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EASEMENTS  
COVENANTS, CONDITIONS AND RESTRICTIONS

BY AND BETWEEN

LOWE'S HIW, INC.

AND

RIVERTON MEADOWS PARTNERS, LLC

THE TALON GROUP

JB# 134453/156528

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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 29 day of JULY, 2005, by and between RIVERTON MEADOWS PARTNERS, LLC, a Nevada limited liability company ("Developer"), and LOWE'S HIW, INC., a Washington corporation ("Lowe's") (the foregoing parties are each hereinafter referred to as a "Party" and are 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 the City of Riverton, County of Salt Lake, State of Utah, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Lowe's Parcel"); and

WHEREAS, Developer is the owner of that certain tract of land located in the City of Riverton, County of Salt Lake, State of Utah, located contiguous with and adjacent to the Lowe's Parcel, which is more particularly described in Exhibit B attached hereto and made a part hereof (the "Developer Parcel"); and

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

NOW, THEREFORE, Developer and Lowe's hereby declare, agree, covenant and consent that the Parcels described on Exhibit A and Exhibit B 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 persons and entities having any right, title or interest in the described Parcels or any part thereof, their heirs, personal representatives, 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, enclosed garden areas (with or without a roof), 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 Area does not include enclosed garden areas, 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, driving lanes, access and egress drives, service drives, non-dedicated streets, lighting standards, sidewalks, irrigation, landscaping, free-standing signage (i.e., pylon, monument and directional signage, but not signage on Buildings), perimeter walls and retaining walls. 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 is subdivided and one or more of the subdivided Lowe's Parcels are sold, conveyed or transferred, such that there is more than one Owner of the Lowe's Parcel, then so long as Lowe's remains the Owner of any one of such subdivided Lowe's Parcels, Lowe's shall continue to be the Consenting Owner for the Lowe's Parcel unless Lowe's designates in writing an Owner of one of the other subdivided portions of the Lowe's Parcel to succeed it as the Consenting Owner. If Lowe's no longer owns any of the subdivided Parcels,

then in the absence of a written designation of which Owner of the subdivided Lowe's Parcel shall become the Consenting Owner, the Owner of the subdivided Lowe's Parcel containing the most square footage of land area shall succeed as the Consenting Owner. In the event that the Developer Parcel is subdivided and one or more of the subdivided Developer Parcels are sold, conveyed or transferred such that there is more than one Owner of all the subdivided Parcels constituting the Developer Parcel, then so long as Developer remains the Owner of any one of the subdivided Developer Parcels, Developer shall continue to be the Consenting Owner unless Developer designates an Owner of one of the other subdivided Developer Parcels to succeed it as the Consenting Owner. If Developer no longer owns the Developer Parcel or any subdivided Developer Parcel, then in the absence of a written designation of which Owner of the Developer Parcel (or subdivided Developer Parcels) shall become the Consenting Owner, the Owner of the Developer Parcel (or the subdivided Developer Parcel containing the most square footage of land area) 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. "Improvement(s)" shall mean the Building and other structures within a Permissible Building Area and Common Area Improvements.

Section 1.7. "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. 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 1.8. "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 1.9. "Parcel" shall mean and refer to the Lowe's Parcel and the Developer Parcel as shown on the Site Plan. "Outparcel" shall mean and refer to the Permissible Building Areas identified on the Site Plan as Permissible Building Area A, Permissible Building Area B, Permissible Building Area C, Permissible Building Area D, Permissible Building Area E, Permissible Building Area G, and Permissible Building Area H.

Section 1.10. "Permissible Building Area" shall mean each of the areas designated on the Site Plan as a Permissible Building Area. Permissible Building Area is the area within which a Building may be constructed on a Parcel, not to exceed the Maximum Square Footage indicated for each Permissible Building Area. Notwithstanding that the Site Plan may show a Building within a Permissible Building Area, such Building may be enlarged or changed, but in no event shall the total square footage of the Building actually constructed within each such Permissible Building Area exceed the Maximum Square Footage for that Permissible Building Area. 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 1.11. "Permittees" shall mean the tenants, subtenants, occupants, licensees and concessionaires leasing or occupying all or any portion of a Parcel, and their respective agents, employees, contractors, heirs, personal representatives, successors, assigns, customers, guests and invitees.

Section 1.12. "Shopping Center" shall mean and refer to the Lowe's Parcel and the Developer Parcel as identified on the Site Plan and described in Exhibit A and Exhibit B.

## ARTICLE II

### EASEMENTS

#### Section 2.1 Definitions and Documentation:

For the purposes of these ECC&Rs, 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 heirs, personal representatives, successors and assigns.

(B) An Owner to whom the easement is granted is called the "Grantee," it being intended that the grant shall benefit and include not only such Owner but also its heirs, personal representatives, successors, assigns, and Permittees (although the grant of the easement shall not be 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 such as the following: storm drainage, detention, retention and disposal facilities and sanitary sewer systems, manholes, domestic and fire protection water systems, natural gas systems, electric power cables and systems, 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 point where it runs exclusively for the benefit of only one Parcel, for use or service in common by all Owners or for the service of the Common Area (except as expressly provided in Section 2.1(E) to the contrary). All Common Utility Facilities lying in or servicing only the 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 any Utility Facilities that benefit only one Parcel and are not installed for use in common by other Owners and not for service of the Common Area (except that Utility Facilities that service Common Area of a Parcel that is to be separately maintained by the Owner of that Parcel shall be considered to be Separate Utility Facilities).

(F) The words "in" or "on" with respect to an easement granted "in" or "on" 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 reasonable request of an Owner, the other Owners shall act reasonably to sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Owners. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Owner to construct or maintain its Building(s) except as expressly provided in 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) No Cross Parking: The Owners hereby specifically disclaim any intention to create any reciprocal parking easements between the Lowe's Parcel and any other Parcel in the

Shopping Center; provided, however, that cross-parking easements may be created between separate Parcels within the Developer Parcel.

(C) Design of the Common Area:

(i) No Change Area: The No Change Area shall be shown on the Site Plan. No Owner may make any change to the Common Area and Common Area Improvements within the area marked "No Change Area" on the Site Plan without the prior written consent of the Consenting Owners, which consent each Consenting Owner may withhold in its sole discretion.

(ii) Initial Development of the Common Area: The Common Area Improvements depicted on the Site Plan are hereby deemed approved by the Consenting Owners. The operator of any business which has a drive through shall not allow vehicles standing for access to the drive through to stack into the No Change Area or otherwise interfere with the free flow of traffic within the Common Area.

(iii) Changes after Initial Development. Subject to the provisions of Section 2.2(C)(i) hereof, each Owner may make such changes to the Common Area and the Common Area Improvements on its Parcel as such Owner determines, in its sole discretion, except that the prior written consent by the Consenting Owners shall be required for any changes to the Common Area which adversely impact traffic flow (e.g., alignment of drive aisles and orientation of parking spaces) or the location of drive through and drive up lanes, the location of curb cuts, entrances and exits, the location of the Pylon Sign outside of the Pylon Sign Area identified on the Site Plan, or the location of any Center Signs outside of the respective Center Sign Areas identified on the Site Plan.

(iv) Enjoyment and Use of Common Area. 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 of each Parcel may conduct and/or allow its Permittees to conduct temporary parking lot sales and other temporary business (including, without limitation, the display of merchandise), within the Outdoor Sales Area on the Parcel(s) owned by such

Owner (provided that there in an Outdoor Sales Area on such Owner's Parcel as not every Parcel may have an Outdoor Sales Area), so long as such activity (a) does not materially interfere with ingress and egress to the rest of the Shopping Center; (b) is not in violation of any applicable law or ordinance; and (c) the area is cleaned of all debris, garbage and refuse following such outdoor sales activity. The Outdoor Sales Areas for the Shopping Center shall be the portions of the Common Area labeled as the "Outdoor Sales Area" on the Site Plan. Further, notwithstanding anything herein to the contrary, so long as such activity does not materially interfere with ingress or egress and is not in violation of any applicable law or ordinance, (i) the Owner of the Lowe's Parcel shall have the right, but not the obligation, to install and maintain a bank teller machine on the sidewalks in front of the Building located on the Lowe's Parcel, and (ii) the Owner of the Developer Parcel shall have the right, but not the obligation, to install or allow any of its tenants, licensees or concessionaires to install or maintain bank teller machines (together with the related structures and improvements necessary for a bank teller machine to be used in the Shopping Center) in the area labeled on the Site Plan as "Bank Teller Area;" provided however, there shall be no drive-through in connection with such bank teller machines without the consent of the Consenting Owners, which consent may be withheld in the Consenting Owners' sole discretion.

(ii) The Owner of each Parcel may conduct and/or allow its Permittees to conduct sidewalk sales and other business (including, without limitation, the display of merchandise or placement of a kiosk) on the sidewalks on such Parcel, so long as such activity (a) does not materially interfere with pedestrian passage to the rest of the Shopping Center, (b) is not in violation of any applicable law or ordinance, and (c) the area is cleaned of all debris, garbage and refuse following such sidewalk sales. Each Party shall have the right to enclose and/or redesign its sidewalks without the need of obtaining any other Party's consent, provided that the sidewalks are in compliance with all applicable laws and ordinances.

(iii) The Owner of the Lowe's Parcel may park vehicles or equipment within the Lowe's Parcel in connection with the leasing of vehicles and/or equipment.

(E) General Provisions for Common Area Easements:

(i) No barriers, fences, walls, grade changes or other obstructions shall be erected without the prior written consent of the Consenting Owners so as to unreasonably impede or interfere 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 maintenance, repairs, replacements, 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, including, without limitation, 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 Access Roads:

Each Owner hereby grants to the other Owners easements for pedestrian and vehicular traffic in those strips of land (not less than the widths therefor shown on the Site Plan) on its (Grantor's) Parcel which are identified as the No Change Area on the Site Plan (hereinafter collectively referred to as the "Shared Access Drives") for the purpose of providing ingress to and egress from the Grantee's Parcel and each of 126<sup>th</sup> South and the proposed access road for use by the Grantee and its Permittees. The Shared Access Drives shall also be considered to be considered to be the No Change Area. The use of the easements for the Shared Access Drives for ingress and egress shall be limited by any limitations and/or restrictions imposed by Governmental Authorities, such as, but not limited to, right-turn-only restrictions.

Section 2.4 Easements for Utility Facilities:

(A) Grant of Easement: Each Owner hereby grants to the other Owner(s) perpetual easements in its (Grantor's) Parcel, except within such Owner's Permissible Building Area(s), 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.

(B) Installation, Repair and Maintenance:

(i) All Separate Utility Facilities installed in the Common Area, whether installed under this Section 2.4 or otherwise, and all Common Utility Facilities, shall be underground, if reasonably possible.

(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.

(iii) 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, replacement and removal at Grantee's cost of all Separate 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, replacement 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, replacing or removing Common Utility Facilities on its Parcel (other than relocation at Grantor's request pursuant to Section 2.4(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, replacement, relocation and removal of Utility Facilities shall be performed in a manner that causes as little disturbance to Grantor and its Permittees 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, replacement or removal of Utility Facilities, except emergency repair work, shall be carried on during the period from November 15<sup>th</sup> through the next succeeding January 15<sup>th</sup>, and April 1<sup>st</sup> through July 1<sup>st</sup>, or on any weekends.

