

EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS

These Easements, Covenants, Conditions and Restrictions (hereinafter referred to as "this ECCR"), are made and entered into as of the date of the last execution hereof, which date is the 30<sup>th</sup> day of November, 2006, by and between Horne RE – Abilene, LLC, a Tennessee limited liability company ("Developer"), Musgrave 351 JV, Ltd., a Texas limited partnership, and Kenneth L. Musgrave, a resident of Taylor County, Texas (collectively, "Musgrave") and Lowe's Home Centers, Inc., a North Carolina corporation ("Lowe's") (the foregoing parties hereinafter singularly referred to as a "Party" and collectively referred to as the "Parties");

## W I T N E S S E T H :

WHEREAS, Lowe's is the owner of that certain tract of real property consisting of approximately 14.48 acres located in Taylor County, State of Texas, as more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "Lowe's Parcel"); and

WHEREAS, Developer is the owner of a certain tract of real property consisting of approximately 101.23 acres located in Taylor County, State of Texas, contiguous with and adjacent to the Lowe's Parcel, which is more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the "Developer Parcel"); and

WHEREAS, Musgrave is the owner of a certain tract of real property consisting of approximately 129.50 acres located in Taylor County, State of Texas, contiguous with and adjacent to the Lowe's Parcel and the Developer Parcel (the "Musgrave Main Parcel"), and another tract of real property consisting of approximately 4.0 acres also located in Taylor County, State of Texas, (the "Musgrave Retail Parcel") which are both more particularly described in Exhibit C attached hereto and made a part hereof for all purposes (collectively, the Musgrave Main Parcel and the Musgrave Retail Parcel shall be referred to as the "Musgrave Parcel").

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

NOW, THEREFORE, the Developer, Musgrave and Lowe's hereby declare, agree, covenant and consent that all of the real property described on Exhibit A, Exhibit B, and Exhibit C shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are imposed on such real property to run with the real property and be binding on and inure to the benefit of all parties having any right, title or interest in the described Parcels (as hereinafter defined) or any part thereof, their heirs, successors and assigns for the purpose of development and operation of the respective Parcels of Lowe's, Musgrave and Developer in an integrated shopping center and to protect the value of such respective Parcels. Further, in consideration of the premises, the agreements and the covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good

and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE I

### BASIC DEFINITIONS

Section 1.1 "Common Area" shall mean all real property owned by the Parties for the common use and enjoyment of the Owners, including non-dedicated streets, and other areas in the Shopping Center where Buildings and parking spaces are not located.

Section 1.2 "Consenting Party" shall mean and refer to the Owner of the Lowe's Parcel and the Owner of the Developer Parcel. There shall be only two (2) Consenting Parties for the Shopping Center consisting of only one Consenting Party representing the Developer Parcel and only one Consenting Party representing the Lowe's Parcel. In the event that the Lowe's Parcel or the Developer Parcel are further subdivided, the current Consenting Party shall designate the particular parcel of the subdivided Parcel whose Owner shall succeed as the Consenting Party. References herein to Consenting Parties approvals shall require the approval of both Consenting Parties.

Section 1.3 "Default Rate" shall mean the rate of interest that is the lesser of (i) eight percent (8%) per annum or (ii) the maximum rate allowed by applicable law.

Section 1.4 "Musgrave Parcel" shall mean and refer to the Musgrave Retail Parcel and the Musgrave Main Parcel, as such parcels are so identified on the Site Plan.

Section 1.5 "Nationally Recognized" shall mean retail businesses having at least 100 locations within shopping centers throughout the United States, which use a distinctive and recognizable architectural design that is substantially the same at all of such locations (subject to changes in such prototypical architectural design which evolve over time), and which have a national identity with the public at large.

Section 1.6 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Parcel which is a part of the Shopping Center, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.7 "Parcel" shall mean and refer to any parcel of land shown on the Site Plan. "Outparcel" and/or "Outparcels" shall mean and refer to Outparcels 1, 2, 3 and 4 as shown on the Site Plan. Every Outparcel shall be a Parcel, 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 1.8 "Parcel 8" shall mean and refer to the parcel of land so identified on the Site Plan.

Section 1.9 "Regionally Recognized" shall mean retail businesses having at least 50 locations within first class shopping centers throughout a particular region of the United States, which use a distinctive and recognizable architectural design that is substantially the same at all of such locations

(subject to changes in such prototypical architectural design which evolve over time), and which have a regional identity with the public at large.

Section 1.10 "Section R" means the retail portion of Developer's Parcel and the Musgrave Retail Parcel, as shown on the Site Plan.

Section 1.11 "Shopping Center" shall mean and refer to the Lowe's Parcel, the Developer Parcel and the Musgrave Parcel, all as shown on the Site Plan.

## ARTICLE II

### EASEMENTS

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

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

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

(c) The term "Building(s)" means any permanently enclosed structure(s) which has (have) been, will be or may be placed, constructed or located on a Parcel within an Owner's Permissible Building Area, (as that term is hereinafter defined in Section 2.1(h), which for the purpose of this ECCR shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions, but such term does not include Common Area Improvements (as that term is hereinafter defined in Section 2.1(d)).

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

(e) The term "Common Utility Facilities" means utility systems and facilities from time to time situated on or serving the Shopping Center, up to the building wall of any Building, for use or service in common by both respective Owners or for the service of the Common Area, such as the following: storm drainage, retention and disposal facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground

electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities for such common use or service, including, without limitation, those installed under the provisions of this ECCR and as replacements thereto.

