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DECLARATION OF EASEMENTS COVENANTS CONDITIONS AND RESTRICTIONS

THIS DOCUMENT WAS PREPARED BY AND MAIL TO:

LOWE'S HOME CENTERS, INC.
REAL ESTATE DEPARTMENT
1605 CURTIS BRIDGE ROAD
WILKESBORO, NC 28697
ATTN:

Box 400-CTCC

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(Orland Park, IL – ECCR – 7/19/06)

DECLARATION OF EASEMENTS
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "**ECCR**"), is made and entered into as of the date of the execution hereof, which date is the 21st day of July, 2006, by **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation ("**Lowe's**").

W I T N E S S E T H :

WHEREAS, Lowe's is the owner of those certain tracts of real property consisting of approximately forty three and 86/100 (43.86) acres known as Orland Park, located in Cook County, State of Illinois, as more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "**Shopping Center**"); and

WHEREAS, immediately following the recordation of this ECCR, Lowe's intends to sell to various owners those certain tracts of real property located in Cook County, State of Illinois, located within the Shopping Center, which are more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the "**Developer Parcels**"); and

WHEREAS, immediately following the recordation of this ECCR, Lowe's intends to deed and the Village of Orland Park (the "**Village**") intends to accept those certain tracts of real property located in Cook County, State of Illinois, located within the Shopping Center, which are more particularly described in Exhibit C (the "**Village Parcels**" (and the Shopping Center less the Developer Parcels and the Village Parcels is herein referred to as the "**Lowe's Property**")); and

WHEREAS, the Lowe's Property, the Developer Parcels, and the Village Parcels are further designated on the site plan of the Shopping Center, attached hereto and made a part hereof as Exhibit D (the "**Site Plan**") (for informational purposes only, Exhibit D-1 is a copy of the Final Plat of Lowe's Orland Park Subdivision, recorded August 24, 2005, as document number 0517503032 in the office of the Recorder of Deeds, Cook County, Illinois (the "**Plat**")).

NOW, THEREFORE, Lowe's hereby declares, agrees, covenants and consents that all of the real property described on Exhibit A, Exhibit B and Exhibit C shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are imposed on such real property to run with the real property and be binding on and inure to the benefit of all parties having any right, title or interest in the described Lowe's Property, Developer Parcels, Village Parcels, or any part thereof, their respective heirs, successors and assigns for the purpose of development and operation of the respective Lowe's Property, Developer Parcels, and Village Parcels in an integrated shopping center and to protect the value of such respective property and parcels.

ARTICLE I

BASIC DEFINITIONS

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Section 1.1 **“Common Area”** shall mean all portions of the Shopping Center dedicated to the common use and enjoyment of all the Owners and permittees, including non-dedicated streets. The Common Area is referred to as “Common Area” on the Site Plan, which includes, without limitation, private streets, detention basins, and a storm water pump and lift station. The Common Area does not include the Village Parcels so long as the Owner is the Village or another governmental authority, nor does it include the primary parking fields for the Lowe’s Parcel and the Developer Parcels.

Section 1.2 **“Consenting Party”** shall mean and refer to the Owner of the Lowe’s Parcel.

Section 1.3 **“Default Rate”** shall mean the rate of interest that is the lesser of (i) twelve (12%) per annum and (ii) the maximum rate allowed by applicable law.

Section 1.4 **“Intentionally deleted.”**

Section 1.5 **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to the Lowe’s Parcel or any Outparcel which is a part of the Shopping Center, as hereinafter defined, but excluding those persons or entities having such interest merely as security for the performance of any obligation.

Section 1.6 **“Lowe’s Parcel”** shall mean and refer only to Lot 1 shown on the Site Plan. **“Outparcel”** shall mean and refer to all other parcels of land identified as a numbered lot or parcel on the Site Plan.

Section 1.7 **“Shopping Center”** shall mean and refer to the Lowe’s Property, the Developer Parcels, and the Village Parcels as shown on the Site Plan, located in the Village of Orland Park, County of Cook, State of Illinois.

ARTICLE II

EASEMENTS

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

(a) An Owner granting an easement is called the **“Grantor”**, it being intended that the grant shall thereby bind and include not only such Owner but also its successors, assigns, occupants, and permittees.

(b) An Owner to whom the easement is granted is called the **“Grantee”**, it being intended that the grant shall benefit and include not only such Owner but its successors, assigns, occupants and permittees; although not for the direct benefit of permittees, the Grantee may permit from time to time its occupants and permittees to use such easements; provided, however, that neither such permission nor the division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of the creation of such easement.

(c) The term **“Building(s)”** means any permanently enclosed structure(s) which has (have) been, will be or may be placed, constructed or located on the Lowe’ Parcel or an Outparcel, which for the purpose of this ECCR shall include any appurtenant canopies, supports, loading docks, truck

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ramps and other outward extensions, but such term does not include Common Area Improvements (as that term is hereinafter defined in Section 2.1(d)).

(d) The term "**Common Area Improvements**" means all improvements which will be or may be constructed on the Lowe's Parcel or an Outparcel under the terms of this ECCR within the Common Areas of the Shopping Center, being those areas designated on the Site Plan for the common enjoyment and use of all Owners, their successors, assigns, occupants and permittees such as access and egress drives, service drives, lighting standards, sidewalks, and all other improvements which would be part of the "Common Area" under the above definition, and all improvements constructed from time to time in replacement of the same or in such redesign or reconfiguration of the same as may be approved by the Consenting Party. The parties agree that the location of such sidewalks may change from what is currently shown on the Site Plan as a result of changes by the Village. Common Areas shall exclude the Village Parcels so long as the Owner of the Village Parcels is the Village or another governmental authority(ies), all primary parking fields for the Lowe's Parcel and the Developer Parcels, Buildings, outdoor seating areas, drive-thru improvements, truck wells, and the sidewalks that are immediately adjacent to any Buildings. Landscaping on each Outparcel shall be the responsibility of the Owner thereof.

