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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration"), is made and entered into as of the date of the last execution hereof, which date is the 6th day of July, 2001, by and between 144TH-MAPLE, L.L.C., a limited liability company ("Developer"), and LOWE'S HOME CENTERS, INC., a North Carolina corporation ("Lowe's"); (the foregoing parties hereinafter collectively referred to as the "Parties").

W I T N E S S E T H :

WHEREAS, Lowe's is the tenant under a certain Ground Lease by and between Developer and Lowe's, dated November 30, 2000 (the "Ground Lease"), under which Lowe's leases that certain tract of land located in Douglas County, Nebraska as more particularly described as "Lowe's Parcel" on Exhibit A attached hereto and shown on the site plan attached as Exhibit B (the "Site Plan"), both of which exhibits are made by this reference a part hereof.

WHEREAS, Developer is the owner of a certain tract of land located in Douglas County, Nebraska, which includes the Lowe's Parcel that is ground leased to Lowe's, consisting of approximately 30 acres of property which is designated on Exhibit B as the "Shopping Center" and is more particularly described in Exhibit C attached hereto and made a part hereof. That portion of the Shopping Center excluding the Lowe's Parcel is referenced herein as the "Developer Property," and is more particularly described in Exhibit D attached hereto and made a part hereof.

WHEREAS, Developer intends the Shopping Center, including the Lowe's Parcel, will form a unified shopping center to be known as "The Shops of Grayhawk".

NOW, THEREFORE, the Parties hereby declare that Lowe's Parcel and the Developer Parcel described on Exhibit C shall be held, sold, leased and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in such Properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner or occupant thereof. Further, in consideration of the premises, the promises and 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

DEFINITIONS

Section 1.1 "Building Area" shall mean all of those areas on each Parcel shown as Building Envelopes on Exhibit B, together with those portions of the expansion areas and Building Envelopes which are from time to time covered by a Building or other commercial structure.

Section 1.2 "Building Envelopes" shall mean all those areas on the Parcels located within the "Building Envelope Lines" as shown on Exhibit B.

Section 1.3 "Common Area" shall mean all real property within each Parcel which is intended for the common use and mutual enjoyment of the Owners, in keeping with the spirit and intent of this Declaration. "Common Area" shall include all non-publicly-dedicated streets, and all areas on each Parcel which are not Building Area, together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for Buildings. Canopies which extend over the Common Area, together with any columns or posts supporting the same, and sidewalks adjacent to a Building, shall be deemed to be a part of the Building to which they are attached and not a part of the Common Area. The garden center on the Lowe's Parcel shall not be deemed to be part of the Common Area. Common Area shall not include that portion of the Lowe's Parcel that is used by Lowe's as an Outside Sales Area or used for location, display or sales of merchandise, during the time when such outside location, display or sales are taking place; but the Owner of the Lowe's Parcel (as to the Lowe's Parcel) shall nonetheless be required to maintain and insure such Outside Sales Area on the Lowe's Parcel in accordance with the Declaration.

Section 1.4 "Owner" shall mean and refer to the record owner of a fee simple title or to the tenant under the Ground Lease, whether one or more persons or entities, to any Parcel which is a part of the Properties, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.5 "Parcel" shall mean and refer to the Developer Property (being Lots 1, 2, 3A, 3B, and 3C and the detention areas) and the Lowe's Parcel (being Lot 3) shown on Exhibit B, "Outparcel" shall mean and refer to any parcel of land shown for identification (and not for survey) purposes as numbered tracts 1 and 2 on Exhibit B. Every Outparcel shall be a Parcel from the date of recording of a subdivision map showing the Outparcel, so that all references herein to Parcels shall apply with equal force to Outparcels; however, references to Outparcels shall be specific to Outparcels as herein defined.

Section 1.6 "Properties" shall mean and refer to that certain real property described on the attached Exhibit A and Exhibit D.

ARTICLE II

EASEMENTS

Section 2.1 Definitions and Documentation. For the purposes of this Article, 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, 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 no such permission nor the

division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of the creation of such easement.

(c) The term "Building(s)" means the building(s) which has (have) been, will be or may be constructed within a Party's Permissible Building Area, but such term does not include Common Area Improvements (as that term is hereinafter defined).

(d) The term "Common Area Improvements" means all improvements which will be or may be constructed on the Common Areas under the terms of this Declaration, 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 of the same as may be agreed to by the Parties.

(e) The term "Common Utility Facilities" means utility systems and facilities from time to time situated on or serving both the Properties, up to the building wall of any Building, for use or service in common by both Parties 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 Declaration and as replacements thereto.

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

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

(h) The term "Party" means Developer or Lowe's and "Parties" means both of the foregoing, or any successor person(s) acquiring any interest of a Party in or to any portion of such Party's Parcel.

(i) The term "Permissible Building Area" means an area designated as on the Site Plan as the building envelopes within which a Building of a certain size and height may be constructed as hereinafter more fully provided. No building, structure or improvements (other than Common Area Improvements) shall be erected or maintained outside of a Permissible Building Area.

(j) The term "Separate Utility Facilities" means any of the following not for use in common by other Parties 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 storm and sanitary sewer 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 hereinafter defined in Section 2.1(f)) situated on any Parcel.

(k) All easements granted herein are non-exclusive and are irrevocable and perpetual, except as otherwise provided in this Declaration.

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

(m) In the event a Party transfers or conveys a portion of its Parcel in accordance with the terms of this Declaration, those easements granted under this Article 2 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 2 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.

(n) All easements granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of a Party, the other Parties 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 Parties. No grant of an easement pursuant to this Article 2 shall impose any greater obligation on any Party to construct or maintain its Building except as expressly provided in this Declaration.

Section 2.2 Easements for Use of Common Area. Developer, as the Owner of the Shopping Center, hereby creates and grants to Lowe's and to all tenants, occupants, invitees and licensees of the Shopping Center (each being a Grantee), easements in the Common Areas in and on the Shopping Center for:

- (a) ingress to and egress from the Parcels;
- (b) the passage of vehicles (provided, however, Lowe's may conduct parking lot sales and display merchandise in that portion of the parking areas designated as the Outdoor Sales Area on the Site Plan so long as it does not interfere with ingress and egress; is in accordance with customary practices at other similar stores; and is not in violation of any applicable law or ordinance. Further, notwithstanding anything herein to the contrary, subject to any restrictions of record, Lowe's shall have the right but not the obligation, to install and maintain a bank teller machine in its parking lot);
- (c) the passage and accommodation of pedestrians (Provided, however, Lowe's may display merchandise and conduct sidewalk sales on the sidewalks on the Lowe's Parcel so long as pedestrian passage is not obstructed and otherwise enclose and/or redesign its sidewalks without the need of obtaining any other Party's consent); and
- (d) the doing of such other things as are authorized or required to be done on the Common Area under this Declaration;

Provided, however, that such easements are limited to such portions of the Common Area of the Grantor's Parcel as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under this Declaration, including those portions of the Common Area shown on the Exhibit B.

