

FILED SARPY CO. NE.  
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*Lloyd J. Dowding*  
REGISTER OF DEEDS

COUNTER PUM C.E. SM  
VERIFY SM D.E. SM  
PROOF SM  
FEES \$ 57.50  
CHECK# 72088  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NFR \_\_\_\_\_



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FOR RECORDING  
INFORMATION.**

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NEXT PAGE.**

**LLOYD J. DOWDING**

SARPY COUNTY REGISTER OF DEEDS  
1210 GOLDEN GATE DRIVE, STE 1109  
PAPILLION, NE 68046-2895  
402-593-5773

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**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE (this "Memorandum") is made and entered into as of the date of the last execution, which date is the 23rd day of January, 2006, by and between Market Pointe, LLC, a Missouri limited liability company ("Landlord"), and LOWE'S HOME CENTERS, INC., a North Carolina corporation ("Tenant");

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Ground Lease dated as of an even date with this Memorandum (the "Lease");

WHEREAS, the Lease pertained to certain premises located in Sarpy County, Nebraska, said premises being more specifically described on Exhibit A, attached hereto and made a part hereof (the "Demised Premises"); and

WHEREAS, the Demised Premises are part of a shopping center, comprised of the Demised, Premises, certain parcels owned by the Landlord or in which Landlord has easement rights, being more specifically described on Exhibit B attached hereto and made a part hereof (the "Landlord Parcels") and a parcel owned by Wal-Mart Real Estate Business Trust (the "Wal-Mart Parcel"). The "Shopping Center" is composed pf the Demised Premises, the Landlord Parcels and the Wal-Mart Parcel.

WHEREAS, Landlord and Tenant desire to evidence the Lease in the Official Records of Sarpy County by the recitations contained in this Memorandum.

NOW, THEREFORE, in consideration of the foregoing and TEN DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord does hereby demise, lease and let unto Tenant the Demised Premises, as follows:

1. Term of Lease. The Term of the Lease shall be for a twenty (20) year period, subject to five (5) Renewal Terms of five (5) years each, provided Tenant is not in material default. The Original Term will commence upon the date of the Lease and will expire on 11:59 p.m. (local time) of the day prior to the twentieth (20th) anniversary of the Rent Commencement Date (a Memorandum of which will be recorded at a later date confirming the actual Rent Commencement Date).

2. Right of First Offer. The Lease contains a right of first offer in favor of Tenant should Landlord desire to sell the Demised Premises or assign its rights in the Lease to a third party.

3. Shopping Center Uses. In addition to the restrictions on use in the ECR, the following use restrictions apply under the Lease.

(a) Restricted Uses. During the Term, no portion of the Shopping Center may be used for any of the following purposes without the written consent of Tenant:

(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 comprise less than fifty percent (50%) of the restaurant's gross annual revenues.

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

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



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(iv) A health club, gymnasium or spa, provided a health club that is no larger than 4,000 square feet of space may be located on the Outlots of Shopping Center, except on Outlots 7 through 9.

(v) A service station, automotive repair shop or truck stop; provided, however, the foregoing shall not prohibit a fuel facility on the Wal-Mart Parcel nor an automotive repair facility located within a Wal-Mart store on the Wal-Mart Parcel, provided the entire repair service is located within the Wal-Mart store and no repairs are conducted outside the building.

(vi) A flea market or pawn shop.

(vii) A training or educational facility (including without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers); provided, if Kohl's Stores Corporation does not lease or own Lot 3 of the Shopping Center, one educational facility may be located on the southern half of Lot 3 provided all other requirements of this Lease and the ECR are satisfied, including maintaining the required parking ratios.

(viii) A car wash, except in conjunction with a fuel facility on the Wal-Mart Lot of the Shopping Center or on a single Outlot and where the same shall have constructed and shall use sanitary sewer, water and storm water drainage lines entirely separate from those utilized at the Demised Premises.

(ix) A medical clinic or office; provided, however, a medical clinic or office that is less than 5,000 square feet for dentistry, physical therapy/sports medicine, ophthalmology services, podiatry, audiology or dialysis services may be located on an Outlot.

(x) A dry cleaning plant, central laundry or Laundromat; provided, any of the foregoing which offer drop-off service only and do not perform any laundering, treatment or dry cleaning on the site shall be permitted.