(e) The term "**Common Utility Facilities**" means utility systems and facilities from time to time situated on or serving the Shopping Center, within the Common Area, for use or service in common by Owners or for the service of the Common Area, such as the following: storm drainage, retention and disposal facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities for such common use or service, including, without limitation, those installed under the provisions of this ECCR and as replacements thereto.

(f) The term "**Improvement(s)**" means Building(s) and the Common Area Improvements on the Lowe's Parcel or an Outparcel.

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

(h) Intentionally deleted.

(i) The term "**Separate Utility Facilities**" means any of the following not installed under the terms of this ECCR for use in common by other Owners or for service of the Common Area: storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities reasonably necessary for the use or service of any Improvement (as that term is herein defined in Section 2.1(f)) situated on the Lowe's Parcel or any Outparcel.

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

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

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

(m) All easements granted hereunder and herein shall exist by virtue of this ECCR, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of the Lowe's Parcel or any Outparcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of an Owner, the other Owners will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Owners. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Owner to construct or maintain its Building(s) except as expressly provided in this ECCR.

Section 2.2 Easements for Use of Common Area. Each Owner hereby grants to the other Owners easements in the Common Area on its (Grantor's) parcel or Outparcel for ingress to and egress from the Grantee's parcel or Outparcel:

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

(b) to permit the passage and accommodation of pedestrians (provided, however, each Owner may display merchandise, conduct sidewalk sales and other business on the sidewalks on its parcel or Outparcel so long as pedestrian passage is not obstructed, and may otherwise enclose and/or redesign its sidewalk areas without the need of obtaining any other Owner's consent); and for the doing of such other things as are authorized or required to be done on the Common Area under this ECCR;

Provided, however, that such easements are limited to such portions of the Common Area located on the Grantor's parcel or Outparcel as shown on the Site Plan.

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

Each Owner hereby reserves the right to eject from the Common Area on its parcel or Outparcel any person not authorized to use the same. In addition, each Owner reserves the right to close off the Common Area of its parcel or Outparcel, or portions thereof, for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Areas as provided above, such Owner must give at least thirty (30) days prior written notice to the other Owners so affected of its intention to do so and must coordinate such temporary closing with the activities of the other Owners so affected so that no unreasonable interference with the operation of the Shopping Center occurs.

In anticipation of a potential future subdivision of Lot 4 as shown on the Plat (same as Lot 4 and Proposed Lot 14 as shown on the Site Plan), Lowe's hereby reserves for the benefit of the Owner(s) of Lot 4 as identified on the Plat and their respective permittees a non-exclusive easement for the parking of vehicles over and across the parking areas located on Lot 4 as the same may, from time to time, be constructed and maintained for such use.

In anticipation of a potential future subdivision of Lot 5 as shown on the Plat (same as Lot 5, Proposed Lot 13, and Proposed Lot 15 on the Site Plan), Lowe's hereby reserves for the benefit of the Owner(s) of Lot 5 as identified on the Plat and their respective permittees a non-exclusive easement for the parking of vehicles over and across the parking areas located on Lot 5 as the same may, from time to time, be constructed and maintained for such use.

In anticipation of the potential future development of Lot 12, Lowe's hereby reserves for the benefit of the Owner(s) of Lot 12 as identified on the Site Plan and their respective permittees an easement for vehicular access over the access road on the east side of the Lowe's Parcel (behind the Lowe's store) and on the southeast corner of the Lowe's Parcel, as shown on the Site Plan. Additionally, Lowe's hereby reserves for the benefit of the Owner(s) of Lot 12 the right to construct a maximum of two (2) curb cuts onto the access road on the east side of the Lowe's Parcel (behind the Lowe's store); provided, however, the location of the curb cuts must first be approved in writing by Lowe's, which approval shall be in Lowe's sole discretion.

Lowe's hereby reserves for the benefit of the Owners of Lot 2 and Lot 3 a reciprocal ingress and egress easement for a private drive along the east/west common boundary of Lot 2 and Lot 3 as shown on the Site Plan as Proposed Shared Access Drive; provided, however, the Owners of Lot 2 and Lot 3 shall be responsible, all at their cost and expense, for the construction and continual maintenance of the drive in accordance with the standards of maintenance for the rest of the Shopping Center. Any such construction shall be in accordance with all applicable laws and regulations. No further consent shall be required from Lowe's to establish said private drive.

The Owners of any adjacent Outparcel may grant additional cross-parking easements between such Outparcels and the same shall not be a default under this Agreement.

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The easements provided for in this Section 2.2 are subject to the rights to use and the restrictions on use of the Common Area provided for in this ECCR. No changes shall be made in the Common Area or in the location, configuration or design of Common Area Improvements without the consent of Lowe's and the Owners of the physically impacted Outparcels; provided, however, that the Owner of the Lowe's Parcel shall have the right to unilaterally allow changes in the Common Areas for access from and to 96th Avenue to the Inland property to the north of the Shopping Center and the Target property to the south of the Shopping Center. This access will be by way of a continuation of 96th Avenue.

