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EASEMENTS

COVENANTS, CONDITIONS AND RESTRICTIONS

BY AND BETWEEN

LOWE'S HIW, INC.

AND

NEWMAN DEVELOPMENT GROUP OF KLAMATH FALLS, LLC

* Being rerecorded to add Legal in 2008-12703

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EASEMENTS

COVENANTS, CONDITIONS AND RESTRICTIONS

THESE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "**ECC&Rs**"), are made and entered into as of the date of the last execution hereof, which date is the ___ day of _____, 20__, by and between NEWMAN DEVELOPMENT GROUP OF KLAMATH FALLS, LLC, an Oregon limited liability company, ("**Developer**") and LOWE'S HIW, Inc., a Washington corporation ("**Lowe's**") (the foregoing parties hereinafter collectively referred to as the "Parties");

W I T N E S S E T H:

WHEREAS, upon the recordation of these ECC&Rs, Lowe's shall be the owner of that certain tract of real property consisting of approximately 9.8 acres located in Klamath County, State of Oregon as more particularly described on Schedule I attached hereto and made a part hereof for all purposes (the "**Lowe's Parcel**"); and

WHEREAS, upon the recordation of these ECC&Rs, Developer shall be the owner of a certain tract of real property described as Parcel C on Schedule II and shall have an agreement for Lowe's to convey Parcels A and B to Developer, all located in Klamath County, State of Oregon, located contiguous with and adjacent to the Lowe's Parcel, which is more particularly described in Schedule II attached hereto and made a part hereof for all purposes (Parcel C, together with Parcel A and Parcel B when conveyed, shall be collectively referred to as the "**Developer Parcel**"); and

WHEREAS, both the Lowe's Parcel and the Developer's Parcel are further designated on the site plan of the overall shopping center development, attached hereto and made a part hereof as Exhibit A (the "Site Plan").

NOW, THEREFORE, the Developer and Lowe's hereby declare, agree, covenant and consent that all of the Parcels described on Schedule I and Schedule II shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are imposed on such Parcels to run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the described Parcels or any part thereof, their heirs,

successors and assigns for the purpose of development and operation of the Parcels 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. "**Building**" shall mean the permanently enclosed structure(s) which has(have) been, will be or may be constructed within the Permissible Building Areas, but shall not include Common Area Improvements. For purposes of these ECC&Rs, "Building" shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

Section 1.2. "**Common Area**" shall mean all real property owned by the Parties for the common use and enjoyment of the Owners and their respective Permittees, including, without limitation, parking areas, access and egress drives, service drives, sidewalks and non-dedicated streets and shall consist of all portions of the Shopping Center not designated as Permissible Building Areas and all portions of any Permissible Building Area upon which no Building is currently constructed. Common Areas do not include drive up or drive through areas and facilities, loading docks, patio areas, or permanent outdoor sales areas.

Section 1.3. "**Common Area Improvements**" shall mean all improvements constructed from time to time within the Common Area and intended for common use which may include, without limitation, parking areas, access and egress drives, service drives, non-dedicated streets, lighting standards, sidewalks, landscaping, fixtures, and signage. The initial Common Area Improvements are shown on the Site Plan.

Section 1.4. "**Consenting Owner**" shall mean and refer to the Owner of the Lowe's Parcel and the Owner of the Developer Parcel. The Parties intend that there shall be only two (2) Consenting Owners for the Shopping Center consisting of only one Consenting Owner representing the Developer Parcel and only one Consenting Owner representing the Lowe's Parcel. In the event that the Lowe's Parcel or the Developer Parcel are further subdivided, the

current Consenting Owner shall designate the particular parcel of the subdivided Parcel whose Owner shall succeed as the Consenting Owner.

Section 1.5. "**Default Rate**" shall mean the rate of interest that is the lesser of (i) twelve percent (12%) per annum, compounded monthly, and (ii) the maximum rate allowed by applicable law.

Section 1.6. "**Floor Area**" shall mean the aggregate of the actual number of square feet of space (i) contained on each floor within a Building as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculations: (a) space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located vertically above ground floor; and (b) any space used solely for Building utilities or mechanical equipment; (ii) the Lowe's Garden Center as identified on the Site Plan; and (iii) space used for outdoor seating for customers of Restaurants and/or other food service businesses. Within thirty (30) days after receipt of a request therefor, a Party shall certify to the requesting Party the amount of Floor Area applicable to such Party's Parcel. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of such survey to the other Parties for informational purposes only.

Section 1.7. "**Improvement(s)**" shall mean Building(s) and other structures within a Permissible Building Area and Common Area Improvements.

Section 1.8. "**Maximum Square Footage**" shall mean and refer to the maximum square footage allowed for all Buildings contained within a single Permissible Building Area. The Maximum Square Footage for each Permissible Building Area is shown on the Site Plan, provided however, with respect to Pad A and Pad B only, in the event only one (1) building is constructed on Pad A and Pad B combined, such building may be nine thousand (9,000) square feet. Any change to the Maximum Square Footage shown on the Site Plan shall be subject to the prior written consent of the Consenting Owners, which consent may be withheld in the sole discretion of each of the Consenting Owners and any such change shall be reflected in an amendment to these ECC&Rs.

Section 1.9. "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of 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 1.10. "**Parcel**" shall mean and refer to any parcel of land shown as a parcel on the Site Plan. "Outparcel" shall mean and refer to Pad A, Pad B and Pad C as shown on the Site Plan. Every Outparcel shall be a Parcel from the date of recording of a subdivision map showing the Outparcel, so that all references herein to Parcels shall apply with equal force to Outparcels; however, references to Outparcels shall be specific to Outparcels as herein defined.

Section 1.11. "**Permissible Building Area**" shall mean the area designated on the Site Plan within which a Building(s) may be constructed not to exceed the Maximum Square Footage, provided however, with respect to Pad A and Pad B only, Developer shall have the right to construct up to 9,000 square feet anywhere within Pad A so long as no building is constructed on Pad B or Developer shall have the right to construct up to 9,000 square feet anywhere within Pad B so long as no building is constructed on Pad A. Any change to the Permissible Building Areas shown on the Site Plan shall be subject to the prior written consent of the Consenting Owners, which consent may be withheld in the sole discretion of each of the Consenting Owners and any such change shall be reflected in an amendment to these ECC&Rs.

Section 1.12. "**Permittees**" shall mean tenants and subtenants and the occupants, contractors, customers, agents, licensees, guests, and invitees of an Owner, its tenants and subtenants.

Section 1.13. "**Shopping Center**" shall mean and refer to the Lowe's Parcel and the Developer Parcel as shown on the Site Plan, located in the City of Klamath Falls, County of Klamath, State of Oregon.

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 its successors, assigns, and Permittees; although not for the direct benefit of Permittees, the Grantee may permit from time to time its 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 "**Utility Facilities**" means utility systems and utility facilities serving the Shopping Center, which require the granting of an easement, including but not limited to the following: storm drainage (including any lateral line running from an Owner's Parcel to the detention pond), detention, 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 utility facilities installed under the provisions of these ECC&RS and as replacements thereto.

(D) The term "**Common Utility Facilities**" means Utility 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 all Owners. 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.

(E) The term "**Separate Utility Facilities**" means utility systems and utility facilities that: (i) benefit only one (1) Owner, (ii) do not service the Common Area, and (iii) are located solely on the benefited Owner's Parcel.

(F) 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.

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

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

(I) In the event an Owner transfers or conveys a portion of its Parcel in accordance with the terms of these ECC&RS, 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.

(J) All easements granted hereunder and herein shall exist by virtue of these ECC&Rs, 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 reasonable request of an Owner, the other Owners shall 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, which approval shall not be unreasonably withheld. 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 these ECC&Rs.

Section 2.2 Easements for Use of Common Area.

(A) Grant of Easement: Each Owner hereby grants to the other Owner(s) easements in the Common Area on its (Grantor's) Parcel for:

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

(ii) the passage of vehicles;

(iii) the passage and accommodation of pedestrians; and

(iv) the doing of such other things as are expressly authorized or required to be done on the Common Area under these ECC&Rs.

(B) Cross Parking: To the extent required by the City of Klamath Falls, the Owners hereby grant reciprocal parking easements between the Lowe's Parcel and the Developer's Parcel.

(C) Design of the Common Areas:

(i) No Change Area: No change may be made to the layout and configuration of that portion of the Common Area shown on the Site Plan as the "**No Change Area**" without the consent of each of the Consenting Owners, which consent may be withheld in the sole discretion of each Consenting Owner.

