

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION (the "Declaration"), is made and entered into as of the date of the last execution hereof, which date is the 27th day of December, 1999, by and between RIVERDALE CENTER II, L.L.C. ("Seller"), a Utah limited liability company, and LOWE'S H.I.W., INC., a Virginia corporation ("Lowe's") (the foregoing parties hereinafter collectively referred to as the "Parties");

W I T N E S S E T H :

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

WHEREAS, Seller is the owner of a certain tract of land located in Weber County, Utah, located contiguous with and adjacent to Lowe's Property, which property is designated on Exhibit B as "Seller Property" and is more particularly described in Exhibit C attached hereto and made a part hereof; and

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

ARTICLE I

DEFINITIONS

Section 1.1 "Common Area" shall mean all real property owned by the Parties for the common use and enjoyment of the Owners, including non-dedicated streets. The Common Area is referred to as "Common Area" on Exhibit B.

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Section 1.2 "Owner" shall mean and refer to the record owner, or any entity that is controlled by or is under common control with the record owner and is operating its business at the Properties, whether one or more persons or entities, of a fee simple title to any parcel which is a part of the Properties, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.3 "Parcel" shall mean and refer to any parcel of land shown on Exhibit B with the exception of the Common Area. "Outparcel" shall mean and refer to any parcel of land shown for identification (and not for survey) purposes as a numbered tract on Exhibit B. Every Outparcel shall be a Parcel from the date of recording of a subdivision map showing the Outparcel, so that all references herein to Parcels shall apply with equal force to Outparcels; however, references to Outparcels shall be specific to Outparcels as herein defined.

Section 1.4 "Properties" shall mean and refer to that certain real property described on the attached Exhibit A and Exhibit C.

ARTICLE II EASEMENTS

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

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

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

(c) The term "Building(s)" means the building(s) which has (have) been, will be or may be constructed within a Party's Permissible Building Area, (as that term is hereinafter defined in Section 2.1(j), but such term does not include Common Area Improvements (as that term is hereinafter defined in Section 2.1(d)).

(d) The term "Common Area Improvements" means all improvements which will be or may be constructed under the terms of this Declaration, all perimeter sidewalks, and all other improvements which would be part of the "Common Area" under the above definition, and all

improvements constructed from time to time in replacement of the same or in such redesign of the same as may be agreed to by the Parties.

(e) The term "Common Utility Facilities" means utility systems and facilities from time to time situated on or serving the Properties, up to the building wall of any Building, for use or service in common by both Parties or for the service of the Common Area, such as the following: storm drainage, retention and disposal facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities for such common use or service, including, without limitation, those installed under the provisions of this Declaration and as replacements thereto.

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

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

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

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

(j) The term "Separate Utility Facilities" means any of the following not installed under the terms of this Declaration and not for use in common by other Parties or for service of the Common Area: storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, under ground electric power, cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities reasonably necessary for the use or service of any Improvement (as that term is hereinafter defined in Section 2.1(h)) situated on any Parcel.

(k) INTENTIONALLY DELETED.

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

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

(n) In the event a Party transfers or conveys a portion of its Parcel in accordance with the terms of this Declaration, those easements granted under this Article 2 which benefit, bind, and burden the remainder of the Parcel not transferred or conveyed shall benefit, bind, and burden the portion of the Parcel so transferred or conveyed, and those easements granted under this Article 2 which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Parcel of which it was a part.

(o) All easements granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of a Party, the other Parties will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Parties. No grant of an easement pursuant to this Article 2 shall impose any greater obligation on any Party to construct or maintain its Building except as expressly provided in this Declaration.

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

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

(b) the passage of vehicles (Provided, however, Lowe's may conduct parking lot sales, conduct other business, and/or display merchandise in that portion of the Common Areas directly in front of Lowe's building so long as it does not interfere with or impair customary ingress and egress to Seller's Parcel; and such activities do not violate of any applicable law or ordinance. Further, notwithstanding anything herein to the contrary, subject to any restrictions of record, Lowe's shall have the right but not the obligation, to install and maintain a bank teller machine in their parking lot in a location approved by Seller, but such location shall not in any event interfere with or impair ingress or egress to the Shopping Center);

(c) the passage and accommodation of pedestrians (provided, however, Lowe's may display merchandise, conduct sidewalk sales and/or conduct other business on the sidewalks on the Lowe's Property so long as pedestrian passage is not obstructed and such activities do not violate applicable laws; and

(d) vehicular parking upon, over and across those portions located on the Grantor's Parcel which are identified with striping, paint or otherwise from time to time as "parking stalls". Provided, however, notwithstanding such reciprocal parking easement, each Party shall be required to maintain on its parcel sufficient and adequate parking stalls to comply with the parking requirements in Section 4.5 and all applicable municipal parking requirements and ratios; and

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

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

Enjoyment of the easements granted by this Section shall commence on the date the Common Area in question is substantially completed.