Section 2.3 Easements for Access Roads. Each Owner hereby grants to the other Owners easements for pedestrian and vehicular traffic in those strips of land (not less than the widths therefor shown on the Site Plan) on its (Grantor's) parcel or Outparcel which are shown on the Site Plan as shaded or cross hatched roadways (hereinafter collectively referred to as the "**Access Roads**") for the purpose of providing ingress to and egress from the Grantee's parcel or Outparcel and each of Lagrange Road (96th Avenue), 94th Street, 95th Street, 155th Street, 156th Place, Wheeler Street, Herion Way, and Lowe's Avenue, together with the following rights and subject to the following restrictions and reservations:

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

(b) As further provided in Section 2.3 herein, Grantors of the Access Road easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Roads, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein or pursuant to any governmental mandate; and

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

Section 2.4 Easements for Utility Facilities. Each Owner hereby grants to the other Owners perpetual easements to its (Grantor's) parcel or Outparcel for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the parcel or Outparcel of the Grantee, provided that such utility facilities shall be located only in Common Areas or parking fields.

Further, all Separate Utility Facilities installed under this Section 2.4 or otherwise and all Common Utility Facilities, shall be underground, if reasonably possible, and the location of the Separate Utility Facilities shall be subject to the reasonable approval of the Owner across whose parcel or Outparcel the same are to be located.

Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section 2.4 shall be responsible, as between such Grantee and the Grantor, for the

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installation, maintenance, repair and removal at Grantee's cost of all Separate Utility Facilities installed by the Grantee pursuant to the easement grant, as well as for all Separate Utility Facilities installed by the Grantee on its own parcel or Outparcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by Grantee only after thirty (30) days advance notice to Grantor of Grantee's intention to do such work. However, in the case of an emergency (whereby either persons or property are in immediate danger of substantial damages and/or harm), any such work may be immediately performed after giving such advance notice to Grantor as is practicable and reasonable under the circumstances. In addition, all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's parcel or Outparcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as existed prior to the commencement of any such work. (No such work or restoration, except emergency repair work or work required pursuant to government mandate, shall be carried on during the periods from November 15th through the following January 15th and from April 1st through the following July 10th, or on any weekends.)

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

The Grantor of any easement for Separate Utility Facilities under this Section 2.4 may use the utility facilities installed pursuant to such easement; provided, however, that any increase in costs incurred in order to make such Separate 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 subparagraph (a) and otherwise complies with the requirements of subparagraphs (b), (c) and (d) of the following paragraph of this Section 2.4.

(Except during the periods from November 15th through the following January 15th and from April 1st through the following July 10th, unless emergency work or work required pursuant to government mandate), the Grantor of any easement under this Section 2.4 may relocate on its parcel or Outparcel 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 materially 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 2.4(a). Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interferences or diminutions, or both;

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- (c) shall not reduce or unreasonably impair the usefulness or function of the facilities in question;
- (d) shall be located underground if reasonably possible; and
- (e) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities or Separate Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee.

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

The Owners hereby acknowledge that certain utility easements were created pursuant to the recording of the Plat.

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

Section 2.5 Construction Easements. Each Owner hereby grants to the other Owners temporary construction related easements in the Common Area of its (Grantor's) parcel or Outparcel, but only prior to the commencement of construction by Grantor of Improvements on its own (Grantor's) parcel or Outparcel, for the purpose of facilitating the initial construction of the Grantee Improvements contemplated within this ECCR.

With respect to the Lowe's Parcel or any Outparcel on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Shopping Center or any public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property or in accordance with a grading plan approved by the Grantor, which approval shall not be unreasonably withheld, conditioned or delayed.

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

Each Grantee agrees to pay the Grantor any additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by Grantor which may arise on account of or due to Grantee's exercise of its temporary construction easement rights under this Section 2.5. Each Grantee further agrees to use due care in the exercise of the rights granted under this Section 2.5 and, in the event the exercise of the rights granted under this Section 2.5 requires Grantee to enter upon the parcel or Outparcel of Grantor, to first obtain the consent of Grantor as to the specific activities, methods and timing in the exercise of such rights so as to avoid cost or damage to Grantor.

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

Furthermore, the Owners agree that once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Parcel or any Common Area access, egress and service drives to the Lowe's Parcel, all construction traffic to or from the Developer Parcels and Village Parcels will be limited to the

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use of the following roadways: 95th Avenue, 156th Street, and 156th Place. In addition, each Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed in the exercise by Grantee of the easements granted under this Section 2.5 and shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or arising out of Grantee's exercise of said temporary construction easements, except to the extent occasioned by Grantor's grossly negligent or wrongful acts or omissions.

Any Grantee improvements made within such temporary construction easements shall, for purposes of cost allocation due to maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under this ECCR, be deemed to be part of the Grantee's parcel or Outparcel and Building and shall be deemed not to be part of the Grantor's parcel or Outparcel or Building for such purposes.

Except as reasonably necessary during the construction of any Building, no structure of a temporary character shall be erected or allowed to remain on any Outparcel.

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

Section 2.7 Easements to Public Utilities. Any grant or other conveyance of an easement to a public utility by a Grantor on its parcel or Outparcel shall, without necessity of further recital in the conveyancing instrument, be deemed to include the following conditions, covenants and restrictions to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument.

- (a) The easement is non-exclusive;
- (b) All facilities installed pursuant to the easement shall be underground, except for manhole and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans reasonably approved by Grantor;
- (c) Grantor retains the right to use the surface areas as Grantor sees fit;

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

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

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

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

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

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

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

Section 2.8 No Barrier Agreement. No barriers, fences, walls, grade changes or other obstructions shall be erected so as to materially impede or interfere with the free flow of vehicular and pedestrian traffic between those portions of the Lowe's Parcel and Outparcels from time to time devoted to pedestrian access, vehicular roadways or parking area, or shall in any manner unreasonably restrict or interfere with the use and enjoyment by the Owners of the rights and easements created by this Article II. In addition, each Owner may temporarily close or block traffic on its parcel or Outparcel for the time necessary for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give thirty (30) days written notice to each other Owner of its intention to do so and shall attempt to coordinate such closing with each other Owner so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its parcel as reasonably required for the purpose of repair, construction and reconstruction.