(ii) Initial Development of the Common Areas: The Common Area Improvements depicted on the Site Plan, including the location, configuration and traffic direction of drive through or drive up lanes and windows, are hereby deemed approved by the Consenting Parties.

(iii) Changes after Initial Development. Any Owner may add Common Areas and Common Area Improvements not shown on the Site Plan or make changes to the Common Area and the Common Area Improvements shown on the Site Plan on such Owner's Parcel and not included in the No Change Area, as such Owner determines in its sole discretion; provided, however, that the consent of each Consenting Owner shall be required for any change or addition that adversely impacts: (i) access to an Owner's Parcel (including changes and additions to entrances or exits that adversely affect access to an Owner's Parcel), (ii) vehicular traffic flow to any other Parcel in the Shopping Center (including changes or additions to curb cuts or the orientation of parking spaces or drive aisles that adversely affect traffic flow to any other Parcel in the Shopping Center), or (iii) visibility of any other Owner's building or any sign on which any other Owner has a right to display a sign panel, and such consent may be withheld in the sole discretion of each Consenting Owner. No change may (i) reduce parking spaces below the minimum required under these ECC&Rs, (ii) alter the location of free standing signs as provided in Section 4.3 of these ECC&Rs, or (iii) relocate Utility Facilities except as provided in Section 2.3 of these ECC&Rs. Notwithstanding the foregoing, no drive through or drive up window or lane may be added to or changed in the Common Areas without the consent of the Owner of the

Lowe's Parcel, which consent may not be unreasonably withheld. In the event the Owner of the Lowe's Parcel does not respond within twenty (20) days, such consent shall be deemed approved.

(iv) 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 complete.

(D) Common Area Sales and Displays: Notwithstanding the grant of easements under Section 2.2(A), sales and displays may be located within the Common Area but only as follows:

(i) The Owner or occupant of the Lowe's Parcel or the Developer Parcel may conduct parking lot sales, conduct other business and/or display merchandise in that portion of the Common Area (including the parking field) to the side of or in front of any Building on the Lowe's Parcel or the Developer Parcel so long as such activity does not materially interfere with ingress and egress to the rest of the Shopping Center and is not in violation of any applicable law or ordinance.

(ii) The Owner or occupant of the Lowe's Parcel or each Outparcel shall have the right, but not the obligation, to install and maintain a bank teller machine or similar kiosk type structure(s) in the parking field of the Lowe's Parcel or its respective Outparcel.

(iii) The Owner or occupant of the Lowe's Parcel or the Developer Parcel may display merchandise, conduct sidewalk sales and/or conduct other business on the sidewalks on the Lowe's Parcel or the Developer Parcel and may otherwise enclose and/or redesign its sidewalk areas without the need of obtaining any other Owner's consent.

(iv) The Owner or occupant of the Lowe's Parcel may park vehicles or equipment in the parking field of the Lowe's Parcel in connection with the leasing of vehicles and/or equipment.

(E) Easements for Access Roads: Each Owner hereby grants to the other Owner(s) easements for pedestrian and vehicular traffic ("**Access Road easements**") in those drive aisles and access roads (not less than the widths therefor shown on the Site Plan) on its (Grantor's) Parcel which are shown on the Site Plan as "No Change Area" for the purpose of providing ingress to and egress from the Grantee's Parcel and each of Shasta Way and Avalon Street, together with the following rights and subject to the following restrictions and reservations:

(i) 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; and

(ii) As further provided in Section 2.2(F) 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 No Change Area, 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.

(F) General Provisions for Common Area Easements:

(i) After the initial construction of the improvements, no barriers, fences, walls, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Shopping Center from time to time devoted to pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Owners 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 fifteen (15) days written notice to each other Owner of its intention to do so and shall attempt to coordinate such closing with each other Owner, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction.

(ii) The easements granted under this Section 2.2 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 these ECC&Rs, specifically including those portions of the Common Area shown on the Site Plan.

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

(iv) 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 these ECC&Rs.

Section 2.3 Easements for Utility Facilities:

(A) Grant of Easement: Each Owner hereby grants to the other Owner(s) perpetual easements to its (Grantor's) Parcel, except within such Owner's Permissible Building Area, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Utility Facilities serving the Parcel of the Grantee.

(B) Installation, Repair and Maintenance:

(i) All Utility Facilities installed in the Common Area, whether installed under this Section 2.3 or otherwise, and all Common Utility Facilities, shall be underground, if reasonably possible.

(ii) The location of the Utility Facilities shall be subject to the prior written consent of the Owner across whose Parcel the same are to be located, which consent shall not be unreasonably withheld, conditioned or delayed.

(iii) Except as otherwise provided herein, the Grantee of any easement for Utility Facilities under this Section shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair and removal at Grantee's cost of all Utility Facilities installed by the Grantee pursuant to this grant of easement, as well as for all Separate Utility Facilities installed by the Grantee on its own Parcel. The Grantee of any easement for Common Utility Facilities shall be responsible for the installation, maintenance, repair and removal at Grantee's cost of all Common Utility Facilities installed by the Grantee pursuant to this grant of easement; Grantee may or may not be reimbursed by Owners pursuant to a separate agreement, however nothing in this Agreement shall obligate the Owner of a Parcel to pay for the costs of installing, maintaining, repairing or removing Common Utility Facilities on its Parcel (other than relocation at Grantor's request pursuant to Section 2.3(E)).

(iv) Any installation, maintenance, repair, replacement, relocation and removal of 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 damage 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.

(v) All installation, maintenance, repair and removal of Utility Facilities 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.

(vi) After the Building on the Lowe's Parcel has opened for business, no installation, repair or removal of Utility Facilities, except emergency repair work, shall be carried on without the consent of the Owner of the Lowe's Parcel, which consent may not be unreasonably withheld. The provisions of this Section 2.3(B)(vi) shall not apply to Separate Utility Facilities.

(C) Easements to Public Utilities. Any grant or other conveyance of an easement to a public utility, as Grantee, 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, in addition to the other provisions of Section 2.3, to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument.

(i) The easement is non-exclusive;

(ii) All Utility Facilities installed pursuant to the easement shall be underground, except for manholes, manhole covers, switch gears and transformers, which shall be flush with adjacent grade, and except as otherwise shown on plans subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed, provided however, existing overhead lines shall remain on Shasta Way and the east side of Avalon Street;

(iii) The right to use the surface areas for the purposes allowed under these ECC&Rs is reserved;

(iv) 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;

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

(vi) Grantee shall protect its Utility Facilities against uses of the surface made by Grantor and others;

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

(viii) 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;

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

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

(D) Indemnification: 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 and reasonable attorney's fees on appeal), incurred in connection with Grantee's use of the Utility Facilities easements under this Section 2.3, except to the extent occasioned by Grantor's negligent or willful wrongful act or omission to act.

(E) Grantee's Rights as to Utility Facilities:

(i) Use of Utility Facilities: The Grantor of any easement for Utility Facilities under this Section 2.3 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 serve Grantor's additional use shall be borne by such Grantor; and provided, further, that Grantor

gives written notice within the time period called for under, and otherwise complies with, the requirements of Section 2.3(E)(ii).

(ii) Relocation of Utility Facilities on Grantor's Parcel: The Grantor of any easement under this Section 2.3 may relocate on its Parcel any 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, specifically in the event such relocation affects the Owner of the Lowe's Parcel, Grantee must first obtain the Owner of the Lowe's Parcel's written consent. Notwithstanding the foregoing, 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 2.3(E)(ii)(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 Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee.

(iii) Limitation on Rights: Nothing herein shall be construed to grant any Owner the right to utilize, drain into, or otherwise alter natural water flow into any detention or retention facilities located on or exclusively serving any other Owner's Parcel.

Section 2.4 Drainage:

Each Owner hereby grants to the other Owners easements to use, maintain and repair any storm water drainage system (the "**Storm Drainage System**") now or hereafter located on any Parcel, together with the right to discharge surface water runoff across portions of any Parcel in accordance with the design of the Storm Drainage System; provided, however, that use,

maintenance and repair of any Utility Facilities for the Storm Drainage System shall comply with Section 2.2. All Storm Drainage Systems shall be subject to the prior written consent of the Consenting Owners, which consent shall not be unreasonably withheld, conditioned or delayed. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of an Owner's Improvements substantially as shown on the Site Plan (including, without limitation, Buildings, curbs, drives and paving) shall be permitted, provided that the same is in accordance with a drainage plan approved by the Consenting Owners and which does not cause water to settle or pool within another Owner's Parcel.