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

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

(h) The term "Permissible Building Area", means an area on an Outparcel designated as such on the Site Plan within which only a Building or structure of a certain size and height may be constructed as hereinafter more fully provided. No building or structure (other than Common Area Improvements) shall be erected or maintained on an Outparcel outside of a Permissible Building Area. The remaining Parcels will not be subject to the Permissible Building Area requirement.

(i) The term "Separate Utility Facilities" means any of the following not installed under the terms of this ECCR for use in common by other Owners nor for service of the Common Area: storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, underground electric power, cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities reasonably necessary for the use or service of any Improvement (as that term is hereinbefore defined in Section 2.1(f)) situated on any Parcel.

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

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

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

(m) All easements granted hereunder and herein shall exist by virtue of this ECCR, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of an Owner, the other Owners will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any

easement, if the form and substance of the document is approved by the other Owners. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Owner to construct or maintain its Building(s) except as expressly provided in this ECCR.

**Section 2.2 Easements for Use of Common Area.** Each Owner hereby grants to the other Owner(s) easements in the Common Area on its (Grantor's) Parcel for:

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

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

(c) the passage and accommodation of pedestrians (provided, however, the Owners of the Parcels may display merchandise, conduct sidewalk sales and other business on the sidewalks on their Parcels so long as pedestrian passage is not obstructed and may otherwise enclose and/or redesign its sidewalk areas without the need of obtaining any other Owner's consent); and

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

Provided, however, that such easements are limited to such portions of the Common Area of the Grantor's Parcel as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under this ECCR, specifically including those portions of the Common Area shown on the Site Plan, and provided further that the Owners hereby specifically disclaim any intention to create any reciprocal parking easements between the Lowe's Parcel, the Musgrave Parcel and the Developer Parcel.

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

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

The easements provided for in this Section 2.2 are subject to the rights to use and the restrictions on use of the Common Area provided for in this ECCR. No changes shall be made in the Common Area or in the location, configuration or design of Common Area Improvements without the consent of both Consenting Parties and except as otherwise herein provided.

**Section 2.3 Easements for Access Roads.** Each Owner hereby grants to the other Owner(s) easements for pedestrian (5 feet wide) and vehicular (30 feet wide, except for the road south of the Lowe's parking lot which will be 25 feet wide) traffic in those strips of land on its (Grantor's) Parcel which

are shown on Site Plan as shaded or cross hatched roadways, and in such additional roadways (regardless of width) as exist in the Shopping Center in the future from time to time (collectively, the "Access Roads") for the purpose of providing ingress to and egress from the Grantee's Parcel and each of East Lake Road, Musgrave Drive, East Overland Trail and S.H. 351 together with the following rights and subject to the following restrictions and reservations:

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

(b) As further provided in Section 2.8 herein, Grantors of the Access Road easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Roads, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein; and

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

(d) Lowe's will allow Developer (i) one right-in, right-out access point, and one full access point to Outparcel 1 from the drive aisle adjacent to the south boundary of the Lowe's Parcel, and (ii) one full access point to Outparcel 2, (iii) one full access point to Outparcel 3, and (iv) one full access point between the portion of Section R northeast of the Lowe's Parcel and the Lowe's front drive aisle, all in the locations shown on the Site Plan.

(e) Developer grants to Lowe's an easement to pave up to twenty (20) feet of the access roads on Outparcels 1 and 2, such easement to be exercised as Lowe's option.

**Section 2.4 Easements for Utility Facilities.** Each Owner hereby grants to the other Owner(s) perpetual easements to its (Grantor's) Parcel, except within such Owner's Permissible Building Area, as shown on the Site Plan, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Parcel of the Grantee.

All Separate Utility Facilities installed in the Common Area, whether installed under this Section 2.4 or otherwise, and all Common Utility Facilities, shall be underground, if reasonably possible, (however, depending upon the requirements of the utility company it is possible that the electrical utilities could be overhead), and the location of the Separate Utility Facilities shall be subject to the approval of the Owner across whose Parcel the same are to be located.

Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section 2.4 shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair and removal at Grantee's cost of all Separate Utility Facilities installed by the Grantee pursuant to the easement grant, as well as for all Separate Utility Facilities installed by the

Grantee on its own Parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by Grantee only after thirty (30) days advance notice to Grantor of Grantee's intention to do such work. However, in the case of an emergency (whereby either persons or property are in immediate danger of substantial damages and/or harm), any such work may be immediately performed after giving such advance notice to Grantor as is practicable and reasonable under the circumstances. In addition, the Parties agree that all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as existed prior to the commencement of any such work. No such work or restoration, except emergency repair work, shall be carried on during the period from October 14th through the next succeeding January 15th, or on any weekends.

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

The Grantor of any easement for Separate Utility Facilities under this Section 2.4 may use the utility facilities installed pursuant to such easement; provided, however, that any increase in costs incurred in order to make such utility facilities adequate to additionally serve Grantor's use shall be borne by such Grantor; and provided further that Grantor gives written notice within the time period called for under subparagraph (a) and otherwise complies with the requirements of subparagraphs (b), (c) and (d) of the following paragraph of this Section 2.4.

Except during the period from October 14th through the following January 15th, the Grantor of any easement under this Section 2.4 may relocate on its Parcel any Separate Utility Facilities or Common Utility Facilities installed thereon under any easement granted by it; provided, however, that such relocation:

- (a) may be performed only after Grantor has given Grantee thirty (30) days' written notice of its intention to relocate such facilities;
- (b) shall not interfere with or diminish the utility services to the Grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantee has been so notified under Subsection 2.4(a)). Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interferences or diminutions, or both;
- (c) shall not reduce or unreasonably impair the usefulness or function of the facilities in question;
- (d) shall be located underground if reasonably possible; and

(e) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities or Separate Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee.