ARTICLE III**USE**

Section 3.1 General Use Requirement. Except as otherwise excluded in this ECCR or as approved by the Owner of the Lowe's Parcel, the Lowe's Parcel and every Outparcel shall be used only for financial institutions, service shops, offices of the type customarily found in retail shopping centers, retail stores selling retail merchandise normally carried in other shopping centers, and restaurants with over sixty (60%) percent of gross revenues from food sales.

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Section 3.2 Nuisances. Subject to the provisions of Section 3.1, the Lowe's Parcel and every Outparcel shall not be used for anything other than purposes which may be permitted by applicable zoning ordinances and regulations, nor shall anything be done on the Lowe's Parcel or any Outparcel which shall constitute a public nuisance to the community.

Section 3.3 Use Restrictions.

(a) During the term of this ECCR no portion of the Shopping Center may be used for any of the following purposes:

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

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

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

(iv) Intentionally deleted.

(v) A service station, automotive repair shop or truck stop; provided, however, the same shall not prohibit the operation of a retail enterprise such as Pep Boys, NTB, or any substantially similar retail operation; provided, however, there shall be no overnight storage of vehicles other than storage inside Buildings.

(vi) A flea market or pawn shop.

(vii) Intentionally deleted.

(viii) A car wash.

(ix) A medical clinic.

(x) A dry cleaning plant, central laundry or laundromat.

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

(xii) Intentionally deleted.

(xiii) A hotel or motel.

(xiv) A storage or mini-warehouse facility.

(xv) Governmental offices.

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

(i) An adult type bookstore or other establishment whose primary business is the 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 except as part of a spa or salon.

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- (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 for Petco, Petsmart, Petland or any other similar animal specialty retailer.
- (x) Assembling, manufacturing, industrial, distilling, refining or smelting facility.

Section 3.4 Use Restrictions on All Outparcels.

No portion of the Outparcels shown on the Site Plan may be used for the following purposes without the written consent of the Owner of the Lowe's Parcel:

- (a) A hardware store or center containing more than 2,000 square feet of usable floor area.
- (b) An appliance, home electronics and/or lighting store or center containing more than 2,000 square feet of usable floor area.
- (c) A nursery and/or lawn and garden store or center containing more than 2,000 square feet of usable floor area (including any outdoor areas).
- (d) A paint, wall paper, tile, flooring, carpeting and/or home decor store or center containing more than 2,000 square feet of floor area.
- (e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Sears Appliance and Hardware, Great Indoors, Sutherlands, Scotty's and/or Orchard Supply.

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

Notwithstanding anything in the foregoing to the contrary, in the event a retail and/or warehouse home improvement center, lumber yard, and/or building materials supply center is not operated on the Lowe's Parcel for a period in excess of three (3) consecutive years (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Parcel), the above stated exclusives shall be of no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall re-open a store on any portion of the Lowe's Parcel for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if such uses were begun during such time as the above exclusive use restrictions were

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of no force and/or effect, and such uses are continuous without interruption, except for temporary closings due to alterations, reconstruction, casualty, or condemnation.

Section 3.5 Proprietary Rights of Lowe's. Any Owner, occupant or person owning, leasing or otherwise making use of any portion of the Shopping Center shall be deemed, by virtue of accepting such ownership, leasehold interest or making such use, to have covenanted and agreed that (i) the trade names, trademarks, service marks (including, without limitation, all logos, emblems, designs or designating words or names) utilized by Lowe's Home Centers, Inc. or its affiliated companies, in connection with the Shopping Center or the conduct of its business thereat are registered and/or the proprietary property of Lowe's Home Centers, Inc. or its affiliated companies, (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 Home Centers, Inc. or its affiliated companies and the legal counsel of Lowe's Home Centers, Inc. or its affiliated companies. Lowe's Home Centers, Inc. or its affiliated companies reserves the right to require any person or entity to whom it may grant a written right to use a given name or mark to enter into a formal written license agreement with Lowe's Home Centers, Inc. or its affiliated companies and to charge a fee or loyalty therefor.

ARTICLE IV

GENERAL CONSTRUCTION & DEVELOPMENT

Section 4.1 Development Timing. When any Building is constructed on the Lowe's Parcel or an Outparcel, the Common Area on the Lowe's Parcel or that Outparcel shall be developed in accordance with the Site Plan at the expense of the Owner of said Lowe's Parcel or Outparcel, except as otherwise provided herein.

No initial buildings or structures shall be erected or allowed to remain on any Outparcel unless the civil drawings and elevations for such structure have been approved in writing by the Owner of the Lowe's Parcel, which approval shall not be unreasonably withheld. All civil drawings and elevations for such initial buildings or structures should be submitted to the Owner of the Lowe's Parcel in electronic format, on 11x17 paper or as otherwise reasonably designated by the Owner of the Lowe's Parcel. All initial improvements shall comply with the plans as presented by the Owner unless the same are in material or such changes are approved in writing by the Owner of the Lowe's Parcel. The right to make inspections necessary to assure compliance is reserved to the Owner of the Lowe's Parcel. Weather permitting, all paving and landscaping will be finished upon completion of the Building, but in no event shall it be installed later than ninety (90) days after the Building is occupied. Total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year, subject to force majeure.

Section 4.2 Parking Requirements. Each Outparcel shall be self-supporting with respect to parking and shall each contain not less than the number of parking spaces required by applicable law.

Section 4.3 Intentionally deleted.