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

(xii) A child day care facility; provided a child care facility that is at least 300 feet from the Demised Premises is permitted.

(b) Prohibited Uses. During the Term of this Lease, no portion of the Shopping Center may ever be used for any of the following uses whatsoever:

(i) An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") [except the foregoing does not prohibit a general purpose bookstore normally found in a first class shopping center such as a "Borders" or "Barnes and Noble" store], or providing adult type entertainment or activities (including, without limitation, any displays of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts.

(ii) A massage parlor.

(iii) A skating rink.

(iv) A mortuary, crematorium or funeral home.

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

(vi) A land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage.

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

(c) Tenant's Exclusives. Provided a Tenant Event of Default is not then continuing (and excluding the Wal-Mart Parcel and excluding the Kohl's Parcel so long as the Kohl's Lease is in effect for the Kohl's Parcel), Tenant shall have the exclusive right, during the Term, to operate within the Shopping Center a building material supplies or home center or home improvement retail warehouse as such businesses are commonly understood in the shopping center business. Neither Landlord, nor any tenant or occupant of the Shopping Center, shall sell, lease, or otherwise allow, directly or indirectly, the use or occupancy of any space in the Shopping Center (excluding the Wal-Mart Parcel and excluding the Kohl's Parcel so long as the Kohl's Lease is in effect for the Kohl's Parcel), including all of the Outlots of the Shopping Center, or any property owned by Landlord adjoining the Demised Premises or the Shopping Center for any of the following uses (except for Tenant's uses of any of the foregoing on the Demised Premises):

- (i) A hardware store containing more than 5,000 square feet of useable floor area.
- (ii) An appliance and/or home electronics store containing more than 5,000 square feet of useable floor area; provided, however, the foregoing shall not prohibit a Best Buy store, Circuit City store, Radio Shack store, or Gateway Computer store, or a successor store to any of the foregoing provided the successor store operates in substantially the same manner and with substantially the same products and percentages of products as presently operated and offered by Best Buy store, Circuit City store, Radio Shack store or Gateway Computer store (or if different products or percentages are offered, the products offered do not otherwise exceed the limitations of this section 19(c)).
- (iii) A lawn and garden store containing more than 3,000 square feet of useable floor area.
- (iv) A paint and/or home decor center containing more than 5,000 square feet of useable floor area.
- (v) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply.

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 3(c)(i) through (iv) when such space exceeds the limitations of subparagraphs 3(c)(i) through (iv).

(d) Additional Restrictions and Requirements: Any rooftop equipment shall be screened in a commercially reasonable manner satisfactory to Landlord and Tenant with respect to any of the Outlots identified as Lots 7, 8 and 9.

4. Subject to Lease. This Memorandum is subject to all conditions, terms and provisions of the Lease, which agreement is hereby adopted and made a part hereof by reference to the same in the same manner as if all the provisions thereof were copied herein in full.

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5. In the event of a conflict between the terms of the Lease and this Memorandum, the Lease shall prevail. Reference should be made to the Lease for a more detailed description of all matters contained in this Memorandum.

6. Capitalized terms not defined herein shall have the meaning as set forth in the Lease.

**[SIGNATURE BLOCKS TO FOLLOW ON THE NEXT PAGE]**



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IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum effective as of the date first written above.

"LANDLORD":

Market Pointe, LLC,  
a Missouri limited liability company

By: *Owen J. Buckley*  
Owen J. Buckley, Managing Member

"TENANT":

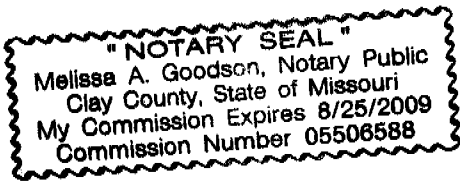
LOWE'S HOME CENTERS, INC.,  
a North Carolina corporation

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

STATE OF MISSOURI            )  
  ) ss.  
COUNTY OF JACKSON        )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December, 2005, by Owen J. Buckley, a Managing Member of Market Pointe, LLC, a Missouri limited liability company, on behalf of the limited liability company.