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

Except as set forth in Section 2.10 below, nothing herein shall be construed to grant any Owner the right to utilize, drain, or otherwise alter natural water flow into any detention or retention facilities located on or exclusively serving any other Owner's Parcel.

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

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

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

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

Each Owner covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the Building(s) or other Improvements of the other Owner, and shall not interfere with or interrupt the business operations conducted by the other Owner in the Shopping Center.

Furthermore, the Parties agree that once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Parcel or any Common Area access, egress and service drives to the Lowe's Parcel, all construction traffic to or from the Developer Parcel and the Musgrave Parcel will be limited to the use of the following roadways: East Lake Road, Musgrave Drive, Enterprise Drive and East Overland Trail. In addition, each Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed in the exercise by



Grantee of the easements granted under this Section 2.5 and shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or arising out of Grantee's exercise of said temporary construction easements, except to the extent occasioned by Grantor's grossly negligent or wrongful acts or omissions to act. Any damage to Enterprise Drive caused by a party during such party's construction shall be repaired by such party at such party's sole cost and expense.

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

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

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

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

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

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

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

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

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

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

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

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

**Section 2.8** No Barrier Agreement. No barriers, fences, walls, grade changes or other obstructions shall (i) be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Lowe's Parcel, the Developer Parcel and the Musgrave Parcel from time to time devoted to pedestrian access, vehicular roadways or parking area, or (ii) in any manner unreasonably restrict or interfere with the use and enjoyment by the Consenting Parties of the rights and easements created by this Article II. In addition, each Owner may temporarily close or block traffic on its Parcel for the time necessary for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give at least fifteen (15) days prior written notice to the Consenting Party of its intention to do so and must coordinate such temporary closing with the activities of the other Owner(s), so that no unreasonable interference in the passage of pedestrians or vehicles shall occur, including, but not limited to, the provision of alternate access by the Owner blocking passage to the other Owner if there is no other means of ingress and egress) and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction.

**Section 2.9** Staging Area Easement. Developer grants to Lowe's a temporary easement of approximately 30,000 square feet for staging purposes in the Lowe's Staging Area as shown on the Site Plan. The term of this temporary staging easement commences on the date hereof and expires upon completion of Lowe's construction on the Lowe's Parcel.

Section 2.10 Drainage and Detention Pond Easement. If Lowe's builds a home improvement warehouse on the Lowe's Parcel, Lowe's will also construct and maintain a detention pond, in accordance with the Lowe's Site Construction Plans, prepared by Adams Engineering, Inc. and dated November 3, 2006, in the location shown on the Site Plan (the "Detention Pond"). Lowe's hereby grants an easement appurtenant for storm water drainage into the Detention Pond in favor of Outparcels 1 and 2. Developer will reimburse Lowe's for 24% (pro rata based on acreage) of the cost of constructing the detention pond, and the Owner of Outparcel 1 will reimburse Lowe's for 12% and the Owner of Outparcel 2 will reimburse Lowe's for 12% of the cost of maintaining the detention pond, all of such reimbursements to occur within thirty (30) calendar days of Lowe's providing Developer (or the Owners of Outparcels 1 and 2, as applicable) an invoice requesting such reimbursement.

### ARTICLE III

#### USE

Section 3.1 General Use Requirement. Every Parcel in Section R shall be used only for financial institutions, service shops, offices of the type customarily found in retail shopping centers, retail stores selling retail merchandise normally carried in other shopping centers, and restaurants with over fifty-five percent (55%) of gross revenues from food sales

Section 3.2 Nuisances. Subject to the provisions of Section 3.1, no Parcel shall be used for anything other than the purposes which may be permitted by applicable zoning regulations, nor shall anything be done on any Parcel which shall constitute a public nuisance to the community.

Section 3.3 Use Restrictions.

(a) During the term of this ECCR no portion of the Shopping Center may be used for any of the following purposes without the prior written consent of the Consenting Parties:

(i) A tavern, bar, nightclub, cocktail lounge, discotheque, dance hall, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than forty-five (45%) percent of the restaurant's gross revenues.

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

(iii) A theater (motion picture or live performance) (only applies to the portion of Section R which is within 600 feet of the Lowe's Parcel).

(iv) A health club, gymnasium or spa on the portion of Section R which is within 600 feet of the Lowe's Parcel; provided, however one (1) of the following will be permitted within 600 feet of the Lowe's Parcel: an LA Weight Loss or a Curves (or a Nationally Recognized or Regionally Recognized operation substantially similar to same) which does not exceed 2,400 square feet of building floor area; and provided, further that one (1) of the following will also be permitted within 600 feet of the Lowe's Parcel (i) a day spa, or (ii) a salon that offers day spa services, neither of which may exceed 2,400 square feet of building floor area.

(v) A service station, automotive repair shop or truck stop; provided however, the foregoing shall not be deemed to prohibit a convenience store or a combination convenience store and restaurant (including, but not limited to, Rudy's Country Stores) that sell gasoline, provided that there is no on-site service or repair of vehicles; and provided, further, the foregoing shall not be deemed to prohibit a Nationally Recognized car maintenance retailer such as Pep Boys, Goodyear, or Firestone from locating on State Highway 351.