Provided further that the Parties hereby specifically disclaim any intention to create any reciprocal parking easements between the Lowe's Parcel and the Developer Property, and there shall be no parking easements created on the Lowe's Parcel by Grantor.

(e) Enjoyment of the easements granted by this Section shall commence on the date the improvements on the Common Area in question are substantially completed.

(f) Each Party hereby reserves the right to eject from the Common Area on its parcel any person not authorized to use the same. In addition, each Party reserves the right to close off the Common Area of its Parcel 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 Party must give notice to the other Parties of its intention to do so and must coordinate its closing with the activities of the other Parties so that no unreasonable interference with the operation of the Properties occurs.

(g) The easements provided for in this Section 2.2 are subject to the rights to use the Common Area for other purposes provided for in this Declaration; provided, however, that no changes shall be made in the Common Area or in the location or design of Common Area Improvements, except as otherwise herein provided.

Section 2.3 Easements for Access Roads. Developer, as the Owner of the Shopping Center, hereby creates and grants to Lowe's, and to all tenants, occupants, invitees and licensees of the Shopping Center (each being a Grantee), easements for pedestrian and vehicular traffic in those strips of land on the Shopping Center which are shown on the Exhibit B as shaded roadways and common access easements (hereinafter collectively referred to as the "Access Roads") for the purpose of providing ingress to and egress from the Lowe's Parcel and the Developer Property each of 144th Road, 147th Road and Maple Road, 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) Developer, as Grantor of the Access Road easements, agrees not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Road, except to the extent necessary for 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; and

(c) The access points and drive lanes and the common access easements as shown on the Site Plan shall not be changed without the written permission of Lowe's and Developer, which consent shall not be unreasonably withheld, delayed, or conditioned.

Section 2.4 Easements for Utility Facilities. Developer, as the Owner of the Shopping Center, hereby creates and grants to Lowe's and to all tenants, occupants, invitees and licensees of the Shopping Center (each being a Grantee), perpetual easements to the Shopping Center, except within Permissible Building Area, as shown on Exhibit B, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Parcels.

(a) All Separate Utility Facilities installed in the Common Area, whether installed under this Section or otherwise, and all Common Utility Facilities, shall be underground if reasonably possible and the location of the Separate Utility Facilities shall be subject to the approval of the Party across whose Parcel the same are to be located.

(b) 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 the easement grant, as well as for all Separate Utility Facilities installed by the Grantee on its own parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by Grantee only after thirty (30) days advance notice to Grantor of Grantee's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after giving such advance notice to Grantor as is practicable under the circumstances. In addition, the Parties agree that all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as the same were in prior to the commencement of any such work. No such work or restoration, except emergency repair work, shall be carried on during the period from October 14 through the next succeeding January 4, or on any weekends.

(c) 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 exercise 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.

(d) 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 the 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 subparagraph (1) and otherwise complies with the requirements of subparagraphs (2), (3) and (4) of the following subparagraph (e) of this Section 2.4.

(e) Except during the period from October 14 through the following January 4th, the Grantor of any easement under this Section 2.4 may relocate on its Parcel any Separate Utility Facilities or Common Utility Facilities installed thereon under any easement granted by it; provided, however, that such relocation:

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

(2) 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 2.4. Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interferences or diminutions, or both);

(3) shall not reduce or unreasonably impair the usefulness or function of the facilities in question;

(4) shall be located underground, if reasonably possible; and

(5) 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.

(f) 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.

(g) Nothing herein shall be construed to grant any Party the right to utilize or drain into any detention facilities or retention located on any other Party's Parcel, except as permitted for the Shopping Center pursuant to the easements granted in this Declaration. It is acknowledged Lowe's will utilize and drain into detention facilities on the Shopping Center that are part of the Developer Property.

Section 2.5 Construction Easements.

(a) Developer, as Owner of the Shopping Center, hereby creates and grants to Lowe's easements in the Common Area of the Shopping Center, and where applicable, in the Permissible Building Area on Developer's Property in the Shopping Center prior to the construction of any Improvements thereon, for the following:

(1) The initial construction of the Improvements contemplated within this Declaration.

(2) 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 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.

(b) The location of all easements under this Section 2.5 shall be subject to the approval of Grantor.

(c) Each Grantee agrees to pay the Grantor the additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by Grantor which arises on account of Grantee's exercise of its 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 methods and timing in the exercise of such rights.

(d) Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the Buildings or other Improvements of any other Party, and shall not interfere with or interrupt the business operation conducted by any other Party in the Shopping Center. Provided further, the Parties agree that once the final topcoat of asphalt paving has been placed on the Lowe's Parcel, all construction traffic from the Developer's Property and the Lowe's Parcel will be limited to the use of the following roadways: 144th Street and other streets or driveways that are not on the Lowe's Parcel and that do not interfere with traffic flow to or on the Lowe's Parcel. 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 easements, except to the extent occasioned by Grantor's negligent or wrongful act or omission to act.

(e) Grantee's improvements in such easements shall, for purposes of maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under this Declaration, 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.

(f) Except as reasonably necessary for and during the construction of any building (in which case a Party may have a temporary structure(s) on its own Parcel), no structure of a temporary character shall be erected or allowed to remain on any Parcel.

Section 2.6 Self-Help Easements. Upon completion of construction of an enclosed building area on the Lowe's Parcel, Developer hereby grants to Lowe's easements in the Common Area of Developer's Parcel for the installation, construction, repair, maintenance, relocation and removal of any and all Separate Utility Facilities and Common Area Improvements, if such installation, construction, repair, maintenance, relocation or removal is required or permitted under the other provisions of this Declaration. Lowe's shall defend, indemnify and hold Developer harmless from and against all liens, losses, liabilities, costs or expenses (including attorney's fees) incurred in connection with or arising out of Lowe's exercise of said easements, except to the extent occasioned by the negligent or wrongful act or omission to act by Developer. The duration of the easements granted under this Section shall be coterminous with the respective provisions of the Declaration which give Lowe's the right or the obligation to perform the work described in this Section.

Section 2.7 Exterior Light Easements. Developer, as Owner of the Shopping Center, hereby creates and grants to Lowe's, and to all tenants, occupants, invitees and licensees of the Shopping Center (each, a Grantee), an easement to install, maintain, repair and replace, at the individual expense (including electricity) of the Grantee, lights for the purpose of highlighting the exterior of the Grantee's Building, such lights to be placed on light standards within that portion of the Common Area on Developer's Parcel contiguous to the Grantee's Parcel and within fifty (50) feet from the face of the Grantee's Building (the exact light standards to be used to be agreed upon by Developer and Lowe's), together with an easement of ingress to and egress from such light standards to accomplish such purpose. The position, location, type and character of such lights shall be subject to the approval of Developer. Each Grantee agrees to use due care in the exercise of the rights granted under this Section 2.7 and to obtain Developer's consent as to the methods and timing in the exercises of such rights, and further agrees, at Grantee's expense, to promptly repair, replace and restore any and all improvements of Developer which have been damaged or destroyed by Grantee in the exercise of the rights granted under this Section 2.7 and to defend, indemnify and hold Developer harmless from all loss, liability, cost or expense incurred in connection with or arising out of the exercise of such rights. The easements granted under this Section 2.7 shall terminate on the expiration of the term of this Declaration.

