

This Instrument prepared by
and when recorded return to:

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**"), is made and entered into as of the 1st of March of 2007 by and between **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation ("**Lowe's**"), whose address is 1605 Curtis Bridge Road, Mail Code LGS6, Wilkesboro, North Carolina 29697, **S & S MILTON LLC**, a Florida limited liability company ("**MILTON**"), whose address is 14502 North Dale Mabry Highway, Suite 333, Tampa, Florida 33618, and **CHARLES E. BROOKS and LISA D. BROOKS** (collectively "**Brooks**"), whose address is 10201 Holberry Road, Pensacola, FL 32534.

W I T N E S S E T H :

- A. Milton is the owner of those certain tracts of land located in Santa Rosa County, Florida, and shown and designated as "**Outparcel A**" and "**Outparcel B**" on the site plan attached hereto as **Exhibit "A"** and incorporated herein by this reference (the "**Site Plan**"), and are each individually more particularly legally described in **Exhibit "B"** and **Exhibit "C"** respectively, attached hereto and incorporated herein by this reference (said tracts of land being sometimes collectively referred to as the "**Milton Outparcels**");
- B. Lowe's is the owner of those certain tracts of land located in Santa Rosa County, Florida, located next to the Milton Outparcels, and designated as the "**Lowe's Main Parcel**", and the "**Stormwater Management Area**" on the Site Plan, and being more particularly legally described in **Exhibit "D"**, and that certain outparcel known as "**Outparcel C**", more particularly legally described in **Exhibit "E"** attached hereto, and incorporated herein by this reference and collectively sometimes herein referred to as the "**Lowe's Properties**".
- C. Brooks is the owner of that certain tract of land located in Santa Rosa County, Florida located next to the Lowe's Main Parcel, and designated as "**Outparcel D**" on the Site Plan, and more particularly legally described in **Exhibit "F"** attached hereto and incorporated herein by this reference.

NOW, THEREFORE, the Parties hereby declare that all of the parcels within the bounds of the Milton Outparcels, the Lowe's Properties and Outparcel D, as described on Exhibit "B", Exhibit "C", Exhibit "D", Exhibit "E", and Exhibit "F" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with each of the Milton Outparcels, the Lowe's Properties and Outparcel D, and be binding on all parties having any right, title or interest in the described Total Site or

Further, in consideration of the premises, the promises and covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I **DEFINITIONS**

Section 1.1 "Common Area" shall mean all portions of the Total Site upon completion of construction of the various facilities, will be available for the general use, convenience and benefit of all the Parties hereto and their respective Permittees (as hereinafter defined) insofar as their activities relate to the intended development, use and occupancy of the Total Site pursuant to the provisions of this Declaration, excepting, however, from the foregoing definition:

- (a) the portions of the Total Site occupied at any time and from time to time by Buildings (including, without limitation, "drive through" areas associated with any such Building, except "Access Roads" lying thereunder as may be reflected on the Site Plan);
- (b) loading docks, truck facilities, including truck ramps, truck tunnels, truck loading, truck parking and truck turn-around facilities and truck docks and delivery concourses;
- (c) trash compactors and enclosures, exclusive fenced-in staging and storage areas, bottle storage areas, exterior coolers, electrical and refrigeration facilities and other similar service facilities;
- (d) those portions of the Total Site which may from time to time be occupied by any duly dedicated public street or highway;
- (e) canopies which extend over the Common Area, together with any columns or posts supporting same;
- (f) the Lowe's Service Area; and
- (g) the Permissible Building Area.

The Common Area shall include, without limiting the generality of the foregoing: (i) the parking area and individual parking places for passenger vehicles (excluding, however, "drive through" areas associated with any such Building); (ii) roadways which have not been dedicated as a highway, public street or right of way, which provide vehicular access to and ingress and egress to and from and in and out of such individual parking places and to streets, highways and alleys adjacent to and abutting the Total Site; (iii) sidewalks and walkways to provide pedestrian access to and ingress and egress to and from such individual parking places or Buildings in the Total Site (but not Building sidewalks); (iv) the Common Utility Facilities; (v) the perimeter sidewalks (but not Building sidewalks); and (vi) landscaping (excluding landscaping between the Buildings and the Building sidewalks).

Section 1.2 "Lowe's Service Area" shall mean and refer to that portion of the Lowe's Main Parcel within which are located certain service related improvements, including, without limitation, emergency walkways, loading docks, delivery doors and gates and other delivery access point areas, truck pits or ramps, scissor lifts, trash collection and/or compactor, transformer, and utility meters serving the Lowe's Main Parcel, as such service area or its improvements are depicted upon the Site Plan.

Section 1.3 "Outside Sales Area" shall mean those areas, if any, located within the Lowe's Main Parcel as designated on the Site Plan or those areas which from time to time may be used for outdoor sales, display and/or storage purposes.

Section 1.4 "Owner" shall mean and refer to the then record owner, whether one or more persons or entities, of a fee simple title to any Parcel which is a part of the Total Site, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.5 "Parcel" shall mean and refer to any parcel of land as shown on the Site Plan located within the Total Site (however, any Common Area within a Parcel shall be deemed a part of the Parcel and not a separate Parcel). Outparcel A, Outparcel B, Outparcel C, and Outparcel D, as shown on the Site Plan and as individually described on Exhibits B, C, E, and F attached hereto, shall be individually referred to herein as an "Outparcel" and collectively referred to herein as "Outparcels"). Accordingly, each Outparcel shall be deemed a Parcel hereunder and all references herein to Parcels shall apply with equal force to Outparcels, provided, however, references to "Outparcels" shall be applicable only to the Outparcels.

Section 1.6 "Permittees" shall mean and refer to the agents, employees, licensees, invitees, tenants, subtenants, officers, directors, employees, contractors, customers, vendors, suppliers, visitors and concessionaires of an Owner.

Section 1.7 "Total Site" shall mean and refer to the Milton Parcels, the Lowe's Properties, and Outparcel D as described on the attached Exhibit B, Exhibit C, Exhibit D, Exhibit E, and Exhibit F.

ARTICLE II **EASEMENTS**

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

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

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

(c) The term "Building(s)" means the building(s) (including, without limitation, "drive through" areas associated with any such Building) which will be, or may be, constructed upon the Lowe's Main Parcel or, with respect to the Outparcels, within a Party's Permissible Building Area (as hereafter defined in Section 2.1(i)), but such term does not include canopies which extend over the Common Area, together with any columns or posts supporting same, or Common Area Improvements (as defined in Section 2.1(d) below).

(d) The term "Common Area Improvements" means all improvements which will be, or may be, constructed under the terms of this Declaration and/or that certain Site Development Agreement ("SDA") by and between Milton and Lowe's of even date herewith (including, without limitation, the Common Utility Facilities described below the wetlands located on the Lowe's Properties, all perimeter sidewalks (but not those adjacent to Buildings) and all other Improvements which would be

part of the Common Area in accordance with its definition and all Improvements constructed from time to time in replacement of the same in accordance with this Declaration, or in such redesign of the same as may be permitted pursuant to this Declaration. The Parties acknowledge and agree that Brooks is not, and shall not become, a party to the SDA.