(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) (only applies to Section R).

(viii) A school (only applies to Section R).

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

(x) A medical clinic or office (only applies to Section R).

(xi) A dry cleaning plant, central laundry or Laundromat (provided, however, an establishment where laundry, dry cleaning, and the like is dropped off and picked up for cleaning and/or laundry at another location is permitted).

(xii) An establishment for sale of automobiles, trucks, mobile homes, or recreational motor vehicle, except on Parcel 8.

(xiii) A child day care facility (only applies to Section R).

(xiv) A hotel or motel (only applies to Section R).

(xv) A storage or mini warehouse facility (only applies to Section R).

(xvi) Governmental offices (only applies to Section R).

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

(i) An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts).

(ii) A massage parlor.

(iii) A skating rink.

(iv) A mortuary, crematorium or funeral home.

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

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

(vii) A telephone call center.

(viii) A gambling establishment or betting parlor.

(ix) A veterinary hospital or any animal raising or keeping facilities; provided, however, this prohibition shall not be applicable to Nationally Recognized pet shops such as Petco and PetsMart if (a) the veterinary or boarding services provided in connection with the operation of such pet shop is incidental to such operation and the boarding of pets as a separate customer service is prohibited; (b) all kennels, runs and pens shall be located inside the Building; (c) the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of such pet shop; and (d) such pet shop is located at least 600 feet from the Lowe's Parcel.

(x) An assembling, manufacturing, industrial, distilling, refining or smelting facility, except that light office/warehouse use will be allowed on Parcel 8.

Section 3.4 Lowe's Exclusives. No portion of the Shopping Center, except the Lowe's Parcel, may be used for the following purposes:

(a) A hardware store containing more than 5,000 square feet of floor area.

(b) An appliance, home electronics and/or lighting store containing more than 5,000 square feet of floor area (provided, however, a Best Buy or Circuit City will be permitted).

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

(d) A paint and/or home decor center containing more than 4,000 square feet of useable floor area.

(e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Great Indoors, Sutherlands, Scotty's and Orchard Supply.

These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) when such space exceeds the limitations of subparagraphs (a) through (d); provided, however, a Target or Kmart as same currently operate as of the date hereof will not be deemed to violate this provision.

Notwithstanding anything in the foregoing to the contrary, in the event a retail and/or warehouse home improvement center, lumber yard, building materials supply center, hardware store, lawn and garden store, appliance, home electronics and/or lighting store, and/or paint and/or décor center is not operated in any portion of the Lowe's Parcel for a period in excess of two (2) consecutive years (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Parcel), the above stated exclusives shall be of

no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall re-open a store on any portion of the Lowe's Parcel for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if such uses were begun during the time that the above exclusive use restrictions were of no force and/or effect.

Section 3.5 Proprietary Rights of Lowe's. Any owner, occupant or person owning, leasing or otherwise making use of any portion of the Shopping Center shall be deemed, by virtue of accepting such ownership, leasehold interest or making such use, to have covenanted and agreed that (i) the trade names, trademarks, service marks (including, without limitation, all logos, emblems, designs or designating words or names) utilized by Lowe's or its affiliated companies in connection with the Shopping Center or the conduct of its business thereat are registered and/or the proprietary property of Lowe's or its affiliates, (ii) except as provided below, no usage of those marks or names will be made in naming or referring to any activity within or without the Shopping Center and (iii) no usage of such marks or names shall be made without the prior written consent of Lowe's and Lowe's legal counsel. Lowe's reserves the right to require any person or entity to whom it may grant a written right to use a given name or mark to enter into a formal written license agreement with Lowe's and to charge a fee or royalty therefor.

#### ARTICLE IV

##### GENERAL CONSTRUCTION & DEVELOPMENT

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

Except as provided in Section 7.6 hereof as to the Lowe's Parcel, no Buildings, Improvements or other structures shall be erected or allowed to remain on any portion of the Shopping Center that is within 500 feet of any boundary line the Lowe's Parcel (the "Approval Parcels") unless (i) the site plans and elevations for such structure have been approved by the Consenting Parties, which approval shall not be unreasonably withheld, or (ii) the Building or structures are the prototypical designs of a Nationally or Regionally Recognized retailer. If the Buildings and structures are not prototypical designs of a Nationally Recognized or Regionally Recognized retailer, a complete set site plans and elevation drawings of all sides of the proposed improvements on the Approval Parcels shall be presented to and approved in

writing by the Consenting Parties prior to the commencement of clearing, grading, or construction of a Building of any kind on such Approval Parcels. The Consenting Parties shall have thirty (30) days from receipt of plans, specifications and a written request for approval to object. If the Consenting Parties do not object within the thirty (30) day period, then the proposed plans shall be deemed approved, provided the request for approval states in caps that that failure to respond within the thirty (30) day time period will be deemed an approval.

Upon completion of the Building foundation on any Approval Parcel on which the Buildings or structures are not prototypical designs of a Nationally Recognized or Regionally Recognized retailer, an actual field survey of the foundation shall be presented to the Consenting Parties to ensure that it has been constructed in accordance with the Site Plan. All Improvements shall comply with the plans as presented by the Owner of such Parcel (if plan approval is required for such Approval Parcel pursuant to this Section) unless changes are approved in writing by the Consenting Parties. The right to make inspections necessary to assure compliance is reserved to the Consenting Parties.

Weather permitting, all paving and landscaping will be finished upon completion of the Building, but in no event shall it be installed later than ninety (90) days after the Building is occupied. Total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year. In the event that a party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations (whether valid or invalid), riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period of performance of any such act shall be extended for a period equivalent to the period of such delay.