Section 2.8 Sign Easement. Developer, as Owner of the Shopping Center, hereby creates and grants to Lowe's, as Grantee, an easement to enter upon and install, maintain, repair and replace two signs on the Developer's Property, at Lowe's expense (including costs of electricity consumed), in the areas designated as Sign A and Sign B on the Site Plan.

Section 2.9 Abandonment of Easements. After the expiration of the term of this Declaration, the perpetual easements granted Sections 2.3 and 2.4 hereof, or all or any part or parts thereof, may be abandoned and terminated, if the use thereof shall have ceased and cessation thereof continues for a continuous period of five (5) years. Thereafter, the then record owner of the fee of the Parcel burdened with such easement may give written notice by United States certified mail, return receipt requested, mailed to the then record owner of the fee of the Parcel benefited by such easement and the then record owner, if any, of any leasehold interest in such benefited Parcel, stating that such easement has been abandoned and may place of record in the Real Property Records of Douglas County, Nebraska, an affidavit that such abandonment has taken place and that such notice has been properly given. If the then record owner of the fee of the benefited Parcel fails to place of record in the Real Property Records of Douglas County, Nebraska, within ninety (90) days after the giving of such notice, an affidavit that such easement has not ceased to be used for such continuous five (5) year period, such easement shall thereupon be conclusively deemed abandoned and any person having or thereafter acquiring an interest in the Parcel previously burdened shall hold and take such interest free of and unencumbered by such easement.

Section 2.10 Easements to Public Utilities. Any grant or other conveyance of an easement permitted hereunder to a public utility by Grantor on its Parcel shall, without necessity of further recital in

the conveyance instrument, be deemed to include the following conditions, covenants and restrictions to which such public utility and its successors shall be bound unless 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 approved by Grantor;

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

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

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

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

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

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

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

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

Section 2.11 No Barrier Agreement. No barriers, fences, 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 Properties 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. The preceding sentence shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. In addition, each owner may temporarily close or block traffic on its Parcel for the time necessary for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give fifteen (15) days written notice to each other Owner of its intention to do so and shall attempt to coordinate such closing with each other Owner, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction.

ARTICLE III

RESTRICTIONS

Section 3.1 Land Use and Building Type. Every Parcel shall be used only for businesses customarily located in retail shopping centers in the regional area, including, but not limited to, financial institutions, service shops, offices, and retail stores selling retail merchandise normally carried in other quality retail shopping centers, and restaurants with over fifty (50%) percent of gross revenues derived from food sales, but subject to the restrictions set forth herein.

Section 3.2 Completion of Improvements. All Buildings on the Shopping Center shall be constructed within the Permissible Building Areas only. 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, weather permitting.

Section 3.3 Nuisances. No Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations, and no Parcel may be used for purposes which violate Section 3.1 or which constitutes a nuisance.

Section 3.4 Use Restrictions.

(a) During the term of this Declaration no portion of the Properties may be used for any of the following purposes without the written consent of Developer and Lowe's:

(i) A tavern, bar, nightclub, discotheque or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than fifty (50%) percent of the restaurant's gross revenues.

(ii) A bowling alley or game room.

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

(iv) A health club or spa, unless such health club or spa is located more than 300 feet from the boundaries of the Lowe's Parcel.

(v) A service station or truck stop, except for gasoline pumps in conjunction with a convenience store located on either of the Outparcels.

(vi) A flea market.

(vii) A school, except for a tutorial center similar to a Sylvan Learning Center.

(viii) A car wash, except on an Outparcel and where the same shall have constructed and shall use sanitary sewer, water and stormwater drainage lines located within an adjacent public right of way that does not use the lines and systems solely utilized by the Lowe's Parcel.

(b) During the term of this Declaration, no portion of the Properties may ever be used for any of the following uses whatsoever:

(i) An adult type bookstore or other establishment selling or exhibiting pornographic materials or live nudity.

(ii) A massage parlor (which does not include health spas or clubs or beauty salons that offer massages as an incidental part of the health and fitness and beauty services, provided

any such health spa or health club or beauty salon is subject to the location restrictions set forth in Section 3.4(a)(iv) above).

- (iii) A skating rink.
- (iv) A mortuary.
- (v) A mobile home or trailer court, labor camp, junkyard or stockyard.
- (vi) A land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage.

(c) The freestanding Shopping Center signs allowed by governmental authorities for the Shopping Center (the "Center Signs") shall be located as shown on the Site Plan as Signs A through E, and Lowe's shall be the only occupant on Center Signs A and B. The design and appearance of Center Signs C, D and E are subject to the approval of Lowe's. The cost of constructing Center Signs A and B and maintaining each of them shall be paid by Lowe's; the cost of constructing Center Signs C, D and E and maintaining each of them shall be paid by Developer. Maintenance of the Center Signs shall be as defined in this Declaration. Except as shown on the Site Plan, no further signs, except approved directional signs and building signage, will be allowed on the Shopping Center without the approval of Lowe's and Developer.

Section 3.5 Use Restrictions on the Developer Property. No portion of the Shopping Center, excluding the Lowe's Parcel, may be sold, leased, or otherwise directly or indirectly, used or occupied for any of the following purposes (provided that such restrictions shall only apply to Developer Property for a period of time while the Lowe's Parcel is used as a retail and/or warehouse home improvement center, lumber yard or building materials supply center and for an additional period not to exceed eighteen (18) months after the Lowe's Parcel is no longer used as a retail and/or warehouse home improvement center, lumber yard or building materials supply center, provided that the Ground Lease is in effect during such 18 month period):

- (a) A hardware store containing more than 5,000 square feet of leasable floor area.
- (b) An appliance and/or home electronics store containing more than 5,000 square feet of leasable floor area, provided this prohibition shall not exclude a Best Buy store or a Circuit City store in the Shopping Center or a store which in the future is equivalent to Circuit City or Best Buy in the size of such store, products carried and sold by such store and in the merchandising and marketing format of such store, and the majority of the products sold from such equivalent store do not compete with the products sold by Lowe's.
- (c) A lawn and garden store containing more than 3,000 square feet of leasable floor area.
- (d) A paint and/or decor center containing more than 5,000 square feet of leasable floor area, provided this prohibition shall not exclude the office/shop of an interior decorator offering personal decorating services.
- (e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, and other stores or centers similar to those operated by Lowe's, Home Depot,

Home Owner's Warehouse, Home Quarters, Hechingers', Builders Square, 84 Lumber, Wickes, Hughes Lumber, McCoy's, Menard's, Sears Hardware, Sutherlands and Payless Cashways.

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). Subject to these restrictions, Developer reserves the right to subdivide, convey, lease or assign the Developer Property or any portion thereof through any means including, but not limited to, subdivision, lease, ground lease, condominium declaration or air-lot condominium declaration.

