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Prepared by and after recording return to:  
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3700 Thanksgiving Tower  
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Dallas, Texas 75201

2004 045758

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2004 JUN -2 AM 9:48

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

**FIRST AMENDMENT TO AGREEMENT**

THIS **FIRST AMENDMENT TO AGREEMENT** (this "Amendment") is made and entered into effective as of May 26, 2004, by and between **THE SHOPPES AT SCHERERVILLE, L.L.C.**, a Missouri limited liability company ("SAS"), and **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation ("Lowe's").

**Preliminary Statements:**

The following preliminary statements are a material part of this Amendment:

A. Lowe's and AAA Supply Corporation, an Indiana corporation ("AAA") made and entered into that certain Agreement (the "Agreement"), dated September 28, 2001, recorded October 3, 2001, as Document No. 2001-080219, in the Recorder's Office of Lake County, Indiana. Pursuant to the Agreement, the Lowe's Property is referred to and defined as the "Main Premises" and the "Additional Premises". The AAA Property is referred to and defined as the "Option Property" in the Agreement.

B. SAS acquired the Additional Premises, together with any and all rights and appurtenances relating thereto, from Lowe's by Special Warranty Deed recorded as of even date herewith in the Recorder's Office of Lake County, Indiana. SAS is the current owner of the Additional Premises, which is more particularly described on Exhibit "A" attached hereto and made part of this Amendment for all purposes.

C. Lowe's has acquired the Option Property, together with any and all rights and appurtenances relating thereto, from AAA by Special Warranty Deed recorded as of even date herewith in the Recorder's Office of Lake County, Indiana. Lowe's is the current owner of the Option Property, which is more particularly described on Exhibit "B" attached hereto and made part of this Amendment for all purposes.

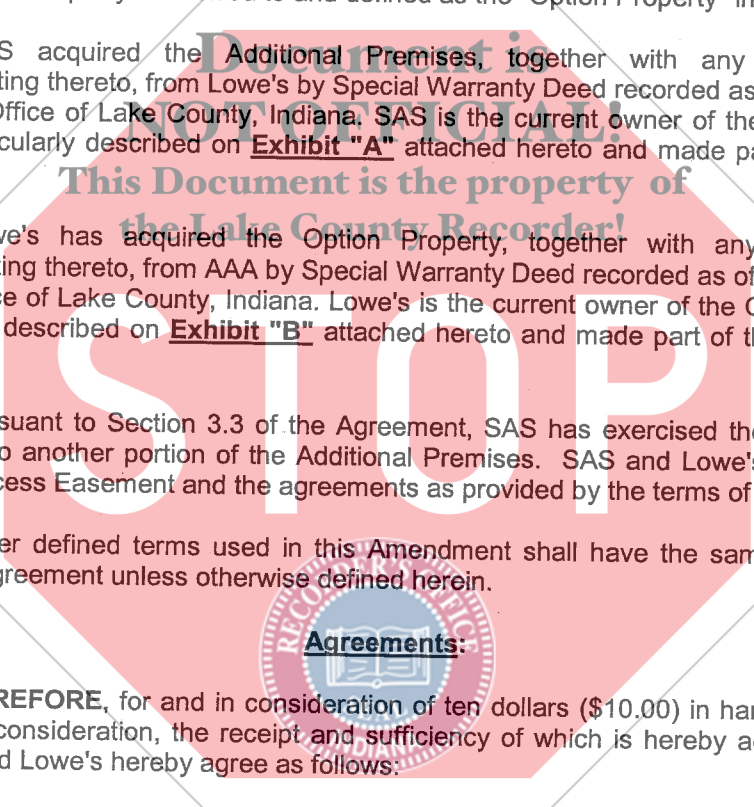
D. Pursuant to Section 3.3 of the Agreement, SAS has exercised the right to relocate the Access Easement to another portion of the Additional Premises. SAS and Lowe's hereby agree to the relocation of the Access Easement and the agreements as provided by the terms of this Agreement.

E. Other defined terms used in this Amendment shall have the same meanings given to such terms in the Agreement unless otherwise defined herein.