(e) The term "**Common Utility Facilities**" means utility systems and facilities from time to time situated on or serving the Total Site, up to the building wall of any Building, for use or service in common by the Parties or for the service of the Common Area, such as the following: surface water storm drainage, detention, retention and disposal facilities; storm water ponds, sanitary sewer systems, lines, conduits, facilities, the lift station, manholes; underground domestic and fire protection water systems, lines, conduits and facilities; underground natural gas systems; underground electric power cables and systems; underground telephone and television cables and systems; lighting poles, standards and conduits within the Access Roads (as hereafter defined); and all other utility systems and facilities for such common use or service, including, without limitation, those installed under the provisions of this Declaration and/or the SDA and all replacements thereto. Lowe's, Milton and Brooks anticipate that the sanitary sewer and waterlines will be conveyed to certain governmental authorities, or their utility providers, and will thereafter be maintained and repaired by said governmental authorities. In connection therewith, Lowe's, Milton and Brooks covenant and agree to execute any deeds, deeds of easements or other documentation as may be reasonably necessary to grant easement areas for said Common Utility Facilities (in accordance with governmental requirements) and to dedicate said Common Utility Facilities to the applicable governmental authorities.

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

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

(h) The term "**Party**" means Brooks, Lowe's or Milton and any additional party executing a Consent and Joinder to this Declaration; and the term "**Parties**" means both of the foregoing and any additional party executing a Consent and Joinder to this Declaration, or any successor person(s) acquiring any interest of a Party in or to any portion of such Party's Parcel.

(i) The term "**Permissible Building Area**" means an area on each of the Outparcels designated as such on the Site Plan within which a Building may be constructed as hereinafter more fully provided. No building, structure or improvements (other than Common Area Improvements) shall be erected or maintained outside of a Permissible Building Area. Notwithstanding anything contained in this Declaration to the contrary, in no event shall there be any restrictions on the placement of Buildings or other Improvements upon the Lowe's Main Parcel.

(j) The term "**Separate Utility Facilities**" means any of the following not installed under the terms of this Declaration and for use solely by the Lowe's Properties: storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, underground electric power, cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities reasonably necessary for the use or service of any Improvements situated on the Lowe's Properties.

(k) INTENTIONALLY DELETED.

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

(m) All easements herein shall be easements appurtenant and not easements in gross and shall run with and bind title to the Total Site.

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

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

Section 2.2 Easements for Use of Common Area. Except for the owner of Outparcel D, each Party hereby grants to the other Party, except for the owner of Outparcel D easements in the Common Area on its (the Grantor's) Parcel for:

- (a) ingress to and egress from the Grantee's Parcel;
- (b) the passage of vehicles; and
- (c) the passage and accommodation of pedestrians.

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

Provided, further, that notwithstanding anything contained herein to the contrary, Lowe's, as the owner of the Lowe's Main Parcel, may (a) install and maintain a single bank teller machine in its parking lot so long as it does not interfere with ingress and egress, (b) conduct parking lot sales and display merchandise in the Common Areas located on the Lowe's Main Parcel so long as it does not interfere with ingress and egress, and (c) display merchandise and conduct sidewalk sales on the sidewalks of the Lowe's Main Parcel so long as pedestrian passage is not obstructed.

Except as to and between Outparcel A and Outparcel B which shall have and enjoy reciprocal parking easements, the Parties hereby specifically disclaim any intention to create, and do not create

hereunder, any reciprocal parking easements between the Lowe's Properties and the Outparcels, or between or among any of the Outparcels.

Notwithstanding anything contained in this Declaration to the contrary, each Outparcel shall only be permitted the curb cuts onto one or more of the Access Roads (as hereinafter defined) as shown on the Site Plan. Except as provided above, in no event shall any of the Outparcels be entitled to any curb cuts along their respective boundaries with the Lowe's Properties or onto the Access Roads without obtaining the prior written consent of Lowe's, such consent not to be unreasonably withheld. Nothing contained in this paragraph shall be construed as limiting or prohibiting curb cuts along the common boundaries between the Outparcels.

Enjoyment of the easements granted by this Section shall commence on the date the Common Area in question is substantially completed unless earlier access is requested and approved by Lowe's, and provided such access does not interfere with the site improvement work being performed pursuant to the SDA.

Each Party hereby reserves the right to eject from the Common Area on its Parcel any individual or entity not authorized to use the same. In addition, each Party reserves the right to close off portions of the Common Area of its Parcel for such reasonable periods of time as may be legally necessary, in the reasonable opinion of its attorneys, to prevent the acquisition of prescriptive rights by anyone. Before closing off any part of the Common Areas as provided above, such Party must: (i) give not less than thirty (30) prior days' written notice to the other Parties of its intention to do so; (ii) coordinate its closing of the Common Areas with the activities of the other Parties so that no unreasonable interference with the operation of the Total Site occurs.

The easements provided for in this Section 2.2 are subject to the rights to use the Common Area for other purposes provided for in this Declaration; provided, however, that except as provided in this Declaration, the configuration of the Common Area on each Parcel, and the location of the Common Area Improvements on each Parcel, may be changed by the owner thereof, so long as such change does not involve a change in the Access Roads (as defined below) to the extent that another Owner has easement rights in and to the subject Access Road, a change in the access points from each Outparcel onto the Access Roads, a change in the location of the Permissible Building Area, or a reduction in the number of parking spaces on a Parcel to less than the number required under this Declaration.

Section 2.3 Easements for Access Roads. Lowe's hereby grants to the Owners of (i) Outparcels A and B and their respective Permittees (and to the Owner of Outparcel C, such easement to spring into effect if and when, Lowe's transfers ownership and title to Outparcel C) easements for pedestrian and vehicular traffic in those strips of land (not less than the widths therefor shown on the Site Plan) on the Lowe's Main Parcel which are shown and designated on the Site Plan as "Access Road No. 2" and "Access Road No. 3" (hereinafter sometimes collectively referred to as the "Shared Access Roads") for the purpose of providing ingress and egress to and from U.S. Highway 90 and Bell Lane, and (ii) Outparcel D, an easement for pedestrian and vehicular traffic over "Access Road No. 1" and "Access Road No. 2" (as shown and designated on the Site Plan), in each case to and from Bell Lane to and from the east boundary of Outparcel D, and together with the following rights and subject to the following restrictions and reservations:

(a) The use of the access road easements hereinabove granted by any person entitled to the use thereof shall be in common with all other such persons. The access road easements and the

land upon which they are located shall be considered in all respects part of the Common Area, and the improvements thereon shall be considered in all respects part of the Common Area Improvements;

(b) As further provided in Section 2.12 herein, Access Road easements shall not be obstructed or interfered in any way and there shall be free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Roads, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control and (subject to the other provisions of this Declaration) to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein; and

(c) The location of the access points which connect the Outparcels to the different Access Roads, as shown on the Site Plan, shall not be changed without the written permission of the Owner of the Lowe's Main Parcel and the Owner of each Outparcel benefited by such Access Road and affected by such change. The Parties acknowledge that each of Outparcel A, Outparcel B and Outparcel C are encumbered by a one foot "no-access restriction" prohibiting the creation of curb cuts along the area of the Outparcel so designated on the Site Plan. Such "no-access" restriction shall remain in effect unless and until removed by the Santa Rosa County, Florida and the Florida Department of Transportation.

Enjoyment of the easements granted by this Section shall commence on the date of this Declaration; provided, however, no such use thereof shall be permitted to the extent said use would delay or unreasonably interfere with the completion of Common Area Improvements upon the Access Roads by Lowe's pursuant to the SDA. Access Road No.1, Access Road No. 2 and Access Road No. 3 shall hereinafter sometimes collectively be referred to as the "Access Roads".