(C) Easements to Public Utilities. Any grant or other conveyance after the date of these ECC&Rs 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 2.4, 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 and manhole covers 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;

(iii) Grantor reserves the right to use the surface areas of its Parcel for the purposes allowed under these ECC&Rs;

(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 wrongful act or omission of, 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: 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 exercise of its rights with respect to the Separate Utility Facilities easements under this Section 2.4, except to the extent occasioned by the negligence or willful misconduct of Grantor or its Permittees.

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

(i) Use of Separate Utility Facilities: The Grantor of any easement for Separate Utility Facilities under this Section 2.4 may use the Utility Facilities installed pursuant to such easement; provided, however, that any increase in costs incurred in order to make such Utility Facilities adequate to 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 2.4(E)(ii). In such instance, the portion of the Separate Utility Facilities previously existing may be transformed in part or in whole, to Common Utility Facilities.

(ii) Relocation of Utility Facilities on Grantor's Parcel: Except during the period from November 15<sup>th</sup> through the following January 15<sup>th</sup>, and the period from April 1<sup>st</sup> through July 1<sup>st</sup>, 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(E)(ii)(a)). Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such unpermitted interferences or diminutions, or both;

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

(d) shall be located underground, if reasonably possible; and

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

(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 exclusively serving any other Owner's Parcel, without the prior written consent of such Owner, which consent may be withheld in the sole discretion of such Owner.

Section 2.5 Drainage:

Each Owner hereby grants to the other Owners easements to use, maintain, repair and replace 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, repair and replacement 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. 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, curbs, drives, paving and Buildings, as such Buildings may be constructed, reconstructed, expanded,



removed and/or altered within Permissible Building Areas) 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, unless such settling or pooling is part of the Storm Drainage System.

Section 2.6 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.

(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. No Owner shall dump fresh dirt on another Owner's Parcel without first obtaining such Owner's prior written consent.

(C) The location and use of all temporary construction easements under this Section 2.6 shall be subject to the prior written consent of Grantor.

(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 2.6. Each Grantee further agrees to use due care in the exercise of the rights granted under this Section 2.6 and, in the event the exercise of the rights granted under this Section 2.6 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.

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

Furthermore, once the final topcoat of asphalt or concrete paving has been placed on the Lowe's Parcel or any Common Area access, egress and service drives to the Lowe's Parcel, all construction vehicular traffic to or from Permissible Building Areas on the Developer Parcel shall be limited to the use of Driveway 1 and Driveway 2 (as designated on the Site Plan), and all construction traffic to or from Permissible Building Area on the Lowe's Parcel shall be limited to the use of Driveways 2 and 3 (as designated on the Site Plan).

(F) Grantee's Improvements made within such temporary construction easements shall, for purposes of cost allocation due to maintenance, operation, insurance, taxes, repairs, replacements, 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 without the prior written consent of the Consenting Owners.

Section 2.7 Sign Easement:

The Owner of each Parcel on which the Pylon Sign and/or any of the Monument Signs are located hereby grants to the other Owners entitled under Section 4.3 of these ECC&Rs to display or allow its Permittees to display a sign panel on such Pylon Sign or Monument Signs, respectively, an easement for access to and from the applicable sign(s) for the purpose of installation, maintenance, repair and replacement of such sign panel and to Developer for construction of such signs and the Utility Facilities servicing same.

Section 2.8 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 2.8 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 exercise of its rights under said easements, except to the extent occasioned by the negligence or willful misconduct of the Grantor or its Permittees. 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 2.8.

### ARTICLE III

#### USE RESTRICTIONS

##### Section 3.1 Permitted Uses:

Every Parcel shall be used only for banks and financial institutions, service shops, Retail Offices, restaurants, a service station (except to the extent prohibited in Section 3.3(A)(v) hereof, and retail and/or discount stores selling, renting and/or providing merchandise, goods and/or services normally carried or provided in other shopping centers, all as subject to the further restrictions of this Article III. "Retail Offices" shall mean insurance offices, real estate offices, travel agents offices, accountants offices, escrow and/or title insurance offices, optometrist offices, dental offices, chiropractic offices, medical offices providing pediatric, physical therapy, and/or otolaryngological services and such other offices customarily found in retail shopping centers, but Retail Offices shall not include educational or training facilities or, except as otherwise expressly provided herein, medical offices. Retail Office uses in the Shopping Center shall be limited to Permissible Building Areas E and F (as shown on the Site Plan) and shall not exceed in the aggregate 15,000 square feet. For those uses not clearly addressed in this Article III, each Owner (sometimes referred to herein as a "Requesting Owner") shall have the right to request that any other Owner (sometimes referred to herein as a "Responding Owner") acknowledge and confirm that a use contemplated by the Requesting Owner for its Parcel is permitted under these ECC&Rs. The Responding Owners shall respond, in writing, to the request within thirty (30) days; however, the failure to respond timely to this request, while a default under these ECC&Rs, shall not be deemed an approval under Section 7.12 hereof.

##### Section 3.2 Nuisances:

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.

##### Section 3.3 Use Restrictions:

(A) During the term of these ECC&Rs, no portion of the Shopping Center shall be used for any of the following purposes (except as expressly provided in these ECC&Rs) without

the prior written consent of the Consenting Owners, which consent may be withheld in the sole discretion of such Consenting Owners:

(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 therein comprises less than fifty (50%) percent of the restaurant's annual gross revenues. No restaurant shall operate in the Shopping Center where the sale of alcoholic beverages therein comprise more than fifty percent (50%) of the restaurant's gross revenues calculated on an annual basis. The foregoing provisions of this Section 3.3(A)(i) shall not prohibit a drug store or convenience store from selling beer for off-premises consumption within Permissible Building Area H (as shown on the Site Plan).

(ii) A bowling alley, billiards parlor, bingo parlor, video arcade or game room; provided, however, that such restriction shall not prohibit (a) the operation of a Chuck E Cheese restaurant or similar restaurant operation similar to a Chuck E. Cheese restaurant within the Shopping Center, and/or (b) up to five (5) mechanical and/or video games, and technological advancements and expansions thereof, that are incidental to an otherwise acceptable use in the Shopping Center.

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

(iv) A health club, gymnasium, or spa, except that one health club, gymnasium or day spa may be located in Permissible Building Area F (as shown on the Site Plan), not to exceed 4,000 square feet.

(v) A service station, automotive repair shop or truck stop, provided, however, that the foregoing shall not prohibit, within Permissible Building Area H (as shown on the Site Plan), the operation of a gasoline service station (along with a car wash that meets the requirements of Section 3.3(A)(ix) and/or a convenience store, if and to the extent such uses are otherwise permitted at such location under these ECC&Rs), so long as the following conditions are met (unless the Owner of the Lowe's Parcel otherwise agrees in writing): (1) all outdoor storage of personal property or inventory, all refuse containers and areas, and the rear of such facilities are screened from public view in a manner suitable to the Owner of the Lowe's Parcel, (2) no portion of the Lowe's Parcel shall be utilized for parking of customer or employee

vehicles related to the operation of such facility, (3) the automotive bays and customer entrances for the facility do not face northwest, (4) any such business shall be operated by a national or regional chain of facilities having at least twenty-five (25) other locations under a national or regional trade name, and (5) any such facility must comply with all local, state and federal storage and disposal regulations, rules, laws and ordinances for petroleum products or petrochemicals, batteries and tires and have in place and functioning adequate facilities and programs for monitoring and preventing any release of petroleum products or chemicals into the environment..

(vi) A flea market, open air market, tent sale or pawn shop (provided, however, that 99 Cent Only Stores, Dollar Tree, and similar type stores as well as discount stores selling closeouts with various departments shall be allowed and shall not be considered a flea market).

(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 to the extent allowed under Section 3.3(A)(v) and so long as sanitary sewer, water and storm water drainage lines entirely separate from those utilized by the Lowe's Parcel are constructed in connection with, and used by, such car wash, and that no drainage from such car wash shall drain into the detention basin for the Shopping Center.

(x) A medical clinic or medical office, except that this does not prohibit offices for optometric, chiropractic, and/or dental services and medical offices providing pediatric, physical therapy, and/or otolaryngological services which are included in Retail Offices.

(xi) A storage or mini warehouse facility.

(xii) An establishment for the sale of automobiles, trucks, mobile homes, boats or recreational motor vehicles (provided that such restriction shall not prohibit the lease of vehicles or equipment from the Lowe's Parcel).

(xiii) A dry cleaning facility or plant, central laundry or Laundromat, except that these restrictions shall not prohibit: (a) a drop-off and pick-up facility where dry cleaning and/or laundry (so long as the laundry is not self-service) is performed offsite, (b) a retail dry cleaning facility that does not use perchloroethylene ("PERC") or any other chemical or substance that is considered to be hazardous or toxic under any environmental law, that is in compliance with environmental laws, and that uses sanitary sewer lines that are entirely separate from those utilized by the Lowe's Parcel, and/or (c) a retail laundry (so long as the laundry is not self-service) that uses sanitary sewer lines that are entirely separate from those utilized by the Lowe's Parcel.

(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, that the sale of such materials in compliance with law, screened from public view and from access by underage customers, and incidental to a national or regional chain store selling and/or renting books, videos, CDs, DVDs and technological advancements and expansions thereof, shall be permitted.

(ii) A massage parlor.

(iii) A skating rink.

(iv) A mortuary, crematorium or funeral home.

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

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

(vii) A telephone call center.

(viii) A gambling establishment or betting parlor.

(ix) A veterinary hospital or animal raising or keeping facilities, except as part of a national or regional chain pet or pet supply store.

(x) 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 (provided, however, that the foregoing restriction shall not apply to exclude a Best Buy Store, a Good Guys Store, a Circuit City Store, a Silo Store, an Office Depot Store, or an Office Max Store, as such stores are operated as of the date of these ECC&Rs).

(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 (provided, however, that such restriction shall not exclude a furniture store, an art gallery, or a store whose primary purpose is selling fine art, posters, sculptures and/or other art objects, a household goods store such as Bed, Bath & Beyond, Strouds, Pier 1 or an arts and crafts store such as Michaels (all subject to the restrictions in Section 3.4(ii)).

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

(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 store; lighting store; and/or a 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 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 HIW, Inc. or its affiliated companies ("Lowe's HIW"), in connection with the Shopping Center or the conduct of its business thereat are registered and/or the proprietary property of Lowe's HIW, (ii) except as provided below, no usage of those marks or names will be made in naming or referring to any activity within 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 HIW 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 within a Permissible Building Area shall exceed the Maximum Square Footage shown for such Permissible Building Area on the Site Plan. No building, structure or improvements (other than Common Area Improvements, or as otherwise allowed under these ECC&Rs) 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 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 Parcel shall be self-supporting with respect to the parking spaces required by applicable law for the Building(s) constructed thereon (to be self-supporting for purposes of the foregoing, 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) and shall each contain not less than ten (10.0) paved automobile parking spaces per each 1,000 square feet of building area for restaurant use (including fast food restaurant use) and four and one-half (4.5) paved automobile parking spaces for each 1,000 square feet of building floor area for any other permitted use constructed on the Developer Parcel and three and 95/100ths (3.95) paved automobile parking spaces for each 1,000 square feet of building floor area for any other permitted use constructed on the Lowe's Parcel, or the number of parking spaces required by applicable law, whichever is greater. At least eighty percent (80%) of the paved automobile parking spaces required in this section shall be full-sized parking spaces, with no more than twenty percent (20%) being compact-sized.