**Section 4.2 Parking Requirements.** The Lowe's Parcel shall be self-supporting with respect to parking and shall contain not less than 3.91 paved full size automobile parking spaces for each 1,000 square feet of building floor area (exclusive of the garden center) constructed thereon. Each Parcel other than the Lowe's Parcel, including all Outparcels, shall be self-supporting with respect to parking and shall each contain not less than five (5) paved full size automobile parking spaces for each 1,000 square feet of building floor area constructed thereon, or the number of parking spaces required by applicable law, whichever is greater; provided however, ten (10) paved, full-sized automobile parking spaces per each 1,000 square feet of building floor area constructed thereon or the number of parking spaces required by applicable law, whichever is greater, will be required for restaurants.

**Section 4.3 Pylon or Monument Signage.** Lowe's will have the right to one (1) Lowe's only pylon sign located near the intersection of Enterprise Drive and East Overland Trail, as shown on the Site Plan (the "Lowe's Pylon Sign"). Developer grants to Lowe's an easement for the Lowe's Pylon Sign in the Lowe's Pylon Sign Easement Area, as shown on the Site Plan together with rights of ingress and egress over Developer's Parcel for construction and maintenance of such sign. Lowe's will construct and maintain the Lowe's Pylon Sign. Lowe's will be the only party with a panel on the Lowe's Pylon Sign. In

addition to the Lowe's Pylon Sign, there will be one (1) Shopping Center multi-occupant pylon sign located near the intersection of Enterprise Drive and S.H. 351 (the "Shopping Center Sign"). With respect to the Shopping Center Sign, Lowe's shall be entitled to have and maintain a sign panel thereon in the top and most prominent position. The maximum number of panels on the Shopping Center Sign will be five (5). No panel on the Shopping Center Sign will be larger than the Lowe's panel, and the Lowe's panel will at all times be a minimum of 25% of the total panel space on the Shopping Center Sign. On both the Lowe's Pylon Sign and the Shopping Center Sign, Lowe's sign panels shall be of colors, design and content as required by Lowe's own visual sign standards and shall not be subject to approval by other parties. Lowe's will construct and Developer will maintain the Shopping Center Sign. Upon completion of construction of the Shopping Center Sign by Lowe's, Developer will reimburse Lowe's 75% of the cost of construction of the Shopping Center Sign (not to exceed \$30,000). All documentation related to the cost of the Shopping Center Sign will be provided to Developer at the completion of the construction of such Shopping Center Sign. If only one freestanding pylon or monument sign is allowed by governmental authorities, then that will be the Lowe's Pylon Sign. All signage must adhere to the City of Abilene specifications and such authority will prevail above this document. The Lowe's Pylon Sign and the Shopping Center Sign will be constructed in accordance with the sign drawings attached hereto as Exhibit E.

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

- (a) Any Building constructed on any of the Outparcels shall not exceed 7,500 square feet.
- (b) Any Building constructed on an Outparcel shall not exceed 27 feet in height, as measured from the finished elevation of the parking area of the Shopping Center to the roofline, plus an additional 6 feet for architectural features, provided such features do not exceed thirty percent (30%) of the frontage of the Building on such Outparcel.
- (c) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to the Consenting Parties.
- (d) No rooftop signs shall be erected on any Building constructed on any Outparcel.
- (e) One (1) freestanding identification sign may be erected on each Outparcel as approved by the City of Abilene, but in no event shall such sign exceed 20 feet in height or block the visibility of any signage on any Building located on the Lowe's Parcel or the visibility of any Lowe's or multi-occupant monument sign or pylon sign. Any variance in Outparcel signage requirements requested of the City of Abilene shall also be subject to the review and approval of Lowe's, such approval not to be unreasonably withheld. Lowe's has the right to review and approve the sign panels of the Outparcel signs, such approval not to be unreasonably withheld, and provided that prototypical panels of Nationally Recognized or Regionally Recognized retailers will be deemed approved. When an Owner of an Outparcel desires to erect a freestanding sign, it shall make its request in writing to Lowe's with a copy of



the sign plans. The Owner of the Lowe's Parcel shall then have thirty (30) days from receipt of the notice to object to the proposed sign. If the Owner of the Lowe's Parcel does not object within the thirty (30) day period, then the proposed sign shall be conclusively deemed approved, and the Owner of the Lowe's Parcel shall not have the right to any further objection. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3' 3" in height; provided, however, the 6'6" directional sign at the corner of E. Overland Trail and Musgrave Drive and the 6'6" directional sign at the corner of East Lake Drive and S.H. 351 are permitted.

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

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

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

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

Section 4.5 Fire Protection (in line stores). Any structure constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered insurance rate on the other structures in the Shopping Center.