Section 3.6 Outparcel Development. Any Outparcel sold or developed on the Properties will only be developed under the following guidelines:

- (a) Any building constructed on any of the Outparcels shall not exceed 8,000 square feet. In the event Outparcels 1 and 2, as shown on the Site Plan, are combined into a single Outparcel, any building constructed on such combined Outparcel shall not exceed 16,000 square feet.
- (b) Any building constructed on any of the Outparcels shall not exceed 24 feet in height (which includes all roof top mechanical equipment, parapets, and design features), as measured from the finished floor elevation of the Outparcels; provided, all Outparcels will be graded in accordance with a grading plan for the Shopping Center approved by Developer and Lowe's.
- (c) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to Developer and Lowe's.
- (d) No rooftop signs shall be erected on any building constructed on any Outparcel, unless approved in advance by Lowe's and Developer.
- (e) A freestanding identification sign may be erected on any Outparcel only with the prior written consent of Lowe's, but in no event shall such freestanding identification sign exceed twelve (12) feet in height or block the visibility of the Lowe's building or pylon sign. Lowe's approval shall not be unreasonably withheld. If an owner of an Outparcel desires to erect such a freestanding sign, it shall make its request in writing to Lowe's with a copy of the sign plans. Lowe's shall then have thirty (30) days from receipt of the notice to object to the proposed sign. If Lowe's does not object within the thirty (30) day period, then the proposed sign shall be conclusively deemed approved, and Lowe's shall not have the right to any further objection. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3' 3" in height.
- (f) Any Outparcel shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
- (g) Any building, structure, or improvement constructed on any of the Outparcels shall conform to the provisions in Article III regarding use and prohibited uses.
- (h) Any party or independent owner purchasing or leasing from Developer and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the utility facilities, as described in Section 2.4 of this Declaration, serving the Properties and the Outparcel

caused by such party, or a lessee or user of the Outparcel, to the extent the Outparcel benefits from any of the utility facilities serving the Properties and the Outparcel.

(i) In the event any Building, structure or other improvement on an Outparcel shall be damaged or destroyed by any casualty, the owner, lessee or user of the Outparcel shall within twenty (20) days of such damage or destruction or within a reasonable period of time thereafter if such person is diligently pursuing same not to exceed 45 days from the date of damage or destruction (a) commence to repair and/or reconstruct such improvements to the condition required by this paragraph and Section 5.1; or (b) level such improvement, remove the debris from the Outparcel and keep the Outparcel neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

(j) Any of the restrictions set forth in this Section 3.6 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by written agreement of Developer and Lowe's; provided that neither Developer nor Lowe's shall waive, amend, modify, release, or terminate this Declaration without the prior written consent of the other Party. However, Developer and/or Lowe's, as the case may be, shall not amend or modify any of the foregoing restrictions if any such amendment or modification would impose additional restrictions on an Outparcel without the prior written consent of the fee owner of the Outparcel. The fee owner of such Outparcel, however, may impose additional restrictions on its Outparcel as such fee owner deems appropriate, subject to any exceptions thereto imposed on said fee owner at the time of conveyance of said Outparcel by Developer to said fee owner.

(k) Developer may subdivide, convey, lease or assign any Outparcel or any portion thereof through any means including, but not limited to, subdivision, lease, ground lease, condominium declaration or air-lot condominium declaration.

(l) The foregoing restrictions and agreements are imposed on each of the Outparcels for the benefit of the Properties. 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.

ARTICLE IV

CONSTRUCTION

Section 4.1 Buildings.

(a) Design and Construction. The Buildings within the Shopping Center shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Parcel onto another Parcel; provided, however, that Lowe's decision shall be final with respect to its Buildings. The design and construction shall be of high quality. No Building in the Center shall exceed forty feet (40') in height above finished grade as measured from finished floor to roof; provided, however that the main sign building pediment or entrance canopy pediment on any Building constructed on the Lowe's Parcel may exceed said height limitation, but shall not exceed in any event fifty feet (50'). Notwithstanding the foregoing, no Building in those areas of the Developer

Property on Lot 3B on the Site Plan may exceed forty feet (40') in height above finished grade as measured from finished floor to roof., although such Buildings may have either a main sign building pediment or minor architectural feature up to a total height of forty-five feet (45'). No Building in those areas of the Developer Property on Lot 3A or on Lot 3C on the Site Plan may exceed twenty-six feet (26') in height above finished grade as measured from finished floor to roof. No Building shall have a metal exterior (although a Building may have a standing metal seam roof or canopy features) and no rooftop signs shall be permitted on any Building constructed in the Shopping Center unless approved in advance by Lowe's and Developer.

(b) Location. No Building shall be constructed on any Parcel (as either immediate development or future expansion) except within the Permissible Building Areas. The front wall(s) of the Building(s) on the Lowe's Parcel shall be constructed approximately in the locations shown on the Site Plan.

(c) Fire Protection. Any Building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other Buildings in the Shopping Center.

(d) Completion of Improvements. All Improvements shall comply with the Site Plan unless changes are approved in writing by the Parties. Weather permitting, all paving and landscaping will be finished upon completion of the building, but in no event shall it be installed later than ninety (90) days after the Building is occupied. Total construction time from pouring footings to the completion of the building ready for occupancy shall not exceed one (1) year, subject to Unavoidable Delays.

Section 4.2 Construction Obligations.

(a) Site Development Agreement. Lowe's and Developer have executed, concurrently with execution of this Declaration, a Site Development Agreement, pertaining to the construction of the Improvements set forth therein.

(b) Grading Plan. Upon the development of any of the Parcels, the Owner of such Parcel covenants and agrees to grade said Parcel substantially in accordance with the Site Plan and the Grading Plan approved by the Parties. The finished floor elevation of the Improvements constructed on any portion of the Shopping Center shall not exceed the maximum elevations for such areas as shown on the Site Plan and the Grading Plan.

Section 4.3 Signs. Subject to compliance with all municipal and state laws and regulations and the provisions in that certain Mixed Use Agreement between Developer and the City of Omaha, dated February 15, 2001 (so long as such Mixed Use Agreement continues in effect for the Shopping Center), each Party shall be entitled to erect the applicable free-standing signs on its respective Parcel shown on the Site Plan as Signs A through E. No Owner or occupant of a Parcel shall be entitled to identification on a freestanding sign located on another Parcel, unless approved by Lowe's and Developer.

ARTICLE V

DEVELOPMENT, MAINTENANCE, AND TAXES

Section 5.1 Development

(a) "Parking Area" Ratio. Each Party hereto agrees that at all times there shall be independently maintained on each Parcel parking areas sufficient to accommodate no fewer than 4.0 paved full size automobile parking spaces for each one thousand (1,000) square feet of floor area contained within the Buildings on such Parcel, or the number of parking spaces required by applicable law, whichever is greater; provided, however, that ten paved full size automobile parking spaces for each 1,000 square feet of floor area contained within the Buildings on a Parcel, or the number of parking spaces required by applicable law, whichever is greater, will be required for restaurants; and, provided further, that fifteen paved full size automobile parking spaces for each 1,000 square feet of floor area contained within the Buildings on a Parcel, or the number of parking spaces required by applicable law, whichever is greater, will be required for restaurants serving alcohol.