(C) Fire Protection: All improvements within the Shopping Center shall be constructed in compliance with all applicable federal, state, and local building codes. There shall be sixty (60) feet of open space on which no Buildings or other structures may be constructed around the Building on the Lowe's Parcel such that the Building on the Lowe's Parcel maintains an unlimited area classification for fire protection purposes. 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, planted in grass and trimmed or covered with a one-inch asphalt cap (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 the current prototypical store building and improvements for Lowe's HIW as of the date hereof. All Buildings within the Shopping Center shall be single story, although mezzanines shall be allowed. The Parties hereto agree that the elevations which are attached hereto, as Exhibit D and made a part hereof (the "Elevations") are architecturally harmonious. If an Owner is unsure whether structures that it intends to construct or alter will be architecturally harmonious with other structures within the Shopping Center, such Owner (sometimes referred to herein as a "Requesting Owner") shall have the right to request in writing that the Consenting Owners acknowledge and confirm that such structures will be architecturally harmonious with the other structures within the Shopping Center. The standards and timing of the response by the Consenting Owners shall be governed by Section 7.12 hereof as though same were a consent by the Consenting Owners. The determination (or deemed determination) by the Consenting Owners shall be conclusive.

(B) Building Foundations. If, prior to the completion of the foundation of a Building, a Consenting Owner delivers written notice to the Owner of the Parcel on which the foundation was constructed, requesting that an actual field survey of the foundation be performed and presented to the Consenting Owners to ensure that the Building is located within the Permissible Building Area authorized by these ECC&Rs, then such a field survey shall be promptly performed by and at the cost of the Owner on whose Parcel the Building is being constructed. Such field survey will be delivered to the Consenting Owners upon completion thereof.

(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.

(D) Construction on Outparcels. Outparcel development is further limited as provided in Section 4.4 hereof.

Section 4.3 Center Signage.

(A) So long as allowed by Governmental Authorities and all laws, the Consenting Owner of the Developer Parcel shall construct and maintain, subject to reimbursement as provided below, two (2) pylon signs (each a "Pylon Sign") in the Shopping Center within the Pylon Sign Area labeled on the Site Plan. Lowe's shall have the top panel on both sides of each Pylon Sign, and no sign panel on a Pylon Sign shall be larger than seventy-five percent (75%) of the Lowe's sign panel. The design of the Pylon Signs attached hereto as Exhibit E and made a part hereof is hereby approved; however, any material changes from such design of the Pylon Sign shall be subject to the prior written approval of the Consenting Owners. A pro rata share of the cost of constructing the Pylon Sign (including utilities servicing same) and maintaining, repairing and replacing it (the "Pylon Sign Proration") shall be paid to the Consenting Owner of the Developer Parcel by each other Owner within thirty (30) days after written notice of the cost which has been incurred therefor. The Pylon Sign Proration for each Owner shall be a fraction, the numerator of which is the square footage of the sign panels on the Pylon Sign which are used or available for use by such Owner (or its tenants), and the denominator of which is the total square footage of all panels on the Pylon Sign used or available for use to display the names of businesses in the Shopping Center. The Pylon Sign Proration shall not take into account the square footage of the name or logo of the Shopping Center which may be located on the Pylon Sign. Each Owner may charge the cost of its Pylon Sign Proration to any one or more of its tenant(s). Each Owner shall separately maintain, repair and replace the sign panels on the Pylon Sign which are used or available for use by such Owner (or its tenants), and the cost of maintaining, repairing and replacing sign panels shall not be part of the Pylon Sign Proration. Each Owner may charge the cost of maintenance, repair and replacement of its sign panels on the Pylon Sign to any one or more of its tenant(s).

(B) So long as allowed by Governmental Authorities and all laws, one (1) multiple-occupant monument sign may be installed and maintained within the Monument Sign Area labeled on the Site Plan (the "Multiple Occupant Monument Sign").

(C) So long as allowed by Governmental Authorities and all laws, other multiple occupant or single occupant monument signs may be installed in the Shopping Center with the consent of Consenting Owners (each, a "Monument Sign" and collectively, the "Monument Signs")

(D) The design of all Monument Signs must conform to the designs set forth in Exhibit E, including a height not to exceed eight (8) feet above the elevation of the surrounding parking areas for the Monument Sign shown on the Site Plan and otherwise not to exceed six (6) feet above the elevation of the surrounding parking areas; however, any material changes from such design of the Monument Signs shall be subject to the prior written approval of the Consenting Owners. If the approval of the Consenting Owners is required for a Monument Sign, the Owner desiring to erect it shall provide the Consenting Owners with a copy of the sign plans and shall request in writing for the Consenting Owners' approval of the design of such Monument Sign. The Consenting Owners shall then have thirty (30) days from receipt of the notice to approve or object to the design of the proposed Monument Sign(s). If the Consenting Owners do not deliver written objection to such proposed Monument Sign(s) and include specific reasons therefor within the thirty (30) day period, then the proposed Monument Sign(s) shall be conclusively deemed approved. A pro rata share of the cost of constructing each of the Monument Signs (including utilities servicing same) and maintaining, repairing and replacing each Monument Sign (the "Monument Sign Proration") shall be paid to the Owner constructing the applicable Monument Sign by each other Owner who has the right (or whose tenant has the right) to use any sign panels on such Monument Sign. The Monument Sign Proration for each Owner shall be a fraction, the numerator of which is the square footage of the sign panels on the applicable Monument Sign which are used or available for use by such Owner (or its tenants), and the denominator of which is the total square footage of all panels on the Monument Sign used or available for use to display the names of businesses in the Shopping Center. The Monument Sign Proration shall not take into account the square footage of the name or logo of the Shopping Center which may be located on the Monument Sign. Each Owner may charge the

cost of its Monument Sign Proration to any one or more of its tenant(s). Each Owner shall separately maintain, repair and replace the sign panels on the Monument Sign which are used or available for use by such Owner (or its tenants), and the cost of maintaining, repairing and replacing sign panels shall not be part of the Monument Sign Proration. Each Owner may charge the cost of maintenance, repair and replacement of its sign panels on the Monument Sign to any one or more of its tenant(s).

(E) The Owner of the Lowe's Parcel (or its Permittees so designated by such Owner) shall have the right to use the sign panels on the Pylon Sign and the Monument Signs that are marked "Lowes" on Exhibit E attached hereto, and the Owner of the Developer Parcel (or its Permittees so designated by such Owner) shall have the right to use the sign panels on the Pylon Sign and the Monument Signs that are not marked "Lowes" on Exhibit E attached hereto (except for the panel above the Lowe's panel bearing the Shopping Center designation on Exhibit E). Developer shall have the right to determine which Developer Parcel or Developer Parcel (and which Permittees of such Developer Parcel or Developer Parcel) are entitled to use the sign panels available to the Owner of the Developer Parcel.

(F) The Owner of a Parcel may, without having to obtain the approval of any other Owners, erect entrance-exit and directional signs on its Parcel(s) (such directional signs may include the name(s) of businesses in the Shopping Center if the Owner of the Parcel on which the directional sign is located obtains the prior written consent of the Consenting Owners) as such Owner reasonably determines would be helpful or appropriate to direct customers and invitees of the Shopping Center to facilitate the free flow of traffic, which entrance-exit and directional signs shall be of a monument type, not to exceed four (4) feet in height.

(G) There shall be no other free standing signs allowed in the Center except as provided in this Section 4.3 without the prior written consent of the Consenting Owners.

Section 4.4 Outparcel Development:

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

(A) Any Building constructed on any of the Outparcels shall not exceed twenty-four (24) feet in height, as measured from the finished elevation of the parking area of the Shopping Center, except that (i) architectural features and equipment may cause a Building to exceed such

height if the portion thereof which exceeds twenty-four (24) feet is not longer than twenty percent (20%) of the length of the facia of the Building and the total height does not exceed thirty-five (35) feet.

(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) The foregoing restrictions and agreements are imposed on each of the Outparcels for the benefit of the 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 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 the Common Area; and (viii) obtain all necessary approvals from Governmental Authorities. 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 person or entity performing such Work shall limit all construction work and staging areas to its own Parcel and not encroach on any Common Area on any other Parcel (without the prior written consent of the Owner of such other Parcel) and shall not utilize parking areas of any other Parcel (without the prior written consent of the Owner of

such other Parcel). In connection with Work performed within the Permissible Building Areas of the constructing Owner, incidental encroachment upon the Common Area of the person or entity 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 Area may be utilized: (a) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with such Work (but each Owner performing Work shall, to the extent reasonably possible and subject to Section 2.6, 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 2.6), 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 ("Work Plans"). No such Work shall be performed in the Common Area without the prior written consent of the Consenting Owners. In the event of any emergency involving an immediate and imminent threat of substantial harm or injury to persons or property, only such notice as may be reasonable under the circumstance shall be required.

**Section 4.6 Compliance in Construction:**

All Work which an Owner undertakes pursuant to these ECC&Rs shall comply with the Work 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 Consenting Owners of any such Work or Work 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 Work Plans, nor shall such consent constitute a representation or warranty that such Work or Work Plans will be economic to construct or will comply with law.

Section 4.7 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 ninety (90) 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) or with a one-inch asphalt cap 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 Parcel).

ARTICLE V

MAINTENANCE, TAXES AND INSURANCE

Section 5.1 Maintenance:

(A) Each Owner hereto shall maintain the Building(s) and the Common Area on its Parcel in good order and condition and state of repair in accordance with the commercially reasonable standards of shopping center operation including (but not limited to) sweeping and removal of trash, litter and refuse, slurry coating, sealing, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair of lighting standards and signs. Each Owner covenants that it, in addition to other requirements of this Section, will keep or cause the inside and outside of all glass in the doors and windows of its Buildings to be kept reasonably clean; will keep or cause its Buildings at its own expense (subject to reimbursement by tenants and occupants of its Parcel) to be kept 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 or cause the same to be removed at its own expense (subject to reimbursement by tenants and occupants of its Parcel), and will keep or cause such refuse to be kept in proper containers or compactors in places designated therefor until called for to be removed; and will keep or cause the Common Area on its Parcel to be kept clear of accumulations of ice and snow. The Owners confirm their intention that the maintenance and repair of the Buildings and Improvements on



each Parcel shall be of such a character that their appearance will be that of a unified shopping center and, accordingly, the Owners 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.

(B) Maintenance of Driveway 2: Notwithstanding the obligation of each Owner to maintain the Common Area on such Owner's Parcel, Lowe's or its successors or assigns, at its sole cost and expense, shall maintain, repair and replace Driveway 2 (as shown on the Site Plan) in accordance with the standards set forth in this Section 5.1 (including associated improvements such as curbs, gutters and lighting).

(C) Maintenance of Detention Basin and Related Facilities: The Consenting Owner for the Developer Parcel shall maintain, repair, and replace the detention basin and other portions of the Storm Drainage System serving the Shopping Center and not located within the Shopping Center. Each Owner shall be responsible for complying with all storm water pollution prevention laws, rules and regulations (including, without limitation, using best management practices with respect to control and management of water flows, residual runoff and parking lot sweeping), and shall be responsible for its own plans and its own monitoring, record keeping, and reporting for compliance with storm water pollution prevention regulations (collectively, the SWPP Obligations"). The fact that the Consenting Owner for the Developer Parcel is maintaining, repairing and replacing the physical condition of the detention basin and of the other portions of the Storm Drainage System shall not render the Consenting Owner for the Developer Parcel liable or responsible for any other Owner's SWPP Obligations. Each Owner shall pay to the Consenting Owner for the Developer Parcel for such Owner's pro rata share of the costs incurred to maintain, repair and replace the portion of the Storm Drainage System not located within the Shopping Center, which pro rata share shall be calculated as the ratio of the total square footage of such Owner's Parcel divided by the total square footage of all Parcels in the Shopping Center. All such payments must be made within thirty (30) days after receipt of an invoice with reasonable documentation of the costs. The Consenting Owner for the Developer Parcel shall indemnify and save harmless Lowe's from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and attorneys' fees on appeal), causes of action, suits, claims, demands or judgments of any nature (collectively, "Claims") (including

without limitation any such Claims asserted by the owner of the property on which those portions of the Storm Drainage System not within the Shopping Center are located) arising from (i) the Storm Drainage System maintenance activities of the Consenting Owner for the Developer Parcel with regard to the Storm Drainage System (except to the extent caused by the negligence or willful misconduct of the indemnified party or its Permittees), (ii) the failure by the Consenting Owner for the Developer Parcel to perform its maintenance obligations under this subparagraph (C) (except to the extent caused by the negligence or willful misconduct of the indemnified party or its Permittees).

