserves the right to require any person or entity to whom it may grant a written right to use a given name or mark to enter into a formal written license agreement and to charge a fee or royalty therefor.

ARTICLE IV

GENERAL CONSTRUCTION & DEVELOPMENT

Section 4.1 Development Parameters.

(A) Permissible Building Areas. All Buildings must be constructed within a Permissible Building Area. No Building can exceed the Maximum Square Footage shown for each Permissible Building Area on the Site Plan. No building, structure or improvements (other than Common Area Improvements) shall be erected or maintained outside of a Permissible Building Area. The Permissible Building Areas and Maximum Square Footages as shown on the Site Plan cannot be changed without the prior written consents as required under Section 1.8 and Section 1.12, which changes shall be reflected in an amendment to these ECC&Rs.

(B) Parking Requirements. The Lowe's Parcel shall be self supporting with respect to parking and shall contain not less than 3.03 paved full size automobile parking spaces for each one thousand (1,000) square feet of building floor area (including the garden center). Each of the Anchor 2 Parcel, Parking Zone 1, and Parking Zone 2 shall be self-supporting with respect to parking and shall each contain not less than five (5.0) paved full size automobile parking spaces for each one thousand (1,000) square feet of building floor area constructed thereon, or the number of parking spaces required by applicable law, whichever is greater. Notwithstanding the foregoing, for restaurants (either on the Lowe's Parcel or elsewhere in the Shopping Center) there shall be at least ten (10) full size automobile parking spaces per each 1,000 square feet of building floor area used as a restaurant or the number of parking spaces required by applicable law, whichever is greater. To be self-supporting, the parking spaces must be located within each Parcel or Parking Zone, as applicable, so that parking spaces available on other Parking Zones or other Parcels or available through easements with other Parcels or Parking Zones cannot be counted in meeting the requirements of this Section.

(C) Fire Protection. All improvements within the Shopping Center shall be constructed in compliance with all applicable federal, state, and local building codes and particularly all improvements within sixty (60) feet of the Building on the Lowe's Parcel shall be

sprinklered for fire protection or a fire wall built such that the sprinklered rate for such Buildings will be preserved. There shall be sixty (60) feet of open space on which no buildings may be constructed around the Building on the Lowe's Parcel and all buildings which are adjacent to, abut or are in line with the Building on the Lowe's Parcel such that the Building on the Lowe's Parcel and any such adjacent, abutting or in-line buildings maintain an unlimited area classification for fire protection purposes. Until a permanent access drive is completed (in such manner as to allow the Building on the Lowe's Parcel to meet fire and building code requirements) Developer shall maintain a twenty-six (26) foot wide temporary all weather access road (of at least 6" of compacted stone) sufficient to meet fire code requirements, surrounding the Building on the Lowe's Parcel (and any building that is adjacent to, abuts, or is in-line with the Building on the Lowe's Parcel) to the extent such buildings are not already surrounded by a permanent access drive. The Parties hereby grant an easement for such temporary access road. In the event that a building is to be constructed across an existing temporary access road, Developer shall first construct a new temporary access road to allow the Building on the Lowe's Parcel to be continuously in compliance with building code and fire code requirements. Notwithstanding anything else to the contrary in these ECC&Rs, no Party shall seek a building permit for a Building within sixty (60) feet of the Permissible Building Area on the Lowe's Parcel without the prior written consent of Lowe's, which consent may be withheld by Lowe's in its sole discretion.

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

Section 4.2 Building Design.

(A) Harmony. All structures (including Common Area Improvements such as lighting) erected within the Shopping Center shall be architecturally harmonious (including, without limitation, harmonious colors, materials and designs). The Consenting Parties shall cooperate in creating a reasonably harmonious exterior appearance for the Buildings and Improvements to be constructed by them within the Shopping Center, acknowledging however that Lowe's may construct improvements similar to its current prototypical store building and improvements (with changes required by local law or governmental authorities). Specifically,

the initial design and appearance of the Buildings and Improvements on the Lowe's Parcel and any changes to the Buildings and Improvements on the Lowe's Parcel that Lowe's may deem appropriate for consistency with changes in the design and appearance of its then current prototypical stores (with changes required by local law or governmental authorities) do not require the consent of any other Party.

(B) Approvals. Except as provided in Section 4.2(A), no buildings or structures shall be erected or allowed to remain on any Parcel unless architectural renderings (depicting the exterior elevations of all sides, materials, colors and dimensions), a foundation plan and a site plan (collectively, the "Plans") for such structure have been approved in writing by the Consenting Parties, which approval shall not be unreasonably withheld, conditioned or delayed. A complete set of the proposed Plans shall be presented to and approved in writing by the Consenting Parties prior to commencing clearing, grading, or construction of a building of any kind on any Parcel. Upon completion of the Building foundation, a Consenting Party in its sole discretion and at its sole cost and expense may require that an actual field survey of the foundation be conducted to ensure that it has been constructed in accordance with the Plans. All improvements shall comply with the Plans as approved by the Consenting Parties unless changes are approved in writing by the Consenting Parties. The right to make inspections necessary to assure compliance is reserved to the Consenting Parties. After initial construction of Buildings and other Improvements, except as provided in Section 4.2(A), no Party shall make alterations that will substantially change the exterior of its Buildings without the consent of the Consenting Parties, such consents not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, no prior approval shall be required for the construction of the then-current prototypical store building and improvements of a Regional Chain or National Chain. As used herein, "Regional Chain" or "National Chain" shall mean a national or regional chain which operates at least ten (10) other locations under a national or regional trade name.

(C) Customer Entrances. The customer entrance(s) to the building in the area shown on the Site Plan as "Bldg G" shall face north or west and the customer entrance(s) to the building in the area shown on the Site Plan as "Bldg L" shall face south. No customer entrance(s) to Bldg G or Bldg L shall face Access Drive B.