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

- (a) Intentionally deleted.
 - (b) Any Building constructed on any of the Outparcels shall not exceed 26 feet in height, as measured from the lowest point of the finished elevation of the parking area within such Outparcel, except for architectural features, which may not exceed 28 feet in height, as measured from the lowest point of the finished elevation of the parking area within such Outparcel; provided, however any Building constructed on Lot 5, Lot 8, Proposed Lot 13, or Proposed Lot 15 as identified on the Site Plan, shall not exceed 28 feet in height, as measured from the lowest point of the finished elevation of the parking area within such Outparcel, except for architectural features, which may not exceed 32 feet in height, as measured from the lowest point of the finished elevation of the parking area within such Outparcel;
 - (c) Any rooftop equipment installed on any Outparcel shall be screened in a manner so as to be screened from public view;
 - (d) No rooftop signs shall be erected on any Building constructed on any Outparcel.
 - (e) A freestanding identification sign may be erected on any Outparcel, but in no event shall such freestanding identification sign exceed the height or square footage of the Owner of the Lowe's Parcel's monument sign located at the corner of LaGrange Rd. and 156th Street, or block the visibility of any signage on any Building located on the Lowe's Parcel or the visibility of any Lowe's or multi-occupant monument sign or pylon sign. Notwithstanding the foregoing, there may also 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 4 feet in height. Lowe's hereby reserves two (2) exclusive permanent sign easements for entry and access, construction, operation, including utility access, maintenance, repair, and relocation of signage, as shown on Lots 4 and 12 of the Site Plan and the Final Plat of Lowe's Orland Park Subdivision, recorded August 24, 2005, as document number 0517503092 in the office of the Recorder of Deeds, Cook County, Illinois.
- Lowe's hereby reserves for the Owner of Lot 8 one (1) exclusive permanent sign easement for entry and access, construction, operation, including utility access, maintenance, repair, and relocation of signage, as shown on Lot 13 of the Site Plan.
- (f) Each Outparcel shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
 - (g) Any Owner or other party purchasing or leasing from such Owner and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the utility facilities, as described in Section 2.4 of this ECCR, serving the Shopping Center which is caused by such Owner or party.
 - (h) Any of the restrictions or requirements set forth in this Section 4.4 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by the Consenting Party.

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(j) The foregoing restrictions and agreements set forth in this Section 4.4 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 undertaken by an Owner after the Building on the Lowe's Parcel has opened for business shall be accomplished in an expeditious, diligent and speedy manner. The person or entity undertaking such work shall: (i) pay all costs and expenses associated with such work; (ii) take necessary measures to minimize disruption and inconvenience caused by such work; (iii) make adequate provisions for the safety and convenience of the Owners and their occupants; (iv) control dust, noise and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area; (v) repair any and all damage which may be caused by or result from such work; (vi) restore all affected portions of the Lowe's Parcel or any Outparcel to a condition equal to or better than the condition existing prior to beginning such work; (vii) indemnify and hold harmless all other Owners in the Shopping Center against any mechanics liens for such work, particularly as to Common Areas. Such construction shall not unreasonably interfere with the business operations on any other parcel or Outparcel 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 or Outparcel and not encroach on any Common Areas on any other parcel or Outparcel and shall not utilize parking areas of any other parcel or Outparcel. In connection with construction work performed, incidental encroachment upon the Common Area of the party performing such work may occur in the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of such Common Area, if such encroachment is kept within reasonable requirements of such work expeditiously pursued. For construction purposes, the Common Areas may be utilized: (a) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with such work (but each Owner performing work shall, to the extent reasonably possible, limit such access to its own parcel or Outparcel) and (b) temporary storage and parking on the constructing Owner's parcel or Outparcel of materials and vehicles in connection with such work. All such work for which a license is granted above (i) which will be performed by an Owner on another Owner's parcel or Outparcel, or (ii) which would adversely affect the ingress and egress to the Shopping Center, the availability of parking and/or circulation of traffic in the Shopping Center, or the operation and supply of common utility facilities to or in the Shopping Center shall be undertaken only after giving the other Owners thirty (30) days prior written notice of the work to be undertaken, and the scope, nature, duration, location and extent of the work. Such notice shall include any plans and specifications for the work. In the event of any emergency involving an immediate and imminent threat of substantial harm or injury to persons or property, only such notice as may be reasonable under the circumstance shall be required.

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The Owner of the Lot 9 as shown on the Site Plan shall not modify the grading of Lot 9 without the prior written consent of the Owner of the Lowe's Parcel.

Section 4.6 Compliance in Construction. All construction, alteration or repair work which an Owner undertakes pursuant to this ECCR shall comply with plans and specifications therefor, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations, including procurement of all license and permits required for such work. An Owner's approval of any such work, or the plans and specifications therefor, under any provisions of this ECCR shall not constitute such Owner's assumption of responsibility for the accuracy, sufficiency or propriety of such work, or of such plans and specifications, nor shall constitute a representation or warranty that such work or plans and specifications call for construction of economic improvements or improvements which comply with law.

Section 4.7 Construction Insurance. Prior to commencing any construction activities within the Shopping Center, each Owner shall obtain or require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the minimum insurance coverage set forth below:

- (a) Worker's Compensation and Employer's Liability Insurance.
 - (i) Worker's compensation insurance as required by any applicable law or regulation with statutory limits.
 - (ii) Employer's liability insurance in the amount of \$2,000,000 each accident for bodily injury, \$2,000,000 policy limit for bodily injury by disease and \$2,000,000 each employee for bodily injury by disease.
- (b) General Liability Insurance. Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:
 - (i) Required Coverages:
 - (A) Premises and Operations;
 - (B) Products and Completed Operations;
 - (C) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
 - (D) Broad Form Property Damage (including Completed Operations);
 - (E) Explosion, Collapse, and Underground Hazards;
 - (F) Personal Injury Liability:
 - (1) \$2,000,000 each occurrence (for bodily injury and property damage);
 - (2) \$3,000,000 for Personal Injury Liability;
 - (3) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work);

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provided, however, if the Owner or Tenant has net worth of at least \$100,000,000, then \$3,000,000 shall be the minimum limit of coverage;

- (4) \$5,000,000 general aggregate; provided, however, if the Owner or Tenant has net worth of at least \$100,000,000, then \$3,000,000 shall be the minimum limit of coverage.