(D) Lighting: Each Owner shall cause the Common Area on its Parcel to be adequately lit for at least the hours during which the business on the Lowe's Parcel is open for business and for one (1) hour after closing. Upon written request by an Owner, any other Owner shall keep the Common Area on its Parcel adequately lit for the period beyond one (1) hour after the Lowe's Parcel is open for business, in which case, the requesting Owner shall pay the other Owner the extra cost of the electricity therefor within fifteen (15) days after receipt of written notice of the cost thereof (such other Owner shall reasonably prorate such extra cost if same is not separately metered and measurable).

Section 5.2 Maintenance Director:

Subject to the mutual agreement of each of the Consenting Owners, a third party may be appointed as an agent of the Consenting Owners to maintain, repair and replace the Common Area 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, repair and replacement 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.

Section 5.3 Failure in Performing Maintenance Responsibilities:

In the event that an Owner fails or defaults in its 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 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. In the event an Owner fails to pay when due all taxes and assessments described herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a breach under these ECC&Rs and either Consenting Owner (the "Curing Party") may, in addition to such Owners' other remedies, thereafter pay such taxes and assessments if such taxes and assessments are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes and assessments. The Curing Party shall then invoice the defaulting Owner for the expenses incurred. The defaulting Owner shall have ten (10) business days after receipt of the invoice to pay the Curing Party. 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 ten (10) business day period until paid.

Section 5.5 Insurance:

(A) Insurance Coverage: Each Owner shall at all times maintain or cause to be maintained with respect to its Parcel and all Buildings and Improvements thereon and by any contractor during any construction activity on such Owner's Parcel, at least the minimum insurance coverage set forth below, which coverages may be increased, decreased or changed upon mutual written agreement of the Consenting Owners (such agreement shall not be unreasonably withheld, conditioned or delayed):

- (i) Worker's Compensation and Employer's Liability Insurance.

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

(b) Employer's liability insurance in the amount of \$2,000,000 each accident for bodily injury, \$2,000,000 policy limit for bodily injury by disease and \$2,000,000 each employee for bodily injury by disease.

(ii) Commercial General Liability insurance with the following minimum limits of liability and coverages:

(a) Premises and Operations;

(b) Products and Completed Operations;

(c) Contractual Liability (insuring the indemnity obligations assumed by any contractor working on an Owner's Parcel under contract documents);

(d) Broad Form Property Damage, including Explosion, Collapse and Underground Hazards, for the full replacement cost of Buildings and Improvements on an Owner's Parcel (including Completed Operations):

(1) \$2,000,000 for Bodily Injury and Property Damage each occurrence;

(2) \$2,000,000 for Personal and Advertising Injury Liability;

(3) \$2,000,000 aggregate for Products and Completed Operations;

(4) \$2,000,000 general aggregate.

(e) Automobile Liability Insurance. Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined.

(f) Umbrella/Excess Liability Insurance. Each Owner shall also carry umbrella/excess liability insurance in the amount of \$2,000,000.

(B) Evidence of Insurance Coverage; Self Insurance: The policies of insurance as required in Section 5.5(A) shall be provided by insurance companies licensed in the State of Utah and rated A-/VII or better in Bests Insurance Guide or its equivalent, shall name every other Owner in the Shopping Center as an additional insured, and shall provide that such insurance

shall not be canceled or reduced in amount or coverage below the requirements of these ECC&Rs without at least thirty (30) days prior written notice to the additional insureds. All insurance may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner, provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$10,000,000.00, then such insuring Owner shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$10,000,000.00, (iii) a plan of self-insurance, provided that such Owner or its parent company (so long as the parent company fulfills the obligations of the subsidiary under this Section 5.5) has \$100,000,000.00 or more of net current assets, determined in accordance with generally accepted accounting principles, consistently applied, and satisfies the other requirements for self-insurance described below, or (iv) a combination of any of the foregoing insurance programs. To the extent of any deductible carried by an Owner, such Owner 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 \$250,000.00 unless (I) such Owner complies with the requirements regarding self-insurance pursuant to (iii) above, or (II) such Owner or its parent company (so long as the parent company fulfills the obligations of the subsidiary under this section 5.5) has \$100,000,000.00 or more of net current assets, determined in accordance with generally accepted accounting principles, consistently applied. Each Owner agrees to furnish the following to any other Owner requesting in writing the same (except that the obligations contained in this sentence shall not apply to Lowe's so long as Lowe's HIW, Inc. is the Owner of the Lowe's Parcel): (Y) a certificate(s) of insurance evidencing that the insurance required to be carried by such Owner is in full force and effect, and (Z) if an Owner's parent company's net worth is being relied upon to satisfy the self-insurance described above, the Owner provides all other Owners with a certificate executed by such parent company stating that such parent company will be obligated as the insurer in providing the self-insurance required under these ECC&Rs. In order for an Owner (or its parent company) to self-insure as allowed above, such Owner (or its parent company) shall satisfy the following requirements, if applicable: (a) for corporations which are not publicly held or whose parent company (if the parent company is satisfying these requirements) is not publicly held, complete copies of audited financial statements for the most recent fiscal year of the self-

insuring Owner (or its parent company, if applicable) and the two immediately preceding fiscal years, are delivered to all other Owners, and such net worth calculation excludes receivables from affiliates of the self-insuring Owner (or its parent company, if applicable); (b) the financial statements described in (a) above, if required in (a) above, are provided to the other Owners within thirty (30) days following request therefor, reaffirming the net worth requirement described above. All self-insurance provided hereunder shall be deemed to be full insurance for purposes of the releases described in Section 5.8.

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 breach under these ECC&Rs and either Consenting Owner (the "Curing Party") may, in addition to such Owners' other remedies, thereafter obtain and pay for such insurance. The Curing Party shall then invoice the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days after receipt of the invoice to pay the Curing Party. 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) 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 or Owners (the "Indemnitee") from and against, all Claims arising from: (i) any injury to or death of a person or loss of or damage to property occurring on the Indemnitor's Parcel (except to the extent caused by the negligence or willful misconduct of the Indemnitee or its Permittees); (ii) any use or condition of the Indemnitor's Parcel (except to the extent caused by the negligence or willful misconduct of the Indemnitee or its Permittees); (iii) the use by the Indemnitor of the Storm Drainage System, or (iv) any negligence or willful misconduct of the Indemnitor or any of its Permittees (unless caused by the negligence or willful misconduct of the Indemnitee or its Permittees).

Section 5.8 Waiver of Subrogation:

Each Owner (the "Releasor") hereby releases the other Owner or Owners (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 (including losses and damages caused thereby due to the 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, which each Party shall endeavor to obtain. The releases contained herein shall apply to items covered by self-insurance and/or deductibles.

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 Owner (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 shall be a breach under these ECC&Rs without necessity of any further notice to the Defaulting Owner 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 shall be a breach under these ECC&Rs without necessity of any notice to the Defaulting Owner, 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) or (B) above, 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 breach claimed; provided, however, that, if the breach is of such nature that it cannot reasonably be cured within thirty (30) days after receipt of such notice, and same does not result in the inability of another Owner or its Permittees to use

any easements granted hereunder, then the Defaulting Owner shall have such additional time as is reasonably required to cure same, so long as the Defaulting Owner commences the cure thereof within such third (30) day period, and diligently prosecutes such cure to completion; provided, however, that if the failure relates to use restrictions described in Article III hereof, then such cure period cannot exceed a total of ninety (90) days. Nothing contained in this Section 6.1(C) shall prohibit an Owner from seeking injunctive relief against violations of these ECC&Rs.

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 Defaulting 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 Non-Defaulting Owner shall have the obligation to join any Permittee in any action or suit to enforce these ECC&Rs.

Section 6.3 Right to Cure:

With respect to any breach under Section 6.1, any Non-Defaulting Owner who is a Consenting Owner (the "Curing Owner") shall have the right, but not the obligation, to cure such breach 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 breach 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 breach 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 breach of the Defaulting Owner. Each Owner shall be responsible for the non-performance or default of its Permittees. In the event any Curing Owner shall cure a breach, the Defaulting Owner shall reimburse the Curing Owner for all reasonable costs and expenses incurred in connection with such curative action, plus interest at the Default Rate, within ten (10)



business days following receipt of written demand therefor, together with reasonable documentation supporting the expenditures made.

Section 6.4 Liens:

Costs and expenses incurred by a Curing Owner pursuant to Section 6.3 above 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. 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 (or instrument number) of recordation hereof.

The claim of lien 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 claim of lien shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law. Any claim of lien shall be subordinate to any and all charges, liens and encumbrances recorded upon the Defaulting Owner's Parcel prior to the recording of the claim of lien, but such claim of lien shall be superior to any and all subsequent charges, liens and encumbrances which thereafter may arise or be imposed upon the Defaulting Owner's Parcel.

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 breach by any other Owner or its Permittees 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 breach. No waiver by any Owner of any breach 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 breach. No express written waiver of any breach shall affect any other default or cover any other period of time other than any breach and/or period of time specified in such express waiver. One or more written waivers or any breach under any provision of these ECC&Rs shall not be deemed to be a waiver of any subsequent breach 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 Owner 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 or entity 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 or entity. In addition, such person or entity shall be bound by these ECC&Rs only during the period such person or entity is the fee Owner or tenant 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 after such person or entity acquires such fee or leasehold interest and prior to such conveyance or transfer by such person or entity. Although persons and entities may be released under this Section 6.8, the easements, covenants and restrictions in these ECC&Rs

shall continue to be benefits to and burdens and servitudes upon said Parcels running with the land.

Section 6.9 Attorneys Fees:

If an Owner or any such tenant commences any action, lawsuit or other proceeding to enforce any of the terms of these ECC&Rs (or for damages by reason of an alleged breach hereof), the prevailing party in any such action, lawsuit or other proceeding shall be entitled to recovery of all costs and expenses thereof (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on appeal) from the losing party therein.

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 breach to any other Owner under these ECC&Rs that has not been cured.

Section 7.2 Term and Perpetuity:

The agreements, conditions, covenants, easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof and shall continue in full force and effect, shall run with the land, and shall inure to the benefit of and be binding upon all Owners and their respective heirs, personal representatives, executors, administrators, successors, successors-in-title and assigns until the expiration of sixty (60) years from the date hereof, unless terminated by the consent of all the Owners pursuant to a writing recorded in the real property records of the county and state in which the Shopping Center is located. Said agreements, conditions, covenants, easements, restrictions and obligations shall be unaffected by any change in the ownership of any 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, easements, restrictions and obligations 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; unless otherwise provided herein, a Consenting Owner may withhold its agreement to amend these ECC&Rs in its sole discretion. 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.