(D) Construction Timing. Weather permitting, all paving and landscaping will be finished upon completion of the Building, but in no event shall it be installed later than ninety

(90) days after the Building is occupied. Subject to force majeure, total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year.

Section 4.3 Pylon or Monument Signage.

(A) A Shopping Center pylon sign ("Center Pylon Sign") shall be erected by Developer at each of the locations shown on the Site Plan. With regard to each Center Pylon Sign which shall be erected or used for the advertising of multiple Owners, tenants or occupants of the Shopping Center, Lowe's shall be entitled to have and maintain a sign panel thereon in the top and most prominent position on both sides of each such Center Pylon Sign ("Lowe's Sign Panel(s)"). One other occupant of the Shopping Center occupying not less than 90,000 square feet of floor area may have a sign panel in the second position of the same size as the Lowe's Sign Panels (but not larger). No other sign panel on any Center Pylon Sign shall be of a size or have dimensions which are greater than seventy-five percent (75%) of the size and dimensions of the Lowe's Sign Panel on the same Center Pylon Sign. Lowe's Sign Panels shall be of colors, design, and content as required by Lowe's own visual sign standards. All pylon signs erected in the Shopping Center shall comply with a sign plan approved by the Consenting Parties (the "Sign Plan").

(B) Tenant shall pay its pro rata share of the cost to erect each Center Pylon Sign on which Tenant installs a Lowe's Sign Panel. The pro rata share of each occupant having a sign panel on a Center Pylon Sign shall be an amount equal to the total costs for such sign multiplied by a fraction, the numerator of which shall be the total number of square feet occupied by such occupants sign panel(s) and the denominator of which shall equal the total number of square feet available on such sign for the installation of sign panels; provided, however, that any designation of the Shopping Center on a Center Pylon Sign shall not occupy more than thirty percent (30%) of the sign fascia.

(C) Single and multiple occupant monument signs ("Monument Signs") may be located outside of the Lowe's Parcel at the location(s) shown on the Site Plan as "Monument Sign"; provided, in no event shall any such Monument Sign exceed eight (8) feet in height or materially block the visibility of any signage on any Building located on the Lowe's Parcel or the visibility of any Center Pylon Sign.

(D) The location of any pylon sign and the design of any sign panel (other than Lowe's Sign Panels) shall be subject to the prior written consent of the Consenting Parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided that the prototypical sign panels of any National Chain or Regional Chain are hereby approved. The design of any Center Pylon Sign structure, pylon sign, or Monument Sign (other than Lowe's Sign Panels) shall comply with the Sign Plan.

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

Section 4.4 Outparcel Development.

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

(A) All Buildings in the Shopping Center shall be single story. Any Building constructed on any of the Outparcels shall not exceed twenty-five (25) feet in height, as measured from the finished elevation of the parking area of the Shopping Center, including all parapets and equipment, except that architectural features and equipment may exceed such height if the portion thereof which exceeds twenty-five (25) feet is not longer than fifty percent (50%) of the length of the facia of the Building and the height of such architectural features and equipment does not at any point exceed thirty-two (32) feet. Notwithstanding the foregoing, a prototypical National Chain store or Regional Chain store in the location(s) designated on the Site Plan as "Bldg H", "Bldg J", "Bldg K", and "Bldg L" may be up to, but shall not exceed, thirty (30) feet in height, as measured from the finished elevation of the parking area of the Shopping Center, including all parapets, equipment, and architectural features.

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

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

(D) Any Owner or occupant of an Outparcel shall repair any damage caused to any of the Utility Facilities, as described in Section 2.3 of these ECC&Rs, which is caused by such Owner or occupant.

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

Section 4.5 Performance of Construction Work Generally.

All construction, alteration or repair work ("Work") undertaken by a Party 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 unless otherwise agreed to between the Parties; (ii) take necessary measures to minimize disruption and inconvenience caused by such Work; (iii) make adequate provisions for the safety and convenience of the Parties and their Permittees; (iv) control dust, noise and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area; (v) repair any and all damage which may be caused by or result from such Work; (vi) restore all affected portions of any Parcel to a condition equal to or better than the condition existing prior to beginning such Work; (vii) indemnify and hold harmless all other Parties in the Shopping Center against any mechanics liens for such Work, particularly as to Common Areas; and (viii) obtain all necessary governmental approvals. Such Work shall not unreasonably interfere with the business operations on any other Parcel and shall not block or impede the Shopping Center ingress or egress from public streets. 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 Work performed within the Permissible Building Areas of the constructing Party, 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 Party performing

Work shall, to the extent reasonably possible and subject to Section 2.5, limit such access to its own Parcel) and (b) temporary storage and parking on the constructing Party'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 a Party on another Party's Parcel (subject to Section 2.5), or (ii) which would adversely affect the ingress and egress to the Shopping Center, the availability of parking and/or circulation of traffic in the Shopping Center, or the operation and supply of common utility facilities to or in the Shopping Center shall be undertaken only after giving the other Parties thirty (30) days prior written notice of the Work to be undertaken, and the scope, nature, duration, location and extent of the Work. Such notice shall include any plans and specifications for the Work ("Plans"). No such Work shall be performed in the Common Areas without the prior written consent of Lowe's, such consent not to be unreasonably withheld, conditioned or delayed. In the event of any emergency involving an immediate and imminent threat of substantial harm or injury to persons or property, only such notice as may be reasonable under the circumstance shall be required.

Section 4.6 Compliance in Construction.

All work which a Party undertakes pursuant to these ECC&Rs shall comply with the Plans, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations, including procurement of all license and permits required for such Work. The consent by Lowe's or Developer to any such Work or Plans, under any provisions of these ECC&Rs, shall not constitute any assumption of responsibility for the accuracy, sufficiency or propriety of such Work or Plans, nor shall such consent constitute a representation or warranty that such Work or Plans will be economic to construct or will comply with law.

Section 4.7 Damage and Destruction.