- (G) Automobile Liability Insurance. Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for any auto. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.

- (H) Umbrella Liability Insurance

(i) The general contractor shall also carry umbrella liability insurance in the amount of \$5,000,000; provided, however, if the Owner or Tenant has net worth of at least \$100,000,000, then \$3,000,000 shall be the minimum limit of coverage.

- (ii) If the construction activity involves the use of another parcel or Outparcel, then the Owner and mortgagee of such parcel or Outparcel shall each be additional insured(s) and such insurance shall provide that the insurance shall not be canceled, or reduced in an amount or coverage below the requirements of this ECCR, without at least thirty (30) days prior written notice to the additional insureds. If such insurance is canceled or expires, then the constructing party shall immediately stop all work on or use of the other Owner's parcel or Outparcel until either the required insurance is reinstated or replacement insurance obtained. Each Owner or occupant, as the case may be, shall supply or cause its general contractor to supply each Owner with certificates with respect to all insurance required by this Section.

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

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ARTICLE V**MAINTENANCE, TAXES AND INSURANCE**

Section 5.1 Maintenance. Each Owner hereto shall maintain or cause to be maintained its parcel or Outparcel, including the Building(s) and the Common Areas thereon, excluding, however, the Common Areas (including the non-dedicated roads) shown on the Site Plan that the Owner of the Lowe's Parcel will be responsible for maintaining on behalf of all the Owners (the "**Lowe's Control Area**"), in good order and condition and state of repair in accordance with the standards of good shopping center operation, including (but not limited to) sweeping and removal of trash, litter and refuse, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair of lighting standards and signs; provided, however, each Owner shall be solely responsible and shall indemnify all other Owners for any damage to the Shopping Center, including the roads and landscaping, as a result of construction on such indemnifying Owner's Outparcel(s). Each Owner, excluding the Owner(s) of the Village Parcels so long as the Owner(s) of the Village Parcels is the Village or another governmental authority, will pay the Owner of the Lowe's Parcel a flat annual fee of fifty cents (\$.50) per square foot of Building floor area on such Owner's Outlot, with a ten percent (10%) increase every five (5) years during the term of this ECCR, for the Common Areas to be maintained by the Owner of the Lowe's Parcel on behalf of all the Owners ("**Maintenance Fee**"). The Maintenance Fee shall be due, in advance, on January 1st of each year. The Maintenance Fee for partial years or construction completed during the year shall be equitably prorated and due upon completion of construction. Each Owner covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its Buildings clean; will maintain its Buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefor until called for to be removed; and will keep the Common Areas on its parcel or Outparcel clear of accumulations of ice and snow. The maintenance and repair of the Buildings and Improvements on each parcel or Outparcel should be of such a character that their appearance will be that of a unified shopping center and, accordingly, the Owners 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. Subject to, but not limited by, the Maintenance Fee to be paid by the other Owners, the Owner of the Lowe's Parcel shall be responsible and pay for all maintenance, repair, renovation, and replacement of Common Areas and the Common Area Improvements within the Lowe's Control Area.

Notwithstanding the previous paragraph, the Owner of the Lowe's Parcel may appoint a third party as an agent of all the Owners, excluding the Owner(s) of the Village Parcels so long as the Owner(s) of the Village Parcels is the Village or another governmental authority, to maintain and repair the Common

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Areas in the manner as above outlined. Said third party may receive for such agency a fee that is reasonably acceptable to the Owner of the Lowe's Parcel to cover supervision, management, accounting and similar fees. Instead of the Maintenance Fee referenced in the previous paragraph, the cost of all maintenance and repair activities undertaken by the third party agent, together with the agency fee, shall be prorated between the Owners, excluding the Owner(s) of the Village Parcels so long as such Owner(s) of the Village Parcels is the Village or another governmental authority, based upon acreage owned. An Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice thereafter. Maintenance of Lot 9 and Lot 10 and the bike path as shown on the Site Plan shall be the responsibility of the Village.

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

In the event any Building, structure or other Improvement on the Lowe's Parcel or an Outparcel shall be damaged or destroyed by any fire or other casualty, the Owner, lessee or user of the Lowe's Parcel or an Outparcel shall promptly (a) commence to repair and/or reconstruct such improvements to the condition required by this Section; or (b) level such Building or Improvement, remove the debris from the Lowe's Parcel or Outparcel and keep the Lowe's Parcel or Outparcel neat, orderly, planted in grass and mowed/trimmed until subsequently improved, constructed upon and operated.

Section 5.3 Default in Maintenance Responsibilities. In the event that an Owner fails in its maintenance obligations as set forth in Section 5.1, which failure continues for a period of thirty (30) days (ten (10) business days in the event of a failure to pay money) after receipt of written notice thereof specifying the particulars of such failure (or such longer period of time as is reasonably necessary to cure such default provided the defaulting Owner is diligently prosecuting the same to completion), such failure shall constitute a default under the ECCR and the Owner of the non-defaulting parcel (the "Curing Party") may thereafter perform such maintenance obligations, in addition to such Owner's other remedies.