**Agreements:**

**NOW, THEREFORE**, for and in consideration of ten dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and Lowe's, SAS and Lowe's hereby agree as follows:

1. Relocation of Access Easement Area. As of the date of this Agreement, the Additional Premises has not been developed with any improvements. Notwithstanding anything to the contrary in Section 3.1 of the Agreement, upon the development and completion of construction of driveways on, over and across the Additional Premises which provide for pedestrian and vehicular ingress and egress to and from the Option Property and Indianapolis Boulevard, the Access Easement granted in Section 3.1 of the Agreement shall no longer burden the Access Easement Area described in the Agreement. Instead,



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STEPHEN R. STIGLICH  
LAKE COUNTY AUDITOR

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such Access Easement Area shall include those driveways constructed on, over and across the Additional Premises which provide for pedestrian and vehicular ingress and egress to and from the Option Property and Indianapolis Boulevard, as the same may exist or be modified at any time and from time to time by any owner of the Additional Premises.

2. Future Relocation of Access Easement Area. SAS and Lowe's hereby acknowledge and agree that Shoppe's may also exercise the right to modify the Access Easement and relocate the Access Easement Area at any time and from time to time as provided by Section 3.3 of the Agreement and that nothing in this Amendment affects the rights of Shoppe's as set forth in Section 3.3 of the Agreement which shall remain in full force and effect.

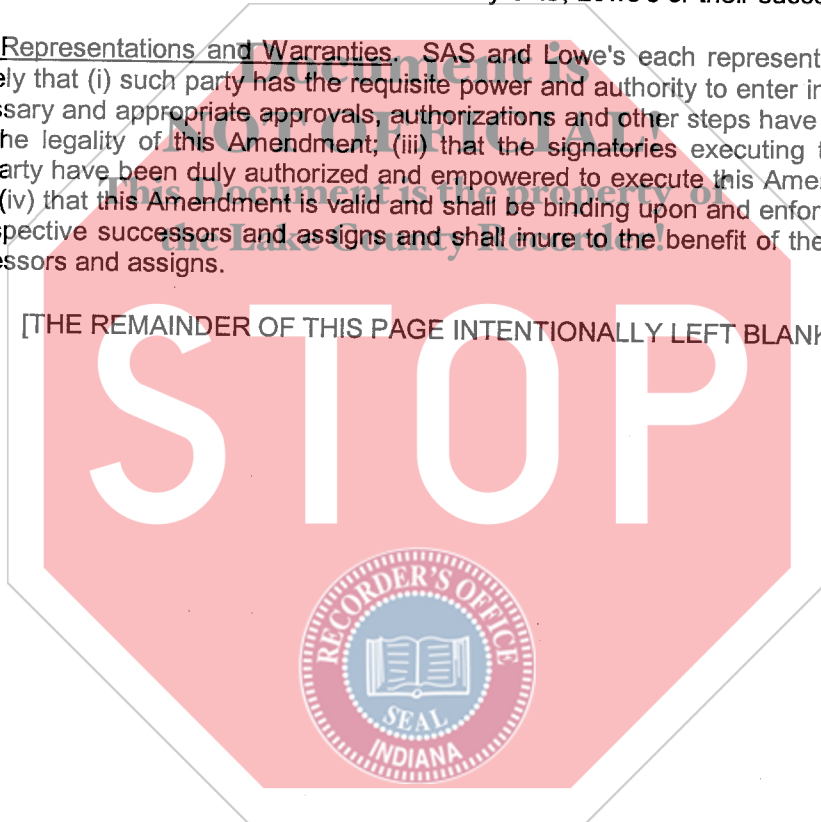
3. Effect of Amendment. Except as specifically modified by this Amendment, all of the terms and conditions of the Agreement remain in full force and effect.

4. Successors and Assigns. Notwithstanding anything to the contrary, all of the rights, privileges, and benefits set forth in the Agreement, as amended by this Amendment, shall inure to the benefit of any owner of the Additional Premises and the Option Property, respectively, and the successors and assigns of SAS and Lowe's, respectively. All of such rights, privileges and benefits set forth in the Agreement, including without limitation those rights, privileges and benefits pertaining to the Access Easement, shall be covenants that "run with the land".

5. Modifications. This Amendment and the Agreement cannot be amended or modified in any manner other than by written modification executed by SAS, Lowe's or their successors or assigns.

6. Representations and Warranties. SAS and Lowe's each represent and warrant to the other, respectively that (i) such party has the requisite power and authority to enter into this Amendment; (ii) that all necessary and appropriate approvals, authorizations and other steps have been taken by such party to effect the legality of this Amendment; (iii) that the signatories executing this Amendment on behalf of such party have been duly authorized and empowered to execute this Amendment on behalf of such party; and (iv) that this Amendment is valid and shall be binding upon and enforceable against such party and its respective successors and assigns and shall inure to the benefit of the other party and its respective successors and assigns.