[SEAL]



*Melissa A. Goodson*  
Notary Public  
My Commission Expires \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_ of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of the Corporation.

[SEAL]

My Commission Expires \_\_\_\_\_  
Notary Public

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**EXHIBIT A**

**Legal Description of Demised Premises**

Lot Two (2), in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska as amended by the Administrative Lot Line Adjustment Lots 2 and 3 Market Pointe Addition, adjusting Lots 2 and 3.



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**EXHIBIT B**

**Legal Description of the Landlord Parcels**

Lots Two (2) through 14 and Outlot "A", in Market Pointe Addition, a Subdivision, in Sarpy County, Nebraska

Together with easements granted to Landlord in the following parcels:

A tract of land more particularly described below located the Northwest ¼ of Section 24, Township 14 North, Range 12, East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska:

**COMMON F:**

Commencing at the Northwest Corner of the East Half of said Northwest Quarter, thence on an assumed bearing of South 00 Degrees 03 Minutes 18 Seconds East along the West line of the East Half of said Northwest Quarter, a distance of 32.90 feet to a point of intersection with the South line of Giles Road Right-of-Way, said point being the True Point of Beginning, thence South 89 Degrees 40 Minutes 45 Seconds East along said South line, a distance of 118.68 feet to a point to the point of curvature of a non tangent curve, thence along a curve in a counter clockwise direction, having a radius of 49.00 feet, Arc length of 42.66 feet, Delta angle of 49 Degrees 52 Minutes 57 Seconds, a chord bearing of South 24 Degrees 53 Minutes 11 Seconds West, and a chord length of 41.33 feet to a point of tangency, thence South 00 Degrees 03 Minutes 18 Seconds East, a distance of 19.65 feet to a point of curvature, thence along a curve in a clockwise direction, having a radius of 126.00 feet, arc length of 173.01 feet, delta angle of 78 Degrees 40 Minutes 16 Seconds, a chord bearing of South 39 Degrees 16 Minutes 51 Seconds West, and a chord length of 159.73 feet to a point of intersection with the West line of the East Half of said Northwest Quarter, thence North 00 Degrees 03 Minutes 18 Seconds West along the West line of the East Half of said Northwest Quarter, a distance of 181.45 feet to the Point of Beginning, said tract contains a calculated area of 15,399.80 square feet or 0.3535 acres, more or less.

**COMMON G:**

Commencing at the Northwest Corner of the East Half of said Northwest Quarter, thence on an assumed bearing of South 00 Degrees 03 Minutes 18 Seconds East along the West line of the East Half of said Northwest Quarter, a distance of 32.90 feet to a point of intersection with the South line of Giles Road right-of-way, thence South 89 Degrees 40 Minutes 45 Seconds East along said South line, a distance of 105.25 feet to a point, said point being the True Point of Beginning, thence continuing South 89 Degrees 40 Minutes 45 Seconds East along said South line, a distance of 264.26 feet to a point, thence South 00 Degrees 03 Minutes 18 Seconds East, a distance of 250.01 feet to a point, thence North 89 Degrees 40 Minutes 45 Seconds West, a distance of 264.26 feet to a point, thence North 00 Degrees 03 Minutes 18 Seconds West, a distance of 250.01 feet to the Point of Beginning, said Tract contains a calculated area of 66,066.14 square feet, or 1.5167 acres more or less.

**COMMON H:**

Beginning at the Southwest Corner of the East Half of said Northwest Quarter of Section 24, , thence on an assumed bearing of North 00 Degrees 03 Minutes 18 Seconds West along the West line of the East Half of said Northwest Quarter, a distance of 278.76 feet to a point, thence South 89 Degrees 42 Minutes 55 Seconds East, a distance of 375.00 feet to a point, thence South 00 Degrees 03 Minutes 18 Seconds East, a distance of 278.76 feet to a point of intersection with the West line of the East Half of said Northwest Quarter, thence South 89

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2006-02426 I

Degrees 42 Minutes 55 Seconds <sup>± 2</sup> East along the South line of the East Half of said Northwest Quarter, a distance of 375.00 feet to the Point of Beginning, said Tract contains a calculated area of 104,534.79 square feet, or 2.3998 acres more or less.

RECORDER NOTE

Should read

\* 1 South  
\* 2 West