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 that maintains record of delivery, 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: Riverton Meadows Partners, LLC  
c/o The Merrill Companies, LLC  
5850 Canoga Avenue, Suite 650  
Woodland Hills, CA 91367  
Attention: David M. Frank

Copy to: Freeman, Freeman & Smiley, LLP  
3415 Sepulveda Blvd., Suite 1200  
Los Angeles, CA 90034  
Attention: Glenn T. Sherman

Lowe's: Lowe's HIW, Inc.  
Box 1111  
(Highway 268 East, North Wilkesboro, North Carolina 28659)  
North Wilkesboro, North Carolina 28656-0001  
Attention: Property Management Dept. (REO)

Copy to: Lowe's HIW, Inc.

Box 1111  
(Highway 268 East, North Wilkesboro, North Carolina 28659)  
North Wilkesboro, North Carolina 28656-0001  
Attention: Legal Department (REO)

If any Parcel is subdivided, then the Owner of the Parcel being subdivided may, by written notice to the other Owners, designate the Owner of each subdivided Parcel to be entitled to receive notices under the ECC&Rs as an Owner hereunder.

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 lessees which rights and obligations shall be expressly assumed by such lessee or lessees for the term of the lease or leases between such Owner and such 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 now or hereafter 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:

No Owner is obligated pursuant to these ECC&Rs to continuously operate a business on its Parcel for any specific period of time; moreover, nothing contained in these ECC&Rs shall be construed or interpreted to prohibit an Owner from ceasing business operations at its Parcel at any time after it has commenced business operations thereon.

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 and the counterpart execution pages accumulated to create 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.

Section 7.12 Consents and Approvals.

Wherever the consent or approval of an Owner (including, without limitation, a Consenting Owner) is required or desirable under these ECC&Rs, such consent or approval shall not be unreasonably withheld, delayed or conditioned unless these ECC&Rs provide otherwise. If the consent or approval of the Consenting Owners is required or desirable under these ECC&Rs, same shall require the consent or approval of both Consenting Owners. If these ECC&Rs provide that an Owner may withhold its consent or approval in its sole discretion, same shall mean such consent or approval may be withheld in such Owner's sole and absolute discretion, without any obligation to be reasonable. Furthermore, an Owner's response to a request for a consent or approval hereunder shall be delivered to the requesting Owner within thirty (30) days following the date an Owner receives such request, unless a shorter time period to respond to that request is expressly set forth in these ECC&Rs (in which case the Owner required to respond shall deliver its response within such shorter time period). If an Owner's response is not

delivered within the requisite time period, then, where consent is required by Sections 2.2(C)(iii) and (E) (Common Area Changes), 2.4(B) and (C) (Utilities Locations), 2.6(C) (Construction Easements), 4.2(A) (Building Design) and 4.5 (Construction Work in the Common Area), if an Owner has not responded to a request for consent within thirty (30) days after receipt (unless a shorter time is provided herein), the requesting Owner shall have the right to deliver a second written request for such consent or approval, which second written request shall specify in bold capitals that failure to respond within ten (10) business days following receipt of such written request shall be deemed to be the consent or approval of the item requested. If an Owner fails to deliver written notice of its response to a request for consent or approval within such ten (10) business day period following such second written notice, it shall be deemed that such Owner consented to or approved of the item requested.

Section 7.13 Conveyance of interests in the Developer Parcel

Subject to the provisions of these ECC&Rs, the Owner of the Developer Parcel may subdivide, convey, lease, or assign any Developer Parcel or any portion thereof through any means including, but not limited to, subdivision, lot line adjustment, lease, ground lease, or condominium declaration.

Section 7.14 Mortgagee Protection Provision

Any Owner shall have the right to encumber its interest in its respective Parcel by either mortgage or deed of trust, provided such mortgage or deed of trust is subject to and subordinate to these ECC&Rs. Notwithstanding the foregoing, such mortgage or deed of trust, once recorded in the Official Records of the Salt Lake County Recorder (the "Official Records") shall at all times remain superior to and have priority over any claim of lien thereafter recorded in the Official Records by virtue of or arising out of any breach of these ECC&Rs. The breach of any of these ECC&Rs shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value on any Parcel or Parcels after the date of the recording of these ECC&Rs in the Official Records, but the agreements, conditions, covenants, easements, restrictions and obligations hereof shall be binding and effective against any Owner whose title is acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or other enforcement of rights under such mortgage or deed of trust.

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]



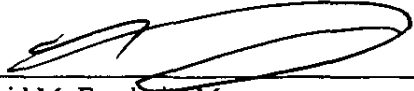


Signature Page for Developer (ECC&Rs):

DEVELOPER:

RIVERTON MEADOWS PARTNERS, LLC  
a Utah limited liability company

By: The Merrill Companies, LLC,  
a California limited liability company,  
Its Co-Manager

By:   
\_\_\_\_\_  
David M. Frank, Its Manager

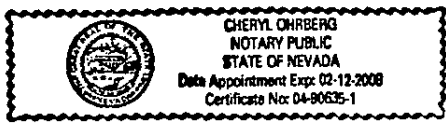
By: Bangerter 126 Real Estate Holdings, LLC,  
a Nevada limited liability company  
Its Co-Manager

By: \_\_\_\_\_  
Keven Golshan, its Manager

STATE OF ~~CALIFORNIA~~ NEVADA )  
 ) ss.  
COUNTY OF CLARK )

On July 27, 2005, before me, Cheryl Shrbeg Notary Public, personally appeared David M. Frank, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Cheryl Shrbeg  
NOTARY PUBLIC

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2005, before me, \_\_\_\_\_ Notary Public, personally appeared Keven Golshan, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

Signature Page for Developer (ECC&Rs):

DEVELOPER:

RIVERTON MEADOWS PARTNERS, LLC  
a Utah limited liability company

By: The Merrill Companies, LLC,  
a California limited liability company,  
Its Co-Manager

By: \_\_\_\_\_  
David M. Frank, its Manager

By: Bangerter 126 Real Estate Holdings, LLC,  
a Nevada limited liability company  
Its Co-Manager

By: \_\_\_\_\_  
Kevin Golshan, its Manager

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2005, before me, \_\_\_\_\_ Notary Public, personally appeared David M. Frank, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Los Angeles )

On July 27, 2005, before me, Pirouz M Adeli Notary Public, personally appeared Keven Golshan, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
NOTARY PUBLIC

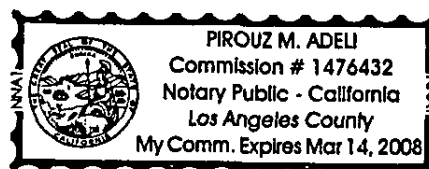


Exhibit A

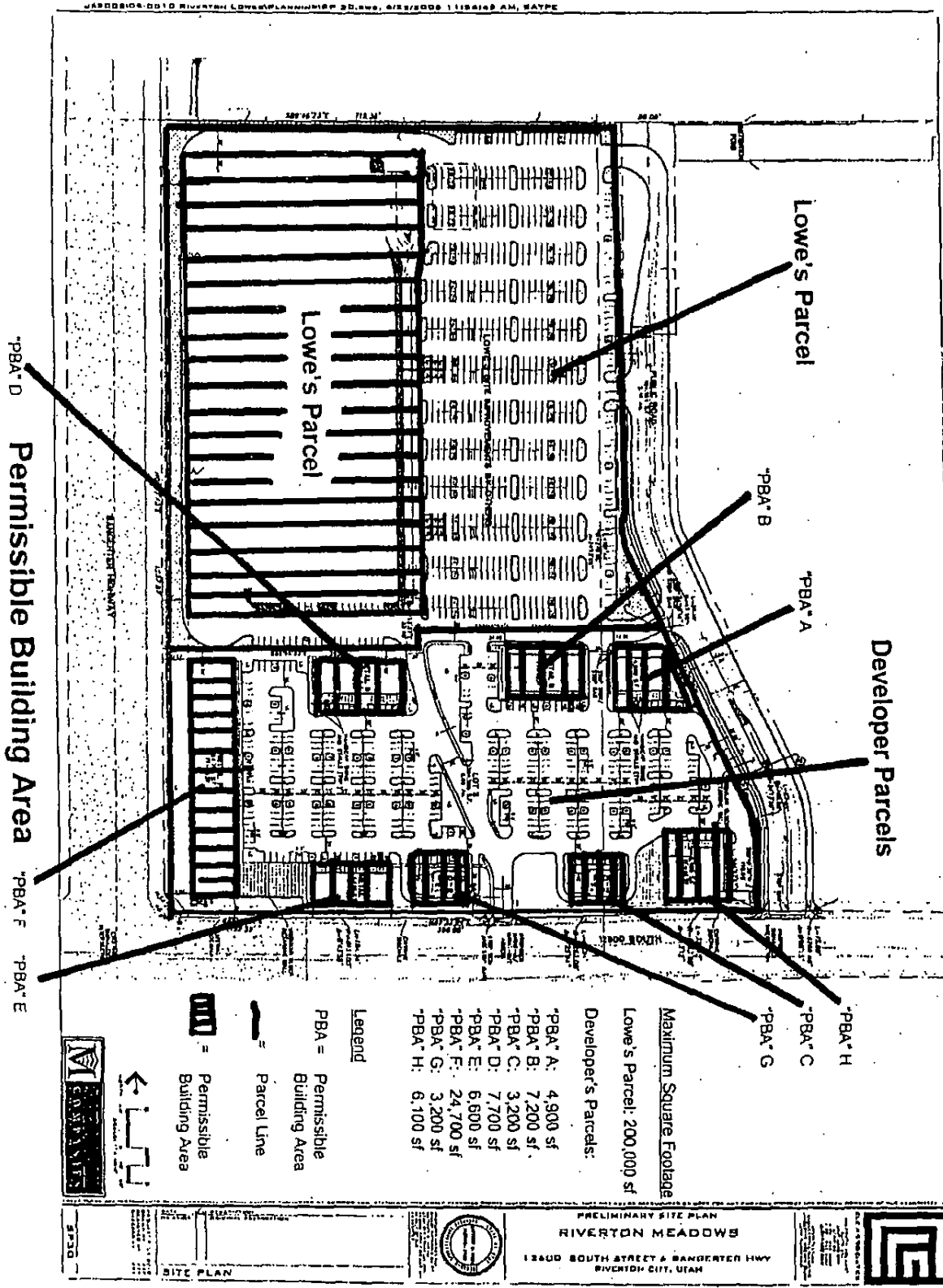
Legal Description of Lowe's Parcel

LOT 1, RIVERTON MEADOWS COMMERCIAL SUBDIVISION, A PART OF THE  
SOUTHWEST QUARTER SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT  
LAKE BASE & MERIDIAN, RIVERTON CITY, COUNTY OF SALT LAKE, STATE OF  
UTAH, RECORDED ON JULY 29 2005 IN THE SALT LAKE COUNTY RECORDER'S  
OFFICE AT BOOK \_\_\_\_\_ AND PAGE \_\_\_\_\_. ENTRY NO. 9446104

Exhibit B

Legal Description of Developer Parcel

LOT 2, RIVERTON MEADOWS COMMERCIAL SUBDIVISION, A PART OF THE  
SOUTHWEST QUARTER SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT  
LAKE BASE & MERIDIAN, RIVERTON CITY, COUNTY OF SALT LAKE, STATE OF  
UTAH. RECORDED ON JULY 29, 2005 IN THE SALT LAKE COUNTY RECORDER'S  
OFFICE AT BOOK \_\_\_\_\_ AND PAGE \_\_\_\_\_. ENTRY NO 9446 104