In the event of the destruction or damage to any extent to any Buildings or Improvements in the Shopping Center, the affected Party shall either: (1) diligently commence and pursue completion of the repair or restoration of such Building or Improvement, or (2) within ninety (90) days after the destruction or damage, level such Building or Improvement, remove the debris and keep the Parcel neat, orderly, planted in grass and mowed/trimmed(or otherwise treated for dust and weed control) until subsequently improved, constructed upon and operated and so that the Parcel is in a

clean, orderly, sightly and safe condition (provided that such Party repairs and restores any No Change Area on such Party's property).

ARTICLE V

MAINTENANCE, TAXES AND INSURANCE

Section 5.1 Maintenance.

(A) Each Party 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 first class 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 (but in no event more often than once every seven (7) years), 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 Party 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 shall 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. Notwithstanding the obligation of each Party to maintain the Common Areas on such Party's Parcel, the Consenting Party for the Lowe's Parcel shall, at its own expense, maintain Main Access Drive A, and the Consenting Party for the Developer Parcel shall, at its own expense, maintain Main Access Drive B.

(B) Maintenance of Stormwater Drainage System. Notwithstanding the obligation of each Party to maintain the Common Areas on such Party's Parcel, the Consenting Party for the Developer Parcel ("Maintaining Owner") shall maintain the Storm Drainage System for the Shopping Center (including without limitation any portions on the Detention Pond Parcel or

other property outside the Shopping Center), and each Party shall reimburse the Maintaining Owner such Party's pro rata share of the cost of such maintenance, which pro rata share shall be a fraction, the numerator of which shall be the total square footage of the such Party's Parcel and the denominator of which shall be the total square footage of the Shopping Center. The Maintaining Owner shall provide to each Party not more frequently than quarterly a billing statement for such Party's pro rata share of the costs of maintaining the Storm Drainage System, accompanied by copies of all invoices, statements and documents supporting the expenses being billed. Such bills shall be due and payable within 30 days after receipt thereof.

(C) Lighting. Each Party shall cause the Common Area on its Parcel to be adequately lit for at least the hours during which the business on the Lowe's Parcel is open for business and for at least one half-hour thereafter.

(D) Shopping Center Signs. The Consenting Party for the Developer Parcel shall be responsible for maintenance, repair and replacement of the sign structure for the Center Pylon Signs, subject to reimbursement by each Party entitled pursuant to Section 4.3 to display a sign panel thereon. The pro rata share of each Party having a sign panel on a Center Pylon Sign shall be an amount equal to the total costs for such sign multiplied by a fraction, the numerator of which shall be the total number of square feet occupied by such Party's sign panel(s) and the denominator of which shall equal the total number of square feet available on such sign for the installation of sign panels. Any designation of the Shopping Center on a Center Pylon Sign shall be treated as a sign panel attributed to the Developer Parcel for purposes of cost proration.

Section 5.2 Maintenance Director

Subject to the mutual agreement of each of the Consenting Parties, a third party may be appointed to maintain and repair the Common Areas in the manner as above outlined (the "Maintenance Director"). The Maintenance Director may receive for such agency a fee that is mutually acceptable to the Consenting Parties to cover supervision, management, accounting and similar fees. The cost of all maintenance and repair activities undertaken by the Maintenance Director, together with the agency fee, shall be prorated between all Parties based upon acreage owned. A Party shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice thereafter.

Section 5.3 Failure in Performing Maintenance Responsibilities

In the event that a Party fails or defaults in its maintenance obligations as set forth in Section 5.1, which failure continues for a period of thirty (30) days (ten [10] business days in the event of a failure to pay money) after receipt of written notice thereof specifying the particulars of such failure, such failure shall constitute a breach under the ECC&RS and either Consenting Party (the "Curing Party") may thereafter perform such maintenance obligations, in addition to such Party's other remedies. The Curing Party shall then invoice the defaulting Party for the expenses incurred. The defaulting Party shall have fifteen (15) days to pay the Curing Party after receipt of the invoice. If the defaulting Party does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Party for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid.

Section 5.4 Taxes.

The Owner of each Parcel shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against such Owner's Parcel. In the event an Owner fails to pay when due all taxes and assessments described herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a breach under these ECC&Rs and either Consenting Party (the "Curing Party") may, in addition to such Parties' other remedies, thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Party shall then invoice the defaulting Party for the expenses incurred. The defaulting Party shall have ten (10) business days after receipt of the invoice to pay the Curing Party. If the defaulting Party does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Party for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said ten (10) business day period until paid.

Section 5.5 Insurance.

(A) **Insurance Coverage.** Each Party shall at all times maintain or cause to be maintained with respect to its Parcel and all Buildings and Improvements thereon and by any contractor during any construction activity on such Party's Parcel, at least the minimum insurance coverage set forth below:

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

(a) Worker's compensation insurance as required by any applicable law or regulation.

(b) 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.

(ii) Commercial General Liability insurance with the following minimum limits of liability and coverages:

(a) Premises and Operations;

(b) Products and Completed Operations;

(c) Contractual Liability (insuring the indemnity obligations assumed by any contractor working on an Party's Parcel under contract documents);

(d) Broad Form Property Damage, including Explosion, Collapse and Underground Hazards, for the full replacement cost of Buildings and Improvements on a Party's Parcel (including Completed Operations):

(1) \$2,000,000 for Bodily Injury and Property Damage each occurrence;

(2) \$3,000,000 for Personal and Advertising Injury Liability;

(3) \$5,000,000 aggregate for Products and Completed Operations;

(4) \$5,000,000 general aggregate.

(e) Automobile Liability Insurance. 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.

(f) Umbrella/Excess Liability Insurance. Each Party shall also carry umbrella/excess liability insurance in the amount of \$5,000,000.