Section 2.5 Construction Easements:

(A) Each Owner hereby grants to the other Owners 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 these ECC&Rs. Notwithstanding the foregoing, the Parties acknowledge that the Lowe's staging area shall be located on the Lowe's Parcel.

(B) 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.

(C) The location and use of all temporary construction easements under this Section 2.5 shall be subject to the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.

(D) 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.

(E) 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 any other Owner, and shall not interfere with or interrupt the business operations conducted by any other Owner in the Shopping Center. 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 temporary construction 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 and reasonable attorneys' fees on appeal) 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.

(F) Grantee's Improvements made within such temporary construction easements shall, for purposes of cost allocation due to maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under these ECC&Rs, 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.

(G) Except as reasonably necessary for and 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 Sign Easement:

The Owner of the Developer Parcel hereby grants to the other Owners entitled under Section 4.3 of these ECC&Rs the right to display a sign panel on the Center Sign, an easement for maintenance, repair and replacement of such sign panel and to the Owner of the Lowe's Parcel an easement for construction of the Center Sign(s).

Section 2.7 Cure Right Easements:

Each Owner hereby grants to the Consenting Owners an easement and license to enter upon its Parcel for the purpose of exercising the cure rights provided under Article V of these ECC&Rs. Each Grantee of the easements granted under this Section 2.7 shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees and reasonable attorneys' fees on appeal) incurred in connection with or arising out of Grantee's use of said easements, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act. The duration of the easements granted under this Section shall be coterminous with the respective provisions of the ECC&RS which give the Grantee the right or the obligation to perform the work described in this Section 2.7

ARTICLE III

USE RESTRICTIONS

Section 3.1 Permitted Uses:

Every Parcel shall be used only for financial institutions, service shops, Retail Offices, retail stores selling retail merchandise normally carried in other shopping centers and restaurants with less than forty percent (40%) of gross revenues from the sale of alcoholic beverages, all as subject to the further restrictions of this Article III. "**Retail Offices**" shall mean offices of the type customarily found in retail shopping centers for use primarily with customers or clients including, without limitation, insurance offices, real estate offices, banks and financial institutions, and travel agents, but shall not include educational or training facilities or medical or dental offices, except as herein contemplated. No Retail Office use shall exceed 4,500 square feet and the total of all Retail Office use in the Shopping Center shall not exceed 9,000 square feet.

Section 3.2 Nuisances:

No Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations. Nothing shall be done on any Parcel which is a public nuisance to the community.

Section 3.3 Use Restrictions:

(A) During the term of these ECC&Rs no portion of the Shopping Center may be used for any of the following purposes without the prior written consent of the Consenting Owners which consent may be withheld in the sole discretion of a Consenting Owner:

(i) A liquor store, or 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 comprise less than forty percent (40%) of the restaurant's gross revenues.

(ii) A bowling alley, billiards parlor, bingo parlor, arcade, game room or other amusement center, provided however, the foregoing shall not prohibit arcade or other games incidental to an otherwise permitted use.

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

(iv) A health club, gymnasium or spa; provided however, one (1) first class day spa may be located within the Shopping Center if such business is no more than three thousand (3,000) square feet.

(v) A service station, automotive repair shop or truck stop; provided however, the foregoing shall not prohibit the operation of: one (1) tire store such as Discount Tire, Sun Devil Auto, Goodyear, America's Tires, Les Schwab, and Firestone ("**Tire Store**") or one (1) facility providing lubrication services for automobiles ("**Lube Facility**"), such as Jiffy Lube, EconoLube, Oil Can Henry's and Quaker State. The Tire Store or Lube Facility must comply with the following conditions: (1) all outdoor inventory and refuse containers are screened from view from the Lowe's Parcel, (2) any such Tire Store or Lube Facility shall be operated by a national or regional chain of facilities, including franchises, having at least ten (10) other locations under a national or regional trade name or such other operator, whose design is of a quality comparable to, and whose operations are consistent with, a typical regional or national chain, (3) any such business must comply with all local, state and federal storage and disposal regulations, rules, law and ordinance for petroleum products or petrochemicals and have in place and functioning adequate facilities and programs for monitoring and preventing any release of petroleum products or chemicals into the environment, and (4) in the event any such business

ceases its operations, and such business operates above or underground storage tanks for storage of petroleum or chemicals, such tanks shall be removed, closed and remediated in accordance with all applicable local, state and federal laws and regulations.

(vi) A flea market, open air market, tent sale or pawn shop.

(vii) A training or educational facility (including, without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers; provided that such restriction shall not prohibit the incidental use of an otherwise permitted business for training or classes, such as "how to" classes taught in conjunction with the sale of retail items from an otherwise permitted retail use).

(viii) A child day care facility.

(ix) A car wash, except on an Outparcel and where the same 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 and/or specialized clinic or office (such as a family planning clinic, cosmetic surgery clinic, immunology clinic, gynecology/obstetrics clinic, or indigent services clinic). However, an urgent care facility, lasik surgery clinic, orthodontic or dental office, and an optometry, ophthalmology, and/or eye care center is permitted.

(xi) A storage or mini-warehouse facility.

(xii) An establishment for the sale of automobiles, trucks, mobile homes, boats or recreational motor vehicles.

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

(xiv) A hotel or motel.

(xv) Governmental offices.

(B) During the term of these ECC&Rs 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). Provided, however, this subsection (i) shall not prevent the sale of so-called "adult" materials by a full service book store operation such as Barnes & Noble or Borders so long as: (a) such sales comply with applicable law, (b) such sales are merely an incidental part of such a full service book store operation, and (c) no sign located on the exterior of the building and no interior sign visible from the exterior thereof advertises the presence of such materials.

(ii) A massage parlor; provided however, one (1) first class day spa may be located within the Shopping Center if such business is no more than three thousand (3,000) square feet.

(iii)

(iv) A skating rink.

(v) A mortuary, crematorium or funeral home.

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

(vii) A land fill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage.

(viii) A telephone call center.

(ix) A gambling establishment or betting parlor; provided, however, gaming machines are permitted in conjunction with an otherwise permitted use so long as the total square footage devoted to such gaming machines does not exceed five hundred square feet (500).

(x) Veterinary hospital or animal raising or keeping facilities except as part of a national or regional chain pet or pet supply store.

(xi) Assembling, manufacturing, industrial, distilling, refining or smelting facility.

Section 3.4 Exclusive Use Restriction for the Benefit of the Lowe's Parcel:

(A) No portion of the Shopping Center other than the Lowe's Parcel may be used for the following purposes:

(i) A hardware store or center containing more than 5,000 square feet of Floor Area.

(ii) An appliance and/or lighting store or center containing more than 5,000 square feet of Floor Area.

(iii) A nursery and/or lawn and garden store or center containing more than 3,000 square feet of Floor Area (including any outdoor areas).

(iv) A paint store or center, wall paper store or center, tile store or center, flooring store or center, carpeting store or center, and/or home decor store or center containing more than 4,000 square feet of Floor Area.

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

(B) 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)(i) through (A)(iv) when such space exceeds the limitations of subparagraphs (A)(i) through (A)(iv).

(C) Notwithstanding anything to the contrary in Section 3.4, 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, wall paper, tile, flooring, carpeting and/or décor store or center is not operated in any portion of the Lowe's Parcel for a period in excess of three (3) consecutive years (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Parcel), the above stated exclusives shall be of no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall re-open a store on any portion of the Lowe's Parcel for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if such uses were begun during such time as the above exclusive use restrictions were 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 Home Centers, Inc. or its affiliated companies ("**Lowe's**"), 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, which consent Lowe's may withhold in its sole discretion. 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 Parameters:

(A) Permissible Building Areas: All Buildings must be constructed within a Permissible Building Area. No Building can exceed the Maximum Square Footage shown for each Permissible Building Area on the Site Plan. No building, structure or improvements (other than Common Area Improvements), shall be erected or maintained outside of a Permissible Building Area. The Permissible Building Areas and Maximum Square Footages as shown on the Site Plan cannot be changed without the prior written consents as required under Section 1.7 and Section 1.10, which changes shall be reflected in an amendment to these ECC&Rs.