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CO. RECORDER

PBA D  
Permissible Building Area  
PBA F PBA E

Lowe's Parcel

Developer Parcels

PBA B

PBA A

PBA G

PBA C

PBA H

- Maximum Square Footage  
Lowe's Parcel: 200,000 sf
- Developer's Parcels:
- \*PBA A: 4,900 sf
  - \*PBA B: 7,200 sf
  - \*PBA C: 3,200 sf
  - \*PBA D: 7,700 sf
  - \*PBA E: 6,600 sf
  - \*PBA F: 24,700 sf
  - \*PBA G: 3,200 sf
  - \*PBA H: 6,100 sf

Legend

PBA = Permissible Building Area

— = Parcel Line

▨ = Permissible Building Area



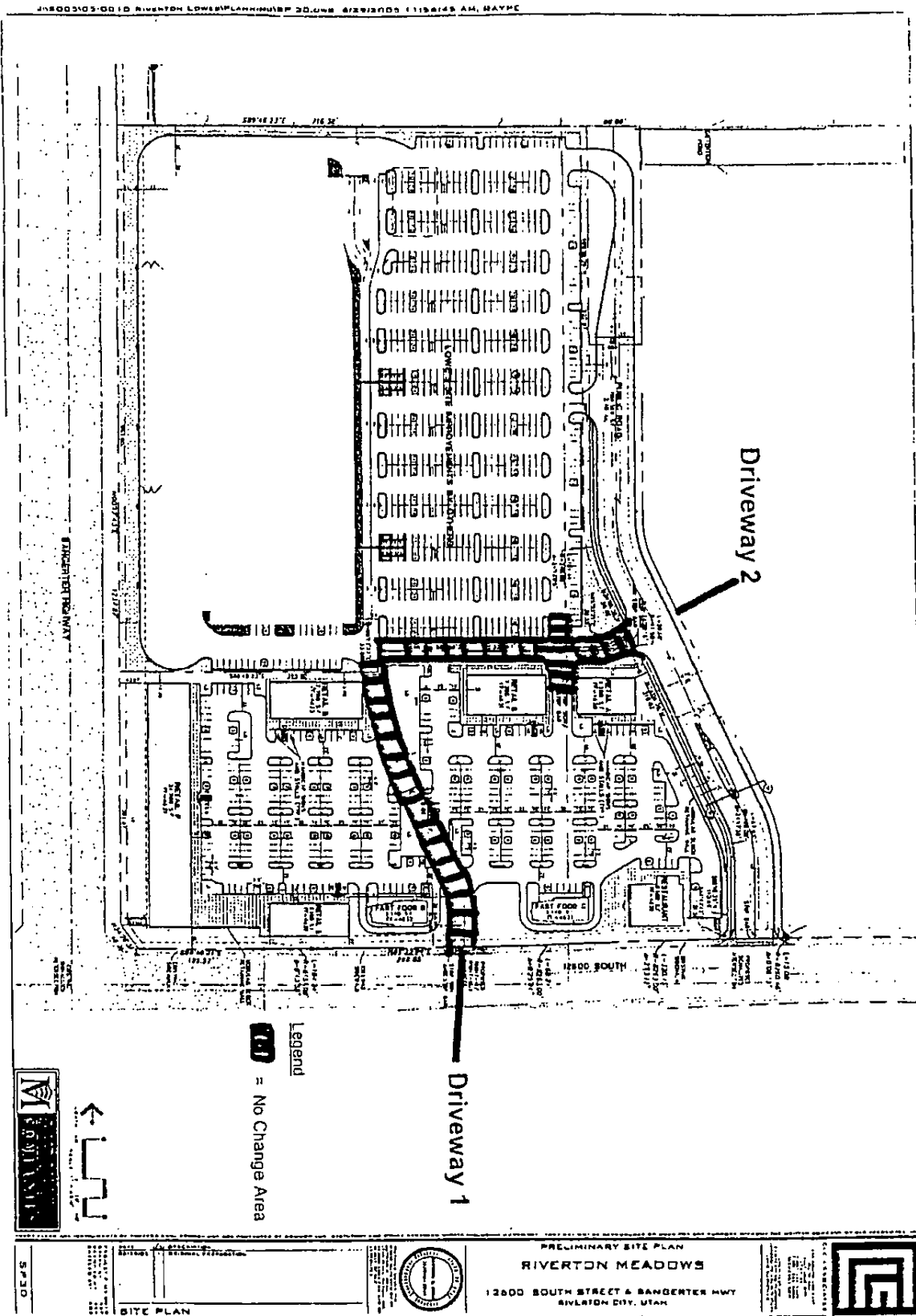
PRELIMINARY SITE PLAN  
RIVERTON MEADOWS  
12400 SOUTH STREET & SANDGATER HWY  
RIVERTON CITY, UTAH

DATE: 01/15/2008  
DRAWN BY: [Name]  
CHECKED BY: [Name]

SCALE: 1" = 100'