(B) Insurance Coverage. The policies of insurance as required in Section 5.5(A) shall be provided by insurance companies licensed in the State of Utah, shall name every other Party in the Shopping Center as an additional insured, and shall provide that such insurance shall not be canceled or reduced in an amount or coverage below the requirements of these ECC&Rs without at least thirty (30) days prior written notice to the additional insureds. All insurance may be

provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party, provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$10,000,000.00, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$10,000,000.00, (iii) a plan of self-insurance, provided that such Party and its parent have \$100,000,000.00 or more of combined net current assets, or (iv) a combination of any of the foregoing insurance programs. To the extent of any deductible carried by an Party, such party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$250,000.00 unless (a) such Party complies with the requirements regarding self-insurance pursuant to (iii) above or (b) such Party and its parent have combined net current assets in excess of \$100,000,000.00. Each Party agrees to furnish to any party requesting in writing the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such party is in full force and effect.

Section 5.6 Failure to Carry Insurance.

In the event a Party 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 breach under these ECC&Rs and either Consenting Party (the "Curing Party") may, in addition to such Party's other remedies, thereafter obtain and pay for such insurance. The Curing Party shall then invoice the defaulting Party for the expenses incurred. The defaulting Party shall have fifteen (15) days after receipt of the invoice to pay the Curing Party. If the defaulting Party does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Party for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) days period until paid.

Section 5.7 Cross Indemnity.

To the extent not covered by the insurance policies described above, each Party (the "Indemnitor") will pay, and indemnify and save harmless the other Party (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, except to the extent that such causes of action, suits, claims, demands or judgments arise out of the negligence or intentional misconduct of the Indemnitee.

Section 5.8 Waiver of Subrogation.

Each Party (the "Releasor") hereby releases the other Party (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 breach of these ECC&Rs by the non-performing party (the "defaulting Party"):

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

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

(C) The failure to observe or perform any other of the covenants, conditions or obligations of these ECC&Rs or to abide by the restrictions and requirements herein provided, other than as described in (A) above, which shall be a breach under these ECC&Rs after expiration of thirty (30) days after the issuance of a notice by a non-defaulting party ("Non-Defaulting Party") specifying the nature of the default claimed.

Section 6.2 Remedies for all Parties.

Each non-defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Party or any other person for breach of any easement or restriction benefiting such non-defaulting Party. Such proceeding shall include the right to restrain by injunction any such violation or threatened violation and to obtain a decree to compel performance of any such easements or restrictions. No Permittee shall have the right to bring any action to enforce any provision of these ECC&Rs and no enforcing Party shall have the obligation to join any Permittee in any action to enforce these ECC&Rs.

Section 6.3 Right to Cure.

With respect to any default under Section 6.1, any Non-Defaulting Party who is a Consenting Party (the "Curing Party") shall have the right, but not the obligation, in addition to any remedy available at law or in equity, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Party (except as otherwise limited in Article V); provided, however, that in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the Curing Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Curing Party shall have the right to enter upon the Parcel of the defaulting party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party. Each Party shall be responsible for the non-performance or default of its Occupants and lessees. In the event any Curing Party shall cure a default, the defaulting Party shall reimburse the Curing Party 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. In addition, Lowe's shall have the right to offset against Rent under the Lowe's Lease any amounts in expended as a Curing Party.

Section 6.4 Liens.

Costs and expenses accruing and/or assessed pursuant to Section 6.3 above and the amounts described in Section 6.1 shall constitute a lien against the defaulting Owner's Parcel. A lien under this Section 6.4 or under Article V shall attach and take effect 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 Curing Party making the claim. The claim of lien shall include the following:

- (A) The name and address of the lien claimant;
- (B) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Curing Party;
- (C) An identification by name and address (if known) of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed;
- (D) A description of the Parcel against which the lien is claimed;
- (E) A description of the work performed which has given rise to the claim of lien;
- (F) A statement itemizing the total amount due, including interest;
- (G) A statement that the lien is claimed pursuant to the provisions of these ECC&Rs, 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 Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 7.4 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

Section 6.5 Other Remedies for Consenting Parties.

Each Non-defaulting Party who is a Consenting Party shall have the right to prosecute any proceedings at law or in equity against any defaulting Party hereto, or any other person, violating or attempting to violate or defaulting upon any provision contained in these ECC&Rs, 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 such terms, covenants, or conditions of these ECC&Rs, 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.

Section 6.6 Cumulative Remedies.

All of the remedies permitted or available to a Consenting Party under these ECC&Rs 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 6.7 No Waiver.

No delay or omission of any Party in the exercise of any right accruing upon any default of any other Party 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 Party of any default under these ECC&Rs shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of these ECC&Rs 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 these ECC&Rs.

Section 6.8 No Termination for Breach.

No breach, whether or not material, of the provisions of these ECC&Rs shall entitle any Party to cancel, rescind or otherwise terminate these ECC&Rs, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of these ECC&Rs.

Section 6.9 Limitation of Liability.

Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Parcel, or any portion thereof, shall be bound by these ECC&Rs only as to the Parcel or portion of the Parcel acquired or possessed by such person. In addition, such person shall be bound by these ECC&Rs only during the period such person is the fee or leasehold owner or occupant of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section 6.9, the easements, covenants and restrictions in these ECC&Rs shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 6.10 Attorneys Fees.

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

ARTICLE VII
MISCELLANEOUS

Section 7.1 Estoppel Certificates.

Each Party shall upon not less than thirty (30) days from receipt of written notice from the requesting Party execute and deliver to the requesting Party a certificate in recordable form stating that (i) either these ECC&Rs are unmodified and in full force and effect or are modified (and stating the modification); and (ii) whether or not such Party has sent any notice of any default to any other Party under these ECC&Rs.

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 Parties, their heirs, executors, administrators, successors, successors-in-title, assigns until the expiration of sixty (60) years from the date hereof, unless terminated by the consent of all the Parties 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 these ECC&Rs or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Notwithstanding the foregoing, the easements contained herein binding and benefiting the Parcels shall be perpetual and shall run with the land. Upon termination of the agreements, conditions, covenants and restrictions of these ECC&Rs, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of these ECC&Rs, except as related to the easements cited and mentioned herein, shall terminate and have no further force or effect.