Each Party hereby reserves the right to eject from the Common Area on its parcel any person not authorized to use the same. In addition, each Party reserves the right to close off the Common Area of its parcel for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone; provided, such closures shall occur at times which shall minimize the impact on all retailers located on the Properties. Before closing off any part of the Common Areas as provided above, such Party must give notice to the other Parties of its intention to do so and must coordinate its closing with the activities of the other Parties so that no unreasonable interference with the operation of the Properties occurs.

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

Section 2.3 Easements for Access Roads. Each Party hereby grants to the other Party easements for pedestrian and vehicular traffic in those strips of land (not less than the widths therefor

shown on the Exhibit B) on its (Grantor's) Parcel which are shown on the Exhibit B as shaded roadways (hereinafter collectively referred to as the "Access Roads") for the purpose of providing ingress to and egress from the Grantee's Parcel and each of Riverdale Road and 300 West Street, together with the following rights and subject to the following restrictions and reservations:

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

(b) As further provided in Section 2.12 herein, Grantors of the Access Road easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Road, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any Person therein; and

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

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

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

Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair and removal at Grantee's cost of all Separate Utility Facilities installed by the Grantee pursuant to the easement grant, as well as for all Separate Utility Facilities installed by the Grantee on its own parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by Grantee only after thirty (30) days advance notice to Grantor of Grantee's intention to do such work. However, in the case

of an emergency, any such work may be immediately performed after giving such advance notice to Grantor as is practicable under the circumstances. In addition, the Parties agree that all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as the same were in prior to the commencement of any such work. No such work or restoration, except emergency repair work, shall be carried on during the period from November 1 through the next succeeding January 4, or on any weekends.

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

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

Except during the period from November 1 through the following January 15th, the Grantor of any easement under this Section 2.4 may relocate on its Parcel any Separate Utility Facilities or Common Utility Facilities installed thereon under any easement granted by it; provided, however, that such relocation:

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

(b) shall not interfere with or diminish the utility services to the Grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantee has been so notified under Subsection 2.4(a). Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interferences or diminutions, or both.);

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

(d) shall be located underground where reasonably possible; and
(e) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities or Separate Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee, which approval shall not be unreasonably withheld.

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.

All owners in the Shopping Center shall have the right to utilize or drain into the detention facilities or retention located in the northwest corner of the Shopping Center.

Section 2.5 Construction Easements. Each Party hereby grants to the other Party easements in the Common Area of its (Grantor's) Parcel, and prior to the construction of any Improvements thereon, where applicable in the Permissible Building Area on its Parcel, for the following:

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

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

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

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

Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the Buildings or other Improvements of any other Party, and shall not interfere with or interrupt the business operation conducted by any other Party in the 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 easements granted under this Section 2.5 and shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or arising out of Grantee's exercise of said easements, except to the extent occasioned by Grantor's negligent or wrongful act or omission to act.

Grantee's improvements in such easements shall, for purposes of maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under this Declaration, be deemed to be part of the Grantee's parcel and Building and shall be deemed not to be part of the Grantor's Parcel or Building for such purposes.

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 INTENTIONALLY DELETED.

Section 2.7 INTENTIONALLY DELETED.

Section 2.8 Exterior Light Easements. Each Party hereby grants to the other Parties who share a common boundary, an easement to install, maintain, repair and replace, at the individual expense (including electricity) of Grantee, lights for the purpose of highlighting the exterior of the Grantee's Building, such lights to be placed on light standards within that portion of the Common Area on Grantor's Parcel contiguous to the Grantee's Parcel and within fifty (50) feet from the face of the Grantee's Building (the exact light standards to be used to be agreed upon by Grantor and Grantee), together with an easement of ingress to and egress from such light standards to accomplish such purpose. The position, location, type and character of such lights shall be subject to the approval of Grantor and shall be in compliance with all applicable laws and approvals. Each Grantee agrees to use due care in the exercise of the rights granted under this Section 2.8 and to obtain Grantor's consent as to the methods and timing in the exercises of such rights, and further agrees, at Grantee's expense, to promptly repair, replace and restore any and all improvements of Grantor which have been damaged or destroyed by Grantee in the exercise of the rights granted under this Section 2.8 and to defend, indemnify and hold Grantor harmless from all loss, liability, cost or expense incurred in connection with or arising out of the exercise of such rights. The easements incurred in connection with or arising out of the exercise of such rights. The easements granted under this Section 2.8 shall terminate on the expiration of the term of this Declaration.