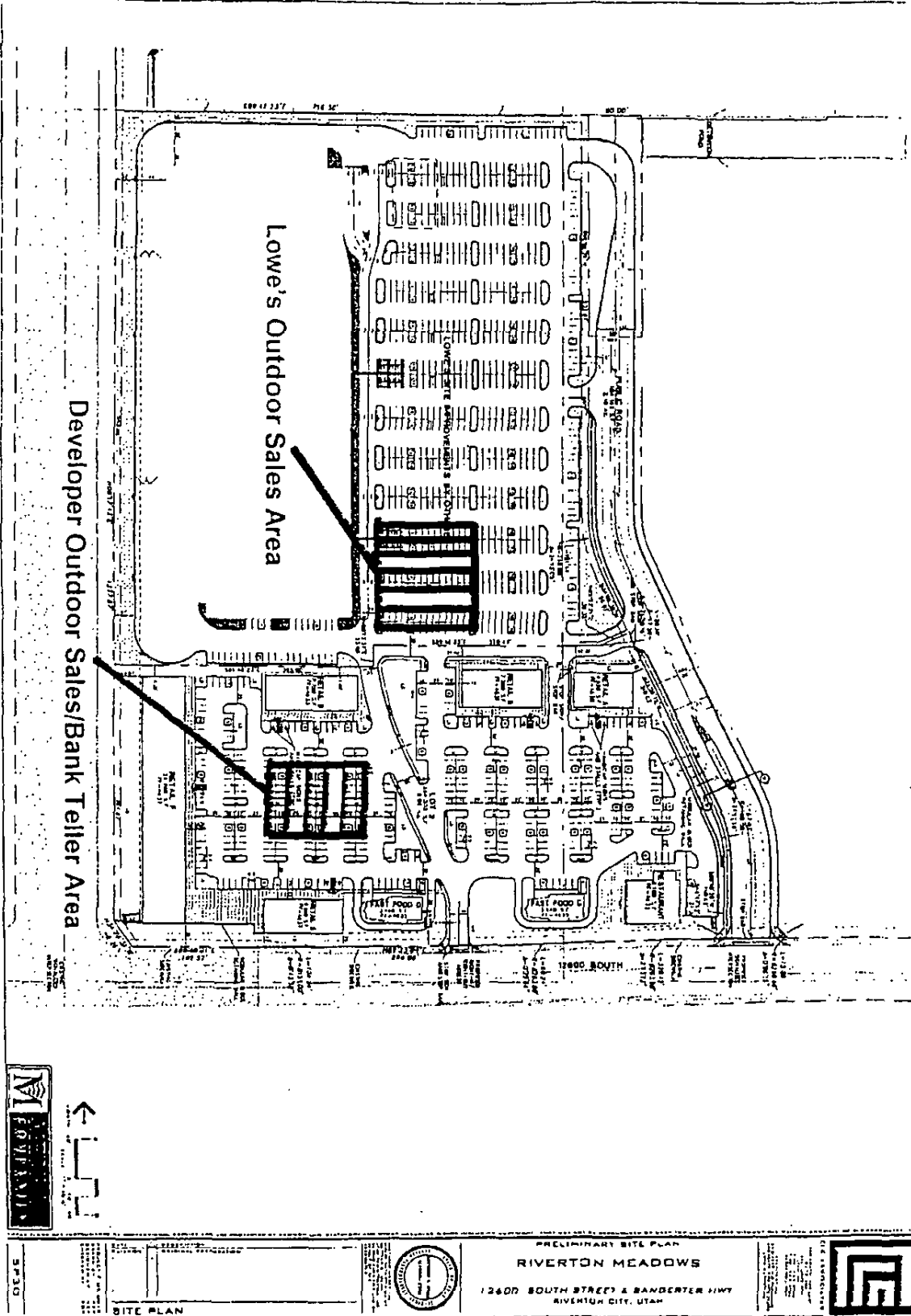


Exhibit "C"  
Page 2



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No Change Area



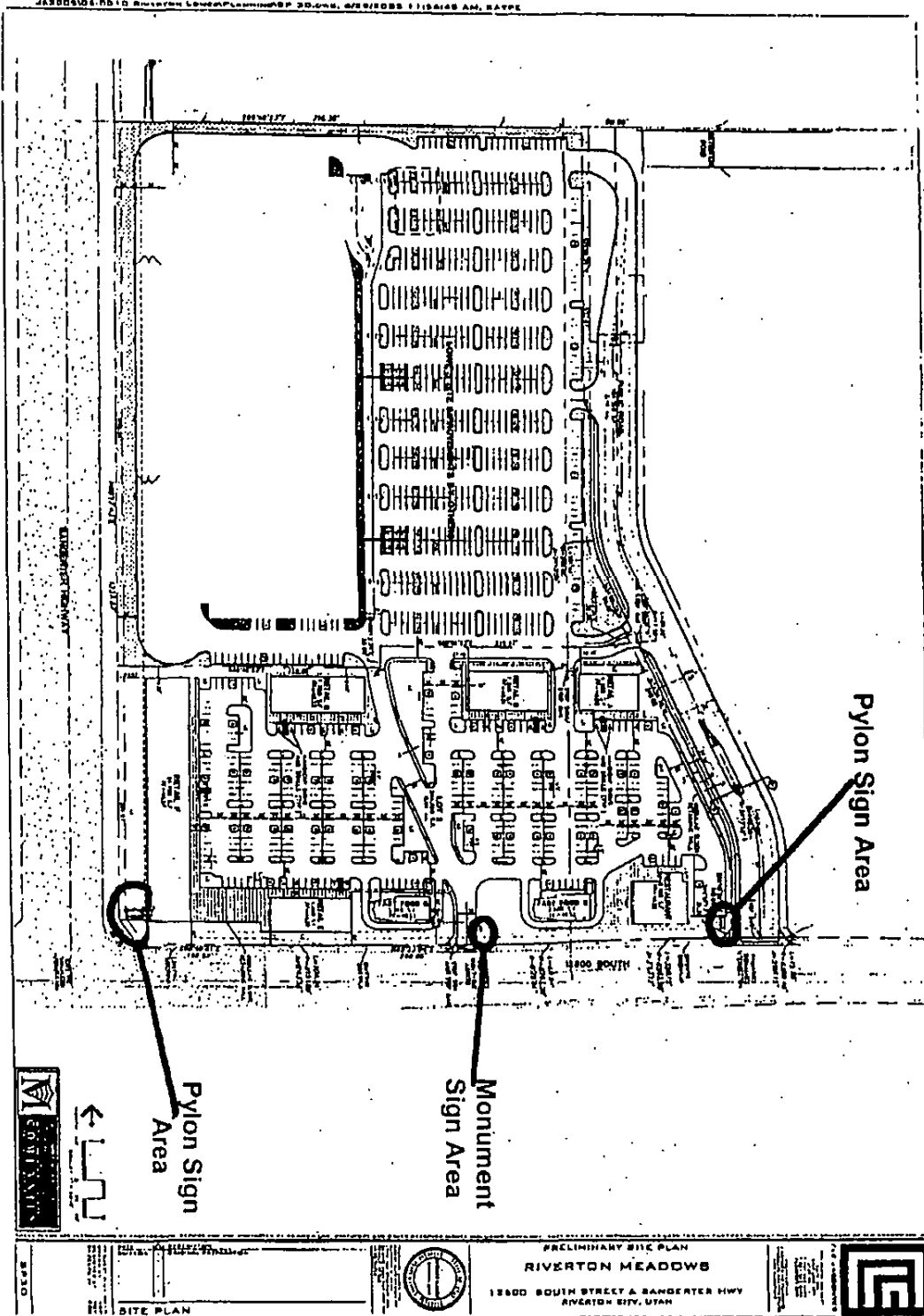
Outdoor Sales/Bank Teller Area

Developer Outdoor Sales/Bank Teller Area

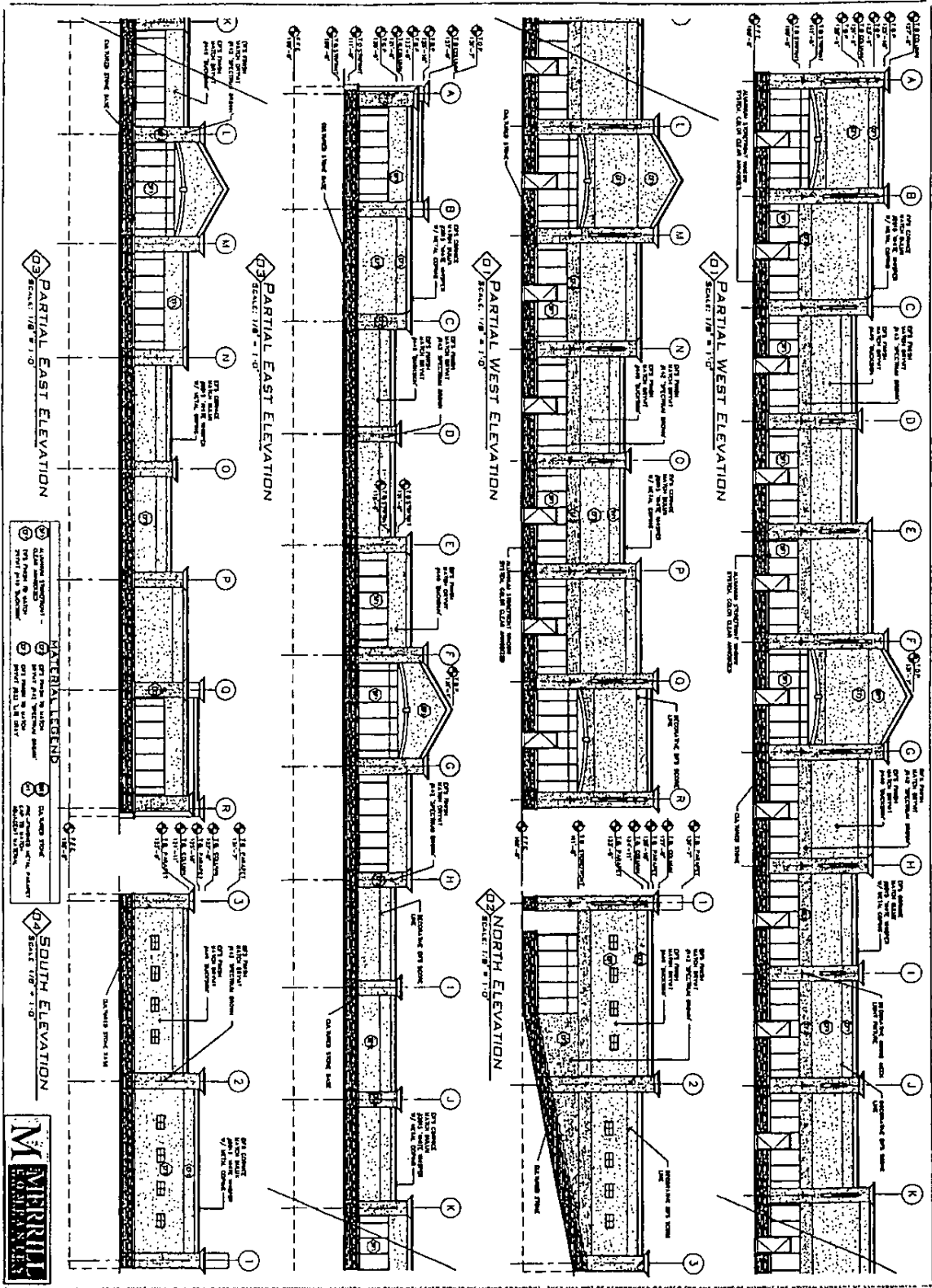
Lowe's Outdoor Sales Area

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CO. RECORDER

Pylon/Monument Sign Locations



- PDDR COPY -  
CO. RECORDER



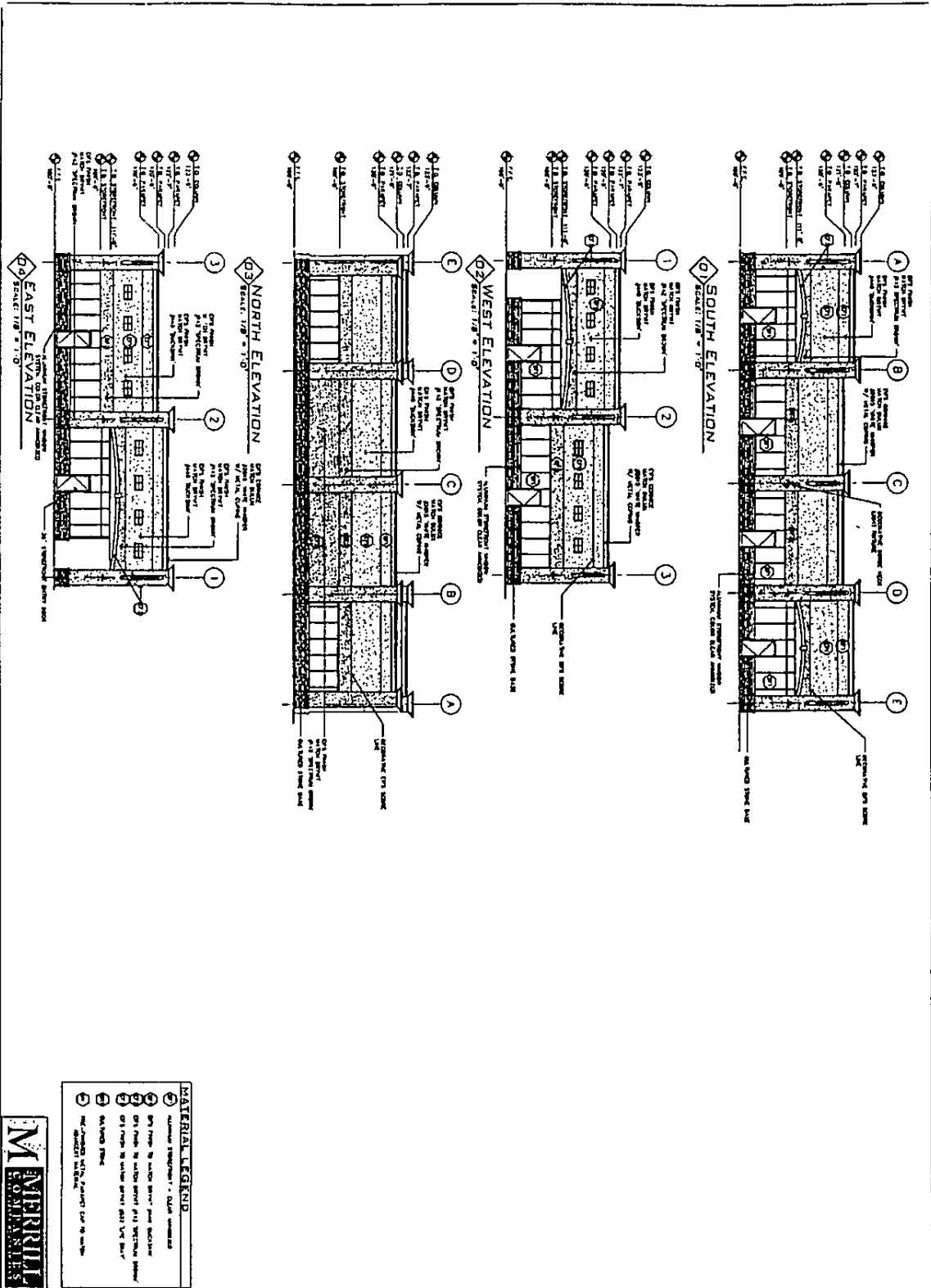
- PDDR COPY -  
CO RECORDER

CORE AND SHELL CO'S  
**RIVERTON MEADOWS  
RETAIL #**  
12600 SOUTH STREET & BANGETER HWY  
RIVERTON CITY, UTAH

**MERRILL**  
ENGINEERS

EXTERIOR ELEVATIONS

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



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CO. RECORDER

**CORE AND SHELL CO'S  
RIVERTON MEADOWS  
RETAIL 'A'**

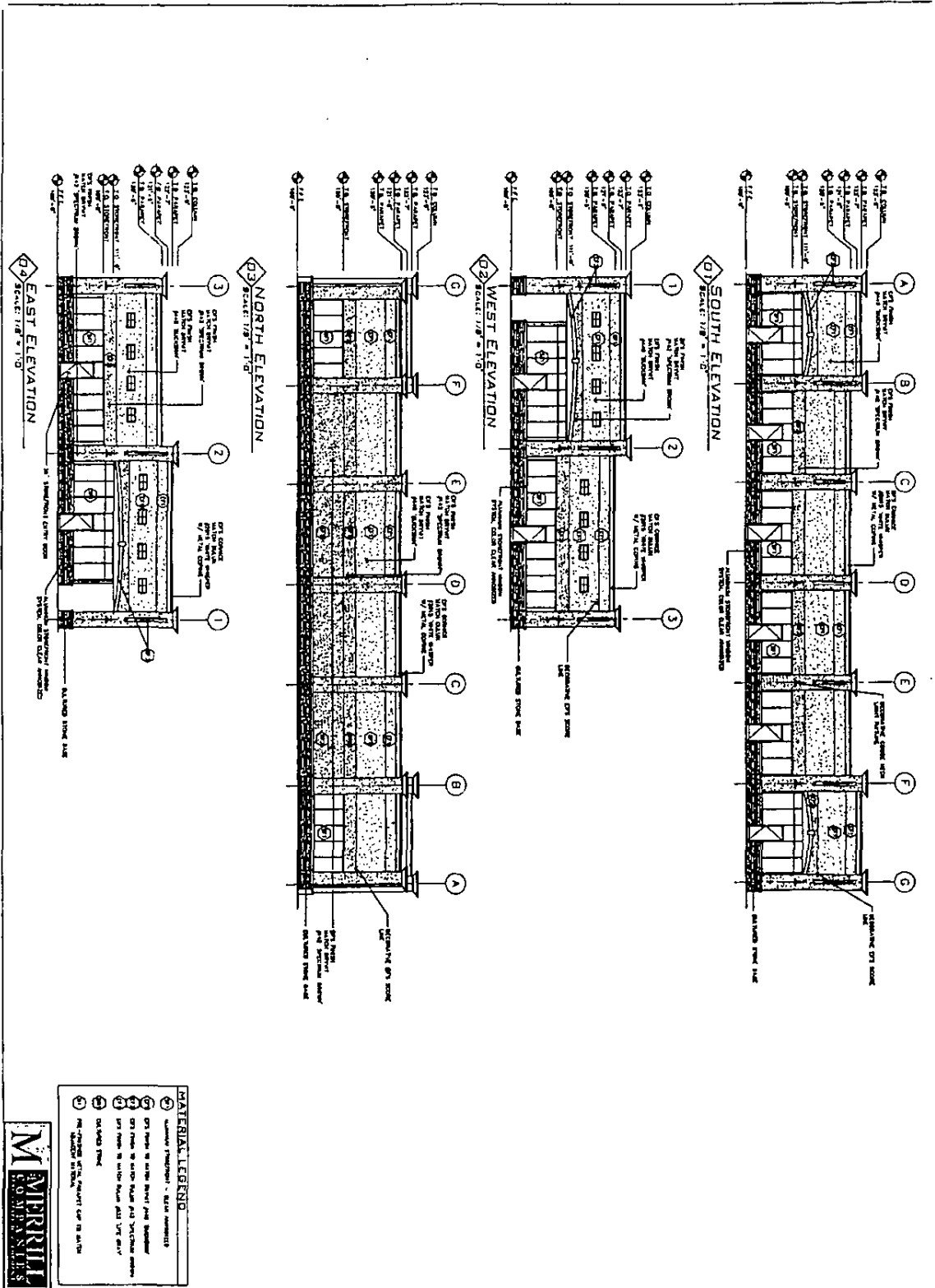
12600 SOUTH STREET & SANDERTER HWY  
RIVERTON CITY, UTAH

**MERRILL  
COMPANIES**

**EXTERIOR ELEVATIONS**

A-4-D

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CO. RECORDER