(b) Subdivision. Subject to the provisions of this Declaration, Developer reserves the right to subdivide, convey, lease or assign its Parcel or any portion thereof through any means including, but not limited to, subdivision, lease, ground lease, condominium declaration or air-lot condominium declaration, and Lowe's reserves the right to sublease or assign its interest in the Lowe's Parcel as set forth in the Ground Lease.

Section 5.2 Maintenance. Each Party hereto shall maintain the Buildings on its Site in good order and condition and state of repair in accordance with the standards of good shopping center operation. Developer shall maintain the Common Areas and other areas of the Shopping Center, excluding the Buildings on the Lowe's Parcel, in good order 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 or lighting standards and signs. Each of the Parties 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 Site clear of accumulations of ice and snow. The Parties confirm their intention that the maintenance and repair of the Shopping Center Site should be of such a character that the Shopping Center Site's 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.

Lowe's and Developer hereby appoint Developer to maintain the Common Areas in the manner as above outlined as pertains to the Common Areas. Subject to the mutual agreement of the Parties hereto, a third party other than Developer may be appointed as an agent of the Parties to perform the maintenance to be performed by the Developer. Said third party may receive for such agency a fee that is mutually acceptable to all Parties to cover supervision, management, accounting and similar fees, which in the case of Lowe's, shall be the administrative fee identified in Section 10(b) in the Ground Lease. Either Developer, pursuant to the above paragraph, or the agent appointed by the Parties to maintain the Common Areas, will be paid by the Owners of the Shopping Center the costs incurred for the maintenance performed on the Common Areas, such costs to be paid on the basis of the acreage of the Owner's Parcel to the total acreage of the Shopping Center, as follows: Lowe's Parcel 45%; Developer Property 55%. In no event shall Lowe's be required to pay more than 45% of the costs for the Common Areas maintenance.

A Party shall have the right, upon giving not less than sixty (60) days' written notice to the other Owners, to take over and assume the maintenance of the Common Area on its Parcel. Following the effective date of such assumption, such Party shall maintain the Common Area on its Parcel, and shall pay all costs and expenses incurred in connection therewith; provided, however, Developer shall continue to maintain the Common Utility Lines of the Shopping Center regardless of location, shall continue to maintain the Common Area security program, if any, and shall continue to insure the Common Area on the other Parcels under the Developer's Common Area public liability insurance program if such Party elects to participate therein by written notice to the Developer. Upon such assumption, such Party shall be released from the obligation to contribute towards Developer's maintenance and operation of the balance of the Common Area, except with respect to those functions identified above for which continued participation is mandatory or elected; such Party's share of such costs shall be paid in accordance with the allocation set forth above. Developer shall continue to maintain the balance of the Common Area in accordance with the standards set forth herein. A Party which elects to self-maintain shall have the right to cause the Developer to resume the operation and maintenance of its Common Area upon the satisfaction of the following conditions: (i) such Party shall give the Developer at least 60 days' prior notice of its intention to have the Developer assume the operation and maintenance of its Common Area; and (ii) prior to the date established for Developer to reassume the maintenance and operation thereof, such Party shall, at its sole cost and expense, cause the Common Area on its Parcel to be at least equal to the same condition of maintenance then existing on the other portions of the Common Area then being maintained by the Developer.

Section 5.3 Taxes. Each of the Parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied against that part of the real property and improvements owned or leased by it. Notwithstanding the foregoing, Lowe's obligation for payment of taxes pertaining to the Lowe's Parcel is set forth in the Ground Lease.

ARTICLE VI

INSURANCE/INDEMNIFICATION/CASUALTY

Section 6.1 Indemnification. To the extent not covered by the insurance which a Party is obligated hereunder to carry, the Owner of each Parcel hereby indemnifies and saves harmless the other Parties from and against any and all liability, damage, expense, cause of action, suit, claim, or judgment arising from personal injury, death, or property damage and occurring on or from its own Parcel, except if caused by the act or negligence of the other Party hereto seeking indemnification.

Section 6.2 Insurance.

(a) The Owner of each Parcel shall procure and maintain in full force and effect throughout the term of this Declaration commercial general liability insurance and property damage insurance against claims for personal injury, death, or property damage occurring upon in or about its Parcel with combined single limit coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate. The Owner of each Parcel shall provide the other Parties with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Declaration. Such insurance shall provide that the same may not be canceled without at least thirty (30) days prior notice to the other Parties.

(b) At all times during the term of this Declaration, the Owner of each Parcel shall keep improvements on its Parcel insured against loss or damage by fire, lightning and other perils and events as may be customarily insured against under an "all-risk" policy of property and casualty insurance, with such insurance to be for the full replacement value of the insured improvements.

(c) Each Owner's policies of insurance provided for in this Article VI shall name such Owner as the named insured and the other Parties as additional insureds as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

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

(e) Notwithstanding anything to the contrary contained in this Section 6.2, so long as the net worth of a Party or its parent company shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as such Party or any affiliate thereof is owner or lessee of its Parcel, such Party shall have the

right to satisfy its obligations under this Article VI by self-insuring and retaining the financial risk for any claim.

Section 6.3 Damage and Destruction. In the event of the destruction and damage to any extent to the buildings and improvements on the Properties, the affected Party shall either (1) diligently commence and pursue completion of the repair or restoration and or (2) within ninety (90) days after the destruction or damage clear away the ruins and leave the Parcel in a clean, orderly, slightly and safe condition. Further, in the event that the affected Party elects not to rebuild its improvements, the use restrictions placed on the non-affected Party's site by the affected Party herein, except for those cited in Sections 3.3 and 3.4 and 3.5 hereof, shall be null and void and of no further force and effect.

ARTICLE VII

EMINENT DOMAIN

Section 7.1 Owner's Right to Award. Nothing herein shall be construed to give any Party any interest in any award or payment made to the other Parties in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Party's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the Shopping Center, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas.

Section 7.2 Collateral Claims. All other Owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another Owner.

Section 7.3 Tenant's Claim. Nothing in this Article VII shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and such Owner for all or a portion of any such award or payment.

Section 7.4 Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the Parcel of any Party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Parcel. Any holder of a first lien on any Parcel, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

Section 8.2 Expansion of Shopping Center. The Parties agree that in the event the Shopping Center is expanded by ownership, control of the Parties or agreement with a third party, all of the provisions of this Declaration shall apply to the expanded area and the parking to the building ratio in the expanded area shall not be less than that provided in Section 5.1.

Section 8.3 Release from Liability. Any person acquiring fee or leasehold title to any Parcel, or any expansion of the Shopping Center pursuant to Section 8.2 or any portion thereof, shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Parcel or portion of the Parcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section 8.3, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 8.4 Breach.