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IN WITNESS WHEREOF, SAS and Lowe's have caused this Amendment to be duly executed as of the date and year first above written.

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

By: Michael D. Decker  
Michael D. Decker,  
Manager

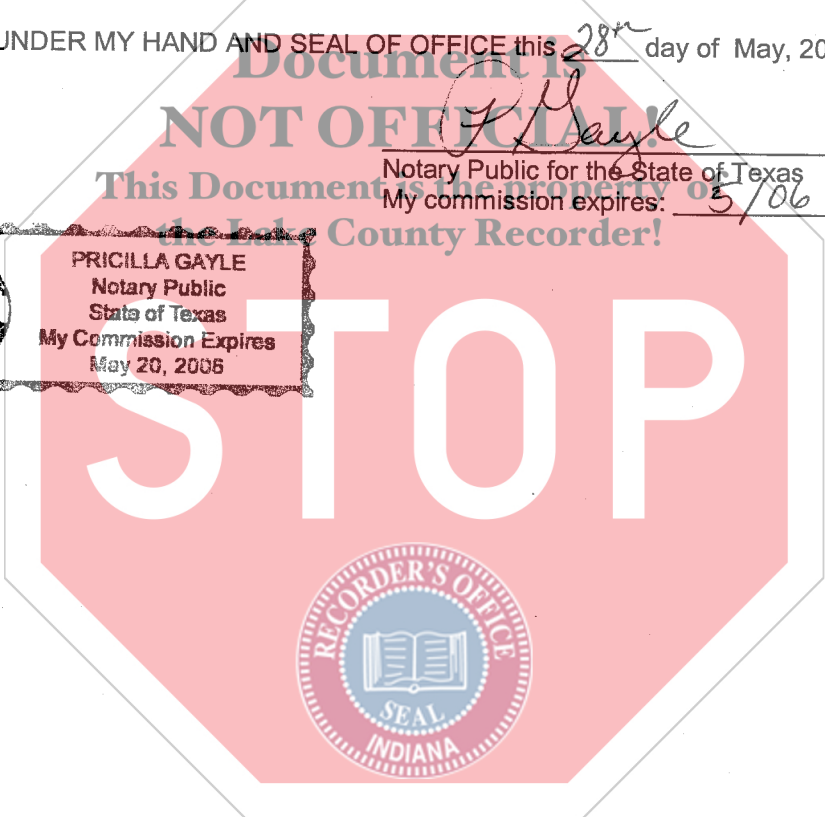
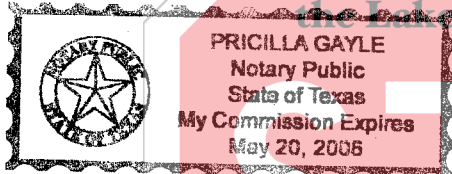
STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Michael D. Decker, known to me to be a Manager of **THE SHOPPES AT SCHERERVILLE, L.L.C.**, a Missouri limited liability company, described in and which executed the foregoing instrument, and acknowledged to me the execution of the foregoing instrument on behalf of said limited liability company for the uses and purposes therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28<sup>th</sup> day of May, 2004.

*Priscilla Gayle*  
Notary Public for the State of Texas  
My commission expires: 5/06