(B) Parking Requirements. Each Outparcel, shall be self-supporting with respect to parking and shall each contain not less than four (4.0) paved full size automobile parking spaces per each 1,000 square feet of non-restaurant use, ten (10.0) paved full size automobile parking spaces per each 1,000 square feet of Floor Area for any restaurant use over 4,500 square feet, seven (7.0) paved full size automobile parking spaces per each 1,000 square feet of building floor for any restaurant use over 2,000 square feet and up to and including 4,500 square feet, and five (5.0) paved full size automobile parking spaces for each 1,000 square feet of Floor Area for any restaurant less than 2,000 square feet. The Lowe's Parcel shall contain the greater of: (a) three

(3) parking spaces per each 1,000 square feet of Floor Area on the Lowe's Parcel (excluding the garden center), or (b) the minimum required by law including variances. To be self-supporting, the parking spaces must be located on each such parcel so that parking spaces available on other Parcels or available through easements with other Parcels cannot be counted in meeting the requirements of this Section.

(C) Fire Protection: All improvements within the Shopping Center shall be constructed in compliance with all applicable federal, state, and local building codes and all improvements within sixty (60) feet of the Building on the Lowe's Parcel shall be sprinklered for fire protection or a fire wall built such that the sprinklered rate for such Buildings will be preserved. Notwithstanding anything else to the contrary in these ECC&Rs, no Owner shall seek a building permit for a Building within sixty (60) feet of the Permissible Building Area on the Lowe's Parcel without the prior written consent of the Owner of the Lowe's Parcel, which the Owner of the Lowe's Parcel may withhold in its sole discretion.

(D) Condition Prior to Construction: After the Building on the Lowe's Parcel has initially opened for business, each Parcel shall be kept neat, orderly, treated for dust and weed control or planted in grass and trimmed (or improved as Common Area) until improved and constructed.

Section 4.2 Building Design:

(A) Harmony. All structures (including Common Area Improvements such as lighting) erected within the Shopping Center shall be architecturally harmonious (including, without limitation, harmonious colors, materials and designs). The Consenting Owners shall 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 the Owner of the Lowe's Parcel may construct improvements similar to its current prototypical store building and improvements as modified to meet Governmental Requirements, and the Owner of Developer's Parcel may construct the prototypical building for any national tenant or occupant having more than thirty (30) stores. Specifically, the initial design and appearance of the Buildings and Improvements on the Lowe's Parcel and any changes to the Buildings and Improvements on the Lowe's Parcel that the Owner of the Lowe's Parcel may

deem appropriate for consistency with changes in the design and appearance of its then current prototypical stores as modified to meet Governmental Requirements do not require the consent of any other Owner. All Buildings within the Shopping Center shall be single story.

(B) Approvals Except as provided in Section 4.2(A), no buildings or structures shall be erected or allowed to remain on any Parcel unless architectural renderings (depicting the exterior elevations of all sides, materials, colors and dimensions), a plan showing the location and orientation of drive-thru or drive-up windows or lanes, and a site plan (collectively, the "**Plans**") for such structure have been approved in writing by the Consenting Owners, which approval shall not be unreasonably withheld, conditioned or delayed. If any Consenting Owner fails to respond to a request for approval within twenty (20) days (or within twenty (20) days after the reply to a request for additional information), such request shall be deemed approved. A complete set of the proposed Plans shall be presented to and approved in writing by the Consenting Owners prior to commencing clearing, grading, or construction of a building of any kind on any Parcel. Upon completion of the Building foundation, an actual field survey of the foundation shall be presented to the Consenting Owners to ensure that it has been constructed in accordance with the Plans. All improvements shall comply with the Plans as approved by the Consenting Owners unless changes are approved in writing by the Consenting Owners. The right to make inspections necessary to assure compliance is reserved to the Consenting Owners. After initial construction of Buildings and other Improvements, except as provided in Section 4.2(A), no Owner shall make alterations that will substantially change the exterior of its Buildings without the consent of the Consenting Owners, such consents not to be unreasonably withheld, conditioned or delayed.

(C) Construction Timing. 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. Subject to force majeure, total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year.

Section 4.3 Pylon or Monument Signage:

(A) The Shopping Center shall have one (1) multiple occupant pylon sign, which shall be constructed by Lowe's in the location identified on the Site Plan as "**Center Sign**". The Center Sign shall be constructed in accordance with the "**Sign Plan**" attached hereto as Exhibit B. The Sign Plan sets forth the maximum dimensions of each sign panel on the Center Sign, the order of the sign panels on the Center Sign and the maximum number of permitted sign panels on the Center Sign. Accordingly, the Owner of the Lowe's Parcel shall be entitled to have and maintain a sign panel thereon in the top and most prominent position on both sides of such Center Sign ("**Lowe's Sign Panel(s)**"). Lowe's Sign Panels shall be of colors, design and content as required by the Owner of the Lowe's Parcel's own visual sign standards. Notwithstanding the foregoing, directional signs or menu boards may be constructed by Developer in accordance with Section 4.4(D), and such signs shall not be required to identify the Lowe's store. The cost of constructing any Center Sign shall be prorated among the occupants having panels thereon, and calculated as a fraction, the numerator of which is the total square footage of their sign panel and the denominator of which is to the total square footage of all sign panels thereon.

(B) Single occupant monument signs ("**Monument Sign**") may be located on each Outparcel or the Lowe's Parcel. Each Owner shall be entitled to use the Monument Sign, if any, shown on such Owner's Parcel, and shall be solely responsible for all costs of construction, maintenance and repair of such Monument Sign.

(C) Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3' 3" in height.

(F) There shall be no other free standing signs allowed in the Center.

Section 4.4 Outparcel Development:

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

(A) Any Building constructed on any of the Outparcels shall not exceed twenty eight (28) feet in height, with architectural features not to exceed thirty one (31) feet in height,

provided that such architectural features shall not exceed twenty five percent (25%) of the width of the fascia of such Buildings. For purposes of this Section, height shall be measured from the finished elevation of the parking area of the Shopping Center.

(B) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to the Consenting Owners;

(C) No rooftop signs shall be erected on any building constructed on any Outparcel.

(D) A Monument Sign, menu board or directional sign may be erected on any Outparcel, provided that such signs (excluding the Lowe's Monument Sign) shall not exceed five and a half (5 1/2) 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 Monument Sign or the Center Sign.

(E) 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, as described in Section 2.3 of these ECC&Rs, serving the Shopping Center and the Outparcel which is caused by such Owner or party, to the extent the Outparcel benefits from any of the Utility Facilities serving the Shopping Center and the Outparcel.

(F) 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 Performance of Construction Work Generally:

All construction, alteration or repair work ("**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, including Work on the Lowe's Parcel, 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 Permittees; (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; and (viii) obtain all necessary governmental approvals. Such Work 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 Work performed within the Permissible Building Areas of the constructing Owner, 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) with respect to the Lowe's Parcel, 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 and subject to Section 2.5, limit such access to its own Parcel) and (b) 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 (subject to Section 2.5), 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 ("**Plans**"). No such Work shall be performed in the Common Areas (unless in connection with Common Utilities) without the prior written consent of the Owner of the Lowe's Parcel and the Developer Parcel, such consent not to be unreasonably withheld, conditioned or delayed. 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. Furthermore, once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Parcel all construction traffic to or from the Developer Parcel will be limited to the No Change Area.

Section 4.6 Compliance in Construction:

All work which an Owner undertakes pursuant to these ECC&Rs shall comply with the Plans, 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. The consent by the Owner of the Lowe's Parcel of any such Work or Plans, under any provisions of these ECC&Rs, shall not constitute any assumption of responsibility for the accuracy, sufficiency or propriety of such Work or Plans, nor shall such consent constitute a representation or warranty that such Work or Plans will be economic to construct or will comply with law.

Section 4.7 Construction Insurance.

(A) Prior to commencing any construction activities within the Shopping Center, each Owner/Occupant 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:

(i) Worker's Compensation and Employer's Liability Insurance. The general contractor and each of its subcontractors shall carry workers' compensation and employer's liability coverage as outlined below

(a) Worker's compensation insurance as required by any applicable law or regulation with statutory limits.

(b) Employer's liability insurance in the amount of $1,000,000 each accident for bodily injury, $1,000,000 policy limit for bodily injury by disease and $1,000,000 each employee for bodily injury by disease.

(ii) Commercial General Liability Insurance. Commercial General Liability insurance covering all operations by or on behalf of the general contractor and any subcontractors, which shall include the following minimum limits of liability:

(a) $2,000,000 each occurrence for bodily injury, death and property damage;

(b) $5,000,000 per project aggregate for products and completed operations (which shall be maintained for a three (3) year period following final completion of work); and

(c) $5,000,000 per project general aggregate.