Section 2.4 Easements for Utility Facilities. Each of (i) Lowe's, Milton and Brooks grants to one another and its respective Permittees, easements to its (the Grantor's) Parcel in those areas expressly so designated and shown on the Site Plan, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities; provided, however, that in the case of Outparcel D, such Common Utility Facilities shall be limited to sanitary sewer and drainage facilities. All Common Utility Facilities shall be underground unless expressly designed otherwise pursuant to the SDA. In addition, the Parties hereby grant to Lowe's and its Permittees easements to those portions of the Milton Parcels and Outparcel D reflected on the Site Plan, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities. Such Common Utility Facilities and Separate Utility Facilities are designated as "Utility Easement Areas" on the Utility Easement Area Plan attached hereto as **Exhibit "P"** and by this reference made a part hereof.

Except during the period from November 1 through the following January 15th (other than for emergency reasons and except during initial new construction), the Grantor of any easement under this Section 2.4 may relocate on its Parcel any 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 each Grantee entitled to the use and benefit of the easements not less than thirty (30) days' prior written notice of the Grantor's intention to relocate such Common Utility Facilities;

(b) shall not interfere with or diminish the utility services to the Grantee (however, temporary interference with and diminution in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantee has been so notified under Subsection 2.4(a) and Grantor

shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interference or diminution, 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 in accordance with plans and specifications approved by all applicable governmental and quasi-governmental authorities and reasonably approved by each Grantee entitled to the use and benefit of the easements.

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

Nothing herein shall be construed to grant any Party the right to utilize or drain into any detention facilities or retention located on any other Party's Parcel which are not a part of the Common Utility Facilities. The Parties agree that all retention ponds on the Stormwater Pond Parcel, as shown on the Site Plan, and all lines, conduits and facilities therefore, are a part of the Common Utility Facilities.

Lowe's shall upon its completion, in accordance with the terms of the SDA, convey to the applicable utility company the "Lift Station" and shall grant an easement to such utility company for purposes of access to the Lift Station over, under and across a small portion of Out Parcel C, legally described in the Utility Easement Area Plan attached hereto in Exhibit "I" attached hereto.

Section 2.5 Construction Easements. The Parties hereby grant to Lowe's, its successors, assigns, employees, contractors and subcontractors, such easements and licenses as may be necessary or desirable for Lowe's to construct the initial Improvements Lowe's contemplates constructing within the Total Site, including, without limitation, the demolition of any existing structures on the Outparcels and the "Site Improvement Work" as defined in the SDA and the "Brooks Site Work" (as hereafter defined); provided, however, that following completion of the Site Improvement Work and construction of the initial Lowe's home improvement store, the construction easements shall be limited to fifteen (15) feet within the boundaries of the Outparcels. For the benefit of Brooks, who is not a party to the SDA, attached hereto as Exhibit "H", and by this reference made a part hereof, is a description of the scope of work to be performed for the benefit of Outparcel D (the "Brooks Site Work") as and when Lowe's performs site work to the Lowe's Properties. In no event shall any portion of the Lowe's Properties or, except as provided hereafter, any portion of the Shared Access Roads or Access Road No. 1 be used for construction activities; provided, however, in connection with any construction activities upon (i) Outparcel D, Access Road No. 2 and Access Road No. 3 may be utilized (up to the east boundary of Outparcel D) for construction activities thereon, and (ii) each of Outparcel A, Outparcel B, and Outparcel C, that portion of Access Drive No. 3 as runs between Outparcel B and Outparcel C from U.S. highway 90/S.R. 10 and to and from the south boundary of the Outparcel, may be utilized for construction activities thereon; as to all in accordance with, and subject to such other limitations and restrictions as are contained in this Declaration. Milton and Brooks shall be responsible for coordinating the work of all contractors employed by any party for the construction of Buildings and other improvements upon any portion of the Outparcels so that there shall be no delay or unreasonable interference with the prosecution of the Site Improvement Work to be performed by Lowe's pursuant to the SDA and the Brooks Site Work. All Owners agree to reasonably cooperate with each other in order that the said Site Improvement Work and the Brooks Site Work shall be completed in a timely fashion. In furtherance of the foregoing,

without the prior written consent of Lowe's (which consent may be withheld in Lowe's sole and absolute discretion and which may be given by Lowe's Construction Manager for the project) in no event shall Milton, as to Outparcels A and B, commence or cause to be commenced any construction work within an Outparcel until the completion by Lowe's of all soil grading pursuant to Lowe's site work contemplated by the SDA; and in no event shall Brooks commence or cause to be commenced any construction work within Outparcel D until the completion by Lowe's of the Brooks Site Work.

Except as reasonably necessary for and during the construction of any Building or the construction of other Improvements on a Parcel, no structure of a temporary character shall be erected or allowed to remain on any Parcel. Any construction staging or storage areas located on any Parcel shall be located only on the Parcel upon which said construction activities are being conducted, but in any event shall not be located upon any portion of the Access Roads.

In connection with any construction activities performed on the Outparcels, the following provisions shall apply:

(a) any such construction work shall only be performed in a manner so as not to disturb or interfere with Lowe's, its customers, employees and invitees, or the operation of any business upon the Lowe's Properties;

(b) the Access Roads shall remain open and available for use by Lowe's and its customers, employees and invitees;

(c) any such construction activity shall be coordinated so as not to delay or unreasonably interfere with any construction activities conducted by Lowe's; and

(d) each Party, at its sole cost and expense, shall promptly repair, replace or restore any and all Improvements which have been damaged or destroyed by such Party and shall defend, indemnify and hold the other Party harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or arising out of such Party's activities on the Outparcels.

Section 2.6 Signage The Parties acknowledge and agree that there shall be no shared signs or signage easements.

Section 2.7 Easements and Indemnities. Each Grantee of the easements granted under this Article II shall defend, indemnify and hold Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including attorney's fees) incurred in connection with or arising out of Grantee's exercise of said easements, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act. The duration of the easements granted under this Article II shall be coterminous with the respective provisions of the Declaration which give the Grantee the right or the obligation to perform the work described herein.

Section 2.8 Access Road Lighting. Common Area Improvements include lighting poles, standards, conduits and other related facilities within the Lowe's Main Parcel, providing lighting service to the Access Roads (hereafter, the "Access Road Lighting"). The cost of maintenance, repair and replacement of the Access Road Lighting shall be deemed a Common Expense (as hereafter defined) and shared among the Parcels, in accordance with Section 5.2 below except for Outparcel D which shall not be a beneficiary of the Access Road Lighting. The lights which are a part of the Access Roads Lighting

shall remain lit from dusk to at least 11:00 p.m., prevailing time, unless the Owners of the Lowe's Main Parcel and Outparcels A, B & C agree upon a different time.

It is recognized that occupants within the Total Site may be open for business at different hours, and that an Owner may wish to have the Access Road Lighting to be illuminated before or after the required time period. Accordingly, an Owner of any Parcel ("**Requesting Party**") shall have the right, at any time to require Lowe's to keep the Access Road Lighting operating as stipulated by the Requesting Party; provided that the Requesting Party notifies Lowe's of such request not less than fifteen (15) days in advance. The Requesting Party shall state the period during which it wishes the Access Road Lighting to be kept operating and shall pay to Lowe's a prepayment as follows:

- (i) If the period is less than thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower), as estimated by Lowe's; or
- (ii) If the period is greater than or equal to thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower) for thirty (30) days, as estimated by Lowe's. If the period is greater than thirty (30) days, then the Requesting Party shall renew such prepayment at the end of each thirty (30) day period.