Section 7.3 Amendment.

These ECC&Rs may not be amended except by agreement of the Consenting Parties in writing. Any amendment that would materially and substantially change the easements granted under Article 2, the uses permitted under Article 3, or the development requirements of Article 4 shall require the prior written consent of any Party reasonably likely to be materially adversely

impacted by such amendment, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 7.4 Notices.

Any notice or invoice required or permitted to be given under these ECC&Rs shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid or deposit with a nationally recognized overnight delivery service, and addressed to the Party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other Party):

Developer: Clinton City Center, LLC
 1412 S. Legend Hills Dr., Suite 327
 Clearfield, Utah 84015

Lowe's: Lowe's HIW, Inc.
 Box 1111
 (Highway 268 East, North Wilkesboro, North Carolina 28659)
 North Wilkesboro, North Carolina 28656-0001
 Attention: Property Management Dept. (REO)

Copy to: Lowe's HIW, Inc.
 Box 1111
 (Highway 268 East, North Wilkesboro, North Carolina 28659)
 North Wilkesboro, North Carolina 28656-0001
 Attention: Real Estate Legal Department (REO)

Section 7.5 Ground Lessee Assignment.

The rights and obligations of any Party 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 Party and such ground lessee or lessees. All ground lessees of any Parcel shall be bound by the terms and conditions of these ECC&Rs regardless of whether the rights and obligations of an Owner are assigned to and assumed by such ground lessee.

Section 7.6 No Covenant to Continuously Operate.

Nothing contained in these ECC&Rs shall be construed, interpreted, or otherwise read to require Lowe's to (i) continuously operate a business on the Lowe's Parcel, (ii) continuously operate or

operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel, or (iii) prevent Lowe's from closing its business on the Lowe's Parcel.

Section 7.7 Severability.

In the event any provision or portion of these ECC&Rs 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 7.8 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 Party 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 7.9 Counterparts.

These ECC&Rs 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 7.10 Relationship of the Parties.

Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Parties hereto or the Owners. It is understood that the relationship between the Parties hereto and Owners is an arms length one that shall at all times be and remain that of separate owners or tenants of real property. No Party shall have the right to act for or on behalf of another Party, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Party to be charged or bound, except as otherwise specifically provided herein.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered these ECC&Rs as of the day and year first written above.

[SIGNATURE PAGES TO FOLLOW]

SIGNATURE PAGE FOR DEVELOPER:

CLINTON CITY CENTER, LLC,
a Utah limited liability company

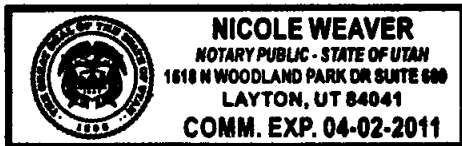
By: *Gary M. Wright*
Name: Gary M. Wright
Title: manager

STATE OF UTAH)
)
COUNTY OF Davis) :SS

The foregoing instrument was acknowledged before me this 30 day of October, 2007, by Gary M. Wright, Manager of Clinton City Center, LLC, a Utah limited liability company.

Nicole Weaver
NOTARY PUBLIC
Residing at: Layton

My commission expires:
04-02-2011



SIGNATURE PAGE FOR LOWE'S:

**LOWE'S HIW, INC.,
a Washington corporation**

ATTEST:

By: *Thomas E. Maddox*
Name: Thomas E. Maddox
Title: Assistant Secretary

By: *Gary E. Wyatt*
Name: Gary E. Wyatt
Title: Senior Vice President
PH
FD
BK
UH

STATE OF North Carolina)
COUNTY OF Wilkes) :ss

The foregoing instrument was acknowledged before me this 1st day of ^{November} ~~October~~, 2007, by Gary E. Wyatt, SVP of Lowe's HIW, Inc, a Washington corporation.

Sheila H. Vannoy
NOTARY PUBLIC
Residing at: Millers Creek, NC

My commission expires:
10-6-08

SHEILA H. VANNOY
Notary Public
North Carolina - Wilkes County
My Commission Expires _____

Exhibit A-1

Legal Description - Lowe's Parcel

A part of Lot 1, Clinton City Center Plat, Clinton City, Davis County, Utah being a part of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 533.44 feet North 89°59'21" East along the Section line and 662.14 feet North 0°00'20" East from the Southwest corner of said Quarter Section and running thence North 610.25 feet; thence Northeasterly along the arc of a 50.00 foot radius curve to the left a distance of 34.60 feet (Long Chord bears North 35°47'25" East 33.91 feet); thence North 0°00'30" West 3.91 feet; thence North 89°59'42" East 320.00 feet; thence North 0°00'01" West 20.00 feet; thence North 89°59'42" East 452.14 feet to the East line of Dawson Estates Subdivision in Clinton City, Davis County, Utah; thence South 0°05'28" West 664.39 feet along said East line and the East line of Kendal Estates Subdivision in Clinton City, Davis County, Utah; thence West 2.95 feet; thence South 0°07'36" West 22.33 feet; thence West 409.74 feet; thence North 15.00 feet; thence West 32.26 feet; thence North 88°09'41" West 311.29 feet thence West 34.78 feet to the point of beginning.