The commercial general liability policy shall include coverage for contractual liability and shall be endorsed to include coverage for Explosion, Collapse and Underground (XCU) hazard, if applicable. If the commercial general liability policy does not provide for per project aggregate limits as required herein, then the insuring party shall carry coverage sufficient to bring the aggregate limits for the general aggregate and the products/completed operations aggregate to not less than $10,000,000 each (may include excess liability coverage).

(d) Automobile Liability Insurance. Automobile liability insurance covering any auto with minimum combined single limit of $1,000,000 for bodily injury, death and property damage. The general contractor shall require each of its subcontractors to maintain automobile liability insurance covering any auto with minimum combined single limit of $1,000,000 for bodily injury, death and property damage.

(B) If the construction activity involves the use of another Parcel, then the Owner and mortgagee of such Parcel shall each be additional insured(s) under the commercial general liability required herein and such insurance shall provide that the insurance shall not be canceled without endeavoring to provide 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.

(C) All insurance required herein shall be procured from companies authorized to do business in the United States and shall be rated by A.M. Best at not less than A-/VII. The commercial general liability insurance may be provided under (i) an individual policy covering this location with per project minimum limits of $2,000,000 per occurrence and aggregate limits of $5,000,000 each general aggregate and products/completed operations aggregate, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such party

(provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than $10,000,000, then such insuring party shall also maintain excess liability coverage necessary to establish a total aggregate limit of $10,000,000 each for the general aggregate and the products/completed operations aggregate, (iii) a plan of self-insurance, provided that any party so self-insuring notifies the other parties of its intent to self-insure and agrees that upon request it shall deliver to such other parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such party (as to Lowe's such party shall consist of Lowe's and its parent corporation) has a net worth in excess of $200,000,000 as determined by generally accepted accounting principles consistently applied, provided that Lowe's shall deliver the annual report of its parent corporation audited by an independent certified public accountant (or directions on how that annual report may be obtained over the internet) which discloses that Lowe's in combination with its parent corporation has a net worth in excess of $200,000,000 as determined by generally accepted accounting principles consistently applied, or (iv) a combination of any of the foregoing insurance programs. To the extent of any deductible carried by a party, such party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed $250,000 unless (a) such party complies with the requirements regarding self-insurance pursuant to (iii) above or (b) such party has a net worth in excess of $200,000,000 as determined by generally accepted accounting principles. Each party agrees to furnish to any party requesting in writing the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such party is in full force and effect.

(D) The insurance required above shall provide that except with respect to the limits of insurance, the coverage applies separately to each insured against whom claim is made or suit is brought and contains no crossclaim exclusions. All insurance required pursuant to this Section 4.7 shall be written on an occurrence form utilizing the most current ISO policy form (or equivalent).

Section 4.8 Damage and Destruction:

In the event of the destruction or damage to any extent to any Buildings or Improvements in the Shopping Center, the affected Owner shall either: (1) diligently commence and pursue completion of the repair or restoration of such Building or Improvement, or (2) within one hundred twenty (120) days after the destruction or damage, level such Building or Improvement, remove the debris and keep the Parcel neat, orderly, planted in grass and mowed/trimmed(or otherwise treated for dust and weed control) until subsequently improved, constructed upon and operated and so that the Parcel is in a clean, orderly, sightly and safe condition (provided that such Owner repairs and restores any No Change Area on such Owner's property). In the event any Building, structure or other Improvement on an Outparcel shall be damaged or destroyed by any fire or other casualty, the Owner, lessee or user of the Outparcel shall within one hundred twenty (120) days of such damage or destruction (a) commence to repair and/or reconstruct such improvements to the condition required by this Section; or (b) level such Building or improvement, remove the debris from the Outparcel and keep the Outparcel neat, orderly, planted in grass and mowed/trimmed until subsequently improved, constructed upon and operated.

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 or 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.

(A) Maintenance of Access Roads and Common Drive Aisles: Notwithstanding the obligation of each Owner to maintain the Common Areas on such Owner's Parcel, the Owner of the Lowe's Parcel shall maintain the Access Roads and the drive aisles marked "**Common Driveway Area**" on the Site Plan in accordance with the standards set forth in this Section 5.1 (including associated improvements such as curb, gutter, lighting (if separately metered), landscaping and irrigation) and each Owner shall reimburse Lowe's such Owner's pro rata share of the cost of such maintenance. Each reimbursing Owner's pro rata share shall be calculated as the ratio of the total square feet on such Owner's Parcel divided by the total square footage of property in the Shopping Center. All reimbursements must be made within thirty (30) days of receipt of an invoice with reasonable documentation of the costs.

(B) Center Signs: The Owner of the Lowe's Parcel shall be responsible for maintenance, repair and replacement of the sign structure for the Center Signs, subject to reimbursement by each Owner entitled pursuant to Section 4.3 to display a sign panel thereon. Each such Owner's share shall be calculated as a fraction, the numerator of which is the total square footage of such Owner's sign panel and the denominator of which is the total square footage of all sign panels on the Center Sign. Any designation of the Shopping Center on a Center Sign shall not be treated as a sign panel attributed to either to the Lowe's or Developer for purposes of cost prorations.

Section 5.2 Maintenance Director:

Subject to the mutual agreement of each of the Consenting Owners, a third party may be appointed to maintain and repair the Common Areas in the manner as above outlined (the "**Maintenance Director**"). The Maintenance Director may receive for such agency a fee that is

mutually acceptable to the Consenting Owners to cover supervision, management, accounting and similar fees. The cost of all maintenance and repair activities undertaken by the Maintenance Director, together with the agency fee, shall be prorated between all Owners based upon acreage owned. An Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice thereafter. In the event the Parties elect to self maintain their parcels, the Owner of the Developer Parcel shall be responsible for reimbursing Lowe's for the maintenance costs associated with Lowe's maintaining the No Change Area. The Owner of the Developer Parcel shall reimburse Lowe's for such costs within thirty (30) days following the receipt of an invoice with supporting documentation.

Section 5.3 Failure in Performing Maintenance Responsibilities:

In the event that an Owner fails or defaults 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 breach under the ECC&RS and either Consenting Owner (the "**Curing Party**") may thereafter perform such maintenance obligations, in addition to such Owner's other remedies. The Curing Party shall then invoice the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days to pay the Curing Party after receipt of the invoice. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the invoice, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid.

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.

Section 5.5 Insurance:

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 insuring against risk of direct physical loss or damage, including the perils of flood and earthquake, 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 minimum limits of not less than TWO MILLION DOLLARS ($2,000,000.00) per occurrence and FIVE MILLION DOLLARS ($5,000,000) general aggregate. 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), as determined by generally accepted accounting principles consistently applied, from self-insuring for such insurance coverage. All insurance required pursuant to Section 5.5 shall be written on an occurrence form utilizing the most current ISO policy form (or equivalent).

Section 5.6 Failure to Carry Insurance:

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 these ECC&Rs and the Owner of the Lowe's Parcel and/or the Owner of the Developer Parcel (the "Curing Party") may, in addition to such Owners' other remedies, thereafter obtain and pay for such insurance. The Curing Party shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) days period until paid.

Section 5.7 Cross Indemnity:

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, agents or employees.

Section 5.8 Waiver of Subrogation:

Each Owner (the "**Releasor**") hereby releases the other Owners (the "**Releasees**"), to the extent of their agreed insurance coverage or any amounts covered under a program of self insurance pursuant to Section 5.5, from any and all liability for any loss or damage caused by fire or any of the losses covered by the releasing party's property insurance or loss covered by the releasing party's commercial general liability insurance, even if such property or casualty loss shall be brought about by the fault or negligence of the other party. The Owners agree to include in their insurance a clause permitting such release. Failure by any party to include this release in their insurance policies shall relieve all other parties from the obligation to grant the release to that party. Except as provided herein, nothing contained in this agreement shall be deemed to release any party from liability for damages resulting from the fault or negligence of that party or its agents, contractors or employees.

ARTICLE VI

DEFAULT, REMEDIES

Section 6.1 Default:

The occurrence of any one or more of the following events shall constitute a breach of these ECC&Rs by the non-performing party (the "**defaulting Owner**"):

(A) The failure to perform any obligation of Article V hereof and to cure such failure within the time requirements cited therein which shall be a breach under these ECC&Rs without necessity of any further notice to the defaulting party other than as provided for in Article V;

(B) The failure to make any payment required to be made hereunder within ten (10) business days of the due date which shall be a breach under these ECC&Rs without necessity of any notice to the defaulting party, or

(C) The failure to observe or perform any other of the covenants, conditions or obligations of these ECC&Rs or to abide by the restrictions and requirements herein provided, other than as described in (A) above, which shall be a breach under these ECC&Rs after expiration of thirty (30) days after the issuance of a notice by a non-defaulting Owner ("**Non-Defaulting Owner**") specifying the nature of the default claimed.