(a) Remedies. If any Party shall fail to perform any covenant or condition contained in this Declaration, the aggrieved Party(ies) shall give the defaulting Party at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting Party shall not have in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved Party(ies) may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

(b) Right of Entry. The defaulting Party hereby grants to the aggrieved Party(ies) a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting Owner's Parcel (excluding the right to enter in or upon any Buildings on such Parcel) for all purposes reasonably necessary to enable the aggrieved Party(ies) (acting directly or through agents, contractors or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Declaration which the defaulting Owner shall have failed to perform, after notice and time to cure, as aforesaid, but only such notice and time to cure as shall be reasonable or practicable under the circumstances need be given in the event of any emergency. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting Owner or collection may be sought otherwise and in any event the Defaulting Owner shall pay such amount with interest at the rate of two percent (2%) per annum over the then existing prime rate of interest announced from time to time by Citibank, N. A. or its successors (but in no event exceeding the maximum rate per annum permitted by law).

Section 8.5 Non-Merger. This Declaration shall not be subject to the doctrine of merger.

Section 8.6 Duration. Except for the easements granted under Sections 2.3, 2.4, 2.5, 2.6, 2.7 and 2.8, or unless otherwise extended by the Parties, or otherwise canceled or terminated by the Parties, this Declaration and all the easements, rights and obligations hereof shall continue and remain in effect for fifty (50) years from the date hereof, or, if a shorter period is required for the effectiveness of this

Declaration, so long as permitted by applicable law. If the Ground Lease terminates, and the Lowe's Parcel has not been purchased or otherwise acquired by Lowe's or its successor or assign, this Declaration will also terminate. Except as specifically set forth elsewhere in this Declaration, the easements, covenants, conditions, restrictions and agreements contained herein binding and benefiting the Parties shall run with the land.

Section 8.7 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

Section 8.8 Entire Agreement. This Declaration constitutes the entire agreement between the Parties hereto as to the matters set forth in this Declaration. The Parties do not rely upon any statement, promise or representation not herein expressed, and this Declaration once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

Section 8.9 Estoppel Certificates. Each Party shall upon not less than thirty (30) days from receipt of written notice from any other Party execute and deliver to such other Party a certificate stating that (a) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other Party or Parties are in default in any respect under this Declaration and if in default, specifying such default.

Section 8.10 Notice. Any notice required or permitted to be given under this Declaration 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 parties):

Developer: 144-Maple LLC
14769 California Street
Omaha, Nebraska 68154
Attention: Mr. Jeff Johnson

Lowe's: Lowe's Home Centers, Inc.
Highway 268 East - East Dock
Box 1111
North Wilkesboro, North Carolina 28659
Attention: Property Management Director

With a copy to: Lowe's Home Centers, Inc.
Highway 268 East - East Dock
P.O. Box 1111
North Wilkesboro, North Carolina 28659
Attention: David N. Barnes, Esq. Legal Dept. (REC)

any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or overnight courier delivery or upon deposit in the United States mail as provided

above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication.

Section 8.11 Assignment. The rights and obligations of any party hereunder may be assigned in whole or in part to any person acquiring the entire interest of such Party in its Parcel or to one or more ground lessees or lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or lease between such Party and such ground lessee or lessee.

Section 8.12 Exhibits. Each reference herein to an exhibit refers to the applicable exhibit that is attached to this Declaration. All such exhibits constitute a part of this Declaration and by this reference are expressly made a part hereof.

Section 8.13 Limitation of Liability. Any person acquiring fee or leasehold title to any of the Properties or any portion thereof, shall be bound by this Declaration only as to the parcel or portion of the parcel acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner 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 Paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said tracts running with the land.

Section 8.14 Term and Enforcement. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties. Said easements, restrictions and obligations shall be unaffected by any change in the ownership of any property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein.

Section 8.15 Harmony. Developer and Lowe's agree to cooperate in creating a harmonious exterior appearance for the improvements to be constructed by them on the Properties. After initial construction of the Buildings, no Party shall make alterations that will substantially change the exterior of its Buildings without the consent of the other Parties, such consent not to be unreasonably withheld. Lowe's may make changes in its buildings and improvements not inconsistent with the overall design of its initial building and a majority of its stores at the time of the changes, without the consent of the other Party. The Parties acknowledge that Lowe's initial design of its Building is hereby approved by Developer.

Section 8.16 No Covenant to Continuously Operate. Lowe's is not obligated to continuously operate a business on the Lowe's Parcel and is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse on its property. Nothing contained in this Declaration shall be construed, interpreted or otherwise read to require Lowe's to operate a business on the Lowe's Parcel or to prevent Lowe's from closing its business on the Lowe's Parcel.

Section 8.17 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 8.18 Counterparts. This Declaration 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.

[SIGNATURES ON NEXT PAGE]

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

144-MAPLE, L.L.C.,
a Nebraska limited liability company

By: [Signature]
Name: David E. Shelton
Its: Member

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

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

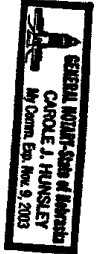
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STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Jeff Johnson, personally known to me to be the Member of 144- Maple, L.L.C., and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as such member, and as his free and voluntary act of said limited liability company for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

Given under my hand and Notarial Seal this 30 day of April, 2001.

Notary Public Carol J. Hunsley
My Commission Expires: 11-09-03



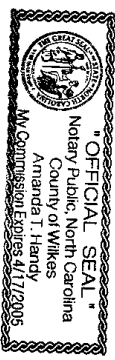
STATE OF NORTH CAROLINA)
)
COUNTY OF WILKES) SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that David E. Shelton personally known to me to be the Sr. Vice President of Lowe's Home Centers, Inc., and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sr. Vice President, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as such Sr. Vice President, and as his free and voluntary act of said Corporation for the uses and purposes therein set forth; and on his respective oath stated that he was duly authorized to execute said instrument.

Given under my hand and Notarial Seal this 6th day of July, 2001.

Amanda J. Hardy
Notary Public

My Commission Expires: 4-17-2005



Acknowledgment and Agreement of Lienholder

The undersigned, U.S. Bank National Association ("Bank"), is the holder of a first priority lien which encumbers the Shopping Center, as evidenced by a Deed of Trust recorded on March 13, 2000 in book 2000 Page 5987 of the records of Douglas County, Nebraska (the "Indenture") and an Assignment of Rents recorded on March 13, 2000 in Book 2000 Page 1330 of the records of Douglas County, Nebraska (the "Assignment"). Bank hereby consents to the recording of this Declaration and states, on behalf of itself and its successors and assigns, that the Indenture and the Assignment shall be subject to the terms and conditions of this Declaration, and in the event of any foreclosure of the Indenture or Assignment, this Declaration shall continue without interruption.

U.S. Bank National Association

By: [Signature]
Name: Edward J. Keller
Its: S. W. Powell

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS) SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Edward J. Keller, personally known to me to be the Sr. Vice Pres of U.S. Bank National Association, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Sr. Vice President, and as his free and voluntary act of said U.S. Bank National Association for the uses and purposes therein set forth, and on his respective oath stated that he was duly authorized to execute said instrument.

Given under my hand and Notarial Seal this day of May 14, 2001.