Contains 12.135 Acres

Exhibit A-2
Legal Description – Developer Parcel

Anchor 2 Parcel

A part of Lot 1, Clinton City Center Plat, Clinton City, Davis County, Utah being a part of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 761.13 feet North 89°59'21" East along the Quarter Section line and 42.00 feet North 0°05'03" West from the Southwest corner of said Quarter Section; and running thence North 0°00'20" West 75.92 feet; thence Northwesterly along the arc of a 204.00 foot radius curve to the left a distance of 142.40 feet (Long Chord bears North 20°00'10" West 139.53 feet); thence North 40°00'00" West 201.71 feet; thence Northwesterly along the arc of a 215.00 foot radius curve to the right a distance of 150.10 feet; thence North 120.27 feet; thence East 34.78 feet; thence South 88°09'41" East 311.29 feet; thence East 32.26 feet; thence South 15.00 feet; thence East 409.74 feet; thence South 0°07'36" West 428.80 feet; thence South 89°08'24" West 320.05 feet; thence South 0°07'35" West 161.38 feet to the North right of way line of 1800 North Street; thence North 89°59'55" West 238.96 feet along said North right of way line to the point of beginning.

Contains 8.229 Acres

Lot 3 (Retail Parcel)

A part of Lot 1, Clinton City Center Plat, Clinton City, Davis County, Utah being a part of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 761.13 feet North 89°59'21" East along the Quarter Section line and 42.00 feet North 0°05'03" West from the Southwest corner of said Quarter Section; and running thence South 89°59'21" West 398.10 feet along the North right of way line of 1800 North Street; thence North 0°07'29" East 307.50 feet thence North 89°59'22" West 33.00 feet; thence North 0°07'29" East 9.22 feet; thence North 89°59'31" West 275.00 feet; to the East right of way line of 2000 West Street; thence North 0°07'29" East 239.77 feet along said East right of Way line; thence East 477.06 feet; thence South 120.27 feet; Southeasterly along the arc of a 215.00 foot radius curve to the left a distance of 150.10 feet (Long Chord bears South 20°00'00" East 147.07feet); thence South 40°00'00" East 201.71 feet; thence Southwesterly along the arc of a 204.0 foot radius curve to the right a distance of 142.40 feet (Long Chord bears South 20°00'10" East 139.53 feet); thence South 0°00'20" East 75.92 feet to the point of beginning.

Contains 5.617 Acres

Lot 4 (Retail Parcel)

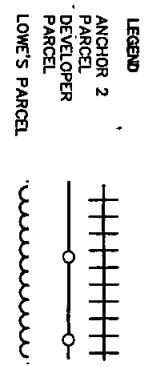
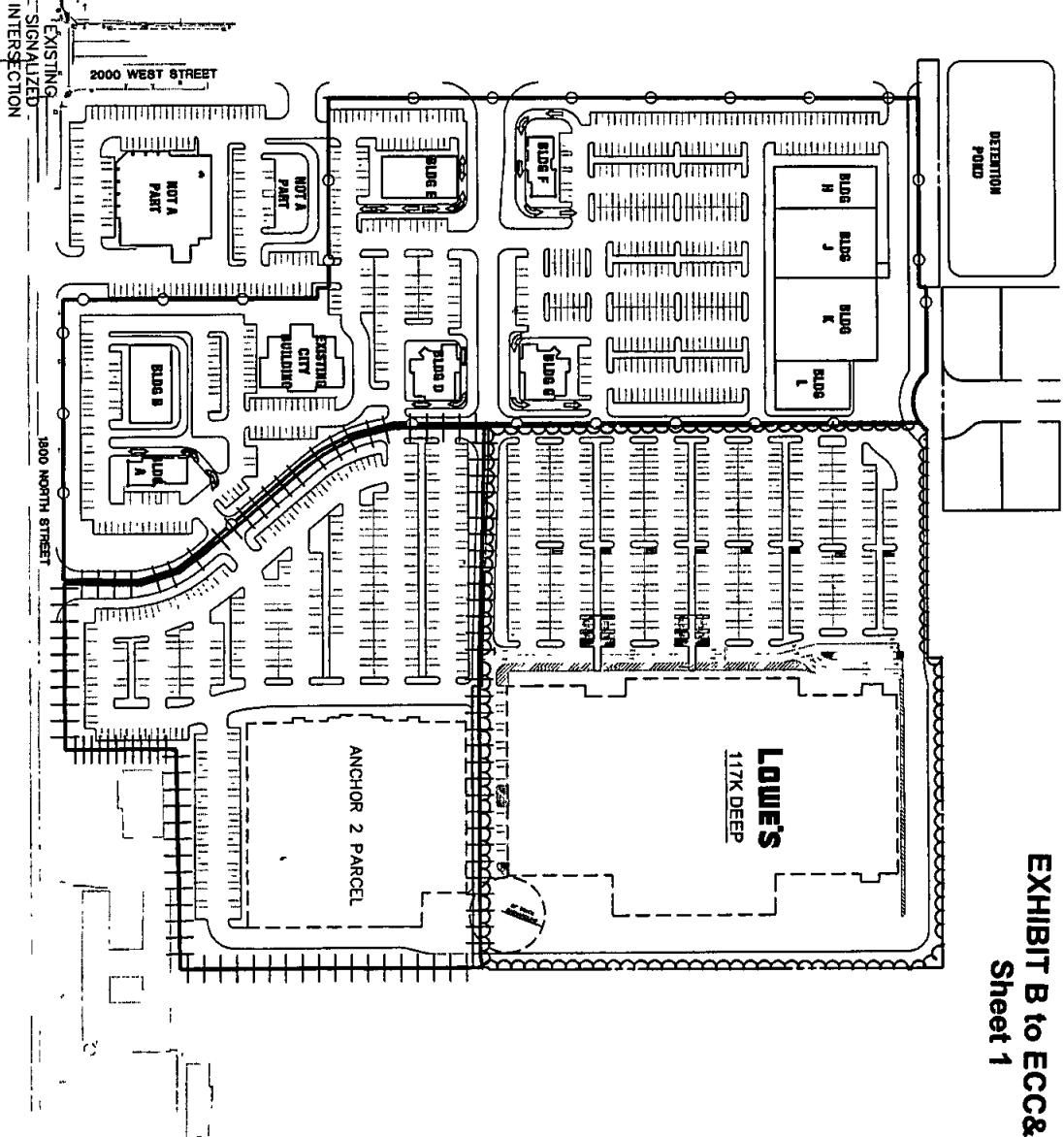
A part of Lot 1, Clinton City Center Plat, Clinton City, Davis County, Utah being a part of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 533.44 feet North 89°59'21" East along the Section line and 662.06 feet North 0°00'20" East from the Southwest corner of said Quarter Section and running thence West 477.06 feet to the East right of way line of 2000 West Street; thence three (3) courses along said East right of way line as follows: North 0°07'29" East 525.71 feet; Northwesterly along the arc of a 812.00 foot radius curve to the left a distance of 58.30 feet (Long Chord bears North 2°02'40" West 58.29 feet); and North 4°06'47" West 48.78 feet; thence South 89°52'30" East 280.82 feet; thence North 0°08'39" East 9.64 feet to the South right of way line of 2050 North Street; thence two (2) courses along said South right of way line as follows: North 89°59'42" East 123.40 feet; and Southeasterly along the arc of a 50.00 foot radius curve to the right a distance of 98.63 feet (Long Chord bears South 67°52'36" East 83.40 feet); thence South 610.25 feet to the point of beginning.