Section 6.2 Remedies for all Owners:

Each non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any Owner or any other person for breach of any easement or restriction benefiting such non-defaulting Owner. Such proceeding shall include the right to restrain by injunction any such violation or threatened violation and to obtain a decree to compel performance of any such easements or restrictions. No Permittee shall have the right to bring any action to enforce any provision of these ECC&Rs and no enforcing Owner shall have the obligation to join any Permittee in any action to enforce these ECC&Rs.

Section 6.3 Right to Cure:

With respect to any default under Section 6.1, any Non-Defaulting Owner who is a Consenting Owner (the "**Curing Owner**") shall have the right, but not the obligation, in addition to any remedy available at law or equity, 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 (except as otherwise limited in Article V); 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 Curing 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 Curing 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 Curing Owner shall cure a default, the defaulting Owner shall reimburse the Curing 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 6.4 Liens:

Costs and expenses accruing and/or assessed pursuant to Section 6.3 above and the amounts described in Section 6.1 shall constitute a lien against the defaulting Owner's Parcel. A lien

under this Section 6.4 or under Article V shall attach and take effect only upon recordation of a claim of lien in the applicable real estate records office of the county in which the said Parcel is located, by the Curing Owner or Curing Party making the claim after a judgment by a court of competent jurisdiction. The claim of lien shall include the following:

(A) The name and address of the lien claimant;

(B) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Curing Owner and/or Curing Party;

(C) 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;

(D) A description of the Parcel against which the lien is claimed;

(E) A description of the work performed which has given rise to the claim of lien;

(F) A statement itemizing the total amount due, including interest;

(G) A statement that the lien is claimed pursuant to the provisions of these ECC&Rs, 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 7.4 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 6.5 Cumulative Remedies:

All of the remedies permitted or available to a Consenting Owner under these ECC&Rs 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 6.6 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 these ECC&Rs shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by a Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of these ECC&Rs 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 these ECC&Rs.

Section 6.7 No Termination for Breach:

No breach, whether or not material, of the provisions of these ECC&Rs shall entitle any Owner to cancel, rescind or otherwise terminate these ECC&Rs, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of these ECC&Rs.

Section 6.8 Limitation of Liability:

Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Parcel, or any portion thereof, shall be bound by these ECC&Rs only as to the Parcel or portion of the Parcel acquired or possessed by such person. In addition, such person shall be bound by these ECC&Rs only during the period such person is the fee leasehold 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 6.8, the easements, covenants and restrictions in these ECC&Rs shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 6.9 Attorneys Fees:

In the event of a breach hereof, the non-prevailing Owner shall pay the reasonable attorney's fees (and the reasonable attorneys' fees on appeal) of the prevailing Owner.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Estoppel Certificates:

Each Owner shall upon not less than thirty (30) days from receipt of written notice from the requesting Owner execute and deliver to the requesting Owner a certificate in recordable form stating that (i) either these ECC&Rs are unmodified and in full force and effect or are modified (and stating the modification); and (ii) whether or not such Owner has sent any notice of any default to any other Owner under these ECC&Rs.

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, and assigns until the expiration of ninety (90) 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 these ECC&Rs or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Notwithstanding the foregoing, 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 these ECC&Rs, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of these ECC&Rs, except as related to the easements cited and mentioned herein, shall terminate and have no further force or effect.

Section 7.3 Amendment:

These ECC&Rs may not be amended except by agreement of the Consenting Owners in writing. Any amendment that would materially and substantially change the easements granted under Article 2, the uses permitted under Article 3, or the development requirements of Article 4 shall require the prior written consent of any Owner reasonably likely to be materially adversely

impacted by such amendment, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 7.4 Notices:

Any notice or invoice required or permitted to be given under these ECC&Rs 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 or deposit with a nationally recognized overnight delivery service, 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:	NEWMAN DEVELOPMENT GROUP OF KLAMATH FALLS, LLC 2255 Van Ness Avenue, Suite 103 San Francisco, CA 94115 Attn: George Akel Facsimile: (415) 923-0680
with a copy to:	Newman Development Group, LLC 3101 Shippers Road Vestal, NY 13850 Attn: Marc Newman Facsimile: (607) 798-1820
with a copy to:	Howard M. Rittberg Levene, Gouldin & Thompson 450 Plaza Drive Vestal, NY 13850 Facsimile: (607) 763-9211
Lowe's:	Lowe's HIW, Inc. Box 1111 North Wilkesboro NC 28656
Street Address:	(1605 Curtis Bridge Road, Wilkesboro, NC 28697) Attention: Property Management Dept. (FMN6)
Copy to:	Lowe's HIW, Inc. Box 1111 North Wilkesboro NC 28656
Street Address:	(1605 Curtis Bridge Road, Wilkesboro, NC 28697) Attention: Legal Department (LGS6)

Section 7.5 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 7.6 Adjacent Developer Parcels:

Developer may, in his sole discretion, subject the parcels of real property adjacent to the Shopping Center which are owned by Developer (the "**Adjacent Developer Parcels**") to the terms, covenants and conditions of these ECC&Rs. At that time the Adjacent Developer Parcels shall be subject to the obligations created herein and shall benefit from the rights granted to Developer herein. If such Adjacent Developer Parcels are incorporated in the Shopping Center and made subject to these ECC&Rs; 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 7.7 No Covenant to Continuously Operate:

Neither the Owner of the Lowe's Parcel or the Developer Parcel shall be obligated to continuously operate a business on such Parcel and, specifically, Lowe's 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 any store on the Lowe's Parcel. Nothing contained in these ECC&Rs 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 these ECC&Rs 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, 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:

These ECC&Rs 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 Owners is an arms 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 these ECC&Rs as of the day and year first written above.

[Remainder of Page Left Intentionally Blank; Signatures on Following Pages]

Signature Page for Lowe's (ECC&Rs):

LOWE'S:
Lowe's HIW, Inc.,
a Washington corporation

By: _____
Name: Gary E. Wyatt
Title: Senior Vice President

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

ON THIS 24th day of June, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Gary E. Wyatt, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the SVP of LOWE'S HOME CENTERS, INC., a North Carolina corporation, and that he/she executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he/she executed such instrument as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public _____
Printed Name: Sheila H. Vannoy

SHEILA H. VANNOY
Notary Public
North Carolina – Wilkes County
My Commission Expires 10-6-08

My Commission Expires:

10-6-08

Signature Page for Developer (ECC&Rs):

DEVELOPER:

NEWMAN DEVELOPMENT GROUP OF KLAMATH FALLS, LLC
an Oregon limited liability company

By _____
Name: ~~George Akel, III~~ Marc Newman
Title: Member
Date June 24, 2008

STATE OF _____)
) ss.
COUNTY OF _____)

ON THIS ____ day of _____, 200_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared __ _____, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the _____ of _____, a _____, and that he/she executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he/she executed such instrument as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public _____
Printed Name:

My Commission Expires:

_____

STATE OF NEW YORK)
) ss:
COUNTY OF BROOME)

On this 24th day of June, 2008, before me personally came MARC NEWMAN, to me known to be the individual who executed the foregoing instrument, and who, being by me duly sworn, did depose and say that he is a Member of NEWMAN DEVELOPMENT GROUP OF KLAMATH FALLS, LLC, an Oregon limited liability company, and that he executed the same as the act and deed of said limited liability company.