Section 2.9 Abandonment of Easements. After the expiration of the term of this Declaration, the perpetual easements granted Sections 2.3 and 2.4 hereof, or all or any part or parts

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

Section 2.10 INTENTIONALLY DELETED.

Section 2.11 Easements to Public Utilities. Any grant or other conveyance of an easement to a public utility by Grantor on its Parcel shall, without necessity of further recital in the conveyancing instrument, be deemed to include the following conditions, covenants and restrictions to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument.

- (a) The easement is non-exclusive;
- (b) All facilities installed pursuant to the easement shall be underground, except for manhole and manhole covers which shall be flush with adjacent grade and for power lines at the rear of the Lowe's Property and except as otherwise shown on plans approved by Grantor;
- (c) Grantor retains the right to use the surface areas as Grantor sees fit;
- (d) Grantor reserves the right to require Grantee to relocate its facilities (and vacate the easement) to another location on Grantor's Parcel, subject to the conveyance of a similar easement, all at Grantor's cost and expense;
- (e) Grantee shall not, in its use or installation, interfere with other installations and easements in the area;
- (f) Grantee shall protect its facilities against uses of the surface made by Grantor and others;

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

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

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

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

Section 2.12 No Barrier Agreement. No barriers, fences, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Properties from time to time devoted to pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Parties of the rights and easements created by this Article II. The preceding sentence shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. In addition, each owner may temporarily close or block traffic on its Parcel for the time necessary for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give fifteen (15) days written notice to each other Owner of its intention to do so and shall attempt to coordinate such closing with each other Owner, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction.

ARTICLE III RESTRICTIONS

Section 3.1 Land Use and Building Type. Every Parcel shall be used only for financial institutions, service shops, offices, and retail stores selling retail merchandise normally carried in other shopping centers and restaurants where sale of alcoholic beverages comprise less than fifty (50%) percent of gross revenues. Provided however, no restaurants shall be permitted in that portion of the Shopping Center which is labeled on the Site Plan as "Restaurants Prohibited," and the total aggregate square footage for all restaurants allowed in that portion of the Shopping Center which is

labeled on the Site Plan as "Restaurants Restricted" shall be limited to seven thousand five hundred (7,500) square feet. No structures shall be erected or allowed to remain on any Parcel unless the plans and specifications for such structure have been approved by the Parties. A complete set of proposed construction plans including a site, foundation, floor plan and elevation drawings of all sides shall be presented to and approved in writing by the Parties prior to commencing clearing, grading, or construction of a building of any kind on any Parcel.

Section 3.2 Completion of Improvements. Upon completion of the foundation, an actual field survey of the foundation shall be presented to the Parties to ensure that it has been constructed in accordance with the site plan. All improvements shall comply with the plans as presented by the owner unless changes are approved in writing by the Parties. The right to make inspections necessary to assure compliance is reserved to the Parties. Weather permitting, all paving and landscaping will be finished upon completion of the building, but in no event shall it be installed later than ninety (90) days after the building is occupied. Total construction time from pouring footings to the completion of the building ready for occupancy shall not exceed one (1) year. All buildings within the Shopping Center shall be constructed within the Building Area Envelope as depicted on the Site Plan and no building shall exceed the maximum square footage for such building as provided on the Site Plan.

Section 3.3 Nuisances. Subject to the provisions of Section 3.1, no Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations, nor shall anything be done on any Parcel which is a nuisance or any annoyance to the community.

Section 3.4 Use Restrictions.

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

area identified on the Site Plan as "Shops Space", Seller shall have the right to operate a convenience store in conjunction with a fuel facility in the Shopping Center.

(vi) A flea market.

(vii) A school.

(viii) 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.

(ix) A dry cleaning plant or central laundry or laundromat.

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

(i) An adult type bookstore or other establishment selling, displaying or exhibiting pornographic materials or providing adult type entertainment or displays of a variety involving or depicting nudity or lewd acts.

(ii) A massage parlor.

(iii) A skating rink.

(iv) A mortuary.