The Requesting Party agrees to pay one hundred ten percent (110%) of the cost to Lowe's of electrical power to provide such extra-hours illumination, and the prepayment shall be applied to such obligation as incurred. If the Requesting Party is of the opinion that the estimated prepayment established by Lowe's is greater than one hundred ten percent (110%) of such costs, the Requesting Party and Lowe's shall attempt to agree to the cost of such electrical power and if they cannot do so, then the amount the Requesting Party is obligated to pay shall be determined from the power costs as estimated by the electrical utility company furnishing such power, or if the electrical utility company fails to do so, by a reputable engineer. Upon the failure of a Requesting Party to pay the estimated amount or renew a prepayment as required hereby, Lowe's shall have the right to discontinue such additional lighting and to exercise any other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours may be made from time to time.

Section 2.9 Outparcel A and Outparcel B shall each have and enjoy reciprocal cross-parking. Upon a separation of title between Outparcel A and Outparcel B, each Owner of Outparcel A and Outparcel B shall be deemed to have granted an easement to the other for cross-parking; such cross-parking easement to automatically spring into effect upon the transfer and severance of title to each such Outparcel.

Section 2.10 INTENTIONALLY DELETED.

Section 2.11 Easements to Public Utilities. In granting an easement to a public utility company, the Grantor thereof shall use good faith efforts, but shall not be required, to include the following provisions in the easement instrument:

- (a) The easement is non-exclusive;

- (b) All facilities installed pursuant to the easement shall be underground, except for manhole and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans approved by Grantor;
- (c) Grantor retains the right to use the surface areas as Grantor sees fit;
- (d) Grantor reserves the right to require Grantee to relocate its facilities (and vacate the easement) to another location on Grantor's Parcel, subject to the conveyance of a similar easement, all at Grantor's cost and expense;
- (e) Grantee shall not, in its use or installation, interfere with other installations and easements in the area;
- (f) Grantee shall protect its facilities against uses of the surface made by Grantor and others;
- (g) Grantee shall make adequate provisions for the safety and convenience of all persons using the area;
- (h) Grantee, following installation or other work, shall replace and restore the areas and improvements to the condition in which they were immediately prior to performance of such installation and work;
- (i) Grantee shall defend, indemnify and hold harmless Grantor against all loss, liability, and costs (including reasonable attorney's fees) which may result to Grantor from the negligent act or omission of, its agents, employees and contractors; and
- (j) Grantee shall not permit any claim, lien or encumbrance to attach against Grantor's Parcel or any interest therein.

Section 2.12 No Barrier Agreement. No barriers, fences, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Total Site from time to time devoted to pedestrian access, vehicular roadways or parking area, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Parties of the rights and easements created by this Article II. The preceding sentence shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes pursuant to the terms of this Declaration. In addition, as provided in Section 2.2 above, 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, and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction so long as such fencing does not unreasonably interfere with the rights granted to the other Owners and their Permittees hereunder.

Section 2.13 Access Stub-Outs. Notwithstanding the fact that the Site Plan reflects access stub-outs along the west and east boundaries of the Lowe's parking area, Lowe's hereby **specifically disclaims any intention to create, and does not create hereunder, any access easements or easements of any kind to or from such lands as lie contiguous to the subject east and west stub outs and the Lowe's parking area and Access Road No. 3.**

ARTICLE III **RESTRICTIONS**

Section 3.1 Land Use and Building Type. Every Parcel shall be used only for the operation of retail business activities, financial institutions, offices of the type typically found in comparable shopping center developments, retail stores selling merchandise or services normally carried in other shopping center developments, and restaurants generating at least sixty (60%) percent of gross revenues from food sales. No Buildings shall be erected or allowed to remain on any Outparcel unless the exterior elevation plans (the "Elevations") therefor have been approved by Lowe's (which approval shall not be unreasonably withheld or delayed and Lowe's failure to approve or disapprove the Elevations within 30 days after receipt thereof shall be deemed an approval). Elevations for Buildings (not including temporary construction trailers) shall be presented to and approved in writing by Lowe's prior to the commencement of construction of a Building on any Outparcel. Once Lowe's has approved the Elevations, material changes thereto (except changes required by governmental authorities) shall require further approval of Lowe's.

Section 3.2 Completion of Improvements. Upon completion of the foundation of a Building, an actual field survey of the foundation shall be provided to Lowe's to ensure that it has been constructed within the Permissible Building Area on the Parcel. The right to make inspections necessary to assure compliance is reserved to Lowe's. Weather permitting, all paving and landscaping for an Outparcel will be finished upon completion of the Building, but in no event (except for reasons outside of an Owner's reasonable control) shall it be installed later than ninety (90) days after the Building is occupied. Subject to matters outside of an Owner's reasonable control, total construction time from pouring Building footings to the completion of the Building ready for occupancy shall not exceed one (1) year.

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

Section 3.4 Use Restrictions.

(a) During the term of this Declaration no portion of the Outparcels may be used for any of the following purposes without the written consent of Lowe's:

(i) A tavern, bar, nightclub, cocktail lounge, discotheque, dance hall, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises forty (40%) percent or less of the restaurant's gross revenues.

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

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

(iv) A health club, gymnasium or spa in excess of a total of 2,500 square feet as to each Outparcel.

(v) A service station, motor vehicle repair shop (other than first class operations of the type operated as of the date of this Declaration by Pep Boys and Car Spa, Inc.) or truck stop; provided, however, the foregoing shall not be deemed to prohibit the sale of gasoline as an incidental part of an otherwise permitted use or an auto part retail sales store.

(vi) A flea market or pawn shop.

(vii) A training or educational facility (including without limitation, a school college, reading room or other facility catering primarily to students or trainees rather than of customers.

(viii) A car wash (except where the sanitary sewer, water and storm water drainage lines are entirely separate from those utilized by the Lowe's Properties)

(ix) A medical clinic or office, other than an outpatient dental office or optometrist's office as long as such use does not exceed 2,500 square feet in the aggregate.

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

(xi) An establishment for sale of automobiles, trucks, mobile homes, recreational motor vehicles.

(xii) A child day care facility.

(xiii) A hotel or motel.

(xiv) A storage or mini warehouse facility.

(xv) Government offices other than a tag agency or motor vehicle satellite office; provided such uses do not exceed 2,500 square feet in the aggregate.

(xvi) A telephone call center.

(b) During the term of this Declaration no portion of the Total Site may ever 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 displays of a variety involving, exhibiting or depicting sexual themes, nudity or lewd or lascivious acts.

(ii) A massage parlor.

(iii) A skating rink.

(iv) A mortuary, crematorium or funeral home.

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

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

- (vii) A gambling establishment or betting parlor.
- (viii) Veterinary hospital or animal raising or keeping facilities.
- (ix) Assembling, manufacturing, industrial, distilling, refining or smelting facility.

(c) The Owner or occupant of the Lowe's Main Parcel shall be entitled to install and erect freestanding or pylon signs on the Lowe's Main Parcel in the locations as shown on the Site Plan and such other freestanding or pylon signs and directional signage, as it deems appropriate in its sole discretion.