Section 5.4 Taxes. The Owner of each parcel or Outparcel 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 or Outparcel. In the event an Owner fails to pay when due all taxes and assessments described herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a default under this ECCR and the Curing Party may, in addition to such Owners' other remedies, thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing

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Party shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have ten (10) business days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the parcel or Outparcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said ten (10) business day period until paid.

Section 5.5 Insurance; Indemnification; Waiver of Subrogation. Each Owner will at all times maintain or cause to be maintained with respect to its parcel or Outparcel and all Buildings and Improvements thereon: (i) commercial property insurance against loss or damage by fire, lightning and other risks customarily covered by an all-risks policy of property insurance for the full replacement cost of the Building(s) and Improvements located thereon and (ii) commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Owner's parcel or Outparcel combined single limit coverage of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence. Nothing herein shall be construed from prohibiting an Owner which itself, or in combination with its parent corporation, has a net worth in excess of TWO HUNDRED MILLION DOLLARS (\$200,000,000.00), as determined by generally accepted accounting principles, from self-insuring for such insurance coverage.

In the event an Owner fails to maintain the insurance described above, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a default under this ECCR and the Owner of the Lowe's Parcel and/or the Owner of the Developer Parcels (the "Curing Party") may, in addition to such Owners' other remedies, thereafter obtain and pay for such insurance. The Curing Party shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the parcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid.

To the extent not covered by the insurance policies described above, each Owner (the "Indemnitor") will pay, and indemnify and save harmless the other Owner (the "Indemnitee") from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from: (i) any injury to or death of a person or loss of or damage to property occurring on the Indemnitor's parcel or Outparcel; (ii) any use or condition of the Indemnitor's parcel or Outparcel; and (iii) any negligence or tortious acts of the Indemnitor or any of its tenants, licensees, agents or employees.

Each Owner (the "Releasor") hereby releases the other Owners (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

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release shall not adversely affect or impair said policy or policies or prejudice the right of the Releasor to recover thereunder.

ARTICLE VI
DEFAULT; REMEDIES

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

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

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

(c) The failure to observe or perform any other of the covenants, conditions or obligations of this ECCR or to abide by the restrictions and requirements herein provided, other than as described in (a) above, within thirty (30) days after the issuance of a notice by another Owner (the "**non-defaulting Owner**") specifying the nature of the default claimed (or such longer period of time as is reasonably necessary to cure such default provided the defaulting Owner is diligently prosecuting the same to completion).

Section 6.2 Right to Cure. With respect to any default under Section 6.1 above, any non-defaulting Owner shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Owner; provided, however, that in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the non-defaulting Owner, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the non-defaulting Owner shall have the right to enter upon the parcel or Outparcel of the defaulting Owner (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Owner. Each Owner shall be responsible for the non-performance or default of its Occupants and lessees. In the event any non-defaulting Owner shall cure a default, the defaulting Owner shall reimburse the non-defaulting Owner for all costs and expenses incurred in connection with such curative action, plus interest at the Default Rate, within ten (10) business days of receipt of demand, together with reasonable documentation supporting the expenditures made.

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

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applicable real estate records office of the county in which the said parcel or Outparcel is located, by the Owner making the claim. The claim of lien shall include the following:

- (i) The name and address of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a non-defaulting and/or curing Owner;
- (iii) An identification by name and address (if known) of the Owner or reputed Owner of the parcel or Outparcel or interest therein against which the lien is claimed;
- (iv) A description of the parcel or Outparcel against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien;
- (vi) A statement itemizing the total amount due, including interest;
- (vii) A statement that the lien is claimed pursuant to the provisions of this ECCR, reciting the date, book and page of recordation hereof.

The notice shall be duly acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 7.3 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of Illinois law.

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

Section 6.5 No Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. No waiver by any Owner of any default under this ECCR shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by a Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this ECCR shall not be deemed

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to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this ECCR.

Section 6.6 No Termination for Breach. No breach, whether or not material, of the provisions of this ECCR shall entitle any Owner to cancel, rescind or otherwise terminate this ECCR, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of this ECCR.

Section 6.7 Limitation of Liability. Notwithstanding the foregoing, any person acquiring fee or leasehold title to the Lowe's Parcel or an Outparcel, or any portion thereof, shall be bound by this ECCR only as to the Lowe's Parcel or Outparcel or portion of the Lowe's Parcel or Outparcel acquired or possessed by such person. In addition, such person shall be bound by this ECCR only during the period such person is the fee leasehold Owner or occupant of such Lowe's Parcel or Outparcel or portion of the Lowe's Parcel or Outparcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section 6.7, the easements, covenants and restrictions in this ECCR shall continue to be benefits to and servitudes upon said Lowe's Parcel or Outparcels running with the land.

Section 6.8 Breach. In the event of breach or threatened breach of this ECCR, an Owner shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In the event of a breach hereof, the non-prevailing Owner, as determined by the court, shall pay the reasonable attorney's fees of the prevailing Owner.

ARTICLE VII

MISCELLANEOUS

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

Section 7.2 Term and Perpetuity. The agreements, conditions, covenants, and restrictions created and imposed herein shall be effective upon the date hereof and shall continue in full force and effect, inure to the benefit of and be binding upon and enforceable by all Owners, their respective heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties until the expiration of sixty (60) years from the date hereof, unless sooner terminated by the consent of all the Owners pursuant to a writing recorded in the real property records of the county and state in which the Shopping Center is located. Said agreements and restrictions shall be unaffected by any change in the ownership of any real property covered by this ECCR or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein.

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Notwithstanding the foregoing, the easements contained herein binding and benefiting the Lowe's Parcel and the Outparcels shall be perpetual and shall run with the land.

Upon expiration or sooner termination of the agreements, conditions, covenants and restrictions of this ECCR, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this ECCR, except as related to the easements cited and mentioned herein, shall terminate and have no further force or effect.