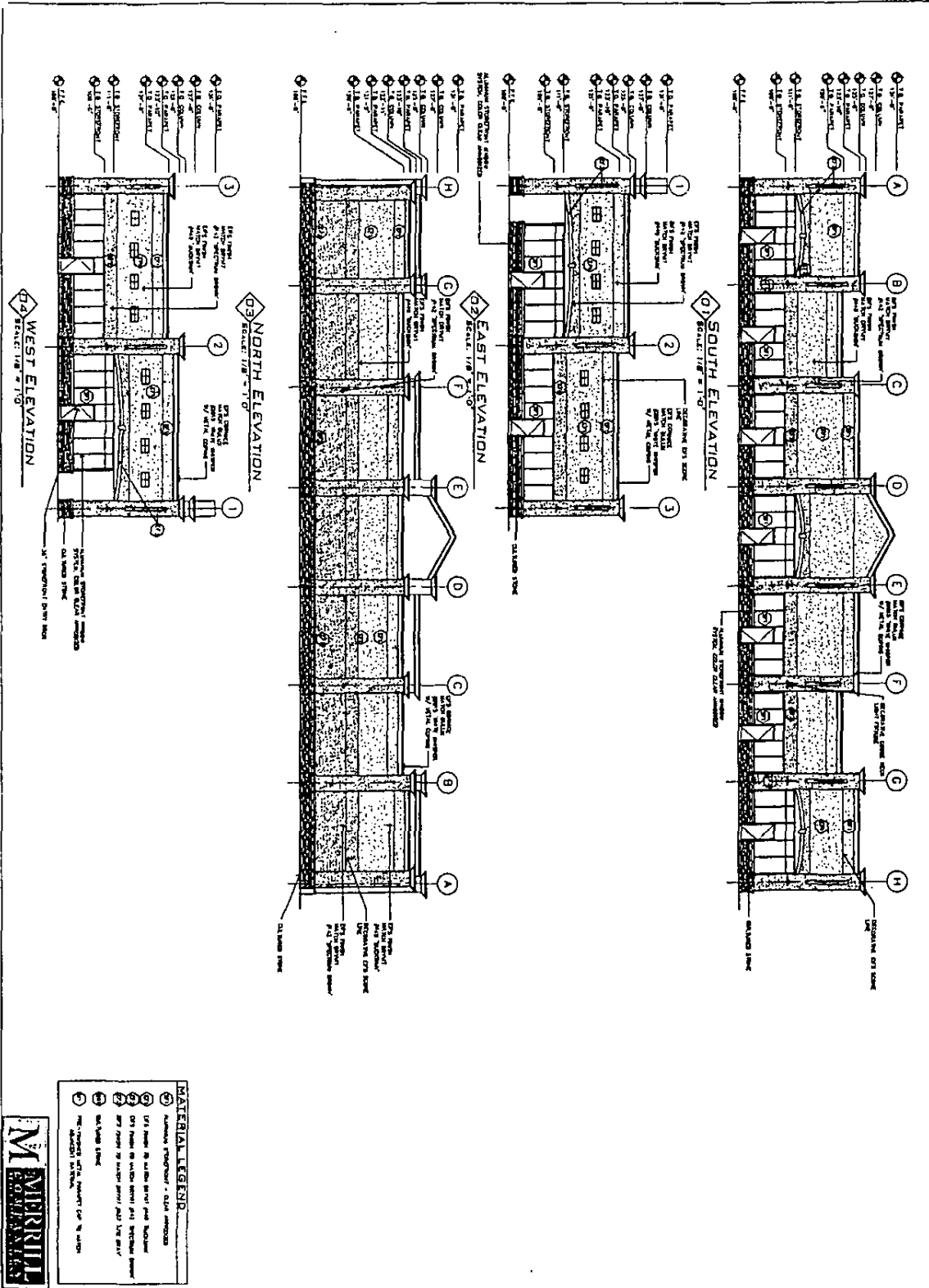


**CORE AND SHELL CO'S**  
**RIVERTON MEADOWS**  
**RETAIL 'B'**  
12600 SOUTH STREET & BANGERTER HWY  
RIVERTON CITY, UTAH

**MERRILL**  
COMMERCIAL

**EXTERIOR ELEVATIONS**

A-4-D



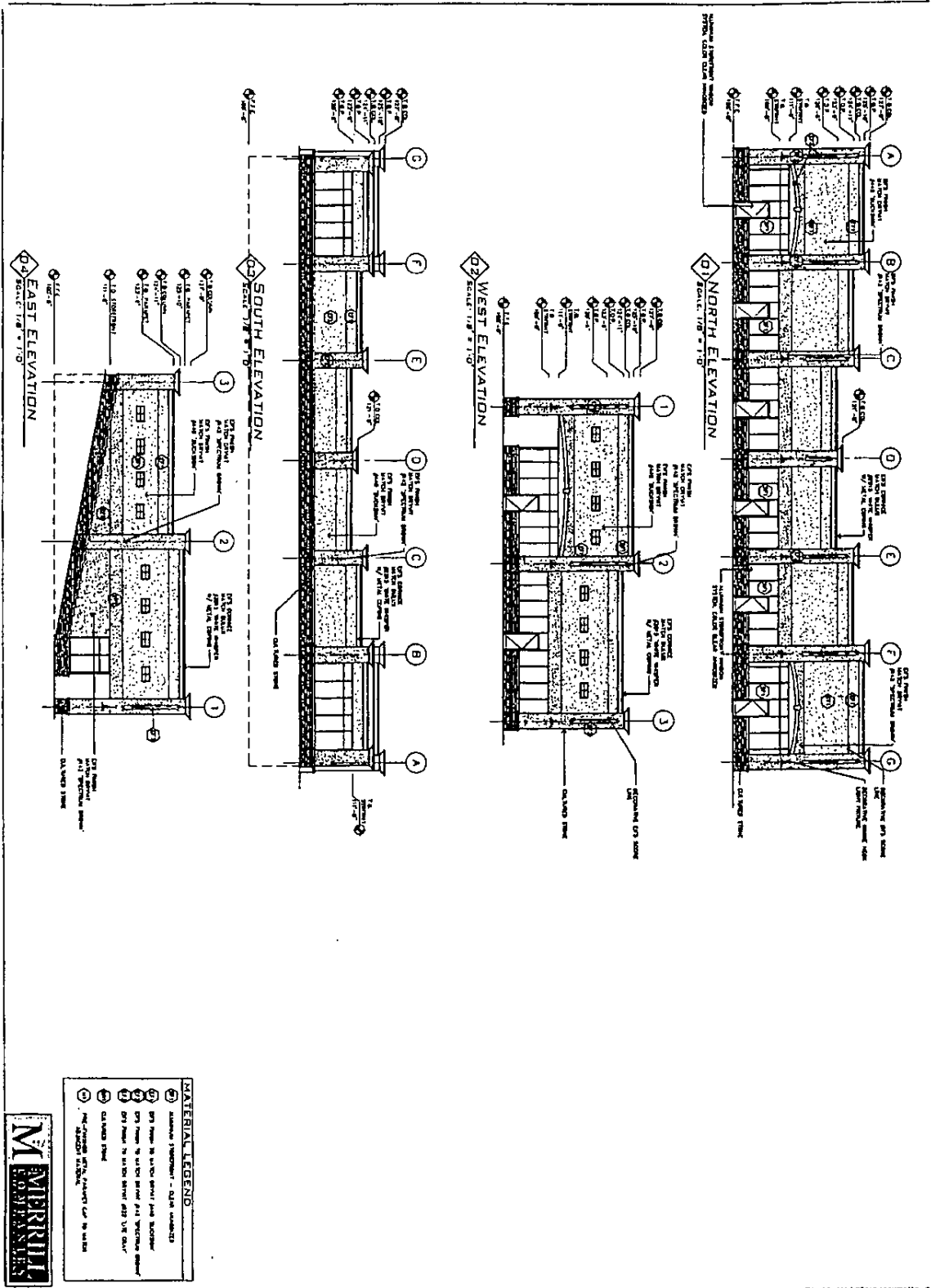
- POOR COPY -  
CO RECORDER

CORE AND SHELL CD'S  
**RIVERTON MEADOWS  
RETAIL 'D'**  
12600 SOUTH STREET & BANGERTER HWY  
RIVERTON CITY, UTAH



NO.	REVISION	DATE
1	ISSUED FOR PERMITS	11/11/11
2	ISSUED FOR CONSTRUCTION	11/11/11
3	ISSUED FOR CONSTRUCTION	11/11/11
4	ISSUED FOR CONSTRUCTION	11/11/11
5	ISSUED FOR CONSTRUCTION	11/11/11
6	ISSUED FOR CONSTRUCTION	11/11/11
7	ISSUED FOR CONSTRUCTION	11/11/11
8	ISSUED FOR CONSTRUCTION	11/11/11
9	ISSUED FOR CONSTRUCTION	11/11/11
10	ISSUED FOR CONSTRUCTION	11/11/11

**EXTERIOR ELEVATIONS**



- POOR COPY -  
CO. RECORDER



**CORE AND SHELL CO'S**  
**RIVERTON MEADOWS**  
**RETAIL 'E'**  
12600 SOUTH STREET & BANGERTER HWY  
RIVERTON CITY, UTAH

**CO. RECORDER**

**EXTERIOR ELEVATIONS**

A-4.0



Exhibit "E"

- POOR COPY -  
CO. RECORDER