Section 4.6 Performance of Construction Work Generally. All construction, alteration or repair work undertaken by an Owner after the Building on the Lowe's Parcel has opened for business shall be accomplished in an expeditious, diligent and speedy manner. The person or entity undertaking such work shall: (i) pay all costs and expenses associated with such work; (ii) take necessary measures to minimize disruption and inconvenience caused by such work; (iii) make adequate provisions for the safety and convenience of the Owners and their occupants; (iv) control dust, noise and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with

construction projects in a populated or developed area; (v) repair any and all damage which may be caused by or result from such work; (vi) restore all affected portions of any Parcel to a condition equal to or better than the condition existing prior to beginning such work; (vii) indemnify and hold harmless all other Owners in the Shopping Center against any mechanics' liens for such work, particularly as to Common Areas. Such construction shall not unreasonably interfere with the business operations on any other Parcel and shall not block or impede the Shopping Center ingress or egress from public streets. The party performing such work shall limit all construction work and staging areas to its own Parcel and not encroach on any Common Areas on any other Parcel and shall not utilize parking areas of any other Parcel. In connection with construction work performed within Permissible Building Areas, incidental encroachment upon the Common Area of the party performing such work may occur in the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of such Common Area, if such encroachment is kept within reasonable requirements of such work expeditiously pursued. For construction purposes, the Common Areas may be utilized: (a) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with such work (but each Owner performing work shall, to the extent reasonably possible, limit such access to its own Parcel) and (b) for temporary storage and parking on the constructing Owner's Parcel of materials and vehicles in connection with such work. All such work for which a license is granted above (i) which will be performed by an Owner on another Owner's Parcel, or (ii) which would adversely affect the ingress and egress to the Shopping Center, the availability of parking and/or circulation of traffic in the Shopping Center, or the operation and supply of Common Utility Facilities to or in the Shopping Center shall be undertaken only after giving the other Owners thirty (30) days prior written notice of the work to be undertaken, and the scope, nature, duration, location and extent of the work. Such notice shall include any plans and specifications for the work. No work will be performed on the Lowe's Parcel without the prior written consent of the Owner of the Lowe's Parcel, such consent not to be unreasonably withheld. In the event of any emergency involving an immediate and imminent threat of substantial harm or injury to persons or property, only such notice as may be reasonable under the circumstance shall be required.

Section 4.7 Compliance in Construction. All construction, alteration or repair work which an Owner undertakes pursuant to this ECCR shall comply with plans and specifications therefor, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations, including procurement of all licenses and permits required for such work. A Consenting Party's approval of any such work, or the plans and specifications therefor, under any provisions of this ECCR shall not constitute such Consenting Party's assumption of responsibility for the accuracy, sufficiency or propriety of such work, or of such plans and specifications, nor shall such approval constitute a representation or warranty by such Consenting Party that such work or plans and specifications call for construction of the most economical improvements or improvements which comply with the law.

**Section 4.8 Construction Insurance.** Prior to commencing any construction activities within the Shopping Center, each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverage set forth below:

- (a) **Worker's Compensation and Employer's Liability Insurance.**
  - (i) Worker's compensation insurance as required by any applicable law or regulation.
  - (ii) Employer's liability insurance in the amount of \$2,000,000 each accident for bodily injury, \$2,000,000 policy limit for bodily injury by disease and \$2,000,000 each employee for bodily injury by disease.
- (b) **General Liability Insurance.** Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:
  - (i) **Required Coverages:**
    - (a) Premises and Operations;
    - (b) Products and Completed Operations;
    - (c) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
    - (d) Broad Form Property Damage (including Completed Operations);
    - (e) Explosion, Collapse, and Underground Hazards;
    - (f) **Personal Injury Liability:**
      - (i) \$2,000,000 each occurrence (for bodily injury and property damage;
      - (ii) \$3,000,000 for Personal Injury Liability;
      - (iii) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work);
      - (iv) \$5,000,000 general aggregate.
  - (g) **Automobile Liability Insurance.** Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.

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- (h) Umbrella/Excess Liability Insurance
  - (i) The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000.
  - (ii) If the construction activity involves the use of another Parcel, then the Owner and mortgagee of such Parcel shall each be additional insured(s) and such insurance shall provide that the insurance shall not be canceled, or reduced in an amount or coverage below the requirements of this ECCR, without at least thirty (30) days prior written notice to the additional insureds. If such insurance is canceled or expires, then the constructing party shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. Each Owner or occupant, as the case may be, shall supply or cause its general contractor to supply each Owner with certificates with respect to all insurance required by this Section.

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

#### ARTICLE V MAINTENANCE, TAXES AND INSURANCE

Section 5.1 Maintenance. Each Owner hereto shall maintain the Building(s) and the Common Areas on its Parcel in good order and condition and state of repair in accordance with the standards of good shopping center operation including (but not limited to) sweeping and removal of trash, litter and refuse, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair of lighting standards and signs. Each Owner covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its Buildings clean; will maintain its Buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed; and will keep the Common Areas on its Parcel clear of accumulations of ice and snow. The maintenance and repair of the Buildings and Improvements on each Parcel should be of such a character

that their appearance will be that of a unified shopping center and, accordingly, the Parties agree to cooperate with each other in good faith with respect to said maintenance and repair and, to the extent reasonably possible, coordinate such repair and maintenance.

**Section 5.2 Damage and Destruction.** In the event of the destruction and damage to any extent to the Buildings and Improvements in the Shopping Center, the affected Owner shall (1) diligently commence and pursue completion of the repair or restoration, and/or (2) within one hundred twenty (120) days after the destruction or damage clear away the ruins and leave the Parcel in a clean, orderly, sightly and safe condition. Further, in the event that the affected Owner elects not to rebuild its Building(s) and Improvements, the use restrictions placed on the non-affected Owner's site by the affected Owner herein, except for those cited in Sections 3.3 and 3.4 hereof, shall be null and void and of no further force and effect.

**Section 5.3 Default in Maintenance Responsibilities.** In the event that an Owner fails in its maintenance obligations as set forth in Section 5.1, which failure continues for a period of thirty (30) days (ten [10] business days in the event of a failure to pay money) after receipt of written notice thereof specifying the particulars of such failure, such failure shall constitute a default under this ECCR and any Owner (the "Curing Party") may thereafter perform such maintenance obligations, in addition to such Curing Party's other remedies.