[Signature]
Notary Public
My Commission Expires: 11-9-03



EXHIBIT A

LEGAL DESCRIPTION OF LOWE'S PARCEL

A tract of land located in Section 11, T15N, R11E of the 6th P.M., Douglas County, Nebraska, and also described as a part Lot 3, Grayhawk, a Subdivision in Douglas County, Nebraska, being more particularly described as follows: Referring to the NE corner of said Section 11; thence S 89°36'31" W (assumed bearing), 1273.26 ft. on the North line of said Section 11; thence S 00°23'29" E, 504.24 ft. to the point of beginning; thence N 89°36'31" E, 266.03 ft.; thence Easterly on a 150.00 ft. radius curve to the left, 112.94 ft. (long chord bears N 68°02'20" E, 110.29 ft.); thence Easterly on a 150.00 ft. radius curve to the right, 101.69 ft. (long chord bears N 65°53'26" E, 99.75 ft.); thence Easterly on a 150.00 ft. radius curve to the left, 84.26 ft. (long chord bears N 69°13'10" E, 83.16 ft.); thence S 36°52'22" E, 15.36 ft.; thence S 00°23'29" E, 277.41 ft.; thence S 45°15'29" E, 141.34 ft.; thence S 44°44'31" W, 38.56 ft.; thence Southerly on a 50.00 ft. radius curve to the left, 39.27 ft. (long chord bears S 22°14'25" W, 38.27 ft.); thence S 00°15'41" E, 282.95 ft.; thence S 45°15'29" E, 45.27 ft.; thence S 44°44'31" W, 88.84 ft.; thence S 58°06'05" W, 59.32 ft.; thence S 89°44'31" W, 511.72 ft.; thence N 45°15'29" W, 102.28 ft.; thence N 00°23'29" W, 375.95 ft.; thence Northerly on a 550.00 ft. radius curve to the left, 262.52 ft. (long chord bears N 13°16'56" E, 260.03 ft.); thence N 00°23'29" W, 49.23 ft. to the point of beginning, containing 11.20 acres more or less.

EXHIBIT C
LEGAL DESCRIPTION OF SHOPPING CENTER

A tract of land located in the Northeast Quarter of Section 11, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 11; thence South 89 degrees 36 minutes 31 seconds West (assumed bearing) on the North line of said Northeast Quarter of Section 11, 125.33 feet; thence South 00 degrees 23 minutes 29 seconds East, 140.00 feet to the point of beginning; said point also being on the Southerly right-of-way of West Maple Road; thence parallel to the East line of said Northeast Quarter of Section 11, South 00 degrees 15 minutes 29 seconds East, 550.00 feet; thence South 89 degrees 44 minutes 31 seconds West, 36.33 feet; thence South 44 degrees 44 minutes 31 seconds West, 802.17 feet; thence South 89 degrees 44 minutes 31 seconds West, 531.10 feet; thence North 45 degrees 15 minutes 29 seconds West 102.28 feet; thence North 00 degrees 23 minutes 29 seconds West, 375.99 feet to the beginning of a curve to the left; thence along said curve to the left, having a radius of 550.00 feet, and a chord bearing North 13 degrees 16 minutes 56 seconds East, 260.03 feet, and an arc distance of 262.52 feet; thence North 00 degrees 23 minutes 29 seconds West, 72.23 feet; thence North 89 degrees 36 minutes 31 seconds East, 250.00 feet; thence North 00 degrees 23 minutes 29 seconds West, 375.95 feet to a point on the Southerly right-of-way line of West Maple Road; thence along said Southerly right-of-way line the following three (3) courses: (1) thence South 87 degrees 13 minutes 42 seconds East, 402.00 feet; (2) thence North 77 degrees 27 minutes 12 seconds East, 332.45 feet; (3) North 89 degrees 36 minutes 31 seconds East, 171.55 feet to the point of beginning.

EXHIBIT D
LEGAL DESCRIPTION OF DEVELOPER PROPERTY

A tract of land located in the Northeast Quarter of Section 11, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 11; thence South 89 degrees 36 minutes 31 seconds West (assumed bearing) on the North line of said Northeast Quarter of Section 11, 125.33 feet; thence South 00 degrees 23 minutes 29 seconds East, 140.00 feet to the point of beginning, said point also being on the Southerly right-of-way of West Maple Road; thence parallel to the East line of said Northeast Quarter of Section 11, South 00 degrees 15 minutes 29 seconds East, 550.00 feet; thence South 89 degrees 44 minutes 31 seconds West, 36.33 feet; thence South 44 degrees 44 minutes 31 seconds West, 802.17 feet; thence South 89 degrees 44 minutes 31 seconds West, 531.10 feet; thence North 45 degrees 15 minutes 29 seconds West 102.28 feet; thence North 00 degrees 23 minutes 29 seconds West, 375.99 feet to the beginning of a curve to the left; thence along said curve to the left, having a radius of 550.00 feet, and a chord bearing North 13 degrees 16 minutes 56 seconds East, 260.03 feet, and an arc distance of 262.52 feet; thence North 00 degrees 23 minutes 29 seconds West, 72.23 feet; thence North 89 degrees 36 minutes 31 seconds East, 250.00 feet; thence North 00 degrees 23 minutes 29 seconds West, 375.95 feet to a point on the Southerly right-of-way line of West Maple Road; thence along said Southerly right-of-way line the following three (3) courses; (1) thence South 87 degrees 13 minutes 42 seconds East, 402.00 feet; (2) thence North 77 degrees 27 minutes 12 seconds East, 332.45 feet; (3) North 89 degrees 36 minutes 31 seconds East, 171.55 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM:

A tract of land located in Section 11, T15N, R11E of the 6th P.M., Douglas County, Nebraska, and also described as a part of Lot 3, Grayhawk, a Subdivision in Douglas County, Nebraska; being more particularly described as follows: Referring to the NE corner of said Section 11; thence S 89°36'31" W (assumed bearing), 1273.26 ft. on the North line of said Section 11; thence S 00°23'29" E, 504.24 ft. to the point of beginning; thence N 89°36'31" E, 266.03 ft.; thence Easterly on a 150.00 ft. radius curve to the left, 112.94 ft. (long chord bears N 68°02'20" E, 110.29 ft.); thence Easterly on a 150.00 ft. radius curve to the right, 101.69 ft. (long chord bears N 65°53'26" E, 99.75 ft.); thence Easterly on a 150.00 ft. radius curve to the left, 84.26 ft. (long chord bears N 69°13'10" E, 83.16 ft.); thence S 36°52'22" E, 15.36 ft.; thence S 00°23'29" E, 277.41 ft.; thence S 45°15'29" E, 141.34 ft.; thence S 44°44'31" W, 38.56 ft.; thence Southerly on a 50.00 ft. radius curve to the left, 39.27 ft. (long chord bears S 22°14'25" W, 38.27 ft.); thence S 00°15'41" E, 282.95 ft.; thence S 45°15'29" E, 45.27 ft.; thence S 44°44'31" W, 88.84 ft.; thence S 58°06'05" W, 59.32 ft.; thence S 89°44'31" W, 511.72 ft.; thence N 45°15'29" W, 102.28 ft.; thence N 00°23'29" W, 375.95 ft.; thence Northerly on a 550.00 ft. radius curve to the left, 262.52 ft. (long chord