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

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

(c) Attached hereto as Exhibit "D" is a sign criteria (the "Sign Criteria") for the Shopping Center. All signs constructed in the Shopping Center shall be subject to and comply with the Sign Criteria. With respect to the pylon sign located on Lowe's Property near the main entrance to the shopping center, Lowe's shall have the top merchant panel on the sign, in accordance with the specifications set forth in the Sign Criteria. The cost of constructing the sign and maintaining it shall be prorated in accordance with that portion of the pylon sign attributable to each Party's sign, compared to the total sign area for the pylon sign. Maintenance of the pylon sign shall be as defined in Section 4.2 of this Agreement.

Section 3.5 INTENTIONALLY DELETED.

Section 3.6 Use Restrictions on the Seller Property. No portion of Seller Property shown on Exhibit B may be used for the following purposes (provided that such restrictions shall terminate one (1) year after Lowe's Property is no longer used by Lowe's as a retail and/or warehouse home improvement center, home improvement service center, lumber yard or building materials supply

center. Provided however, such period of time shall not include closings caused by fire and other casualty provided that the Parties commence reconstruction as provided for herein and shall be subject to delays caused by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials to reconstruct, damage to work in progress by reason of fire or other casualty):

- (a) A hardware store containing more than 5,000 square feet of useable floor area.
- (b) An appliance and/or home electronics store containing more than 5,000 square feet of useable floor area.
- (c) A lawn and garden store containing more than 3,000 square feet of useable floor area.
- (d) A paint and/or decor center containing more than 5,000 square feet of useable floor area.
- (e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and other stores or centers similar to those operated by Lowe's, Home Depot, Home Owner's Warehouse, Home Quarters, Hechinger's, Builders Square, 84 Lumber, Wickes, Hughes Lumber, McCoys, Home Base, Eagle, Menard's, Sears Hardware, Sutherlands, Orchard Supply and Payless Cashways.

These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) when such space exceeds the limitations of subparagraphs (a) through (d). Subject to these restrictions, Seller reserves the right to subdivide, convey, lease or assign the Seller Property or any portion thereof through any means including, but not limited to, subdivision, lease, ground lease, condominium declaration or air-lot condominium declaration.

Section 3.7 Outparcel Development. Any Outparcel sold or developed on the Properties will only be developed under the following guidelines:

- (a) The floor area of any building constructed on any of the Outparcels shall not exceed that area set forth on the Site Plan.
- (b) Any building constructed on any of the Outparcels shall not exceed twenty-eight (28) feet in height, as measured from the finished elevation of the parking area of the Properties and architectural elements may be thirty-three (33) feet in height.
- (c) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to Seller and Lowe's;

(d) Any rooftop equipment on the Lowe's Property shall be screened in front in a manner reasonably satisfactory to Seller and Lowe's;

(e) No rooftop signs shall be erected on any building constructed on any Parcel.

(f) A freestanding identification sign may be erected on any Outparcel only with the prior written consent of Lowe's, but in no event shall such freestanding identification sign exceed eight (8) feet in height or block the visibility of the Lowe's building, monument sign, or pylon sign. Lowe's approval shall not be unreasonably withheld. If an owner of an Outparcel desires to erect such a freestanding sign, it shall make its request in writing to Lowe's with a copy of the sign plans. Lowe's shall then have thirty (30) days from receipt of the notice to object to the proposed sign. If Lowe's does not object within the thirty (30) day period, then the proposed sign shall be conclusively deemed approved, and Lowe's shall not have the right to any further objection. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3' 3" in height.

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

(h) Any party or independent owner purchasing or leasing from Seller and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the utility facilities, as described in Section 2.4 of this Declaration, serving the Properties and the Outparcel caused by such party, or a lessee or user of the Outparcel, to the extent the Outparcel benefits from any of the utility facilities serving the Properties and the Outparcel.

(i) In the event any building, structure or other improvement on an Outparcel shall be damaged or destroyed by any casualty, the owner, lessee or user of the Outparcel shall within ninety (90) days of such damage or destruction (a) commence to repair and/or reconstruct such improvements to the condition required by this paragraph and Section 5.1; or (b) level such improvement, remove the debris from the Outparcel and keep the Outparcel neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

(j) Any of the restrictions set forth in this Section 3.7 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by Seller and Lowe's; provided that either Party shall not waive, amend, modify, release, or terminate this Declaration without the prior written consent of the other Party. However, Seller and/or Lowe's, as the case may be, shall not amend or modify any of the foregoing restrictions if any such amendment or modification would impose additional restrictions on an Outparcel without the prior written consent

of the fee owner of the Outparcel. The fee owner of such Outparcel, however, may impose additional, restrictions on an Outparcel as such fee owner deems appropriate, subject to any exceptions thereto imposed on said fee owner at the time of conveyance of said Outparcel by Seller to said fee owner.