Contains 6.905 Acres

Exhibit B
Site Plan

EXHIBIT B to ECC&RS
Sheet 1



GENERAL NOTES

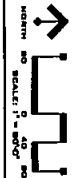
1. DEVELOPER PARCEL INCLUDES ALL AREAS EXCEPT FOR DEMISED PREMISES.
2. DRIVE-THROUGH LANES SHOWN HEREON ARE APPROVED BY THE CONSENTING PARTIES ONLY FOR TRAFFIC FLOW IN THE DIRECTIONS INDICATED BY THE DIRECTIONAL ARROWS SHOWN IN EACH DRIVE-THROUGH LANE. ANY DRIVE THRU WINDOW ON BLDG D SHALL BE ON THE NORTH SIDE OF BLDG D.

PLANNED SQUARE FOOTAGES

PAD	SQUARE FOOTAGE
A	3,280
B	6,720
D	4,200
E	6,600
F	3,200
G	4,200
H	9,000
J	15,000
K	20,000
L	8,000

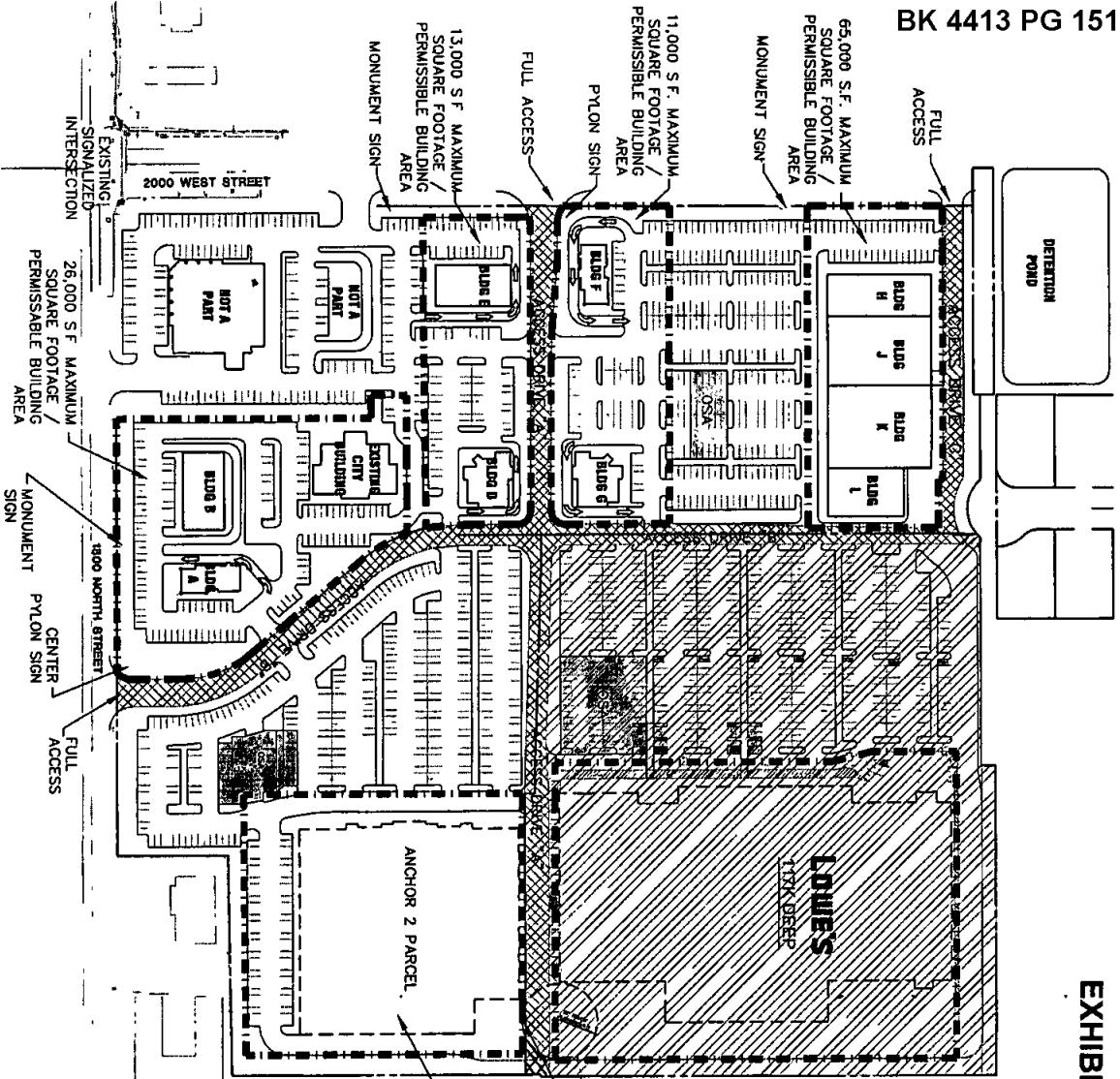


STATEMENT OF RESPONSIBILITY
I, the undersigned, being a duly Licensed Professional Engineer in the State of Utah, do hereby certify that I am the author of the design and calculations shown on these drawings, and that I am a duly Licensed Professional Engineer in the State of Utah, and that I am duly qualified to perform the services shown on these drawings, and that I am duly qualified to perform the services shown on these drawings, and that I am duly qualified to perform the services shown on these drawings.