Notary Public

CARRIE A. COLEGROVE
Notary Public, State of New York
No. 02CO6122023
Qualified in Broome County
My Commission Expires Feb. 07, 20 09

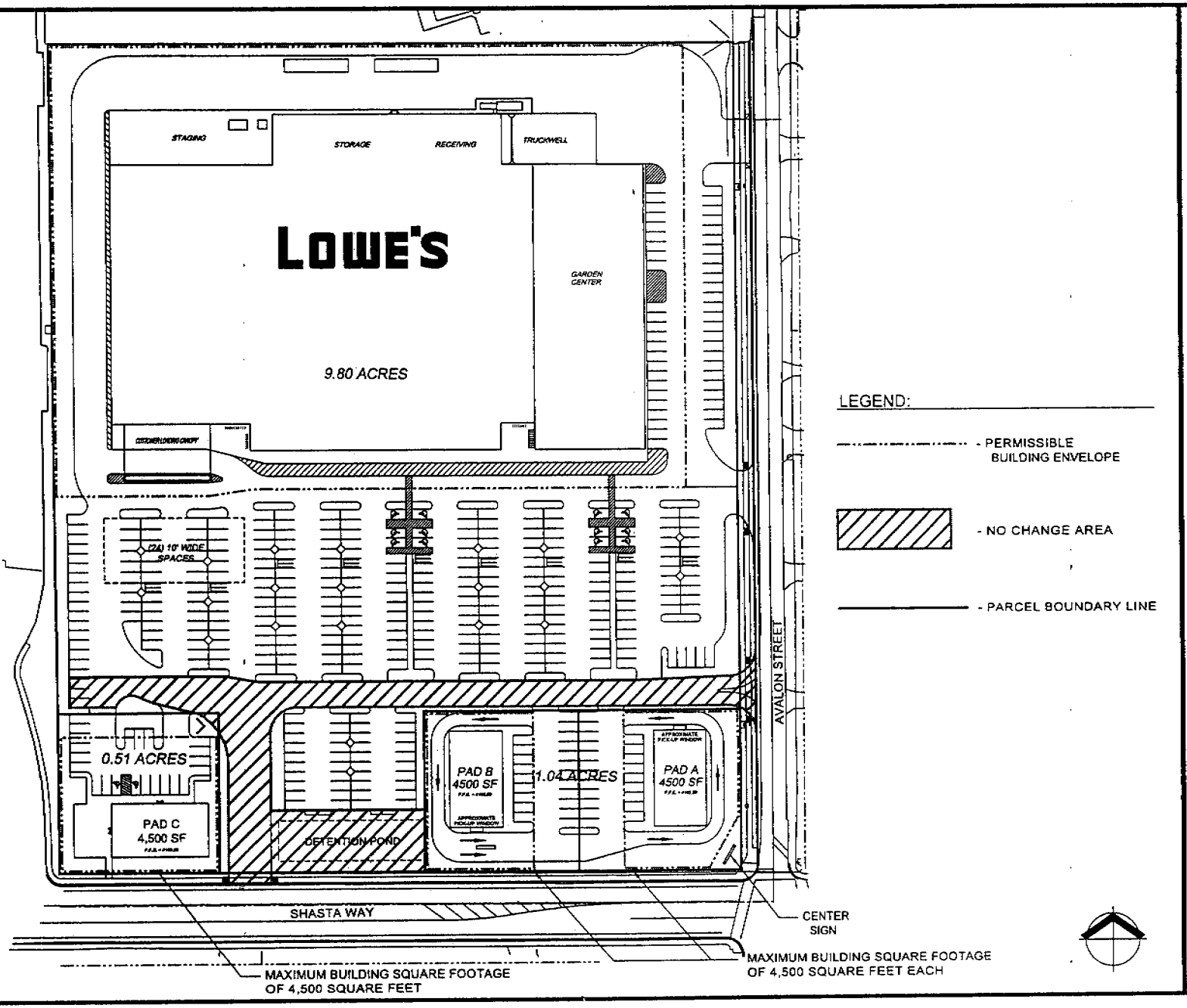
Schedule I
Legal Description Lowe's Parcel(s)

Parcel 2 of Land Partition 19-08, Being a Re-Plat of Lots 37, 38A, 41B and 42 of Enterprise Tracts, situated in the SW ¼ of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Schedule II
Legal Description Developer's Parcel(s)

Parcel 3 of Land Partition 19-08, Being a Re-Plat of Lots 37, 38A, 41B and 42 of Enterprise Tracts, situated in the SW ¼ of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

EXHIBIT A
Site Plan



General Notes

No.	Revision/Issue	Date

TOWN SQUARE PLAZA
ECCR SITE PLAN EXHIBIT
KLAMATH FALLS, OR

Newman Development Group of Klamath Falls, L.L.C.
2255 Van Ness Avenue, Suite #102
San Francisco, CA 94109
Phone: (415) 923-0810
Fax: (415) 923-0699
www.newmandevelopment.com

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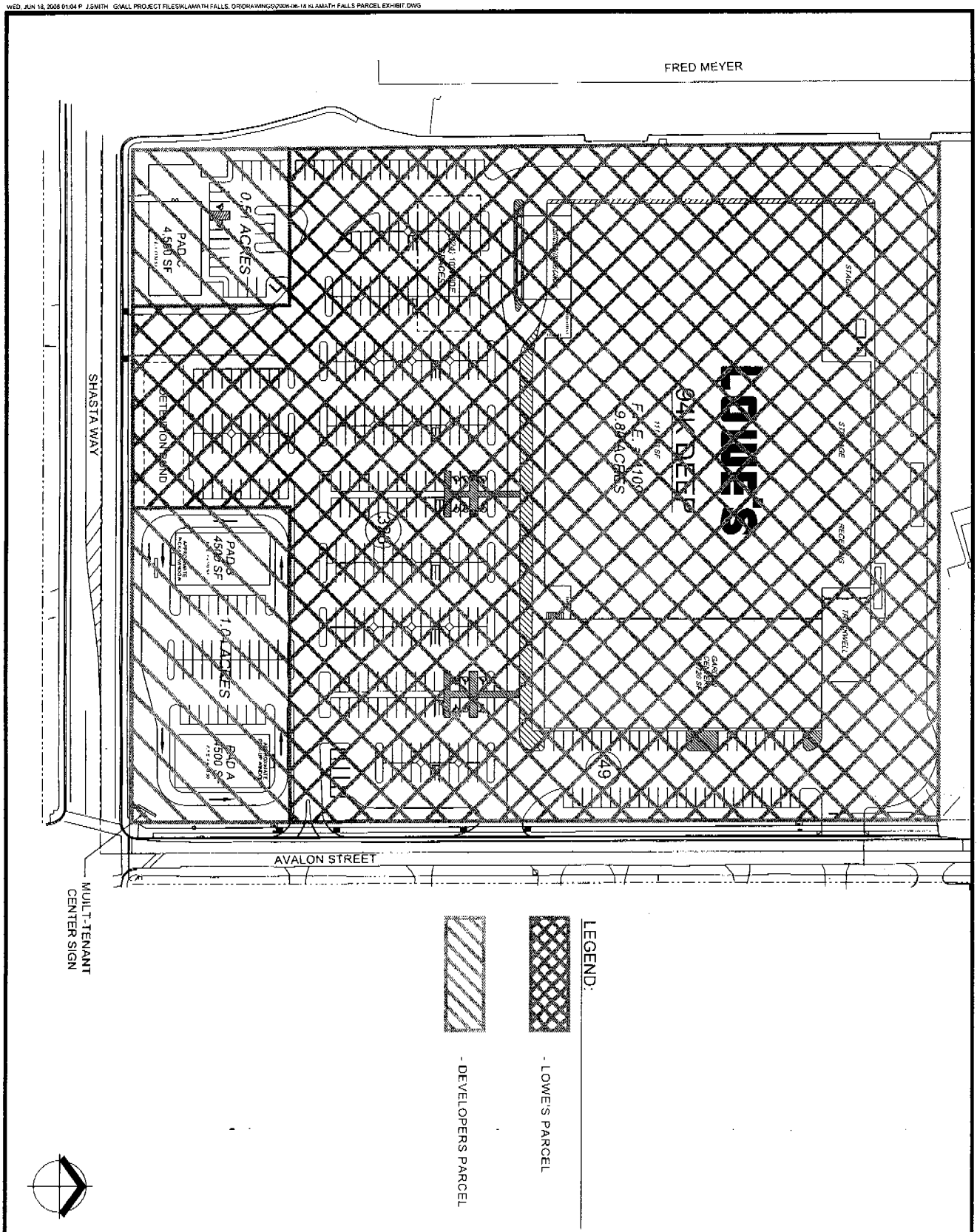
Project	
Date	JUNE 24, 2008
Scale	NOT TO SCALE

M:\E, Jun 24, 2008 09:44 A. SMITH - Q:\ALL PROJECT FILES\KLAMATH FALLS, OR\DWG\CD\2008-06-24 KLAMATH FALLS ECCR SITE PLAN.DWG

EXHIBIT A-1

WED, JUN 18, 2008 01:04 P J:\SMITH G\ALL PROJECT FILES\KLAMATH FALLS, OR\DRAWINGS\2008-06-18 KLAMATH FALLS PARCEL EXHIBIT.DWG