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

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

ARTICLE IV
MISCELLANEOUS

Section 4.1 Damage and Destruction. In the event of the destruction and damage to any extent to the buildings and improvements on the Properties, the affected Party shall either (1) diligently commence and pursue completion of the repair or restoration and or (2) within ninety (90) days after the destruction or damage clear away the ruins and leave the Parcel in a clean, orderly, sightly and safe condition. Further, in the event that the affected Party elects not to rebuild its improvements, the use restrictions placed on the non-affected Party's site by the affected Party herein, except for those cited in Sections 3.3 and 3.4 (b) hereof, shall be null and void and of no further force and effect.

Section 4.2 Maintenance. Each Party hereto shall maintain the buildings and the Common Areas on its Site 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 of the Parties covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its buildings clean; will maintain its buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash rubbish and other refuse, and will remove

same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed; and will keep the common areas on its Site clear of accumulations of ice and snow. The Parties confirm their intention that the maintenance and repair of the Shopping Center Site should be of such a character that the Shopping Center Site's appearance will be that of a unified shopping center and, accordingly, the Parties agree to cooperate with each other in good faith with respect to said maintenance and repair and to the extent reasonably possible coordinate such repair and maintenance. Each Party shall keep that portion of the Common Area located within such Party's parcel lighted during all normal business operating hours. All Common Area artificial lighting facilities shall be separately metered to the parcel on which they are located.

Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees.

Section 4.3 Estoppel Certificates. Each Party shall upon not less than thirty (30) days from receipt of written notice from the other Party execute and deliver to such other Party a certificate in recordable form stating that (i) either this Agreement is unmodified and in full force and effect or is modified (and stating the modification); (ii) whether or not to the best of its knowledge the other Party is in default in any respect under this Agreement and if in default, specifying such default; and (iii) such other reasonable information as a lender may customarily request.

Section 4.4 Perpetuity of Agreement. Except as specifically set forth in this Agreement, the easements, covenants, conditions, restrictions and agreements contained herein binding and benefitting the Parties shall be deemed to be perpetual and shall be construed to run with the land.

Section 4.5 Parking Requirements. The Properties, including all Outparcels shall be self-supporting with respect to parking and shall each contain not less than 4.5 paved full size automobile parking spaces for each 1,000 square feet of building floor area constructed thereon, or the number of parking spaces required by applicable law, whichever is greater. Provided however, ten (10) spaces per each 1,000 square feet of building floor area constructed thereon will be required for restaurants.

Section 4.6 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon deposit in the United States Mail

as Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other parties):

Seller: Riverdale Center II, L.C.
127 South 500 East, Suite 100
Salt Lake City, Utah 84102
Attn: H. Roger Boyer

To Lowe's: Lowe's H.I.W., Inc.
1530 Faraday Avenue, Suite 125
Carlsbad, CA 92008
Attn: Tom Maddox, Esq.

with a copy to: Lowe's H.I.W., Inc.
Highway 268 East-East Dock
North Wilkesboro, North Carolina 28659
Attn: Kevin Bennett (REO)

with a copy to: Lowe's H.I.W., Inc.
Highway 268 East-East Dock
North Wilkesboro, North Carolina 28659
Attn: Property Management (REO)

Section 4.7 Assignment. The rights and obligations of any party hereunder may be assigned in whole or in part to one or more ground lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or leases between such party and such ground lessee or lessees.

Section 4.8 Limitation of Liability. Any person acquiring fee or leasehold title to any of the Properties or any portion thereof, shall be bound by this Declaration only as to the parcel or portion of the parcel acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such parcel or portion of the parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said tracts running with the land.

E# 1481482 BK2050 PG2358

Section 4.9 Adjacent Seller Parcels. Seller may, in his sole discretion, subject the parcels of the property adjacent to the Properties which are owned by Seller (the "Adjacent Seller Parcels") to the terms and conditions of this Declaration at which time the Adjacent Seller Parcels shall be subject to the obligations created herein and shall benefit from the rights granted to Seller herein. If such additional Outparcels are incorporated in the Shopping Center and if there are any continuing liabilities of the parties based on proration of land area, then the proration shall be adjusted accordingly.

Section 4.10 Insurance; Indemnification; Waiver of Subrogation. Each Party will at all times maintain or cause to be maintained with respect to its Parcel: (i) casualty insurance against loss or damage by fire, lightning and other risks customarily covered by an all-risks policy of property and casualty for the full replacement cost of the Improvements located thereon and (ii) commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Party's Parcel combined single limit coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) with respect to any one person, in the amount of ONE MILLION DOLLARS (\$1,000,000.00) with respect to any one accident or disaster, and in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) with respect to property damage. Nothing herein shall be construed from prohibiting a Party with a net worth in excess of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00), as determined by generally accepted accounting principle, from self-insuring.

