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#8121

08/18/95/Declaration of Covenants, Conditions and Restrictions/Ponca City, OK
RECEPTION #
FILED OR RECORDED
STATE OF OKLAHOMA

RETURN TO:
STEWART ESCROW & TITLE
1922 LAKE RD.
PONCA CITY, OK 74604

A4

95 AUG 30 PM 2:36
Casey Blase
MATTIE KIMMEL

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by the L.A. Weingart Trust, a _____, ("Trust") and LOWE'S HOME CENTERS, INC., a North Carolina corporation ("Lowe's"); (the foregoing parties hereinafter collectively referred to as (the "Parties");

WITNESSETH:

WHEREAS, Lowe's is the owner of that certain tract of land located in Kay County, Oklahoma as more particularly described as "Lowe's Property" on Exhibit A attached hereto and shown on the site plan attached as Exhibit B (the "Site Plan"), both of which exhibits are made by this reference a part hereof; and

WHEREAS, Trust is the owner of a certain tract of land located in Kay County, Oklahoma, located contiguous with and adjacent to Lowe's Property, which property is designated on Exhibit C as "Trust Property"; and

NOW, THEREFORE, the Parties hereby declare that all of the parcels within the bounds of the real property described on Exhibit A and Exhibit C and any future properties hereafter acquired by the Trust which are contiguous to the real property described on Exhibit A and Exhibit C ("After Acquired Properties") (hereinafter, the Trust Property, the Lowe's Properties and the After Acquired Properties will be collectively referred to as the "Properties") shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof. Further, in consideration of the premises, the promises and covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
RESTRICTIONS

Section 1.1 Use Restrictions.

- (a) During the term of this Agreement no portion of the Properties may be used for any of the following purposes without the written consent of Trust and Lowe's:
 - (i) A tavern, bar, nightclub, discotheque or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than fifty (50%) percent of the restaurant's gross revenues.
 - (ii) A bowling alley or game room.
 - (iii) A theater (motion picture or legitimate).

- (iv) A health club or spa.
 - (v) A service station or truck stop (Provided however, a service station may be located at the intersection of the Trust Property and Hubbard Road.)
 - (vi) A flea market
 - (vii) A school
- (b) During the term of this Agreement no portion of the Properties may ever be used for any of the following uses whatsoever:
- (i) An adult type bookstore or other establishment selling or exhibiting pornographic materials.
 - (ii) A massage parlor.
 - (iii) A mortuary.
 - (iv) A mobile home or trailer court, labor camp, junkyard or stockyard.
 - (v) A land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage.

Section 1.2 Use Restrictions on the Trust Property. No portion of Trust Property or the After Acquired Properties may be used for any of the following purposes (provided that such restrictions shall only apply to Trust Property or the After Acquired Properties for a period of time not to exceed three (3) years after Lowe's Property is no longer used by Lowe's as a retail and/or warehouse home improvement center, lumber yard or building materials supply center):

- (a) A hardware store containing more than 5,000 square feet of leasable floor area.
- (b) An appliance and/or home electronics store containing more than 5,000 square feet of leasable floor area.
- (c) A lawn and garden store containing more than 3,000 square feet of leasable floor area.
- (d) A paint and/or decor center containing more than 5,000 square feet of leasable floor area.
- (e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, substantially similar to that now operated by Lowe's, Home Depot and/or Crossroads, Home Owner's Warehouse, Home Quarters, Hechinger's, Builders Square, 84 Lumber, Wickes, Hughes Lumber, McCoys, Sutherlands and Payless Cashways.

Provided however, in the event Lowe's ceases to use the Lowe's Property as a retail and/or warehouse home improvement center, lumber yard or building materials supply center during the first five (5) years of the date of the recording of this Declaration of Covenants, Conditions and Restrictions, then the Trust Property may be used for the purposes at (a) - (d) above, but may not be used for the purposes at (e) above during such five year period.

Subject to these restrictions, Trust reserves the right to subdivide, convey, lease or assign the Trust Property or the After Acquired Properties or any portion thereof through any means including,

but not limited to, subdivision, lease, ground lease, condominium declaration or air-lot condominium declaration.

ARTICLE II
MISCELLANEOUS

Section 2.1 Perpetuity of Agreement. Except as specifically set forth in this Agreement, the easements, covenants, conditions, restrictions and agreements contained herein binding and benefiting the Parties shall be deemed to be perpetual and shall be construed to run with the land.

Section 2.2 Parking Requirements. The Properties shall be self-supporting with respect to parking.

Section 2.3 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other parties):

Trust: Albright Title & Trust Company
 P.O. Box 51
 Newkirk, OK 74647

Lowe's: Lowe's Home Centers, Inc.
 Attn: Senior Vice President/Real Estate
 Box 1111
 (1203 School Street, Wilkesboro, NC 28697)
 North Wilkesboro, North Carolina 28656

Section 2.4 Assignment. The rights and obligations of any party hereunder may be assigned in whole or in part to one or more ground lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or leases between such party and such ground lessee or lessees.

Section 2.5 Insurance; Indemnification; Waiver of Subrogation. Each Party will at all times maintain or cause to be maintained with respect to its Parcel: (i) casualty insurance against loss or damage by fire, lightning and other risks customarily covered by an all-risks policy of property and casualty for the full replacement cost of the 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 Party's Parcel combined single limit coverage of not less than \$1,000,000.00 with respect to any one person, in the amount of \$1,000,000.00 with respect to any one accident or disaster, and in the amount of \$500,000.00 with respect to property damage. Nothing herein shall be construed from prohibiting a Party with a net worth in excess of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00), as determined by generally accepted accounting principle, from self-insuring.