TOWN SQUARE PLAZA
PARCEL EXHIBIT
KLAMATH FALLS, OR

Newman Development Group of Klamath Falls, L.L.C.
2215 Van Ness Avenue, Suite 4102
San Francisco, CA 94109
Phone: (415) 921-9880
Fax: (415) 921-6040
www.newmandevelopment.com

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Project

Date: JUNE 18, 2008

Scale: NOT TO SCALE

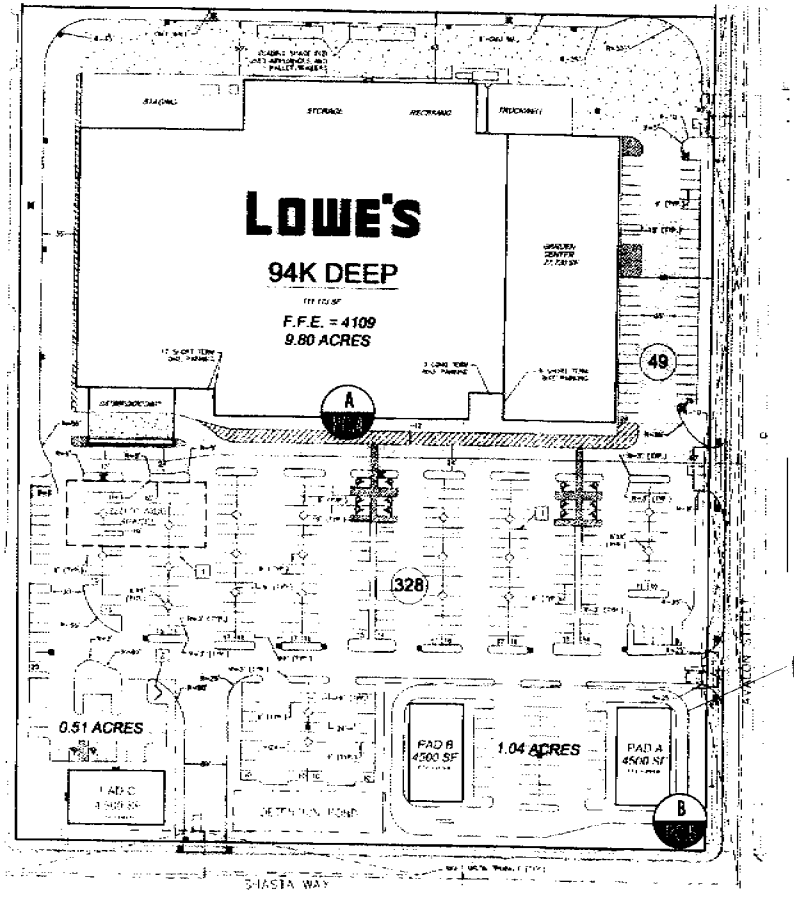
No.	Revision/Issue	Date

General Notes

EXHIBIT B
Sign Plan

Site Plan

Klamath Falls, OR



LOCATION TBD

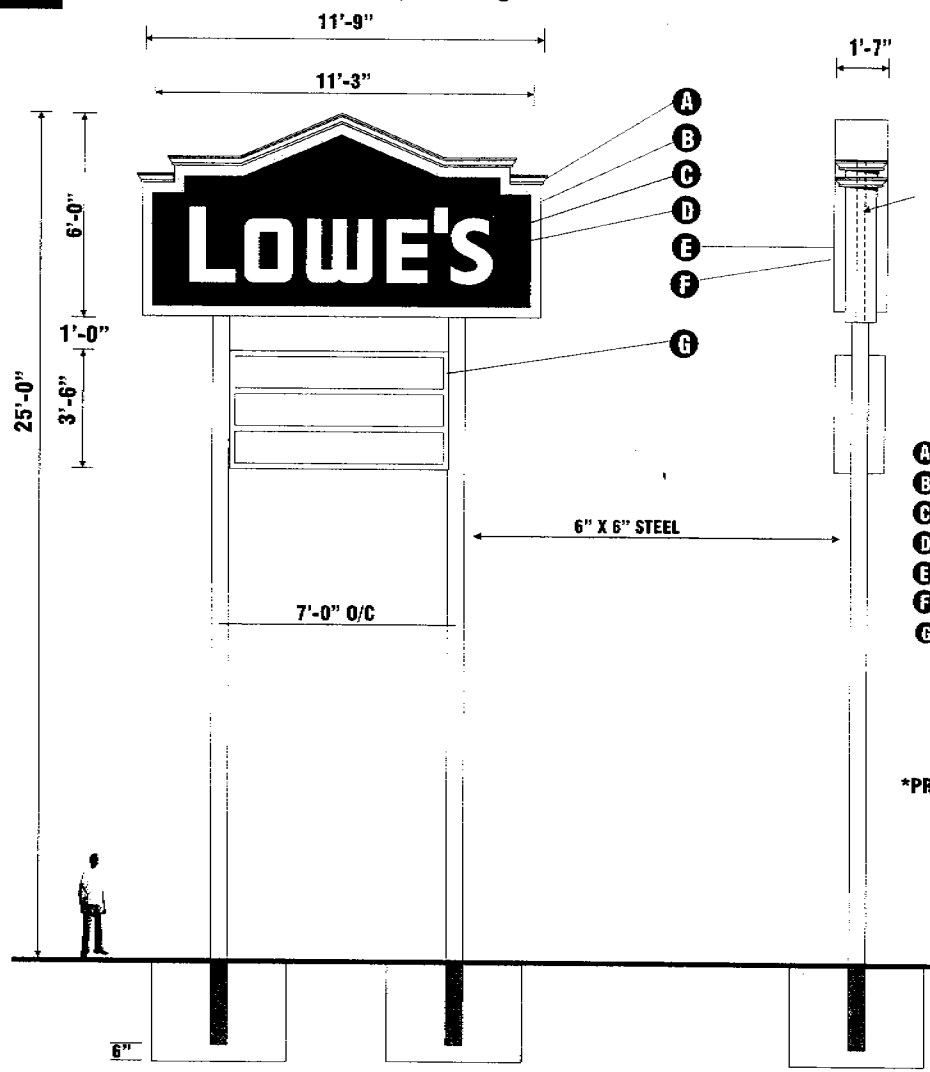
THE INTENT OF THIS DRAWING IS TO SHOW A CONCEPTUAL REPRESENTATION OF THE PROPOSED SIGNAGE. DUE TO VARIATIONS IN PRINTING DEVICES AND SUBSTRATES, THE FINISHED PRODUCT MAY DIFFER SLIGHTLY FROM DRAWING.

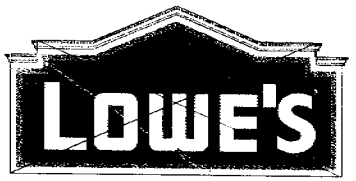
Page 6

HILTONDISPLAYS
GREAT SIGNS FOR GREAT COMPANIES
www.hiltondisplays.com
125 Hillside Dr.
Greenville, SC
29607
(864) 233-0401
(800) 353-9132
Fax: (864) 242-2204

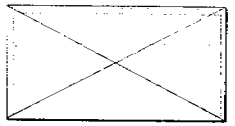
Sign Type 3

Klamath Falls, OR





57 SQUARE FEET



22.75 SQUARE FEET

- **A** CROWN MOLDING (WHITE)
- **B** 11" DEEP SURROUND WITH 3" FACE (LOWE'S LT. BEIGE)
- **C** 2" RETAINER (RED ON FACE/LT. BEIGE ON SIDE)
- **D** POLYCARBONATE FACE (WHITE COPY, LOWE'S BLUE B/G)
- **E** INTERNAL ILLUMINATION WITH T8 LAMPS
- **F** 19" DEEP CABINET
- **G** 5'-2" X 9'-6" X 18" DEEP ALUMINUM TENANT CABINET WITH 2" RETAINERS/DIVIDERS (LOWE'S LT. BEIGE) WHITE ACRYSTEEL FACES ILLUMINATED WITH T8 LAMPS

*PRIMED STEEL TO GET FINAL COAT OF PAINT ON SITE

LOWE'S COLOR SPECS
RED- PMS 200 C
CABINET/STEEL BEIGE- SW LOWE'S LT. BEIGE
BLUE - 2114 (PMS 280)
WHITE COPY

THE INTENT OF THIS DRAWING IS TO SHOW A CONCEPTUAL REPRESENTATION OF THE PROPOSED SIGNAGE. DUE TO VARIATIONS IN PRINTING DEVICES AND SUBSTRATES, THE FINISHED PRODUCT MAY DIFFER SLIGHTLY FROM DRAWING.

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