**Section 5.4 Taxes.** The Owner of each Parcel shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied against such Owner's Parcel, subject, however, to each Owner's right to protest such taxes in accordance with law. In the event an Owner fails to pay when due all taxes and assessments described herein, which failure continues for a period of twenty (20) days after written notice thereof, such failure shall constitute a default under this ECCR and any Owner (the "Curing Party") may, in addition to such Owners' other remedies, thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Party shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have twenty (20) business days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Party shall be entitled to claim a lien (subordinate to any purchase money mortgage lien) in accordance with Section 6.3 on the Parcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of the expiration of said ten (10) business day period until paid.

**Section 5.5 Insurance: Indemnification: Waiver of Subrogation.** Each Owner will at all times maintain or cause to be maintained with respect to its Parcel and all Buildings and Improvements thereon: (i) commercial property insurance against loss or damage by fire, lightning and other risks customarily covered by an all-risks policy of property insurance for the full replacement cost of the Building(s) and Improvements located thereon and (ii) commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Owner's Parcel with combined single limit coverage of not less than TWO MILLION DOLLARS

(\$2,000,000.00) per occurrence. Nothing herein shall be construed from prohibiting an Owner which itself, or in combination with its parent corporation, has a net worth in excess of TWO HUNDRED MILLION DOLLARS (\$200,000,000.00), as determined by generally accepted accounting principles, from self-insuring for such insurance coverage.

In the event an Owner fails to maintain the insurance described above, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a default under this ECCR and any Owner (the "Curing Party") may, in addition to such Owners' other remedies, thereafter obtain and pay for such insurance. The Curing Party shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill.

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

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

## ARTICLE VI

### DEFAULT: REMEDIES

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

- (a) The failure to perform any obligation of Article V hereof within the time requirements cited therein;
- (b) The failure to make any payment required to be made hereunder within ten (10) business days of the due date, or
- (c) The failure to observe or perform any of the other covenants, conditions or obligations of this ECCR or to abide by the restrictions and requirements herein provided, other than as described in (a) above, within thirty (30) days after the issuance of a notice by another Owner (the "non-

defaulting Owner") to defaulting Owner (with a copy to Developer, if Developer is different from defaulting Owner) specifying the nature of the default claimed.

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

**Section 6.3 Liens.** Costs and expenses accruing and/or assessed pursuant to Section 6.2 above and the amounts described in Section 6.1 shall constitute a lien against the defaulting Owner's Parcel. The lien shall attach and take effect only upon recordation of a claim of lien by the non-defaulting party in the applicable real estate records office of the county in which the said Parcel is located, by the Owner making the claim. The lien will be subordinate to any purchase money mortgage lien. The claim of lien shall include the following, as well as all other information required by law to make the lien effective:

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

The notice shall be duly acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 7.3 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including

without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

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

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

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

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



Section 6.8 Breach. In the event of a breach or threatened breach of this ECCR, only an Owner of more than 45,000 square feet of enclosed building area of the Developer Parcel or the Musgrave Parcel or the Owner of the Lowe's Parcel, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In the event of a breach hereof, the non-prevailing Owner shall pay the reasonable attorney's fees of the prevailing Owner.

#### ARTICLE VII

#### MISCELLANEOUS

Section 7.1 Estoppel Certificates. Each Owner shall, upon not less than thirty (30) days written notice from the other Owner, execute and deliver to such requesting Owner a certificate in recordable form stating that (i) either this ECCR is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge the requesting Owner is in default in any respect under this ECCR and if in default, specifying such default. If an Owner fails or refuses to furnish such documents within the time provided, it will be conclusively presumed that this ECCR is in full force and effect in accordance with its terms.

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

Notwithstanding the foregoing, with the exception of the self-help easements set forth in Section 2.6, the easements contained herein binding and benefiting the Parcels shall be perpetual and shall run with the land.

Upon termination of the agreements, conditions, covenants and restrictions of this ECCR, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this ECCR, except as related to the easements cited and mentioned herein, with the exception of the self-help easements set forth in Section 2.6, shall terminate and have no further force or effect.

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

Developer: Horne RE – Abilene, LLC  
412 N. Cedar Bluff Road, Suite 205  
Knoxville, Tennessee 37923  
Attention: Senior Vice Manager

Copy to: Horne RE – Abilene, LLC  
412 N. Cedar Bluff Road, Suite 205  
Knoxville, Tennessee 37923  
Attention: General Counsel

Lowe's: Lowe's Home Centers, Inc.  
P. O. Box 1111  
(Highway 268 East-East Dock, North Wilkesboro, No. Carolina 28659)  
North Wilkesboro, North Carolina 28656-0001  
Attention: Property Management Dept. (REO)

Copy to: Lowe's Home Centers, Inc.  
P. O. Box 1111  
(Highway 268 East-East Dock, North Wilkesboro, No. Carolina 28659)  
North Wilkesboro, North Carolina 28656-0001  
Attention: Real Estate Law Department (REO)

Copy to: Wilson, Cribbs & Goren, P.C.  
2500 Fannin Street  
Houston, Texas 77002  
Attention: Abe S. Goren

Musgrave: Musgrave 351 JV, Ltd.  
500 Chestnut, Suite 700  
Abilene, Texas 79602  
Attention: Kenneth L. Musgrave