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

By: David E Shelton  
Name: David E. Shelton  
Title: Senior Vice President

*MSH*  
*1/2/04*

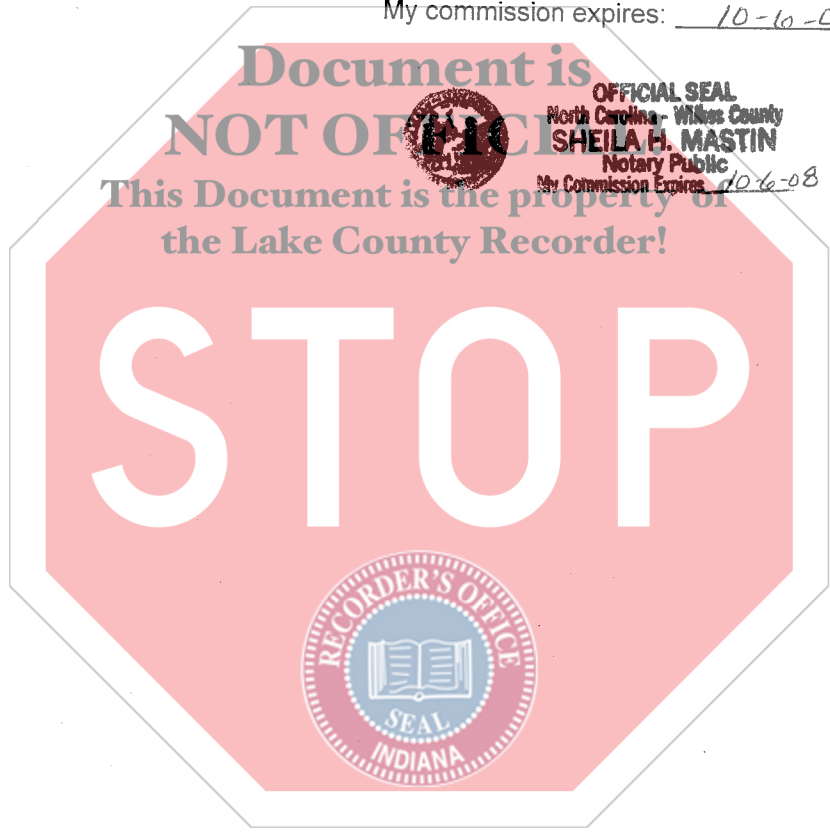
STATE OF NORTH CAROLINA

COUNTY OF WILKES

BEFORE ME, the undersigned authority, a Notary Public in and for the State of North Carolina on this day personally appeared David E. Shelton, known to me to be the Sr. Vice President of **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation, described in and which executed the foregoing instrument, and acknowledged to me the execution of the foregoing instrument on behalf of said corporation for the uses and purposes therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26<sup>th</sup> day of May, 2004.

Sheila H. Mastin  
Notary Public for the State of North Carolina  
My commission expires: 10-6-08



**Exhibit "A"**

The Additional Premises

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 35 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT A SURVEY DISK MARKING THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTH 00 DEGREES 28 MINUTES 44 SECONDS WEST, 934.14 FEET ALONG THE WEST LINE THEREOF TO AN INTERSECTION WITH THE WESTERLY EXTENSION OF THE NORTH LINE OF A PARCEL OF LAND DESCRIBED IN TRUSTEE'S DEED RECORDED AS DOCUMENT NO. 027296, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE LAST DESCRIBED COURSE, 884.67 FEET; THENCE SOUTH 89 DEGREES 30 MINUTES 06 SECONDS EAST, 701.65 FEET ALONG A LINE PARALLEL WITH THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 4; THENCE SOUTH 00 DEGREES 29 MINUTES 54 SECONDS WEST, 191.30 FEET TO A POINT ON THE WESTERLY EXTENSION OF A LINE OF AN AREA DEFINED AS WETLAND MITIGATION AND RESTORATION AREA IN A RESTRICTIVE COVENANT RECORDED AS DOCUMENT NO. 95039625 AND MODIFIED BY DEPARTMENT OF THE ARMY FILE NO. 92-145-072-OE; THENCE NORTH 89 DEGREES 31 MINUTES 16 SECONDS EAST, 506.37 FEET ALONG SAID LINE AND ITS WESTERLY AND EASTERLY EXTENSIONS TO A POINT ON THE WEST LINE OF LAND CONVEYED TO THE INDIANA HARBOR RAILROAD COMPANY BY DEED DATED FEBRUARY 25, 1905 AND RECORDED MARCH 3, 1905 IN BOOK 115, PAGES 127 AND 128; THENCE SOUTH 00 DEGREES 00 MINUTES 18 SECONDS WEST, 314.87 FEET ALONG SAID WEST LINE TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY 498.88 FEET ALONG A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 829.50 FEET AND A CHORD BEARING SOUTH 17 DEGREES 14 MINUTES 04 SECONDS WEST, 491.39 FEET TO A POINT ON THE NORTHERLY LINE OF A TRACT OF LAND LEASED TO LAKEHEAD PIPELINE COMPANY PER AGREEMENT RECORDED APRIL 10, 2001 AS DOCUMENT NO. 2001026155; THENCE SOUTH 70 DEGREES 03 MINUTES 35 SECONDS WEST, 584.60 FEET ALONG SAID NORTHERLY LINE TO A POINT ON A LINE 30 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF A PARCEL OF LAND DESCRIBED IN WARRANTY DEED RECORDED AS DOCUMENT NO. 804913; THENCE NORTH 00 DEGREES 28 MINUTES 44 SECONDS WEST, 296.30 FEET ALONG SAID PARALLEL LINE TO A POINT ON THE EASTERLY EXTENSION OF THE NORTH LINE OF AFORESAID PARCEL OF LAND DESCRIBED IN TRUSTEE DEED RECORDED AS DOCUMENT NO. 027296; THENCE SOUTH 89 DEGREES 31 MINUTES 16 SECONDS WEST, 501.29 FEET ALONG SAID NORTH LINE AND ITS EASTERLY AND WESTERLY EXTENSIONS THEREOF TO THE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PART OF THE LAND LYING WEST OF THE EAST LINE OF U.S. ROUTE 41 (INDIANAPOLIS BOULEVARD) SAID EAST LINE BEING ESTABLISHED BY WARRANTY DEED RECORDED MARCH 8, 1999 AS DOCUMENT NO. 99020612 AND ALSO EXCEPTING THEREFROM ALL THAT PART DESCRIBED IN WARRANTY DEED RECORDED SEPTEMBER 5, 2000 AS DOCUMENT NO. 2000-064326.