(Covenants, Conditions and Restrictions NW Omaha, NE)

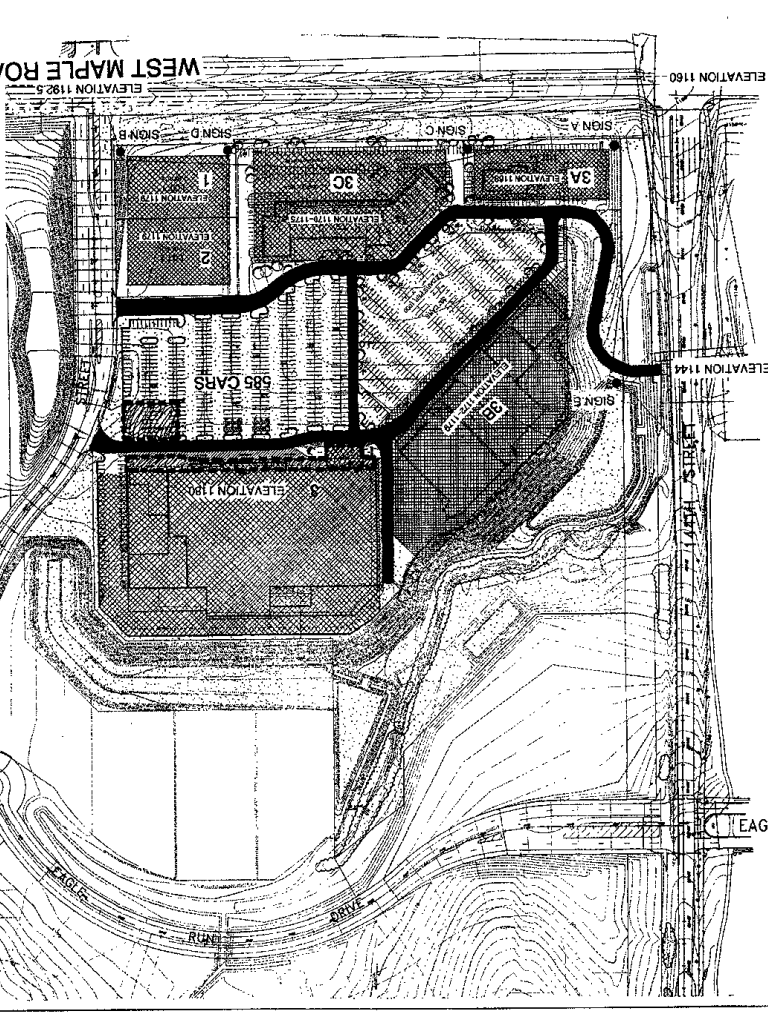
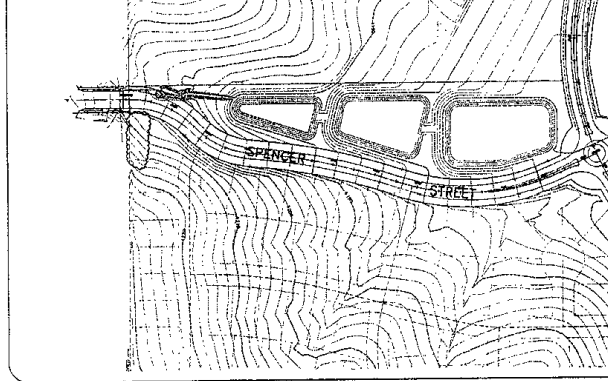
bears N 13°16'56" E, 260.03 ft.); thence N 00°23'29" W, 49.23 ft. to the point of beginning, containing 11.20 acres more or less.

EXHIBIT B.

for lot 3.
 Note 6: Maximum Bldg. Area shall not exceed the designated Bldg. envelope.
 Note 5: The parking ratio shall be a minimum of 4.0 cars per 1000 G.L.A. for lot 3.
 Note 4: Architectural features and mechanical units may exceed the maximum building height up to 25'.
 Note 3: Maximum Square Footage shall be determined using the parking ratios of Note 1 and 2.
 Note 2: Sign A - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign B - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign C - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign D - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign E - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign F - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign G - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign H - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign I - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign J - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign K - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign L - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign M - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign N - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign O - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign P - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign Q - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign R - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign S - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign T - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign U - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign V - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign W - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign X - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign Y - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign Z - 10' Tall monument sign to be designated by the developer in a location allowed by city code.

Lot	Building Number	Maximum Building Floor Height	Maximum Building Area	Maximum Building Volume	Maximum Building Footprint	Maximum Building Envelope
1	24	1179	25	0	0	8,000
2	24	1179	25	0	0	8,000
3	30	1179	25	0	0	8,000
4	30	1179	25	0	0	8,000
5	30	1179	25	0	0	8,000
6	30	1179	25	0	0	8,000
7	30	1179	25	0	0	8,000
8	30	1179	25	0	0	8,000
9	30	1179	25	0	0	8,000
10	30	1179	25	0	0	8,000
11	30	1179	25	0	0	8,000
12	30	1179	25	0	0	8,000
13	30	1179	25	0	0	8,000
14	30	1179	25	0	0	8,000
15	30	1179	25	0	0	8,000
16	30	1179	25	0	0	8,000
17	30	1179	25	0	0	8,000
18	30	1179	25	0	0	8,000
19	30	1179	25	0	0	8,000
20	30	1179	25	0	0	8,000
21	30	1179	25	0	0	8,000
22	30	1179	25	0	0	8,000
23	30	1179	25	0	0	8,000
24	30	1179	25	0	0	8,000
25	30	1179	25	0	0	8,000
26	30	1179	25	0	0	8,000
27	30	1179	25	0	0	8,000
28	30	1179	25	0	0	8,000
29	30	1179	25	0	0	8,000
30	30	1179	25	0	0	8,000

Note 1: The parking ratio for the lot shall be a minimum of 4.0 cars per 1000 G.L.A. for general retail. Maximum shall have a minimum parking ratio of 4.0 cars per 1000 for those restaurants and bars. If lot 1 and 2 become combined for a General Retail use, then 1,000 sq. ft. is allowed.
 Note 2: The parking ratio shall be a minimum of 4 cars per 1000 G.L.A. overall between building envelope 3B and building Envelope 3C.
 Sign A - LOWESS SIGN
 Sign B - LOWESS SIGN
 Sign C - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
 Sign D - 10' Tall monument sign to be designated by the developer in a location allowed by city code.
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144TH AND WEST MAPLE ROAD
 OMAHA, NE

GRAYHAWK
 144TH AND WEST MAPLE ROAD
 OMAHA, NE

REVISED JUNE 1, 2001
 OCTOBER 10, 2000
 REVISED JANUARY 12, 2001

EXHIBIT C
LEGAL DESCRIPTION OF SHOPPING CENTER

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LEGAL DESCRIPTION OF DEVELOPER PROPERTY

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