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

Each party (the "Releasor") hereby releases the other Party (the "Releasee") from any and all liability or responsibility to the Releasor or anyone claiming through or under the Releasor by way of subrogation or otherwise for any incurred loss or damage to any person or property caused by fire or other casualty 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.

Section 2.6 Term and Enforcement. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties. Said easements, restrictions and obligations shall be unaffected by any change in the ownership of any property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Each of the rights created hereunder may be enforceable in a court of equity by the owner of any property covered by this Agreement and by any mortgagee of said property; however, enforcement hereunder shall be sought solely against the then owner of the property or of the parcel (or the owner of an interest in such property or parcel) alleged to be in default subject to the limitation on liability as set forth in Section 5.8 hereof.

Section 2.7 Harmony. Trust and Lowe's agree to cooperate in creating a harmonious exterior appearance for the improvements to be constructed by them on the Properties. After initial construction of the Buildings, no Party shall make alterations that will substantially change the exterior of its Buildings without the consent of the other Parties, such consent not to be unreasonably withheld. Lowe's may make changes in its buildings and improvements not in consistent with the overall design of its initial building and a majority of its stores at the time of the changes. The Parties acknowledge that Lowe's initial design of its Building is hereby approved by Granite.

Section 2.8 No Covenant to Continuously Operate. Lowe's is not obligated to continuously operate a business on the Lowe's Property and is not obligated to continuously operate or operate for any

specific period of time a Lowe's building supply or home improvement retail warehouse on its property. Nothing contained in this Declaration shall be construed, interpreted or otherwise read to require Lowe's to operate a business on the Lowe's Property or to prevent Lowe's from closing its business on the Lowe's Property.

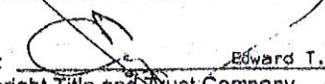
Section 2.9 Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 2.10 Breach. In the event of breach or threatened breach of this Declaration, only all owners of the Trust Property or Lowe's, 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 Party shall pay the reasonable attorney's fees of the prevailing Party(s).

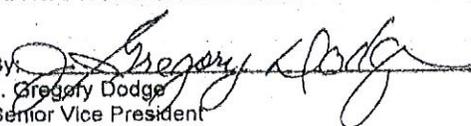
Section 2.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

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

SELLER(S):
L.A. WEINGART TRUST

By:  Edward T. Johnson, President
Albright Title and Trust Company,
Trustee, L.A. Weingart Trust

LOWE'S HOME CENTERS, INC.

By:  J. Gregory Dodge
Senior Vice President

Egm
AOM
D.P

STATE OF OKLAHOMA
COUNTY OF Key

Before me, a notary public, Edward T. Johnson, President of Albright Title and Trust Company, Trustee, L.A. Weingart Trust to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Trustee and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed, and as the free and voluntary act and deed of such Trust for the uses and purposes therein set forth.



Deborah J. Gingerich
Notary Public Deborah J. Gingerich

My Commission Expires: 5-19-97

STATE OF NORTH CAROLINA
COUNTY OF WILKES

Before me, a Shari Elledge in and for said state, on this 18 day of August, 1995, personally appeared J. Gregory Dodge to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Senior Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

Shari Elledge
Notary Public
My Commission Expires: 8-11-95

EXHIBIT "A"

A tract of land lying in the Northeast Quarter of Section 10, Township 26 North, Range 2 East of the Indian Meridian, Ponca City, Kay County, Oklahoma, and being more particularly described as follows:

COMMENCING at the Southeast Corner of said Northeast Quarter;

THENCE North $89^{\circ}53'53''$ West a distance of **50.01 feet** to a point on the West line of U.S. Highway No. 77 Right of Way as established by Warranty Deed recorded in Book 73, Page 384, and to the POINT OF BEGINNING;

THENCE North $89^{\circ}53'53''$ West, along the South line of said Northeast Quarter, a distance of **1172.99 feet**;

THENCE North $00^{\circ}57'07''$ West a distance of **776.00 feet**;

THENCE South $89^{\circ}53'53''$ East a distance of **840.00 feet**;

THENCE North $00^{\circ}57'07''$ West a distance of **24.28 feet**

THENCE South $89^{\circ}51'30''$ East, a distance of **302.93 feet** to a point on the West line of U.S. Highway No. 77 as established by Warranty Deed recorded in Book 73, Page 386;

THENCE Southeasterly, along said West line, on a curve to the left having a radius of **8684.37 feet** (said curve subtended by a chord which bears South $02^{\circ}27'52''$ West a distance of **49.42 feet**) an arc distance of **49.42 feet** to a point of tangency

THENCE South $15^{\circ}28'13''$ East, along the West line of U.S. Highway No. 77, a distance of **158.30 feet** to a point of intersection with a non-tangent curve;

THENCE Southeasterly, along said West line, on a curve to the left having a radius of **8637.37 feet** (said curve subtended by a chord which bears South $00^{\circ}10'29''$ West a distance of **339.66 feet**) an arc distance of **339.68 feet** to a point of tangency;

THENCE South $00^{\circ}57'07''$ East, along said West line, a distance of **258.45 feet** to the POINT OF BEGINNING.

Said tract contains 21.0129 acres, or 915.322 square feet.