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

Each party (the "Releasor") hereby releases the other Party (the "Releasee") from any and all liability or responsibility to the Releasor or anyone claiming through or under the Releasor by way of subrogation or otherwise for any incurred loss or damage to any person or property caused by fire or other casualty or other such loss, damages, or other insured event or negligence of the Releasee, or anyone for whom such Releasee may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring

during such time as the Releasor's policy or policies of insurance shall contain a waiver of subrogation endorsement, to the effect that any such release shall not adversely affect or impair said policy or policies or prejudice the right of the Releasor to recover thereunder.

Section 4.11 Term and Enforcement. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties. Said easements, restrictions and obligations shall be unaffected by any change in the ownership of any property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Each of the rights created hereunder may be enforceable in a court of equity by the owner of any property covered by this Agreement; however, enforcement hereunder shall be sought solely against the then owner of the property or of the parcel (or the owner of an interest in such property or parcel) alleged to be in default subject to the limitation on liability as set forth in Section 5.8 hereof.

Section 4.12 Harmony. Seller and Lowe's agree to cooperate in creating a harmonious exterior appearance for the improvements to be constructed by them on the Properties. After initial construction of the Buildings, no Party shall make alterations that will substantially change the exterior of its Buildings without the consent of the other Parties, such consent not to be unreasonably withheld. Lowe's may make changes in its buildings and improvements not consistent with the overall design of its initial building and a majority of its stores at the time of the changes. The Parties acknowledge that Lowe's initial design of its Building is hereby approved by Seller.

Section 4.13 No Covenant to Continuously Operate. Neither Lowe's nor Seller is obligated to continuously operate a business on the Lowe's Property or the Outparcels and is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse on its property. Nothing contained in this Declaration shall be construed, interpreted or otherwise read to require Lowe's to operate a business on the Lowe's Property or Seller to operate a business on the Outparcels or to prevent Lowe's from closing its business on the Lowe's Property or Seller from closing any business on the Outparcels.

Section 4.14 Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same

extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 4.15 Breach. In the event of breach or threatened breach of this Declaration, only Owners of more than 15,000 square feet of enclosed building area of the Seller Property or the record owner of Lowe's Property so long as it or any affiliate has an interest as owner or lessee of Lowe's Property, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In the event of a breach hereof, the non-prevailing Party shall pay the reasonable attorney's fees of the prevailing Party(s).

Section 4.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

Section 4.17 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. It is understood that the relationship between the parties is an arms length one that shall at all times be and remain that of separate owners of real property. No party shall have the right to act for or on behalf of another party, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the party to be charged or bound.

Section 4.18 Amendment. All negotiations and oral agreements acceptable to the Parties have been incorporated herein. Except as otherwise provided herein, this Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by Lowe's and the owners of fifty percent (50%) of the land area comprising Seller Property and duly recorded.

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

RIVERDALE CENTER II, L.L.C.,
a Utah limited liability company
by its Manager:

THE BOYER COMPANY, L.C.,
a Utah limited liability company

By: *Stu Oster*
Name: *STEVEN B. OSTER*
Its: *Manager*

ATTEST:

LOWE'S H.I.W., INC.,
a Virginia corporation

Kevin D. Bennet
Kevin D. Bennet, Assistant Secretary

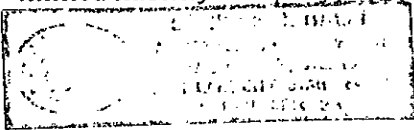
By: *David E Shelton*
David E. Shelton
Senior Vice President



PA KOR
DM
ms

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 9 day of December, 1999,
by STEVEN B. OSTLER MANAGER of The Boyer Company, L.C., a Utah
limited liability company, Manager of Riverdale Center II, L.L.C., a Utah limited liability company.

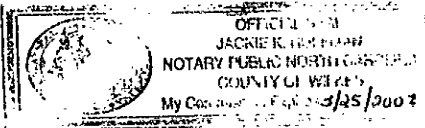


David J. Balli
NOTARY PUBLIC
Residing at: Salt Lake County

My Commission Expires:
4-28-01

STATE OF North Carolina)
 : ss.
COUNTY OF Wilkes)

The foregoing instrument was acknowledged before me this 14th day of December, 1999,
by David E. Shelton, Senior Vice President of Lowe's H.I.W., Inc., a Virginia corporation.