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

Section 3.6 Use Restrictions on the Outparcels. No portion of any Outparcel may be used for any of the following purposes:

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

These restrictions or exclusive rights shall also apply to prohibit a larger business having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) when such space exceeds the limitations of subparagraphs (a) through (d).

Further, notwithstanding anything in the foregoing to the contrary, in the event a retail and/or warehouse home improvement center, lumber yard, building materials supply center, hardware store, lawn and garden store, appliance, home electronics and/or lighting store, and/or paint and/or décor center is not operated in any portion of the Lowe's Main 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 Main Parcel), the above stated exclusives shall be of no further force and/or effect until such time as Lowe's or its successors, assigns or tenants shall re-open a store on any portion of the Lowe's Main Parcel for any one of the foregoing uses, which reopening shall not prohibit uses in violation of such exclusives if such uses were begun during such time as the above exclusive use restrictions were of no force and/or effect.

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

- (a) Outparcel D shall be permitted to subdivide into two parcels and to have a total of no more than 15,000 square feet of building area, to be distributed at the discretion of the Owner, between a total of two buildings. Outparcel A and Outparcel B together shall be permitted to have a total of no more than 12,000 square feet of building area, to be distributed at the discretion of the Owner(s). Outparcel C shall be permitted to have a total of no more than 7,000 square feet of building area.
- (b) Any Building constructed on an Outparcel shall not exceed twenty-eight feet in height, as measured from the finished elevation of the lowest floor elevation on such Outparcel; provided, however, architectural features shall be permitted up to 35 feet in height.
- (c) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to Lowe's.
- (d) No rooftop signs shall be erected on any Building constructed on any Outparcel.
- (e) Upon approval by the governmental authorities, one (1) freestanding identification sign may be erected on each Outparcel in the location so designated therefore on the Site Plan. Otherwise, the location of such free-standing identification sign shall be subject to the prior written consent of Lowe's which may be withheld in its sole and absolute discretion; provided, however, that if a free standing sign is for use by an "End User" (as such term is hereinafter defined) and such signage conforms to the standard signage of such End User, it shall be permitted. For purposes of this Agreement, an "End User" shall be deemed a national or regional retailer or other national or regional user whose operation does not violate the terms of this Declaration having a minimum of 100 of the same stores located throughout the United States. In no event shall any such freestanding identification sign exceed the lesser of (i) six feet (6') in height and twenty-four (24) square feet or (ii) the maximum height and size permitted by law. In addition to one free-standing sign and provided it is used in connection with and as part of a drive-thru, each Outparcel shall be entitled to install and maintain one menu board (not to exceed 6 feet) as part of such drive-thru system. If an owner of an Outparcel desires to erect a freestanding sign or a menu board, it shall make its request in writing to Lowe's with a copy of the sign plans and the proposed location. Subject to the foregoing provisions of this Section 3.7(e), Lowe's shall then have thirty (30) days from receipt of the notice to object to the location of the proposed sign. If Lowe's does not object within the thirty (30) day period, then the proposed sign location shall be conclusively deemed approved, and Lowe's shall not have the right to any further objection.

Notwithstanding the foregoing, there may be erected directional signs, which signs shall be of a monument type and shall not exceed four feet (4') in height.

(f) The Owner or Permittee of an Outparcel shall repair any damage caused to any of the Common Utility Facilities, as described in Section 2.4 of this Declaration, caused by such Owner or Permittee.

(g) Any of the restrictions set forth in this Section 3.7 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by Lowe's (without the consent or joinder of any other Owners or mortgagees); provided however that Lowe's shall not amend or modify any of the foregoing restrictions if any such amendment or modification would impose additional restrictions on an Outparcel without the prior written consent of the Owner of the Outparcel. The Owner of an Outparcel, however, may impose additional restrictions on its Outparcel as such Owner deems appropriate, subject to any exceptions thereto imposed on said Owner at the time of conveyance of said Outparcel to said Owner.

(h) Except for Outparcel D which may be subdivided into two outparcels, the Outparcels shall not be split, separated or subdivided without the prior written consent of Lowes.

(i) The foregoing restrictions and agreements are imposed on each of the Outparcels for the benefit of the Total Site. 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 3.8 Permissible Building Areas on Outparcels. Any Building constructed within the Outparcels shall be located only within the Permissible Building Areas as defined in Section 2.1(i) above.

ARTICLE IV **CONSTRUCTION**

Section 4.1 Road Construction. Lowe's intends to construct the proposed Access Roads depicted on the Site Plan, substantially in accordance with the SDA, and Milton shall reimburse Lowe's for a share of the costs and expenses incurred by Lowe's in connection with such work, all as provided for in the SDA.

Section 4.2 Storm Water Drainage System. Lowe's intends to construct the proposed Storm Water Drainage System depicted on the Site Plan, substantially in accordance with the SDA, and Milton shall reimburse Lowe's for a share of the costs and expenses incurred by Lowe's in connection with such work, all as provided for in the SDA.

Section 4.3 Compliance in Construction. All construction, alteration or repair work which an Owner undertakes pursuant to this Declaration shall comply in all material respects with plans and specifications therefor, the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations, including procurement of all license and permits required for such work. Approval by the Owner of the Lowe's Main Parcel of any such work, or the plans and specifications therefor, under any provisions of this Declaration shall not constitute such Owner's assumption of responsibility for the accuracy, sufficiency or propriety of such work, or of such plans and specifications, nor shall constitute a representation or warranty that such work or plans and specifications call for construction of economic improvements or improvements which comply with law.

Section 4.4 Construction Insurance. Prior to commencing any construction activities within the Total Site, each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverage set forth below:

- (a) **Worker's Compensation and Employer's Liability Insurance.**
 - (i) Worker's compensation insurance as required by any applicable law or regulation.
 - (ii) Employer's liability insurance in the amount of \$2,000,000 each accident for bodily injury, \$2,000,000 policy limit for bodily injury by disease and \$2,000,000 each employee for bodily injury by disease.
- (b) **General Liability Insurance.** Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:
 - (i) **Required Coverages:**
 - (A) Premises and Operations;
 - (B) Products and Completed Operations;
 - (C) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
 - (D) Broad Form Property Damage (including Completed Operations);
 - (E) Explosion, Collapse, and Underground Hazards;
 - (F) **Personal Injury Liability:**
 - (1) \$2,000,000 each occurrence (for bodily injury and property damage;
 - (2) \$3,000,000 for Personal Injury Liability;
 - (3) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work);
 - (4) \$5,000,000 general aggregate.
 - (G) **Automobile Liability Insurance.** Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage

combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.

(H) Umbrella/Excess Liability Insurance

(1) The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000.

(2) If the construction activity involves the use of another Parcel, then the Owner and mortgagee of such Parcel shall each be additional insured(s) and such insurance shall provide (as evidenced by a duly issued insurance certificate) that the insurance shall not be canceled, or reduced in an amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice to the additional insureds. If such insurance is canceled or expires, then the constructing party shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. Each Owner or occupant, as the case may be, shall supply or cause its general contractor to supply each Owner with certificates with respect to all insurance required by this Section.

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

ARTICLE V
MAINTENANCE

Section 5.1 Maintenance. Each Party hereto shall maintain the Buildings, Improvements, Common Areas and Common Area Improvements (including, without limitation, Common Utility Facilities, unless the Common Utility Facilities have been dedicated to and are being maintained, repaired and replaced by governmental authorities) on its Parcel in good order and condition and state of repair in accordance with the standards utilized in good retail management practices in Santa Rosa County, Florida, for developments of similar size, value and use, including (but not limited to) sweeping and removal of trash, litter and refuse; painting and striping of parking areas and traffic and directional signs; repair and replacement of parking, roadway and pavement areas as necessary; maintenance, repair and replacement of retention and detention areas; maintenance of landscaped areas (including replacement and replanting); maintenance, repair and replacement of landscape irrigation lines (if any), of storm water, water, sewer and other Common Utility Facilities; monument signs, lighting standards, poles and conduits. Each of the Parties covenants that it, in addition to other requirements of this Section 5.1, will keep the inside and outside of all glass in the doors and windows of its Buildings clean; will maintain its Buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed. The Parties confirm their intention that the maintenance and repair of the Total Site should be of such a character that the appearance of the Total Site will be that of a unified retail development and, accordingly, the Parties agree to cooperate with each other in good faith with respect to said maintenance and repair and to the extent reasonably possible coordinate such repair and maintenance.

Section 5.2 Sharing of Cost of Maintenance of Certain Common Area Improvements. Except as expressly limited or otherwise provided below, the Parties agree that the costs and expenses

(the "Common Expenses") for maintenance, repair, replacement and operation of the following Common Area Improvements shall be shared proportionately by each of the Owners of the Lowe's Main Parcel, Outparcel C and the Milton Outparcels, as follows: based upon the ratio of the square footage of the Owner's Parcel to the aggregate square footage of the Lowe's Main Parcel, Outparcel C and the Milton Outparcels, less any storm water pond(s) and wetlands (such ratio is, hereafter, the "Pro Rata Share" and is equal to 83% for the Lowe's Main Parcel, 5% for Outparcel A, 6% for Outparcel B and 6% for Outparcel C): (i) the Common Utility Facilities (including, without limitation (i) the Stormwater Management Area (ii) the Shared Access Roads; and (iii) the Access Road Lighting. No more often than on a calendar quarterly basis, Lowe's shall provide to each of the other Owners an invoice ("Invoice") containing a reasonable itemization of Common Expenses previously incurred as per the period described and the Owner's Pro Rata Share of the Common Expenses. Lowe's shall also provide such other information supporting the Common Expenses as an Owner may reasonably request. Payment of the amount of Common Expenses described in the Invoice shall be made to Lowe's within thirty (30) days of receipt of the Invoice. If an Invoice is not timely paid, Lowe's may record a lien (which shall be effective from and after the recording of the same) for the sums due thereunder, together reasonable costs and attorneys' fees, in the manner as provided for in Article VI below. Within 30 days of request of an Owner, Lowe's shall provide a written confirmation as to whether there are any unpaid Common Expenses due from such Owner or its Outparcel, the amount of same and whether a lien has or will be filed for unpaid Common Expenses.

It is contemplated that the Lift Station shall be conveyed by Lowe's to the local sewer utility company so as to service the Total Site, and that at such time, such local utility company shall become responsible for the operation, maintenance and repair of the Lift Station and related system. In the event that the Lift Station is not conveyed or maintenance and repair obligations are not accepted, the Owners of the Lowe's Main Parcel and Outparcel A, Outparcel B and Outparcel C shall share the maintenance and repair obligations for the Lift Station per their respective Pro-Rata Share for Common Expenses, as set forth above.

Section 5.3 Maintenance by Third Party. Subject to the mutual agreement of the Owners, a third party may be appointed by Lowe's under an agreement reasonably acceptable to Lowe's and the Owners as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all Owners (which fee shall be deemed a Common Expense) to cover supervision, management, accounting and similar fees.

ARTICLE VI

REMEDIES

Section 6.1 Default of Owner. Except as otherwise provided herein, an Owner shall be deemed to be in default upon the expiration of thirty (30) days from receipt of written notice from any other Owner specifying the particulars in which such Owner has failed to perform the obligations of this Declaration unless that Owner, prior to the expiration of said thirty (30) days, has rectified the particulars specified in said notice. However, such Owner shall not be deemed to be in default if such failure (except the failure to pay any monetary obligation) can not reasonably be rectified within said thirty (30) day period despite its best efforts in good faith to do so, so long as such Owner shall have commenced to cure the default within said thirty (30) days and shall diligently pursue such cure until completed. In the event of a default that is not cured as provided in the preceding two (2) sentences, each non-defaulting party shall have all of the rights and remedies set forth in this Article VI. In the event that an Owner hereunder shall fail to pay any Party any monetary obligation owed by such Owner within said thirty (30) day period, the amount so owed shall accrue interest thereon from the date said monetary obligation was

due until paid at the rate of fifteen percent (15%) per annum or the highest rate permitted by law, whichever is lower, and the Party owed said monetary obligation shall have a lien against the defaulting Owner's Parcel for the unpaid amount, together with all accrued interest thereon, effective from and after the recordation of same as provided below.

Section 6.2 Right to Cure. In the event that any Owner shall be in default under this Declaration beyond any cure period (if any) as provided in Section 6.1 above, the non-defaulting Party or Parties (the "**Curing Party**") shall have the right, upon ten (10) days prior written notice (except in the event of an emergency which shall be defined as a circumstance involving imminent bodily harm or material property damage, in which event prior notice immediately upon learning of such circumstances shall suffice) to the defaulting Owner (the "**Defaulting Party**"), to perform any such obligation on behalf of and at the sole cost and expense of the Defaulting Party. Any reasonable costs incurred by the Curing Party shall be reimbursed by the Defaulting Party within thirty (30) days after written demand therefor. In the event that the Defaulting Party fails to reimburse the Curing Party for its costs incurred, the amount so owed shall accrue interest thereon from the date said reimbursement was due until paid at the rate of fifteen percent (15%) per annum or the highest rate permitted by law, whichever is lower, and the Curing Party shall have a lien against the Defaulting Party's Parcel for the unpaid amount, together with all accrued interest thereon, effective from and after the recordation of same as provided below.

Section 6.3 Other Remedies. In addition to the foregoing, if any Owner defaults in the performance of any provision of this Declaration beyond any cure period (if any) as set forth in Section 6.1 above, any other Owner may institute legal action against the defaulting Owner for specific performance, declaratory relief, damages or other suitable legal or equitable remedy. In addition to the recovery of damages and any sums expended on behalf of the defaulting Owner, the prevailing party in such action shall be entitled to receive from the other party its reasonable attorney's fees and actual costs for services rendered to the prevailing party in any such action (including any appeal thereof).

The remedies and liens provided in this Article VI and the enforcement thereof as herein provided shall be in addition to and not in substitution for or exclusion of any other rights and remedies which the Parties may have under this Declaration or at law or in equity.

Section 6.4 Liens. The lien provided for under this Article VI shall only be effective from and when filed for record by the Curing Party as a claim of lien against the Defaulting Party and its Parcel in the applicable real estate records for Santa Rosa County, Florida, signed and verified, which claim of lien shall contain the following as well as any other information required by law in order to make the lien effective:

- (i) A statement of the unpaid amount of costs and expenses;
- (ii) A description sufficient for identification;
- (iii) The last known name and address of the Owner or reputed Owner of the Parcel which is the subject of the alleged lien; and
- (iv) The name and address of the lien claimant.

The lien, when so established against the Parcel described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be, or has been, acquired or attached to such

real property after the time of filing of the lien. The lien shall be for the use and benefit of the Curing Party and may be enforced by any remedies afforded lien claimants under applicable law or otherwise.

Section 6.5 Enforcement of Lien. The Curing Party may bring an action to foreclose the claim of lien against any Parcel in like manner as a foreclosure of a mortgage on real property, and/or bring a suit on the personal obligation the Owner thereof, and there shall be added to the amount owed, the cost of preparing, filing and conducting the complaint in such action (including reasonable attorney's fees at trial and appellate levels), and in the event a judgment is obtained, such judgment shall also include interest on the obligation as above provided, the cost of collection (including reasonable attorney's fees incurred in the action), and the costs of the action.

Section 6.6 Mortgage Priority over Assessment Liens. When an institutional mortgagee or another person becomes the Owner of a parcel through the foreclosure of a mortgage owned by an institutional mortgagee, or as a result of a deed given in lieu of the foreclosure of such mortgage, such institutional mortgagee (and its successors and assigns) shall not be liable for the unpaid amounts owing that are attributable to the subject mortgaged Parcel which became due prior to the acquisition of title of the mortgaged Parcel by such institutional mortgagee as a result of the foreclosure, or deed in lieu of foreclosure, unless said unpaid amounts owing are secured by a claim of lien that was recorded prior to the recording of a subject mortgage owned by the institutional mortgagee. The unpaid amounts owing that are subordinated under this Section shall be collectible only from the Owner or after it no longer owns its Parcel, the successor in title to the defaulting Owner of such Parcel. Except as otherwise provided in this Section, an institutional mortgagee becoming the Owner of a Parcel upon the foreclosure of the mortgage owned by an institutional mortgagee or as a result of a deed in lieu of the foreclosure thereof (and their successors and assigns) shall be liable for all further amounts that may become due and payable hereunder.

Section 6.7 No Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach or a default of any of the terms and conditions of this Declaration by any other Owner shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Declaration. Except as otherwise specifically provided in this Declaration, no remedy provided in this Declaration shall be exclusive, but each shall be cumulative with all other remedies provided in this Declaration and at law or in equity.

Section 6.8 No Termination for Breach. It is expressly agreed that no breach, whether or not material, of the provisions of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect, in any manner, any other rights or remedies which any Owner may have hereunder by reason of any breach of the provisions of this Declaration.

ARTICLE VII **MISCELLANEOUS**

Section 7.1 Damage and Destruction. In the event of the destruction and damage to any extent to the Buildings and Improvements on any Outparcel, the affected Party shall, within 90 days after the occurrence of such destruction or damage, either (i) commence to repair and/or reconstruct such Buildings and Improvements to the condition required by the Declaration; or (ii) level such Building or Improvement, clear away the ruins and leave the Parcel in a clean, orderly, sightly and safe condition, planted in grass and trimmed until subsequently improved.

Section 7.2 Estoppel Certificates. Each Party shall upon not less than thirty (30) days from receipt of written notice from the other Party execute and deliver to such other Party a certificate in recordable form stating that (i) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); (ii) whether or not to the best of its knowledge the other Party is in default in any respect under this Declaration and if in default, specifying such default; and (iii) such other information as may be reasonably requested.

Section 7.3 Duration. The agreements, conditions, covenants, and restrictions created and imposed herein shall be effective upon the date hereof and shall continue in full force and effect, to the benefit of and being binding upon all Owners, their heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties until the expiration of sixty (60) years from the date hereof, whereupon they shall be automatically extended for a period of ten (10) years and continue to be automatically renewed every ten (10) years thereafter, unless terminated by the consent of all the Owners pursuant to a writing recorded in the Public Records of Santa Rosa County, Florida. Said agreements and restrictions shall be unaffected by any change in the ownership of any real property covered by this Declaration 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.

Section 7.4 Parking Requirements. The Total Site, including all Outparcels, shall be self-supporting with respect to parking and shall each contain not less than 4.5 paved full size automobile parking spaces for each 1,000 square feet of building floor area constructed thereon (building floor area not including any garden center areas located on the Lowe's Main Parcel), or the number of parking spaces required by applicable law, whichever is greater. Provided however, ten (10) spaces per each 1,000 square feet of Building floor area constructed thereon will be required for restaurants. For purposes of this Declaration, "restaurants" shall be defined as any business, or any portion of any business, providing food service to the public for on site consumption, but excluding for purposes of this Section 7.4 any such restaurant operated as an incidental part of the primary use conducted on such Parcel.

Section 7.5 Notices. Any notice required or permitted to be given under this Declaration shall be in writing and shall be deemed to have been given: (i) upon delivery by a recognized courier service; or (ii) three (3) days after deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other parties):

Milton: S & S Milton LLC
 14502 North Dale Mabry Highway
 Suite 333
 Tampa, Florida 33618
 Attn: Paul D. Schertz or Jon Schwartz

With copy
to: Shutts & Bowen LLP

250 Australian Avenue, South
Suite 500
West Palm Beach, Florida
Attn: John C. Strickroot, Jr., Esq.

Lowe's: Lowe's Home Centers, Inc.
1605 Curtis Bridge Road
REEC Dock (FMN6)
Wilkesboro, North Carolina 28697
Attention: Property Management Dept. (REO)

With copy
to: Lowe's Home Centers, Inc.
1605 Curtis Bridge Road
Wilkesboro, North Carolina 28697
Attention: Real Estate Law Department (REO)

Brooks: Charles E. Brooks and Lisa D. Brooks
10201 Holsberry Road
Pensacola, Florida 32534

With copy
to: Margaret T. Stopp, Esq.
Moore, Hill & Westmoreland, P.A.
SunTrust Tower
220 West Garden Street, 9th Floor
Pensacola, FL 32502

Section 7.6 Assignment. The rights and obligations of any party 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 party and such lessee or lessees. No such assignment to a lessee will, however, relieve the assigning Owner of its obligations and liabilities under this Declaration.

Section 7.7 Limitation of Liability. Any person acquiring fee title to any of the Total Site or any portion thereof, shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired by such person. No Owner of a Parcel shall have liability for the obligations of, or the liability for the breach or violation of this Declaration by, the Owner or Permittees of any other Parcel. In addition, such person shall be bound by this Declaration only during the period such person is the fee Owner of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrued prior to such conveyance or transfer. Although persons may be released under this Section, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 7.8 Mechanic's Liens If because of any act or omission (or alleged act or omission) of any Owner, or such Owner's employees, agents, contractors, subcontractors under this Declaration (such Owner being hereinafter referred to as the "**Responsible Party**"), any mechanic's,

construction or other lien, charge or order for the payment of money or other encumbrance shall be filed against the other Owner's Parcel and/or any portion of the Total Site not owned by the Responsible Party (whether or not such lien, charge, order or encumbrance is valid or enforceable as such), the Responsible Party shall at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice to the Responsible Party of the filing thereof or (if acceptable to the Owner, in its discretion, whose Parcel is affected by the lien, charge or encumbrance) obtain affirmative coverage through a title insurance policy issued by a company acceptable to the Owner; and the Responsible Party shall indemnify and save harmless the other Owners against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees resulting therefrom. If the Responsible Party fails to comply with the foregoing provisions, any of the other Owners hereto shall have the option of discharging or bonding any such lien, charge, order or encumbrance, and the Responsible Party agrees to reimburse such discharging or bonding Owner upon demand for all costs, expenses and other sums of money in connection therewith, together with interest thereon until paid at the Interest Rate.

Section 7.9 Insurance; Indemnification; Waiver of Subrogation. Each Owner will at all times maintain or cause to be maintained with respect to its property: (i) casualty insurance against loss or damage by fire, lightning and other risks customarily covered by an all-risks policy of Parcel and casualty for the full replacement cost of the Improvements located thereon and (ii) commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Owner's Parcel combined single limit coverage of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence. Each Owner will name all other Owners as additional insureds on such Owner's commercial general liability insurance policy. Nothing herein shall be construed as prohibiting a Party from self-insuring provided such Party or such Party's parent company has a continuing net worth in excess of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00).

To the extent not covered by the insurance policies described above, each Owner (the "Indemnitor") will pay, and indemnify and save harmless the other Owners (each is, hereafter, an "Indemnitee") from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from: (i) any injury to or death of a person or loss of or damage to property, including the Indemnitee's real property and the personal property of any tenant of the Indemnitee, occurring on the Indemnitee's Parcel due to any negligence or willful or tortuous acts of the Indemnitor or its Permittees; and (ii) any use or condition of the Indemnitor's Parcel in violation of this Declaration which causes damage or injury to the Indemnitee.

Each Owner (the "Releasor") hereby releases the other Owner (each is, hereafter, a "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 Parcel caused by fire or other casualty or other such loss, damages, or other insured event or negligence of the Releasee, or anyone for whom such Releasee may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the Releasor's policy or policies of insurance shall contain a waiver of subrogation endorsement, to the effect that any such release shall not adversely affect or impair said policy or policies or prejudice the right of the Releasor to recover thereunder.

Section 7.10 Term and Enforcement. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors, successors-

in-title, assigns and Permittees. Said easements, restrictions and obligations shall be unaffected by any change in the ownership of any Parcel covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Each of the rights created hereunder may be enforceable in a court of equity by the Owner of any Parcel covered by this Declaration; however, enforcement hereunder shall be sought solely against the then Owner of the Parcel (or the Owner of an interest in such Parcel) alleged to be in default subject to the limitation on liability as set forth in Section 7.7 hereof.

Section 7.11 Harmony. The Parties agree to cooperate in creating a harmonious exterior appearance for the Improvements to be constructed by them within the Total Site. Each Building or other Improvements shall be architecturally and aesthetically harmonious and compatible with the other Buildings and Improvements from time to time located on the Total Site. Notwithstanding the foregoing, the Building and Improvements constructed on the Lowe's Main Parcel shall comply with the foregoing requirement so long as the Building and Improvements are consistent with other stores then being constructed by Lowe's. Lowe's may make changes in its Buildings and Improvements consistent with the overall design of its initial Building and/or a majority of its stores at the time of the changes. The Parties acknowledge that Lowe's initial design of its Building complies with the provisions of this Section 7.11.

Section 7.12 No Covenant to Continuously Operate. Neither Lowe's nor any other Owner is obligated to continuously operate a business on its Parcel. In addition, Lowe's is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse on its Parcel. Nothing contained in this Declaration shall be construed, interpreted or otherwise read to require Lowe's or any Owner to operate a business on its Parcel or to prevent Lowe's or any Owner from closing its business on its Parcel.

Section 7.13 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 7.14 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

Section 7.15 WAIVER OF TRIAL BY JURY. THE PARTIES AND OWNERS HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY OR OWNER AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS DECLARATION, OR THE RELATIONSHIP OF THE PARTIES AND OWNERS CREATED HEREBY.

Section 7.16 Relationship of the Parties. Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the parties. It is understood that the relationship between the parties is an arms length one that shall at all times be and remain that of separate owners of real property. No party shall have the right to act for or on behalf of another party, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the party to be charged or bound.

Section 7.17 Breach. In the event of a breach of this Declaration, any Owner shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach. In the event of a breach hereof, the non-prevailing Owner(s) shall pay the reasonable attorney's fees of the prevailing Owner(s).

Section 7.18 Incorporation by Reference. Any and all exhibits referred to herein as attached hereto shall be deemed to be incorporated herein as though set forth in this Declaration at full length.

Section 7.19 Governing Law. This Declaration shall be construed in accordance with the laws of the State of Florida.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

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

Witnesses:

S & S MILTON LLC,
a Florida limited liability company

By: Tandem Development Holdco LLC,
a Delaware limited liability company,
its managing member

By: S&S Tada LLC,
a Florida limited liability company,
its managing member

Name

Printed Name

Name

Printed Name

By:

Name:

Title:

STATE OF FLORIDA

COUNTY OF Hillsborough

SS:

The foregoing instrument was acknowledged before me this 28 day of Feb, 2007 by Jon Schwartz, as managing member of S&S Milton LLC, a Florida limited liability company, on behalf of the company.

[Notarial Seal]



Rebecca S. Nordlum
My Commission DD284118
Expires November 02, 2007

Rebecca S. Nordlum
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

Print Name of Notary: Rebecca S. Nordlum

My Commission Expires: Nov. 2, 2007

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signed, sealed and delivered
in the presence of:

Pam Bonner
Name
Pam Bonner
Printed Name

Stephanie Brewer
Name
Stephanie Brewer
Printed Name

LOWE'S HOME CENTERS, INC.

By: Gary E. Wyatt *AWK*
Senior Vice President
Senior Vice President
(CORPORATE SEAL)

Address: Lowe's Home Centers, Inc.
1605 Curtis Bridge Road
Wilkesboro, North Carolina 28697
Attention: Property Management Dept. (REO)

STATE OF NORTH CAROLINA
COUNTY OF WILKES

The foregoing instrument was acknowledged before me this 20th day of February, 2007 by Gary E. Wyatt, Senior Vice President of **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation, on behalf of the corporation.

[NOTARY SEAL]



Sheila H. Vannoy
Notary Public
Sheila H. Vannoy
[Print Notary's Name]

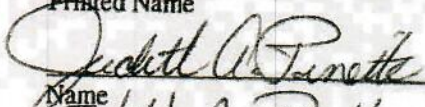
My commission expires: 10-6-08

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signed, sealed and delivered
in the presence of:

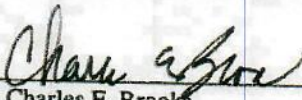

Name

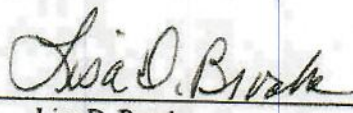
MARGARET T. STOPP
Printed Name


Name

Judith A. Pinette
Printed Name

CHARLES E. BROOKS and LISA D. BROOKS

By: 
Charles E. Brooks

By: 
Lisa D. Brooks

Address: 10201 Hylsberry Rd
Pensacola, FL 32534

STATE OF Florida
COUNTY OF Escambia

The foregoing instrument was acknowledged before me this 27 day of Feb., 2007 by Charles E. Brooks - Personally Known

[NOTARY SEAL]




Notary Public

[Print Notary's Name]

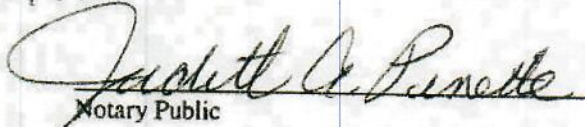
My commission expires: _____

STATE OF Florida
COUNTY OF Escambia

The foregoing instrument was acknowledged before me this 27 day of Feb., 2007 by Lisa D. Brooks - Personally Known

[NOTARY SEAL]




Notary Public

[Print Notary's Name]

My commission expires: _____