**Exhibit "B"**

The Option Property

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 9, WEST OF THE SECOND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT A SURVEY DISK MARKING THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTH 00 DEGREES 28 MINUTES 44 SECONDS WEST, 934.14 FEET ALONG THE WEST LINE THEREOF TO AN INTERSECTION WITH THE WESTERLY EXTENSION OF THE NORTH LINE OF A PARCEL OF LAND DESCRIBED IN TRUSTEE'S DEED RECORDED MARCH 15, 1989, AS DOCUMENT NO. 027296; THENCE NORTH 89 DEGREES 31 MINUTES 16 SECONDS EAST, 471.29 FEET ALONG THE NORTH LINE OF SAID PARCEL OF LAND AND ITS WESTERLY EXTENSION TO THE NORTHEAST CORNER THEREOF, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 31 MINUTES 16 SECONDS EAST 30.00 FEET ALONG THE EASTERLY EXTENSION OF THE LAST DESCRIBED COURSE; THENCE SOUTH 00 DEGREES 28 MINUTES 44 SECONDS EAST, 296.30 FEET ALONG A LINE 30.00 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF SAID PARCEL, TO A POINT ON THE NORTH LINE OF A PARCEL OF LAND DESCRIBED IN A CERTAIN LEASE AGREEMENT RECORDED APRIL 10, 2001 AS DOCUMENT NO. 2001 026155; THENCE NORTH 70 DEGREES 03 MINUTES 35 SECONDS EAST, 584.60 FEET ALONG SAID NORTH LINE TO A POINT ON WESTERLY LINE OF LAND CONVEYED TO THE INDIANA HARBOR RAILROAD COMPANY BY DEED DATED FEBRUARY 25, 1905 AND RECORDED MARCH 3, 1905, IN BOOK 115, PAGES 127 AND 128; THENCE SOUTHWESTERLY, 515.34 FEET, ALONG A NON-TANGENT CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 829.50 FEET AND A CHORD BEARING SOUTH 52 DEGREES 15 MINUTES 42 SECONDS WEST, 507.09 FEET TO A POINT OF TANGENCY, SAID POINT BEING ON THE NORTHERLY LINE OF CONRAIL RAILROAD COMPANY RIGHT-OF-WAY (FORMERLY MICHIGAN CENTRAL RAILROAD COMPANY); THENCE SOUTH 70 DEGREES 03 MINUTES 35 SECONDS WEST, 188.36 FEET ALONG SAID NORTHERLY LINE TO THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED IN WARRANTY DEED RECORDED MAY 29, 1985, AS DOCUMENT NO. 804913; THENCE NORTH 00 DEGREES 28 MINUTES 44 SECONDS WEST, 471.29 FEET ALONG THE EAST LINE OF SAID PARCEL, SAID LINE ALSO BEING THE EAST LINE OF AFORESAID PARCEL DESCRIBED IN DOCUMENT NO. 027296 TO THE POINT OF BEGINNING.