<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	DESCRIPTION	DATE					<p>SITE DEVELOPMENT GROUND LEASE SITE PLAN</p> <p>LOWE'S NE CORNER OF 1800 NORTH AND 2000 WEST CLINTON, UTAH</p>	<p>PROJECT NO. 1007-0000 DATE: 08/08/07</p>	<p>LOWE'S OF CLINTON, UTAH</p>
NO.	DESCRIPTION	DATE								

EXHIBIT B to ECC&RS
Sheet 2



NOTE: THE NORTHERN EDGE OF THE PERMISSIBLE BUILDING AREA ON THE ANCHOR 2 PARCEL BEGINS 10 FEET FROM THE NORTHERN BOUNDARY LINE OF THE ANCHOR 2 PARCEL.

- GENERAL NOTES**
1. DEVELOPER PARCEL INCLUDES ALL AREAS EXCEPT FOR DEMISED PREMISES.
 2. DRIVE-THROUGH LANES SHOWN HEREON ARE APPROVED BY THE CONCERNING PARTIES ONLY FOR TRAFFIC FLOW IN THE DIRECTIONS INDICATED BY THE DIRECTIONAL ARROWS SHOWN IN EACH DRIVE-THROUGH LANE. ANY DRIVE THRU WINDOW ON BLDG-D SHALL BE ON THE NORTH SIDE OF BLDG-D.
 3. THE PERMISSIBLE BUILDING AREAS SHOWN HEREON EXTEND TO THE INSIDE EDGE OF THE HEAVY BLACK DOTTED LINE

LEGEND

- PERMISSIBLE BUILDING AREA (INTERIOR EDGE)
- OUTDOOR SALES AREA
- NO CHANGE AREAS
- LOWE'S PARCEL

PLANNED SQUARE FOOTAGES

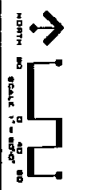
PAD	SQUARE FOOTAGE
A	3,280
B	6,720
D	4,200
E	6,800
F	3,200
G	4,200
H	9,000
J	15,000
K	20,000
L	8,000

COUNTY OF CLINTON
CLINTON, UTAH
1800 NORTH STREET
CLINTON, UTAH 84302

EXHIBIT B TO ECC&RS
SITE PLAN
DATE: 08/07/07
PROJECT: 4413

LEGEND

- PERMISSIBLE BUILDING AREA (INTERIOR EDGE)
- OUTDOOR SALES AREA
- NO CHANGE AREAS
- LOWE'S PARCEL



ECC & R
SITE PLAN

LOWE'S OF
CLINTON, UTAH

DATE: 08/07/07
PROJECT: 4413

SITE DEVELOPMENT
GROUND LEASE SITE PLAN

LOWE'S

NE CORNER OF
1800 NORTH AND 2000 WEST
CLINTON, UTAH

REVISIONS

NO.	DATE	DESCRIPTION

DATE: 08/07/07
PROJECT: 4413

Exhibit C

Legal Description – Detention Pond Parcel

A part of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:

14-001-0160

Beginning at a point on the East right of way line of 2000 West Street (SR-108), said point being 1323.79 feet North $0^{\circ}07'29''$ East along the Section line and 46.98 feet South $89^{\circ}52'31''$ East from the Southwest Corner of said Quarter Section and running thence North $0^{\circ}07'29''$ East 142.73 feet; thence South $89^{\circ}52'31''$ East 282.96 feet to the West Boundary of Park Side Subdivision in Clinton City, Davis County, Utah; thence South $0^{\circ}06'00''$ West 142.73 feet along said West boundary; thence North $89^{\circ}52'31''$ West 275.00 feet to the point of beginning.

CONSENT AND SUBORDINATION

Wells Fargo Bank, National Association ("Lender") is the beneficiary under that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, made by Clinton City Center, LLC, as trustor, and recorded against the Shopping Center on July 11, 2007 as Entry No. 2287678 in Book 4322 at Page 940-974 in the Official Records of Davis County, Utah (the "Deed of Trust"). The Deed of Trust secures indebtedness in the original maximum aggregate principal amount of \$5,000,000.00 (the "Indebtedness"). Lender hereby consents to the execution of the foregoing Easements, Covenants, Conditions and Restrictions ("ECC&Rs") by Clinton City Center, LLC, and the recordation of the ECC&Rs against the Shopping Center and hereby subordinates the lien of the Deed of Trust and any other document securing the Indebtedness to the ECC&Rs and agrees that, in the event that Lender should take possession of the Shopping Center by foreclosure or deed in lieu thereof, Lender shall recognize the ECC&Rs and the rights of Lowe's pursuant thereto.

WELLS FARGO BANK, NATIONAL ASSOCIATION

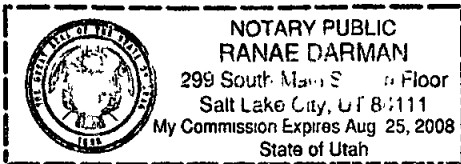


By: _____

Name: Erik Bengtzen
Title: VP

STATE OF Utah)
COUNTY OF Salt Lake) ss.

The foregoing instrument was acknowledged before me this 6th day of November, 2007, by Erik Bengtzen, VP of Wells Fargo Bank, National Association.



Ranae Darman
Notary Public
Residing at:

My commission expires:
