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**DECLARATION OF RESTRICTIVE EASEMENTS,
COVENANTS AND RESTRICTIONS AGREEMENT**

**Stewart Title Services
of Northwest Indiana
The Pointe
5521 W. Lincoln Hwy.
Crown Point, IN 46307**

THIS **DECLARATION OF RESTRICTIVE EASEMENTS, COVENANTS AND RESTRICTIONS AGREEMENT** (this "Declaration"), is made and entered into as of the 26th day of MAY, 2004, by and between and **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation ("Lowe's"), and **THE SHOPPES AT SCHERERVILLE, L.L.C.**, a Missouri limited liability company ("SAS").

WITNESSETH:

WHEREAS, Lowe's is the owner of that certain tract of land located in the City of Schererville, Lake County, State of Indiana, more particularly described as the "Lowe's Property" on Exhibit A, attached to this Declaration and by this reference made a part of this Declaration, and shown more particularly on that certain plat identified as Lot 1 in Lowe's Subdivision as recorded in Plat Book 90, Page 90 of the plat records of Lake County, Indiana, and as shown on Exhibit B, attached to this Declaration and by this reference made a part of this Declaration (hereinafter the "Site Plan"); and

WHEREAS, SAS is the owner of a certain tract of land located in the City of Schererville, Lake County, State of Indiana, located contiguous with and adjacent to the Lowe's Property, which property is more particularly described on Exhibit A as the "SAS Property" and as shown on the Site Plan attached hereto as Exhibit B.

NOW, THEREFORE, Lowe's and SAS hereby declare that the Properties (defined below) 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 the Properties, and which shall "run with the land" and be binding on all parties having any right, title or interest in the described Properties or any part thereof, and shall inure to the benefit of each Owner (defined below) thereof. Further, in consideration of the premises, the promises and covenants of Lowe's and SAS, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lowe's and SAS agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 "Hwy. 41 Access Easement Area" shall have the meaning given to such term in Section 2.3 of this Declaration.

Section 1.2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Parcel which is a part of the Properties, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation. As the current record owner of the Lowe's Property, Lowe's is currently an "Owner" for all purposes under this Declaration. As the current record owner of the SAS Property, SAS is currently an "Owner" for all purposes under this Declaration.

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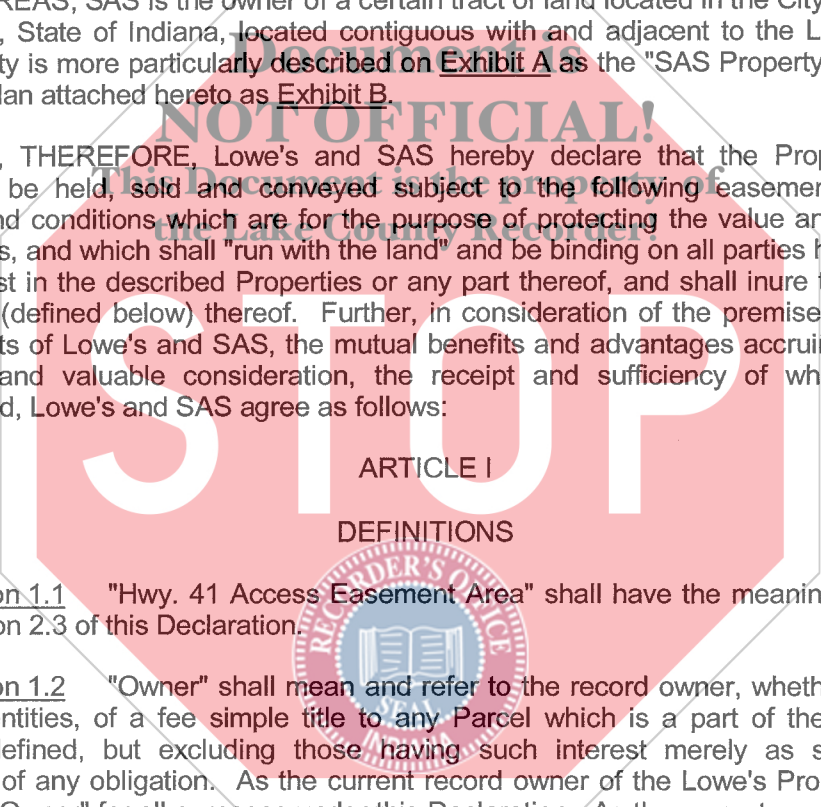
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**STEPHEN R. STIGLICH
LAKE COUNTY AUDITOR**

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LAKE COUNTY
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Section 1.3 "Parcel" shall mean and refer to any parcel of land which constitutes any portion of the Properties described on Exhibit A and/or shown on the Site Plan.

Section 1.4 "Properties" shall mean and refer to the Lowe's Property and the SAS property which are described and/or shown on the attached Exhibit A and the Site Plan.

Section 1.5 "Operator" shall mean and refer to an entity leasing or occupying space or premises on the Lowe's Property or the SAS Property.

ARTICLE II

EASEMENTS

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

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

(b) An Owner to whom the easement is granted shall be called the "Grantee", provided that the grant shall also benefit and include not only such Owner, but its successors, assigns, Operators and permittees. Although not for the direct benefit of Operators and permittees, the Grantee may permit from time to time its Operators and permittees to use such easements.

(c) The term "Building(s)" means the building(s) which has (have) been, will be or may be constructed upon an Owner's Parcel.

(d) The term "Easement Area Improvements" means all improvements which have heretofore been constructed or may be hereafter constructed under the terms of this Declaration, and all other improvements which would be part of the "Hwy. 41 Access Easement Area" under the above definition or the Common Utility Facilities lying within any easement areas as described in Section 2.4 below, and all improvements constructed from time to time in replacement of the same or in such redesign of the same as may be agreed to by the Owners.

(e) The term "Common Utility Facilities" means utility systems and facilities from time to time situated on or serving the Properties, up to the building wall of any Building, for use or service in common by the Owners or any two Owners or for the service of the Hwy. 41 Access Easement Area, such as the following: storm drainage, retention and disposal facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities for such common use or service, including, without limitation, those installed under the provisions of this Declaration and as replacements thereto.

(f) The term "Improvements" means Building(s) and the Easement Area Improvements.

(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 Lowe's and/or SAS and their successors and assigns, and "Parties" means all or any two of the foregoing as appropriate.

(i) INTENTIONALLY DELETED.

(j) The term "Separate Utility Facilities" means any of the following not installed under the terms of this Declaration and not for use in common by other Owners or for service of the Hwy. 41 Access Easement Area: storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, 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 Improvement situated on any Parcel.

(k) INTENTIONALLY DELETED.

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

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

(n) In the event an Owner transfers or conveys a portion of its Parcel in accordance with the terms of this Declaration, those easements granted under this Article II which bind and burden the portion so transferred or conveyed shall bind and burden the remainder of the Parcel of which it was a part, and those easements granted under this Article II which benefit the portion so transferred or conveyed shall benefit 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 an Owner, the other Owners shall sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Parties. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Party to construct or maintain a building unless expressly provided in this Declaration.

Section 2.2 INTENTIONALLY DELETED.

Section 2.3 Ingress & Egress Easements.

(a) Lowe's hereby grants to SAS for the benefit of the SAS Property and any and all Parcels included therein, an easement (the "Hwy 41 Access Easement") over the area

described as the "Hwy. 41 Access Easement Area" shown on Exhibit B and as shown and described on Exhibit C, attached to this Declaration and by this reference made a part of this Declaration for the purpose of providing pedestrian and vehicular ingress to and egress from the SAS Property, and any and all Parcels included therein, and U.S. Highway 41 as shown on the Site Plan, together with the following rights and subject to the following restrictions and reservations set forth in this Section 2.3.

(b) The use of the Hwy. 41 Access Easement by any person entitled to the use thereof shall be in common with all other such persons. Lowe's expressly acknowledges and agrees that SAS may grant an easement for the purpose of providing pedestrian and vehicular ingress and egress to and from the SAS Property and certain property located to the immediate south of and adjacent to the SAS Property (the "South Property"). Lowe's further acknowledges and agrees that the pedestrian and vehicular traffic to and from the South Property over, across and upon the SAS Property via the Hwy. 41 Access Easement Area shall be permitted notwithstanding the fact that such traffic originated from the South Property or is destined to such South Property and that such traffic shall not be deemed to over-burden the Hwy. 41 Access Easement. The Hwy. 41 Access Easement and the land upon which the same is located shall be considered in all respects part of the Hwy. 41 Access Easement Area, and the improvements thereon shall be considered in all respects part of the Easement Area Improvements.

(c) Lowe's agrees not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Hwy. 41 Access Easement Area, except in accordance with Section 2.12 hereof.

(d) The access points providing access to the Hwy. 41 Access Easement from the SAS Property as shown on the Site Plan shall not be changed without the prior written permission of Lowe's, which consent shall not be withheld, delayed, or conditioned unreasonably.

(e) Lowe's shall be responsible for the repair and maintenance expenses of the Hwy. 41 Access Easement Area, provided however, SAS shall pay to Lowe's, as SAS's sole obligation with respect to maintenance and repair expenses relating to the Hwy. 41 Access Easement Area, Two Thousand Five Hundred Dollars (\$2,500.00) per annum, increasing by 10% every five (5) years for the repair and maintenance of the Hwy. 41 Access Easement ("Common Area Expenses"). The obligation to pay such Common Area Expenses will begin on the earlier date of (i) 365 days after the date SAS obtains title to the Property and (ii) the day the first store or restaurant opens for business on the SAS Property. Such sum shall be due and payable (in advance) to Lowe's on the first day of each calendar year, except that the amount due to Lowe's in the first calendar year or year of purchase shall be prorated as of the date set forth in the second sentence of this paragraph and due on the date set forth in second sentence of this paragraph. It shall not be necessary for Lowe's to invoice or otherwise bill the owner of the SAS Property for this sum. SAS agrees to pay Lowe's this sum in advance, send notice of date the first store or restaurant opens for business on the SAS Property and remit payment to the address set forth in Section 5.6 and coded as Lowe's store # 1601.

(f) Should Lowe's fail to repair or maintain the Hwy. 41 Access Easement Area as required, an Owner shall be entitled to perform such repair and maintenance as may be reasonably required, provided such Owner has given Lowe's not less than thirty (30) days prior written notice of such condition and Lowe's has failed to take such actions necessary to cure such matter. However, in the case of an emergency, any such repair work may be performed

immediately after giving such written notice to Lowe's as is practicable under the circumstances, and such Owner having made a prudent and reasonable attempt to contact Lowe's immediately. Lowe's shall reimburse the Owner making such repairs for all of such Owner's reasonable costs for making any repair in accordance with the immediately preceding sentence.

Section 2.4 Easements for Utility Facilities. Subject to the provisions of this Section 2.4, each Owner hereby grants to the other Owner perpetual easements on its (Grantor's) Parcel on those areas identified specifically on the Site Plan as utility easement areas, if any, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Parcel of the Grantee.

All Separate Utility Facilities and all Common Utility Facilities, whether installed under this Section or otherwise, shall be installed underground if reasonably possible and the location of the same shall be subject to the prior written approval of the Owner across whose Parcel the same are to be located, which approval shall not be withheld, delayed or conditioned unreasonably.

Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair and removal at Grantee's cost of all Separate Utility Facilities installed by the Grantee pursuant to the easement grant, as well as for all Separate Utility Facilities installed by the Grantee on its own parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by Grantee only after not less than thirty (30) days prior written notice to Grantor of Grantee's intention to do such work. However, in the case of an emergency, any such repair work may be performed immediately after giving such written notice to Grantor as is practicable under the circumstances, and Grantee making a prudent and reasonable attempt to contact Grantor immediately. In addition, the Parties agree that all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Grantee, to essentially the same condition as the same were in prior to the commencement of any such work. No such work or restoration, except emergency repair work, shall be carried on during the period from November 1 through the next succeeding January 4, or on any weekends.

Lowe's shall be responsible for the repair and maintenance expenses of the Common Utility Facilities located on the Lowe's Property, provided however, the Owner of the SAS Property shall reimburse Lowe's for its prorata share of any such expenses if and to the extent any such Owner of any Parcel which is part of the SAS Property uses the Common Utility Facilities. Such Owner's prorata share shall be determined by multiplying the total amount of the maintenance expenses for each Common Utility Facility used by such Owner by a fraction, the numerator of which is the total land area of such Owner's Parcel and the denominator of which is the total land area of the Lowe's Property and the Owner's Parcel. Lowe's shall provide such Owner with an itemized statement of such expenses relating to the Common Utility Facilities used by such Owner, if any, and calculating such prorata share of such costs. SAS may request backup documentation from Lowe's verifying such itemization of expenses within thirty (30) days of receipt of such itemization of expenses and Lowe's shall thereafter provide such documentation within thirty (30) days of the request therefor. The applicable prorata shares of such costs shall be paid to Lowe's within thirty (30) days of receipt of such itemized statement. An Owner may submit a good faith, reasonable objection to its prorata

reimbursement based either upon the total amount of such costs or the method of calculating such prorata share thereof, provided, however, such objection shall not negate such obligation to reimburse Lowe's as set forth above. Should Lowe's fail to repair or maintain such Common Utility Facilities located on the Lowe's Property as required, an Owner benefiting from such Common Utility Facilities shall be entitled to perform such repair and maintenance as may be reasonably required, provided such Owner has given Lowe's not less than thirty (30) days prior written notice of such condition and Lowe's has failed to take such actions necessary to cure such matter. However, in the case of an emergency, any such repair work may be performed immediately after giving such written notice to Lowe's as is practicable under the circumstances, and such Owner making a prudent and reasonable attempt to contact Lowe's immediately. Lowe's agrees to reimburse such Owner for performing such repairs and maintenance for the reasonable cost of the same.

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

The Grantor of any easement for Separate Utility Facilities under this Section 2.4 may use the utility facilities installed pursuant to such easement; provided, however, that the increase in costs incurred in order to make such utility facilities adequate to serve Grantor's additional use shall be borne by such Grantor; and provided, further, that Grantor gives prior written notice within the time period called for under subparagraph (i) and otherwise complies with the requirements of subparagraphs (ii), (iii) and (iv) of the following paragraph of this Section 2.4. If Grantor exercises this right, from and after the use by Grantor, the facilities so used shall be Common Utility Facilities.

Except during the period from August 1 through September 15 and November 1 through the following January 4th, 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:

- (i) may be performed only after Grantor has given Grantee not less than thirty (30) days prior written notice of its intention to relocate such facilities;
- (ii) 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(i). Grantor shall promptly reimburse Grantee for all costs, expenses and losses incurred by Grantee as a result of such interference or diminution, or both;
- (iii) shall not reduce or impair the usefulness or function of the facilities in question;
- (iv) shall be located underground if reasonably possible; and,
- (v) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities or Separate Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee, which approval shall not be unreasonably withheld, delayed or conditioned.

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

Section 2.5 Construction Easements. Lowe's hereby grants to SAS a construction easement ("Construction Easement") in the construction easement area ("Construction Easement Area"), which requires approval by Grantor from time to time as contemplated in Section 2.5 (b) below, subject to the following:

(a) Such Construction Easement shall only apply during the initial construction of the Improvements contemplated within this Declaration. During any period of renovation to the SAS Property, Grantee shall first obtain the written consent from Grantor to use the Construction Easement Area as a Construction Easement, such consent not to be withheld, conditioned or delayed unreasonably.

(b) In the event dirt is dumped or otherwise placed on the SAS Property, such area shall be sloped to meet any contiguous property within the Properties or public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property or in accordance with a grading plan approved by the Grantor, which approval shall not be withheld, conditioned or delayed unreasonably. The location of all easements under this Section 2.5 shall be subject to the approval of the Grantor, which approval shall not be withheld, delayed or conditioned unreasonably.

Grantee agrees to use due care in the exercise of the rights granted under this Section 2.5 and, in the event the exercise of the rights granted under this Section 2.5 requires Grantee to enter upon the Parcel of Grantor, excepting the Construction Easement Area in connection with initial construction, to first obtain the written consent of Grantor as to the methods and timing in the exercise of such rights, which consent shall not be withheld, delayed or conditioned unreasonably.

Each Owner covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the Buildings or other Improvements of any other Owner, and shall not unreasonably interfere with or interrupt the business operation conducted by any other Owner of any Parcel. In addition, each Grantee Owner, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of Grantor and other Grantees which have been damaged or destroyed in the exercise by Grantee Owner of the easements granted under this Section 2.5 and shall defend, indemnify and hold Grantor and other Grantees harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or arising out of Grantee's exercise of said easements, except to the extent occasioned by Grantor's or other Grantees' negligent or wrongful act or omission to act.

Each Grantee agrees to exercise due care in construction, excavation, and grading on Grantee's or Grantor's property to avoid damaging Grantor's irrigation system. In the event Grantee discovers Grantor's irrigation system on Grantee's Parcel, then Grantee shall promptly notify Grantor as to its location and whether or not the irrigation system interferes with Grantee's construction. In the event Grantee severs Grantor's irrigation system, Grantee agrees to use its best efforts to cap the line to mitigate damages, and promptly notify Grantor.

Grantee's Separate Utility Facilities shall, for purposes of maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under this Declaration, be deemed to

be part of the Grantee's Parcel and Building and shall not be deemed to be part of the Grantor's Parcel or Building for such purposes.

Except as reasonably necessary for and during the construction of any building including any structures in staging areas, no structure of a temporary character shall be erected or allowed to remain on any Parcel.

Section 2.6 INTENTIONALLY DELETED.

Section 2.7 INTENTIONALLY DELETED.

Section 2.8 INTENTIONALLY DELETED.

Section 2.9 Abandonment of Easements. After the expiration of the term of this Declaration, the perpetual easements granted pursuant to Sections 2.3 and 2.4 hereof, or all or any part or parts thereof, may be abandoned and terminated, if the use thereof shall have ceased and cessation thereof continues for a continuous period of five (5) years. Thereafter, the then record Owner of the Parcel burdened with such easement may give written notice by United States certified mail, return receipt requested, mailed to the then record Owner of the Parcel benefited by such easement and the then record holder, if any, of any leasehold interest in such benefited Parcel, stating that such easement has been abandoned and may place of record in the real property records of Lake County, Indiana, an affidavit that such abandonment has taken place and that such notice has been properly given. If the then record Owner of the benefited Parcel, or the holder, if any, of any leasehold interest in such benefited parcel fails to place of record in the real property records of Lake County, Indiana, within ninety (90) days after the giving of such notice, an affidavit that such easement has not ceased to be used for such continuous five (5) year period, such easement shall thereupon be conclusively deemed abandoned and any person having or thereafter acquiring an interest in the Parcel previously burdened shall hold and take such interest free of and unencumbered by such easement.

Section 2.10 INTENTIONALLY DELETED.

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

- (i) The easement is non-exclusive;
- (ii) 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;
- (iii) Subject to the provisions herein, Grantor retains the right to use the surface areas of such easement as Grantor sees fit;
- (iv) Grantor reserves the right to require the public utility 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) The public utility grantee shall not, in its use or installation, interfere with other installations and easements in the area;

(vi) The public utility grantee shall protect its facilities against uses of the surface made by Grantor and others;

(vii) The public utility grantee shall make adequate provisions for the safety and convenience of all persons using the area;

(viii) The public utility grantee, following installation or other work, shall replace and restore the areas and improvements substantially to the condition in which they were immediately prior to performance of such installation and work;

(ix) The public utility 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

(x) The public utility 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 Parcels 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 upon the written consent of all Owners. In addition, each Owner may temporarily close or block traffic on its Parcel for the time necessary, but only to the extent 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 Hwy. 41 Access Easement Area, as herein provided, such Owner of the Parcel including the Hwy. 41 Access Easement Area shall give fifteen (15) days written notice to all other Owners of its intention to do so and shall attempt to coordinate such closing with each other Owner, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), and may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction. Notwithstanding any provisions herein to the contrary, no barrier or obstruction in the Hwy. 41 Access Easement Area or any other easement area, temporary or otherwise, shall be erected by any party hereto between August 1 through September 15 or November 1 through the next succeeding January 4.



Section 3.1 Construction. The Parcels constituting the SAS Property shall not be used in violation of those restrictions on the use as are specifically enumerated hereinafter in Section 3.5. The Parties hereby acknowledge that the buildings constructed on any Parcel constituting part of the SAS Property shall be located within the "Permissible Building Areas" as shown on the Site Plan and such buildings shall not contain more than the maximum amount of

gross leaseable area permitted for each Parcel as shown on the Site Plan, provided, however, that Lot 1 as shown on the Site Plan shall not have any limitation or restriction regarding maximum gross leaseable area and no such limitation or restriction is shown on the Site Plan. The Parties hereby acknowledge that any building constructed on any Parcel constituting part of the SAS Property shall not have a primary parapet height in excess of thirty five feet (35'-0") and with a parapet height of the architectural features located on the front or side of the building of no greater than forty five feet (45'-0"). No structures shall be erected on any Parcel constituting part of the SAS Property unless the site plan and building elevation for such structure have been approved by Lowe's in writing, such approval not to be unreasonably withheld, conditioned or delayed. By virtue of its execution hereof, Lowe's evidences and acknowledges its consent to the initial construction and development of any Parcel constituting part of the SAS Property in accordance with the Site Plan and building elevations previously submitted to Lowe's. In the event of reconstruction on any Parcel constituting a part of the SAS Property, but excluding non-structural renovation and relocation of doors, docks and signage and other changes in accordance with Section 5.12, which are hereby deemed approved, a complete set of the proposed reconstruction plans including a site, foundation, floor plan and elevation drawings of all sides shall be presented to and approved in writing by Lowe's prior to commencing the clearing, grading, or construction of a building of any kind on any Parcel, such approval by Lowe's not to be unreasonably withheld, conditioned or delayed. Such review by Lowe's shall be made in good faith and applying reasonable standards relating to the design of the site work or other improvements that may be constructed or reconstructed on any Parcel and will include, but not be limited to, the location of the building, building height, entrances, landscaping, parking lot design and circulation and underground improvements. Notwithstanding anything to the contrary contained herein, with respect to any Operator's Building which exceeds 9,500 gross leaseable square feet and which is located on any part of the SAS Property, Lowe's shall not have approval rights with respect to (and no Operator or Owner shall be required to make any submission to Lowe's with respect to) (i) initial and/or reconstruction plans (including foundation plans, floor plans, and elevation drawings), or (ii) initial construction, reconstruction or alterations. In no event shall any Owner materially alter the Site Plan or landscaping to materially alter the visibility of Lowe's retail store as currently constructed, from U.S. Highway 41. Failure of Lowe's to approve or disapprove any submitted plans within fifteen (15) days after the receipt of the same shall be deemed approval. Any disapproval shall state specifically the reason therefor.

Upon completion of the foundations of the initial improvements on the SAS Property, an actual field survey of the foundations shall be presented to Lowe's to ensure that such foundations have been constructed in accordance with the Site Plan. Notwithstanding anything to the contrary contained herein, Lowe's shall not have approval rights with respect to the field survey of the foundation plan for any Operator on the SAS Property whose gross leaseable square feet exceeds 9,500 and no such Operator shall be required to deliver a field survey or foundation plan to Lowe's.

All improvements shall substantially comply with the plans as presented by SAS, if any, to Lowe's unless changes are approved in writing by Lowe's, such approval not to be unreasonably withheld, conditioned or delayed. The right to make inspections necessary to assure compliance is reserved to Lowe's. Weather permitting, all paving and landscaping shall be finished upon completion of the Buildings, but in no event shall it be installed later than 90 days after the Building is occupied. Each Owner shall use good faith and diligent efforts to ensure that total construction time from the pouring of the footings to the completion of the Building on its Parcel does not exceed one (1) year.

Section 3.2 INTENTIONALLY DELETED.

Section 3.3 Nuisances. Subject to the provisions of Section 3.1, the Lowe's Property and the SAS Property shall not be used for anything other than purposes which may be permitted by applicable zoning regulations, nor shall anything be done on the Lowe's Property or SAS Property which is deemed a nuisance or an annoyance to the community.

Section 3.4 INTENTIONALLY DELETED.

Section 3.5 Use Restrictions on the SAS Property. For as long as Lowe's, its successors and assigns, owns, occupies, leases and/or controls the Lowe's Property, but only for so long, the SAS Property shall not be occupied or used for any operation whose primary business is as follows:

(i) Paint Store;

(ii) Appliance Store, except that a business primarily operating as a consumer electronics store such as Circuit City or Best Buy shall be permitted and shall be permitted to sell its customary products (including appliances, if applicable), and except that a business primarily operating as a home furnishings store such as Linen 'N Things, Bed Bath and Beyond, Pier One or Cost Plus World Market, shall be permitted and shall be permitted to sell its customary products (including appliances, if applicable);

(iii) Lawn and Garden Store;

(iv) Hardware Store;

(v) Lumber Yard;

(vi) Decorating Center (floor and/or wall coverings), except that a business primarily operating as an arts and crafts store such as Jo-Ann's or Michael's shall be permitted, and except that a business primarily operating as a home furnishings store such as Linen 'N Things, Bed Bath and Beyond, Pier One or Cost Plus World Market, shall be permitted;

(vii) Building Supply Center;

(viii) Home Improvement Center; or

(ix) Home Improvement Warehouse.

No Owner shall use or permit the occupancy or use of any space upon such Owner's Parcel for the following purposes:

(i) Church;

(ii) School (provided such restriction shall not preclude incidental staff training or any classes of instruction that are an incidental to the business of any retail business operated in connection therewith; e.g. cooking classes at a store selling cookware or computer classes at a store selling computers;

(iii) Theater (motion picture or live performance);

(iv) The sale, rental, other exchange or exhibition of any sexually explicit materials, except as provided below;

(v) A bar, tavern, nightclub, discotheque, or other similar type facility, provided however, a bar may be a part of a restaurant facility so long as the primary business is a restaurant and at least 60% of the total revenue is derived from the food sales; or

(vi) A gas station or convenience store, except that SAS may be allowed to develop a gas station / convenience store on Lot # 4 of the SAS Property.

Notwithstanding anything in this Declaration to the contrary, the restrictive use item (iv) referenced immediately above shall not exclude such national retail chains as: Books-a-Million, Barnes and Noble, Borders, Movie Gallery, Hollywood Video, Blockbuster Video, Circuit City, Best Buy, Virgin Records or other similar national retail chains, from selling such items to the extent the same is sold in a majority of their then existing stores.

Section 3.6 INTENTIONALLY DELETED.

Section 3.7 SAS Property Development. The Parcels constituting the SAS Property are intended to be developed in accordance with the Site Plan and intended to be initially developed as a retail center with multiple buildings, which development is subject to change in accordance with Section 5.12. Any of the restrictions set forth in Section 3.5 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by the consent of Lowe's. The Owner of the SAS Property, however, may impose such additional restrictions on the SAS Property or any Parcel constituting a part thereof as such Owner deems appropriate. The Owner of the SAS Property may convey, lease or assign its respective property through any means including, but not limited to, lease, ground lease, sale, condominium declaration or air-lot condominium declaration.

ARTICLE IV

SIGNS

Section 4.1 Sign Construction. Subject to local governmental regulation, other easements and restrictions affecting the Parcels, Lowe's agrees that four (4) freestanding signs may be constructed on the SAS Property, each sign to be constructed in the locations shown on the Site Plan and substantially in accordance with the sign plans shown on Exhibit D 1, D 2, D 3, and D 4 attached to this Declaration and by this reference made a part of this Declaration. The surface area of each of the freestanding signs shall contain Operator identification panels but such panels shall not exceed the total surface area shown on Exhibit D 1, D 2, D 3, and D 4. The cost of constructing the sign and maintaining the same shall be borne wholly by the Owner of the Parcels upon which signs are located. Maintenance of the signs shall be as defined in Section 5.2 of this Declaration. Any increase in the size of any such freestanding signs or other substantial modification to the design (specifically excluding, however, any identification panels thereon) or location of such freestanding signs, or the construction of additional freestanding signs, shall be subject to the prior written approval of Lowe's, such approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary contained herein, Lowe's shall not have approval rights with respect to any building signage located on any of the buildings on any Parcel constituting a part of the SAS Property.

ARTICLE V

MISCELLANEOUS

Section 5.1 Damage and Destruction. In the event of the destruction and damage to any extent to the Buildings and Improvements on the Parcels, the affected Owner shall either (1) diligently commence and pursue completion of the repair or restoration and or (2) within one hundred and eighty (180) days after the destruction or damage clear away the ruins and leave the Parcel in a clean, orderly, sightly and safe condition. Further, in the event that the affected Owner elects not to rebuild its Improvements, the restrictions placed on the non-affected Owner's Parcel by the affected Owner shall be null and void and of no further force nor effect.

Section 5.2 Maintenance. Each Owner hereto shall maintain the Buildings and the common area on its Parcel in good order and condition and state of repair in accordance with the standards of good shopping center operation including (but not limited to) sweeping and removal of trash, litter and refuse, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair of lighting standards and signs. Each of the Owners covenants that it, in addition to other requirements of this Section 5.2, will maintain its Buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash, rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed; and will not receive or ship articles of any kind except through the designated loading areas for its Buildings. The Owners confirm their intention that the maintenance and repair of the Parcels should be of such a character that the appearance of the Parcels 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 practical coordinate such repair and maintenance. Notwithstanding any provision herein to the contrary, the Owner's obligations with respect to payment of maintenance expenses incurred in maintenance of the Hwy. 41 Access Easement Area, Common Utility Facilities and Separate Utility Facilities as set forth in Article 2 shall not be altered hereby.

Section 5.3 Estoppel Certificates. Each Owner shall upon not less than fifteen (15) days from receipt of written notice from any other Owner execute and deliver to such other Owner a certificate stating that (i) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge any other Owner is in default in any respect under this Declaration and, if in default, specifying such default.

Section 5.4 Perpetuity of Agreement. Except as specifically set forth in this Declaration, the easements, covenants, conditions, restrictions and agreements contained herein binding and benefiting the Owners and the Parcels shall be deemed to be perpetual and shall be construed to run with the land.

Section 5.5 Parking Requirements. The SAS Property shall contain at least the minimum number of parking spaces required by local code or ordinance.

Section 5.6 Notices. Any notice required or permitted to be given under this Declaration 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 upon deposit with a nationally recognized next day courier delivery service, the same being 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):

Lowe's: Lowe's Home Centers, Inc.
Property Management Department (REO)
Box 1111
North Wilkesboro, NC 28656-0001
Attention: Neal C. Hamilton
Manager – Excess Property

Street Address: Highway 268 – East Dock
North Wilkesboro, NC 28659
Tax ID No.: 56-0748358
Telephone: (336) 658-3357
Fax: (336) 658-3643

SAS: The Shoppes at Schererville, L.L.C.
1015 E. Broadway, Suite 275
Columbia, MO 65201
Attention: Otto Maly
Telephone: (573) 443-3200
Fax: (573) 875-1286

Otherwise, all notices to be delivered to an Owner shall be delivered to such Owner at the address of such Owner as provided in such Owner's deed or as otherwise provided by the real estate records of Lake County, Indiana, where deeds are filed.

Section 5.7 Assignment. The rights and obligations of any Owner hereunder may be assigned in whole or in part to one or more ground lessees, which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or leases between such Owner and such ground lessee or lessees.

Section 5.8 Limitation of Liability. The Parcels and the Owners of the Parcels shall be bound by all of the terms and provisions of this Declaration. Notwithstanding any term or provision of this Declaration to the contrary, Operators and any other parties acquiring leasehold title to any Parcel or any portion thereof shall not have any liability to any Owner for any breach of the terms and provisions of this Declaration except with respect to such Operator's or such other party's breach of the terms and provisions of Section 3.3 and Section 3.5 of this Declaration, and except as otherwise provided by any other separate written agreement. To the extent any Owner, Operator, and any other party acquiring leasehold title to any Parcel or any portion thereof shall be bound by this Declaration, such Owner, Operator, or other party acquiring leasehold title, respectively, shall be bound by this Declaration only as to the interests acquired in such Parcel. Further, such Owner, Operator, and any other party shall be bound by this Declaration only during the period such Owner, Operator or other party, respectively, is the fee or leasehold owner of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although Owners, Operators and other parties may be released under this Section 5.8, the

easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Parcel(s) running with the land.

Section 5.9 INTENTIONALLY DELETED.

Section 5.10 Insurance; Indemnification; Waiver of Subrogation. Each Owner will at all times maintain or cause to be maintained with respect to its Parcel: (i) casualty insurance against loss or damage by fire, lightning and other risks customarily covered by an all-risks policy of property and casualty for the full replacement cost of the Improvements located thereon and (ii) commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Owner's Parcel combined single limit coverage of not less than \$2,000,000.00 with respect to any one person, in the amount of \$2,000,000.00 with respect to any one accident or disaster, and in the amount of not less than \$500,000.00 with respect to property damage and (iii) waiver of subrogation. Nothing herein shall be construed from prohibiting a Party with a tangible net worth in excess of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00), as determined by generally accepted accounting principle, from self-insuring its obligations hereunder.

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

Each Owner (the "Releasor") hereby releases the other 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 or other such loss, damages, or other insured event or negligence of the Releasee, or anyone for whom such Releasee may be responsible.

Section 5.11 Term and Enforcement. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the benefit of and be binding upon the Owners for their benefit and the use of their respective Operators, including any ground lessee under a ground lease, and the customers, employees and invitees of such Owners and Operators. Said easements, restrictions and obligations shall be unaffected by any change in the ownership of any property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Each of the rights created hereunder may be enforceable in a court of equity by the Owner of any Parcel covered by this Declaration and by any mortgagee of any said Parcel; however, enforcement hereunder shall be sought solely against the then Owner of the Parcel (or the Operator of an interest in such Parcel) alleged to be in default, all subject to the limitations on liability as set forth in Section 5.8 hereof.

Section 5.12 Harmony. The Owners agree to cooperate in creating a harmonious exterior appearance for the improvements to be constructed on each respective Parcel. Lowe's hereby acknowledges that the SAS Property is intended to be developed as a retail shopping center with multiple buildings. Lowe's agrees that in the event a retail shopping center with multiple buildings is developed, then changes may be made to the Buildings and Improvements from time to time without the consent of Lowe's provided such changes are consistent with the

quality of the overall design of the initial Buildings approved by Lowe's pursuant to this Declaration. Lowe's acknowledges that the initial design, the Site Plan, and building elevations for the development of the SAS Property are hereby approved by Lowe's. Notwithstanding anything to the contrary contained herein, Lowe's shall not have approval rights with respect to the structural or exterior alterations by any Operator on any Parcel constituting a part of the SAS Property whose gross leasable square feet exceeds 9,500.

Section 5.13 No Covenant to Continuously Operate. No Owner or Operator is obligated to continuously operate any particular business or any business at all on any Parcel. Nothing contained in this Declaration shall be construed, interpreted or otherwise read to require any Owner to operate a business on any Owner's respective Parcel.

Section 5.14 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 affect 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 5.15 Breach. In the event of breach or threatened breach of this Declaration, only the then record Owner of a Parcel or any Operator then occupying or leasing in excess of 20,000 square feet of space, either jointly or severally, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, but only to the extent such right has been granted to such Operator by an Owner and only to the extent such breach or threatened breach conflicts with the specific provisions of any agreement between an Owner and Operator then in effect. No amendment, modification, supplement or termination of the Declaration shall be done without the prior written consent of the then record Owners of Parcels, and with respect to any amendment, modification or supplement to Section 3.3 and Section 3.5 of this Declaration, with the prior written consent of Operators then occupying or leasing in excess of 20,000 square feet of space, which consent shall not be unreasonably withheld or delayed. Nothing herein contained shall be construed to operate to create any actual privity of contract between any Operator and Lowe's or an other Owner, nor any power of attorney in Operator to act on behalf of Lowe's, SAS, or any Owner of any Parcel, under the Declaration.

Section 5.16 Attorney's Fees. In the event of a breach hereof, the non-prevailing Party shall pay the reasonable attorney's fees of the prevailing Party(ies).

Section 5.17 INTENTIONALLY DELETED.

Section 5.18 Counterparts. This Declaration may be executed in multiple counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWING]

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

Signed and acknowledged
in the presence of:

[Handwritten Signature]

LOWE'S HOME CENTERS, INC.,
a North Carolina corporation

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

[Handwritten initials]

Shannon M. Louie

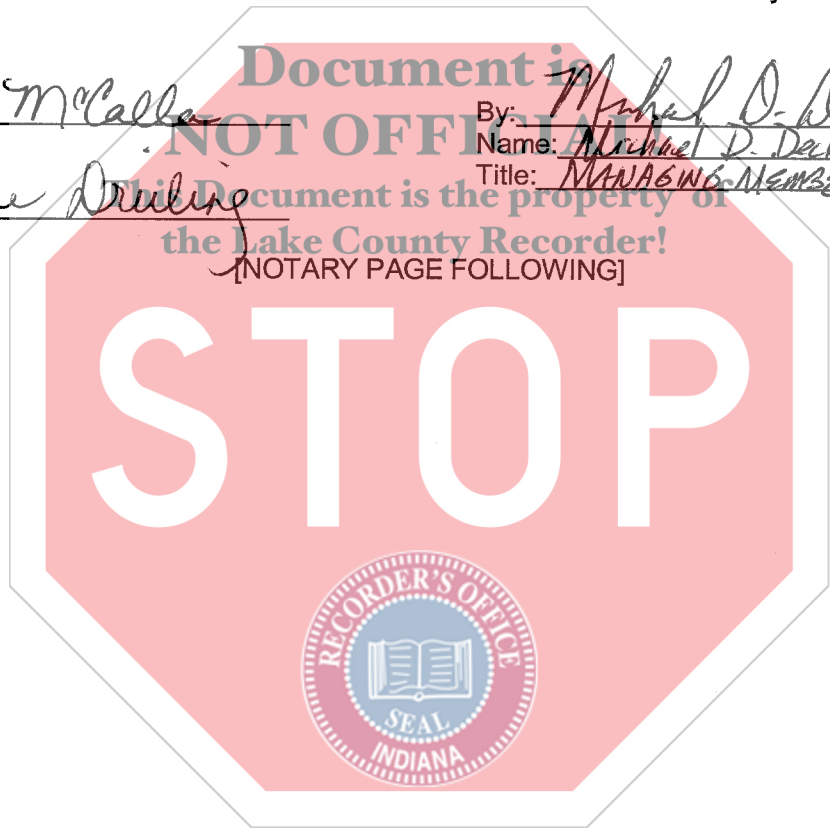
[CORPORATE SEAL]

Signed and acknowledged
in the presence of:

THE SHOPPES AT SCHEREVILLE, L.L.C.,
a Missouri limited liability company

Christi McCalla
Adrienne Drilling

By: *Michael D. Dector*
Name: *Michael D. Dector*
Title: *MANAGING MEMBER*



• STATE OF NORTH CAROLINA §
 §
COUNTY OF WILKES §

BE IT REMEMBERED, that on this 26th day of May, 2004 before me, the subscriber, a Notary Public, in and for said state, personally came, **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation, by DAVID E. SHELTON, Senior Vice President, who acknowledges that he did sign the foregoing instrument and that the same is the free act and deed of himself and said entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at WILKES COUNTY, this 26th day of May, 2004.



OFFICIAL SEAL
North Carolina - Wilkes County
SHEILA H. MASTIN
Notary Public
My Commission Expires 10-6-08

Sheila H. Mastin NOTARY PUBLIC

My Commission Expires: 10-6-08

STATE OF Texas §
 §
COUNTY OF Dallas §

BE IT REMEMBERED, that on this 28th day of May, 2004 before me, the subscriber, a Notary Public, in and for said state, personally came, **THE SHOPPES AT SCHERERVILLE, L.L.C.**, a Missouri limited liability company, by R. OTTO MALY, its Member Manager, did sign the foregoing instrument and that the same is the free act and deed of himself and said entity. Michael D. Decker

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Dallas COUNTY, this 28th day of May, 2004.

Priscilla Gayle NOTARY PUBLIC
My Commission Expires: 5/06

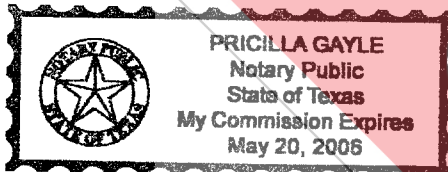


Exhibit A

LEGAL DESCRIPTIONS OF THE PROPERTIES

Lowe's Property

Lot 1 in Lowe's Subdivision, as shown in Plat Book 90, Page 90, in the office of the Recorder of Lake County, Indiana .

SAS Property

Lots 1, 2, 3, 4 and Outlot A of the Final Plat of The Shoppes of Schererville, an addition to the Town of Schererville, recorded on June 1, 2004, as Document No. 2004 045544, Book 95, Page 52 in the Map Records of Lake County, Indiana.



Exhibit B

SITE PLAN

This Site Plan is intended solely to depict the area of the Lowe's Property and the SAS Property and the location of the Permissible Building Areas and common areas constructed or to be constructed within the Lowe's Property and the SAS Property. Except as may be otherwise expressly set forth in this Declaration, neither Party makes any representation or warranty regarding the Site Plan unless such representation or warranty is expressly set forth in this Declaration.

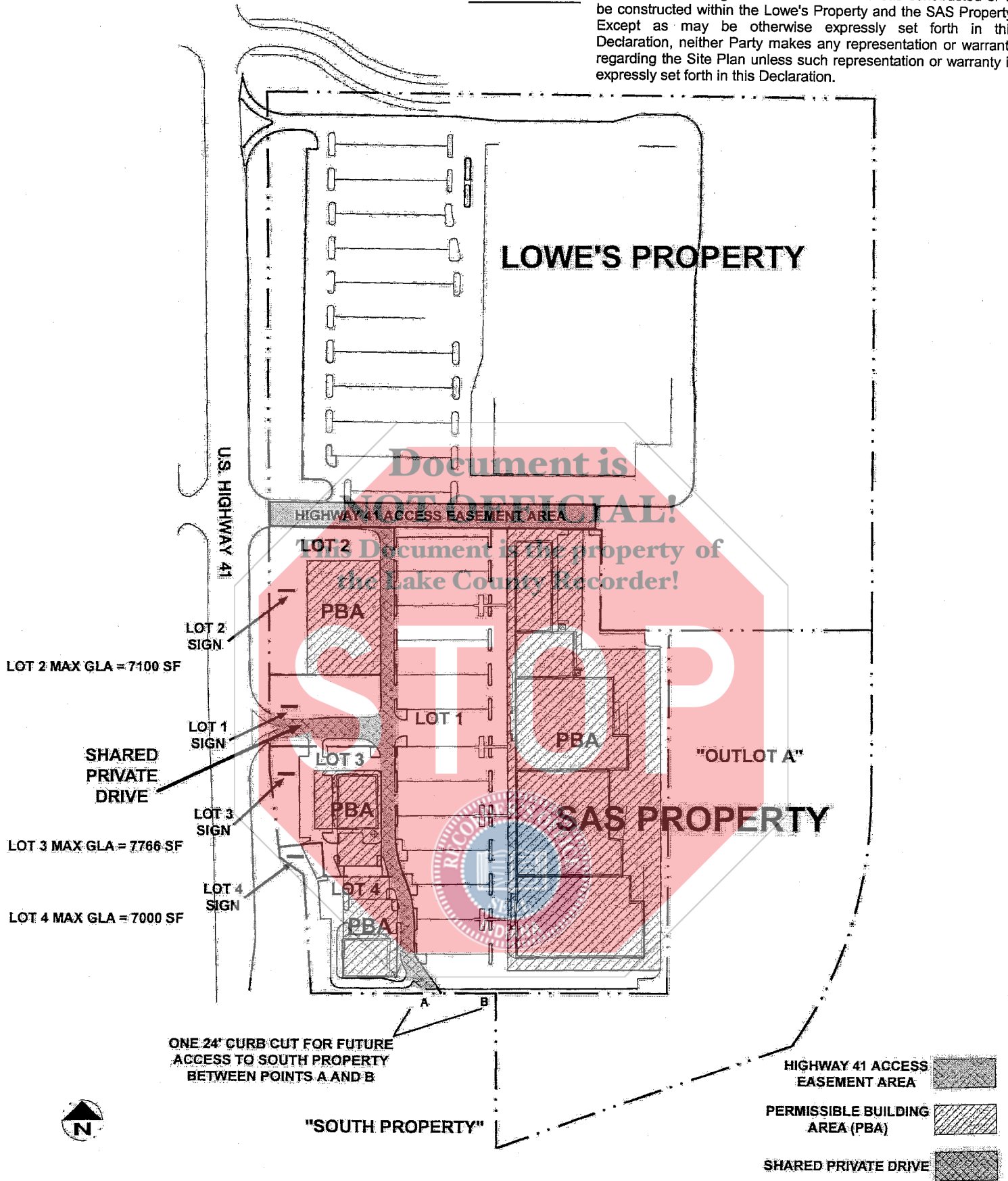
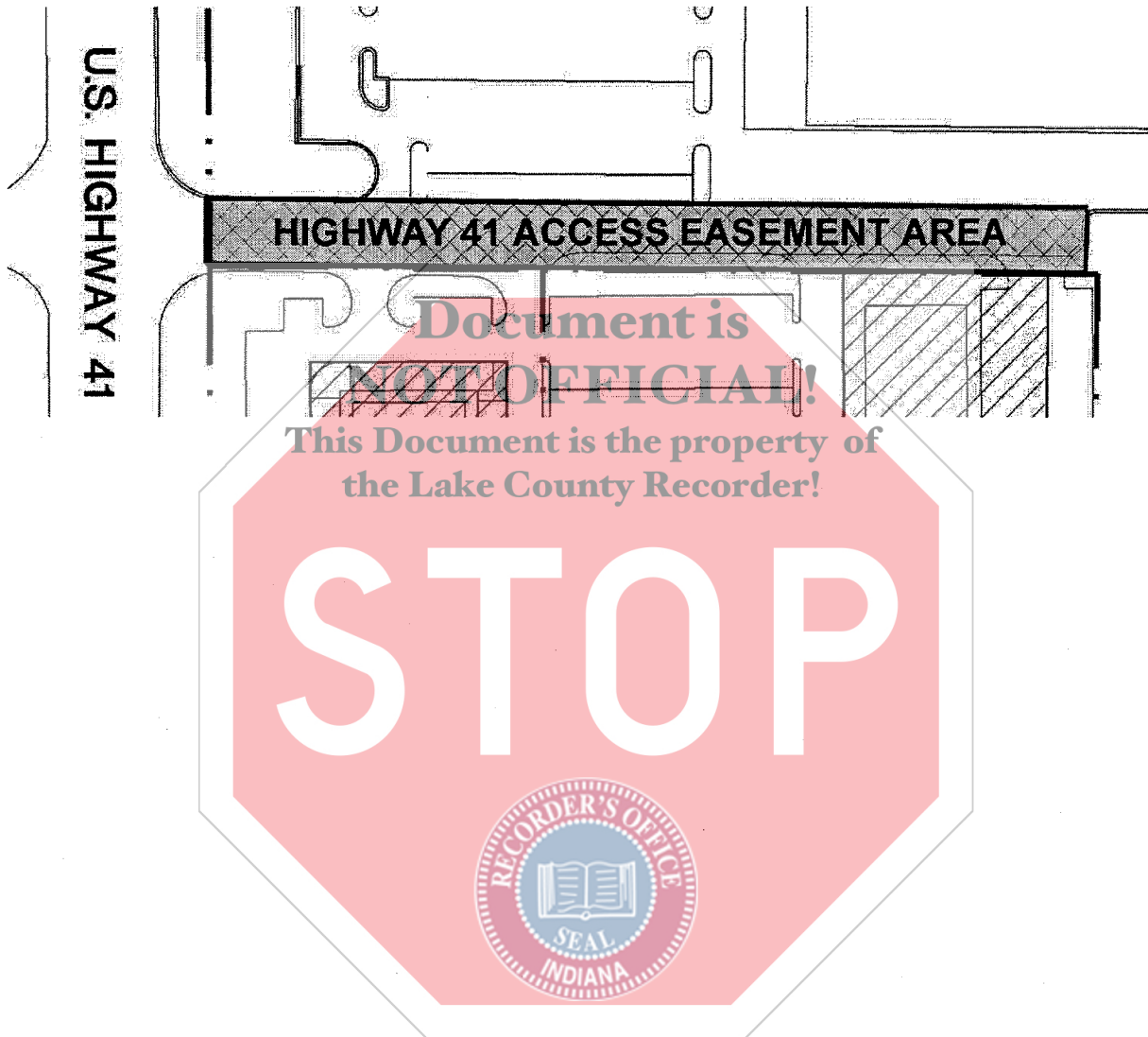


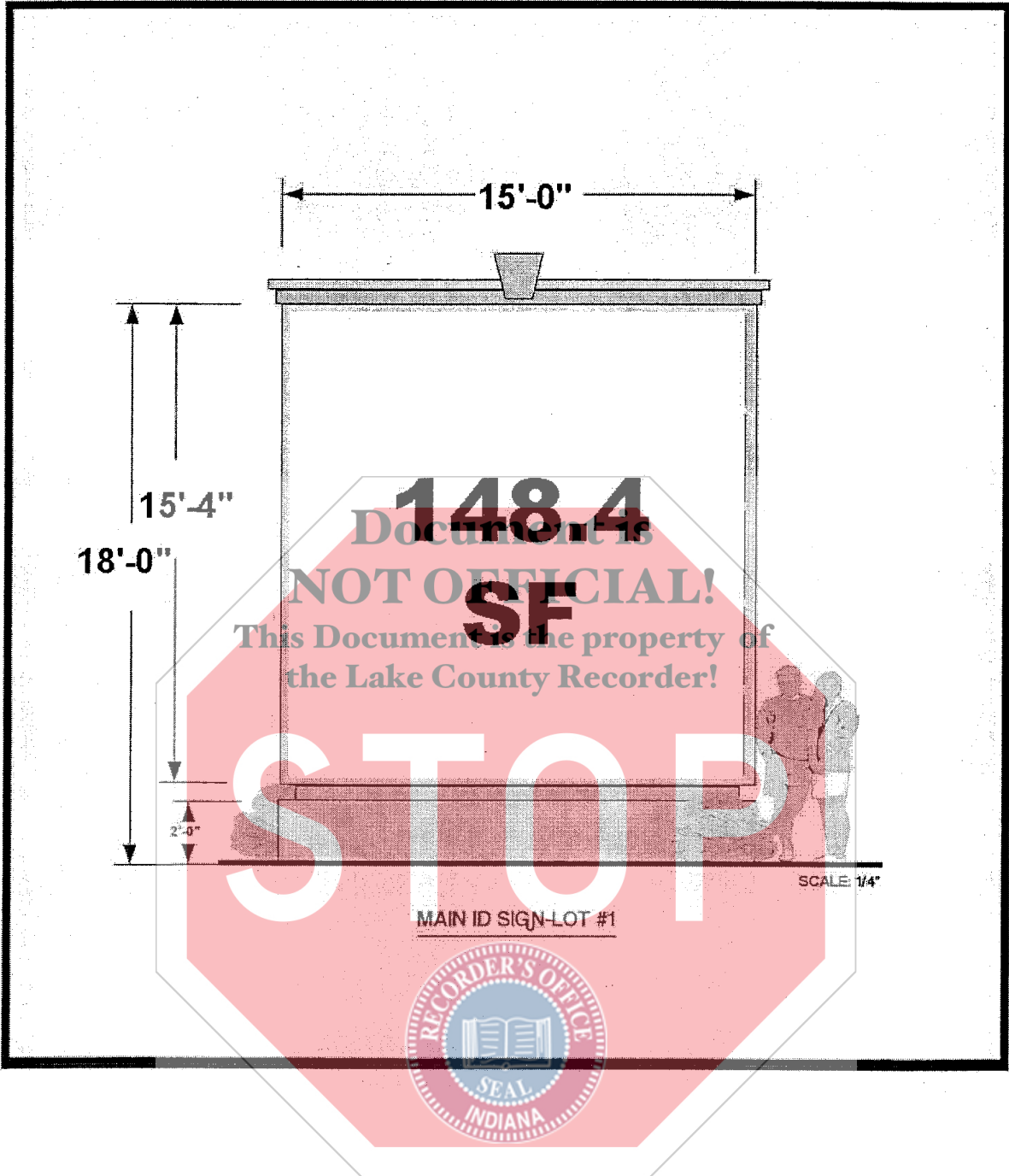
Exhibit C

DESCRIPTION OF CROSS-ACCESS EASEMENT

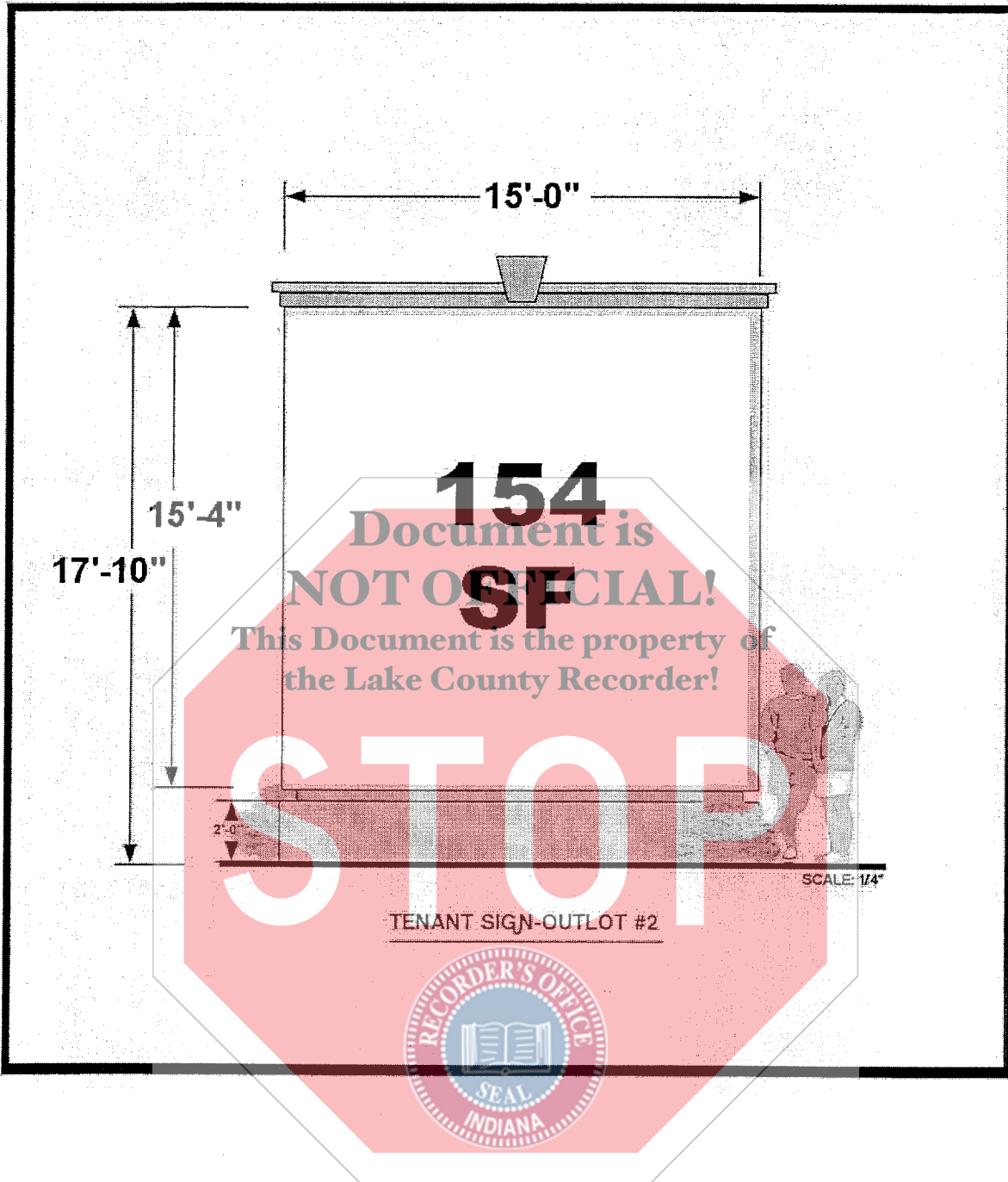
The South 50 feet of the West 620.26 feet of Lot 1 in Lowe's Subdivision, an Addition to the Town of Schererville, Lake County, Indiana, as recorded in Plat Book 90, page 90 in the Office of the Recorder of Lake County, Indiana.



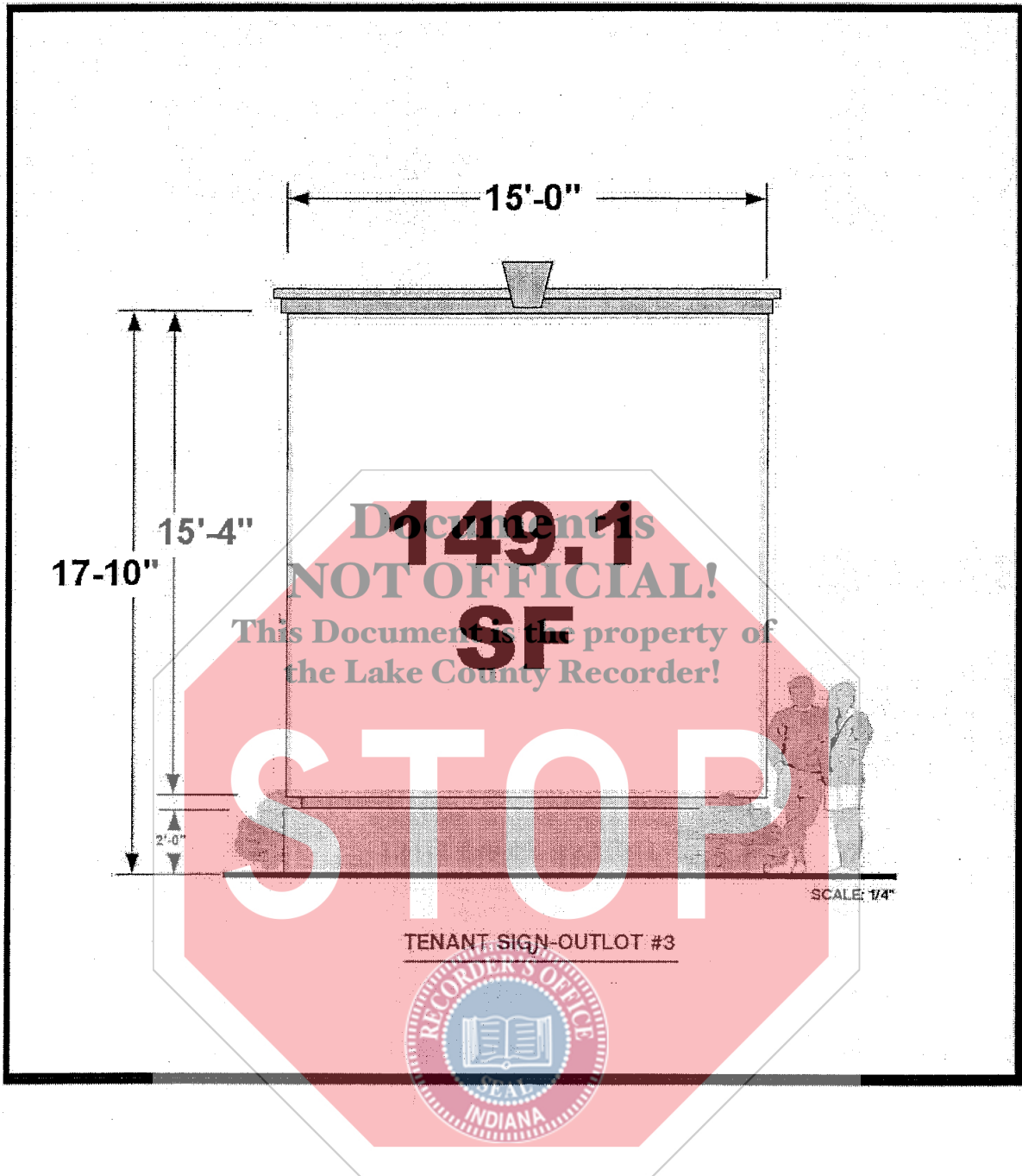
LOT 1 MONUMENT SIGN



LOT 2 MONUMENT SIGN



LOT 3 MONUMENT SIGN



LOT 4 MONUMENT SIGN