Section 7.3 Notices. Any notice required or permitted to be given under this ECCR shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other Owners):

In the case of Lowe's:

Lowe's: Lowe's Home Centers, Inc.
Box 1111
(1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697)
North Wilkesboro, North Carolina 28656-0001
Attention: Property Management Dept.

Copy to: Lowe's Home Centers, Inc.
Box 1111
(1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697)
North Wilkesboro, North Carolina 28656-0001
Attention: Real Estate Law Department

If not previously provided by the Owner, the proper notice address to Owners other than Lowe's is the address found in records of the Cook County Collector.

Section 7.4 Ground Lessee Assignment. The rights and obligations of any Owner hereunder may be assigned in whole or in part to one or more ground lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or leases between such Owner and such ground lessee or lessees.

Section 7.5 No Covenant to Continuously Operate. No Owner is obligated to continuously operate a business on its parcel or Outparcel.

Section 7.6 Severability. In the event any provision or portion of this ECCR is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 7.7 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 rights, privileges or immunities of any Owner hereto shall insure to the benefit of any third-party, nor shall any third-party be deemed or considered to be a beneficiary of any of the provisions herein contained.

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Section 7.8 Intentionally deleted.

Section 7.9 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 Owners. It is understood that the relationship between the Owners is an arms length one that shall at all times be and remain that of separate owners of real property. No Owner shall have the right to act for or on behalf of another Owner, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Owner to be charged or bound, except as otherwise specifically provided herein. The Owners agree that this ECCR and any exhibits attached hereto may be amended only by written agreement signed by the Owner of the Lowe's Parcel, by the Owners of at least three-fourths (3/4ths) of the Outparcels, and all Owners whose Outparcels are directly affected by any such amendment.

Section 7.10 Intentionally deleted.

Section 7.11 Purchase of Outparcels. All Owners and occupants of Outparcels in the Shopping Center shall be bound by the terms of this ECCR.

[Signature page follows]

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(Orland Park, IL - ECCR - 7/19/06)

IN WITNESS WHEREOF, Lowe's has executed and delivered this ECCR as of the day and year first written above.

LOWE'S HOME CENTERS, INC.

By: Kevin D. Bennett

Name: Kevin D. Bennett
Vice President

Title: _____

lv
mk
fcb

STATE OF NORTH CAROLINA)
) ss
COUNTY OF WILKES)

The foregoing ECCR was sworn to and acknowledged before me on July 2nd, 2006 by Kevin D. Bennett as Vice President of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of the corporation.

Sherry Luckey
Notary Public

SHERRY LUCKEY
Notary Public, North Carolina
Wilkes County
My Commission Expires
January 25, 2010

My Commission Expires: 1/25/10

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(Orland Park, IL - ECCR - 1/15/06)

EXHIBIT A

Description of Shopping Center

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Final Plat of Lowe's Orland Park Subdivision, recorded August 24, 2005, as document number 0517503092 in the office of the Recorder of Deeds, Cook County, Illinois.

*in the SW 1/4 of the NW 1/4 of Section 15
Township 36 North Range 12, East of the
Third Principal Meridian in Cook County
Illinois*

2715300001

Property of Cook County Clerk's Office

(Orland Park, IL – ECCR – 7/16/06)

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EXHIBIT B

Description of Developer Parcels

Lots 2, 3, 4, 5, 8, 11, and 12 of the Final Plat of Lowe's Orland Park Subdivision, recorded August 24, 2005, as document number 0517503092 in the office of the Recorder of Deeds, Cook County, Illinois.

*on the SW 1/4 of the NW 1/4 of Sec 15 Township 36 North,
Range 12*

Property of Cook County Clerk's Office

(Orland Park, IL - ECCR - 1/16/06)

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EXHIBIT C

Description of Village Parcels

Lots 9 and 10 of the Final Plat of Lowe's Orland Park Subdivision, recorded August 24, 2005, as document number 0517503092 in the office of the Recorder of Deeds, Cook County, Illinois.

*in the SW 1/4 of the NW 1/4 of Section 15, Township
36 North Range 12*

Property of Cook County Clerk's Office

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(Orland Park, IL – ECCR – 7/18/06)

EXHIBIT D

Site Plan

Property of Cook County Clerk's Office

(Orland Park, IL – ECCR – 7/16/06)

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EXHIBIT D-1

Plat
(for informational purposes only)

Property of Cook County Clerk's Office

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(Orland Park, IL – ECCR – 7/19/06)

EXHIBIT E

ESTOPPEL CERTIFICATE

Date

To: _____

Re: Orland Park Shopping Center

Gentlemen:

This estoppel certificate is being delivered pursuant to Section 7.1 of the Easements, Covenants, Conditions and Restrictions (the "ECCR") dated _____, made by Lowe's Home Centers, Inc., a North Carolina corporation.

The undersigned hereby states that as of the present date:

1. The ECCR is unmodified and in full force and effect (or is modified and stating the modification).
2. To the best of the undersigned's knowledge, _____ (the other party) is (is not) in default in any respect under the ECCR (and if in default, specify such default).

The statements contained herein are not affirmative representations, warranties, covenants or waivers, but shall act solely to estop the undersigned from asserting any claim or defense against you as lender to the extent such claim or assertion is based upon facts now known to the undersigned which are contrary to those contained herein, and you as a bona fide lender for fair value have acted in reasonable reliance upon such statements without knowledge of facts to the contrary.

Very truly yours,

Title: _____

UNOFFICIAL COPY

OVERSIZE

EXHIBIT
FORWARD
TO PLAT COUNTER
FOR SCANNING

RECORDED DATE Aug 3, 2004

CASHIER # / NAME #242 DORSEA ROGERS