Jackie K. Huffman
NOTARY PUBLIC
Residing at: North Wilkesboro, NC

My Commission Expires:

EXHIBIT "A"

Legal Description of Lowe's Property 06-031-0022

That certain tract of land located in Weber County, Utah, more particularly described as follows:

A part of the Northeast Quarter of Section 7 and the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point which is 13.83 feet South 01°00'35" West along the Section line and 198.26 feet South 13°53'52" West from the Northwest corner of said Section 8; and running thence South 76°06'08" East 46.20 feet; thence North 77°34'58" East 78.37 feet; thence South 87°39'26" East 18.68 feet; thence South 76°24'50" East 297.00 feet; thence South 13°35'10" West 64.61 feet; thence South 38°29'32" West 143.76 feet; thence South 76°24'50" East 152.65 feet; thence South 51°30'28" East 96.13 feet; thence South 13°35'10" West 39.35 feet; thence South 76°24'50" East 164.16 feet; thence South 38°29'32" West 207.76 feet; thence South 25°21'26" West 74.59 feet; thence South 66°49'12" East 43.79 feet; thence South 51°31'42" East 326.07 feet to the Westerly right-of-way line of Riverdale Road; thence South 38°24'20" West 24.00 feet along said Westerly right-of-way line; thence North 51°31'42" West 322.88 feet; thence North 66°49'12" West 41.48 feet; thence South 25°21'26" West 38.51 feet; thence South 13°35'10" West 36.33 feet; thence North 76°24'50" West 158.53 feet; thence South 13°35'10" West 268.96 feet; thence North 78°05'28" West 506.41 feet; thence North 13°53'52" East 879.88 feet to the point of beginning.

Contains 525,835 Square Feet

Or 12.072 Acres

EXHIBIT "C"

Legal Description of Seller Property

*06-031-0027, 0020,
0016 to 0019*

That certain tract of land located in Weber County, Utah, more particularly described as follows:

A part of the Northeast Quarter of Section 7 and the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point which is 1111.12 feet South 01°00'35" West along the Section line and 261.52 feet South 78°05'28" East from the Northwest corner of said Section 8; and running thence North 13°35'10" East 268.96 feet; thence South 76°24'50" East 158.53 feet; thence North 13°35'10" East 36.33 feet; thence North 25°21'26" East 38.51 feet; thence South 66°49'12" East 41.48 feet; thence South 51°31'42" East 322.88 feet to the Westerly right-of-way of Riverdale Road; thence South 38°24'40" West 207.26 feet along said Westerly right-of-way line; thence North 78°05'28" West 413.36 feet to the point of beginning.

Contains 125,875 Square Feet

Or 2.890 Acres

and:

06-002-0053, 0002, 0027

05-139-0051

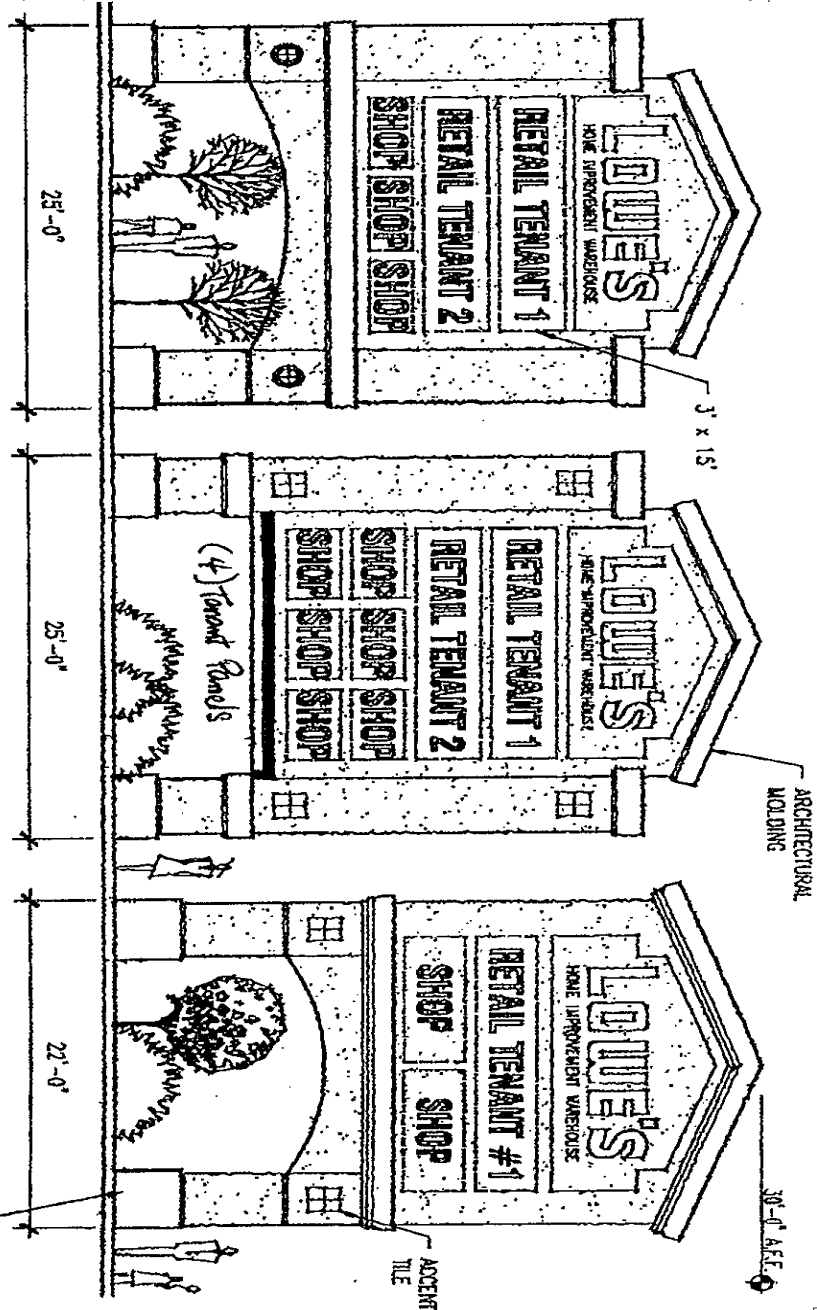
06-031-0001, 0006, 0007, 0039,

A part of the Southwest Quarter of Section 5, Southeast Quarter of Section 6, 0040, Northeast Quarter of Section 7 and the Northwest Quarter of Section 8, 0016 to 0018, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey: 0024, 0041

Beginning at a point which is 138.08 feet North 0°46'25" East along a Section line and 20.18 feet North 82°15'33" West from the Northwest corner of the North Quarter of said Section 8; and running thence South 82°15'33" East 358.13 feet along a fence to the West right of way line of Pacific Avenue; thence two (2) courses along said West right of way line and the Southerly right of way line of 300 West Street as follows: Southeasterly along the arc of a 396.56 foot radius curve to the left a distance of 327.76 feet (Central Angle equals 47°21'18" and Long Chord bears South 27°35'23" East 318.51 feet) to a point of tangency and South 51°16'02" East 589.61 feet; thence South 31°13'02" West 335.53 feet to the Northerly right-of-way line of Pacific Avenue; thence South 73°17'48" East 161.30 feet along said Northerly line to the Westerly right of way line of Riverdale Road; thence South 38°24'20" West 225.90 feet along said Westerly right-of-way line; thence North 51°31'42" West 326.07 feet; thence North 66°49'12" West 43.79 feet; thence North 25°21'26" East 74.59 feet; thence North 38°29'32" East 207.76 feet; thence North 76°24'50" West 164.16 feet; thence North 13°35'10" East 39.35 feet; thence North 51°30'28" West 96.13 feet; thence North 76°24'50" West 152.65 feet; thence North 38°29'32" East 143.76 feet; thence North 13°35'10" East 64.61 feet; thence North 76°24'50" West 297.00 feet; thence North 87°39'26" West 18.68 feet; thence South 77°34'58" West 78.37 feet; thence North 76°06'08" West 46.20 feet; thence South 13°53'52" West 879.88 feet; thence South 78°05'28" East 317.80 feet to a point on a fence; thence four (4) courses along said fence as follows: South 14°15'57" West 198.21 feet; North 70°56'39" West 107.34 feet; North 71°40'41" West 146.44 feet and North 71°32'13" West 118.31 feet to a point on the Easterly Union Pacific Railroad right-of-way fence; thence North 13°53'52" East 1380.74 feet along said Easterly right-of-way fence to the point of beginning.

Contains 523,088 Square Feet
Or 12.008 Acres

EXHIBIT "D"



SCHEME 'A'

SCALE: 1/8" = 1'-0"

SCHEME 'B'

SCALE: 1/8" = 1'-0"

SCHEME 'C'

SCALE: 1/8" = 1'-0"

MONUMENT SIGN ELEVATIONS

LOWE'S
RIVERDALE
Utah



P.O. Box 1117, N. W. Highway, E. C. 2000