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

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

Section 7.6 Harmony. Developer and Lowe's agree to cooperate in creating a reasonably harmonious exterior appearance for the Buildings and Improvements to be constructed by them within the Shopping Center, acknowledging however that Lowe's may construct improvements similar to its current

prototypical store building and improvements. After initial construction of Buildings and other Improvements on Section R, no Owner shall make alterations that will substantially change the exterior of its Buildings in Section R without the consent of the Consenting Parties, such consents not to be unreasonably withheld, conditioned or delayed. Such consents will be deemed given by a Consenting Party if such Consenting Party does not respond to a request for approval within thirty (30) days of receipt of same, provided the request for approval states in caps that failure to respond within the thirty (30) day time period will be deemed an approval. Notwithstanding the foregoing, the Owner of the Lowe's Parcel may make, without the consent of any other Owner, changes to its Buildings and Improvements that it may deem appropriate for consistency with changes in the design and appearance of its then current prototypical stores.

Section 7.7 No Covenant to Continuously Operate. The Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or store on the Lowe's Parcel. Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel.

Section 7.8 Severability. In the event any provision or portion of this ECCR is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 7.9 No Public Dedication. Nothing contained herein shall be deemed or implied to be a gift, grant or dedication of the Shopping Center or any portions thereof, to the general public (except the contemplated dedication of Enterprise Drive to the City of Abilene), or for any public use or purpose whatsoever. Except as may be specifically provided herein, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third party, nor shall any third party be deemed or considered to be a beneficiary of any of the provisions herein contained.

Section 7.10 Counterparts. This ECCR may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

Section 7.11 Relationship of the Parties. Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Parties hereto or the Owners. It is understood that the relationship between the Parties hereto and the Owners is an arm's length one that shall at all times be and remain that of separate owners of real property. No Party hereto nor any Owner shall have the right to act for or on behalf of another Party or Owner, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Party or Owner to be charged or bound, except as otherwise specifically provided herein.

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

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**DEVELOPER:**

Horne RE - Abilene, LLC,  
a Tennessee limited liability company

By: Horne Real Estate, LLC,  
a Tennessee limited liability company,  
its sole member

By:   
Christina Grey Myer  
Its Senior Vice Manager

THE STATE OF TENNESSEE  
COUNTY OF KNOX

§  
§  
§

This instrument was acknowledged before me this 21<sup>st</sup> day of November, 2006 by Christina Grey Myer, Senior Vice Manager of Horne Real Estate, LLC, a Tennessee limited liability company, sole member of Horne RE - Abilene, LLC, a Tennessee limited liability company, on behalf of said company.



  
Notary Public in and for the State of Tennessee

**My Commission Expires  
12/03/08.**

**LOWE'S:**

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

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

Approved  
TAD  
11-29-06  
Feb  
21

THE STATE OF NORTH CAROLINA §  
  §  
COUNTY OF WILKES                  §

This instrument was acknowledged before me this 10th day of December, 2006 by David E. Shelton, Senior Vice Pres of Lowe's Home Centers, Inc., a North Carolina corporation, on behalf of said corporation.

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

Carla H. Reavis  
Notary Public in and for the State of North  
Carolina

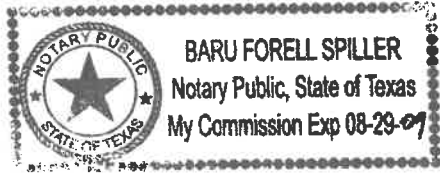


*Kenneth L. Musgrave*  
KENNETH L. MUSGRAVE, INDIVIDUALLY

THE STATE OF TX  
COUNTY OF TAYLOR

§  
§  
§

This instrument was acknowledged before me this 28 day of November, 2006 by KENNETH L. MUSGRAVE, INDIVIDUALLY.



*[Signature]*  
Notary Public in and for the State of TEXAS

**[ NEED SUBORDINATION OF EXISTING LIENS ]**

Consent and Subordination of Lienholder

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Wachovia Bank, National Association ("Lienholder"), by its joinder herein, hereby consents to this Easements, Covenants, Conditions and Restrictions ("ECCR") and the creation of the covenants, conditions, restrictions, easements and other rights created or reserved herein, and subordinates the Liens (hereinafter defined) to this ECCR, and agrees that any foreclosure of the Liens or any of them shall in no way affect, extinguish or diminish the covenants, conditions, restrictions, easements, and other rights created or reserved in this ECCR, all of which shall remain in full force and effect. As used herein, the term "Liens" shall mean and refer to the following, and any other liens and/or security interests held by Lienholder against the Developer Parcel and/or the Musgrave Parcel (both as defined in this ECCR):

Deed of Trust executed by Developer (as defined in this ECCR), as Grantor to TRSTE, Inc, as Trustee, in favor of Lienholder as Beneficiary, dated 12-6-06 recorded in \_\_\_\_\_ under Clerk's File Number 06-023408 of the DEED OF TRUST Records of Taylor County, Texas.

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Executed this \_\_\_\_\_ day of November, 2006.

"LIENHOLDER "

WACHOVIA BANK, NATIONAL ASSOCIATION,

By: Janet R. Helms  
Name: Janet R. Helms  
Title: Vice President

STATE OF North Carolina :  
COUNTY OF Mecklenburg :

The foregoing instrument was acknowledged before on this 29th day of November, 2006, by Janet R. Helms, as Vice-President of Wachovia Bank a National Association on behalf of said Lienholder.

May M. Dawson  
Notary Public in and for  
The State of North Carolina

