

Recording Requested By and
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Lowe's Home Centers, LLC
1000 Lowe's Boulevard
 Mooresville, NC 28117
Attention: Legal Department-Real Estate (LGL)

FILED

Dec 06 2023 LM
PEGGY HOLINGA-KATONA
LAKE COUNTY AUDITOR

OUTPARCEL EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS

THESE OUTPARCEL EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS (this "ECCR") are made and entered into on December 4th 2023, (the "Effective Date") by and between LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company (formerly Lowe's Home Centers, Inc.) ("Lowe's"), as owner of that certain property shown as the Lowe's Parcel on the site plan attached as Exhibit A ("Site Plan") and more particularly described in the legal description attached hereto as Schedule 1 (the "Lowe's Parcel"), and Dahm No. 69, LLC, an Indiana limited liability company ("Outparcel Owner"), as owner of that certain property shown as Outparcel 1 on the Site Plan and more particularly described in the legal description attached hereto as Schedule 2 (the "Outparcel") (Lowe's and Outparcel Owner are referred to individually as a "Party" or "Owner" and collectively as the "Parties" or "Owners" and the Lowe's Parcel and the Outparcel are referred to individually as a "Parcel" and collectively, as the "Parcels").

WHEREAS, the Parties desire to declare and agree upon the following easements, covenants, conditions, and restrictions to run with the land and to be binding upon and inure to the benefit of the Lowe's Parcel and the Outparcel for the purpose of development and operation of the Lowe's Parcel and the Outparcel, and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt, and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DESIGN OF OUTPARCEL COMMON AREAS AND BUILDINGS.

For purposes of this ECCR, "Building" shall mean all permanently enclosed structures constructed on the Outparcel including any appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions, and "Common Areas" shall mean and consist of all land on the

Outparcel upon which no Building is constructed and shall include, without limitation, all parking areas, access roads, service drives, drive aisles, sidewalks, and landscaped areas but shall not include any drive-up or drive through areas.

Section 1.1 Outparcel Building Design Parameters.

(a) The Outparcel shall only be used for purposes of the kind typically found in shopping centers, including offices, restaurants and retail shops (provided, however, that the Outparcel may be used as a tunnel carwash provided such carwash shall have constructed and shall use sanitary sewer and water lines entirely separate from the Lowe's Parcel), and the Outparcel and all improvements shall be maintained in good condition and repair;

(b) There may be no more than one (1) building constructed on the Outparcel, the exterior of which shall not be constructed of metal, provided, however, that metal features and decorative components of the building shall be permitted;

(c) All rooftop equipment shall be screened from view in a manner reasonably satisfactory to Lowe's and no rooftop signs shall be allowed;

(d) The footprint of the any building(s) constructed on the Outparcel shall not exceed 6,144 square feet and the primary parapet height of the Outparcel shall not exceed or twenty-six (26) feet in height (inclusive of architectural features and building signage), as measured from the finished elevation of the parking area; and the Building constructed on the Outparcel shall be a one-story structure located within the area shown on the Site Plan as the "**Permissible Building Area.**" No Building on the Outparcel shall be constructed within sixty (60) feet of the exterior walls of the building on the Lowe's Parcel.

Section 1.2 Common Area Design Parameters.

(A) The Outparcel shall have access to the Lowe's Parcel through two (2) curb cuts to be constructed at the sole cost and expense of the Outparcel Owner in the location shown on the Site Plan; no other curb cuts shall be permitted without the prior written consent of the Owner of the Lowe's Parcel, which consent it may withhold in its sole and arbitrary discretion.

(B) The Outparcel shall contain at all times at least (i) five (5) parking spaces per one thousand (1,000) square feet of office or retail use, at least ten (10) parking spaces per one thousand (1,000) square feet of restaurant use, and at least fifteen (15) parking spaces per one thousand (1,000) square feet of restaurant use with alcohol sales, or (ii) the number of spaces required by local code or ordinance, whichever is greater. Notwithstanding the foregoing, so long as the Outparcel is used as a tunnel carwash, the Outparcel shall only be required to contain the number of spaces required by local code or ordinance.

(C) The Outparcel shall be self-supporting with respect to parking (e.g., shall self-park such that the parking requirements above are met with parking spaces physically located on the Outparcel).

(D) There shall be no parking garages and no charge for parking on the Outparcel.

(E) There shall be no drive-through lanes or drive-up windows on the Outparcel except as shown on the Site Plan and provided that such drive-through lane or drive-up window has space for stacking at least six (6) cars (of twenty feet each), and further provided that the Outparcel shall be required to comply with the "Stacking Requirements" outlined in Section 1.2(F) below.

(F) Stacking Requirements. In the event Lowe's, in its reasonable discretion, determines that traffic flow to and from the Outparcel, including but not limited to, drive-thru or other traffic stacking in areas outside of the Outparcel, materially and adversely impacts or interferes with the Lowe's Parcel or the access drives, common areas, or roadways serving the Lowe's Parcel on a regular basis, Lowe's may provide the Owner of the Outparcel with written notice of same (and which will include reasonable detail as is necessary to identify the times and locations of such interference). Upon such written notice, Lowe's and the Owner of the Outparcel will cooperate in the development of a mutually acceptable plan to promptly address the interference (the "Traffic Plan"). Such Traffic Plan may include (i) temporary traffic control measures, including but not limited to placing at the Owner of the Outparcels' sole cost and expense, a traffic control manager in the shopping center during peak hours and implementing other temporary traffic control measures as may be necessary (e.g., temporary signage and traffic cones), and (ii) a permanent Traffic Plan to enhance the traffic flow. The Owner of the Outparcel agrees to diligently proceed with preparation of the permanent Traffic Plan. Lowe's shall reasonably cooperate with the Owner of the Outparcel to review, modify, and implement the permanent Traffic Plan. So long as the parties are negotiating the permanent Traffic Plan in good faith, the Owner of the Outparcel agrees to maintain temporary traffic control measures set forth in (i) above, at its sole cost and expense. The reasonable costs associated with implementing the Traffic Plan shall be solely borne by the Owner of the Outparcel, even if associated improvements (such as speed bumps or signs) are placed on the Lowe's Parcel as part of the Traffic Plan.

Section 1.3 Sign Design Parameters.

(A) Subject to Outparcel Owner obtaining the approval of governmental authorities, Outparcel Owner may install a freestanding pylon or monument sign on the Outparcel (the "Grantee Sign") which may be erected or used solely and exclusively for the advertising of the business being conducted thereon by the owners, tenants or occupants of the Outparcel. Said Grantee Sign shall have no more than one sign panel per side and shall not be more than seventy-five percent (75%) of the height of the sign located on the Lowe's Parcel. No sign panel on the Grantee Sign shall be of a size or have dimensions which are greater than seventy-five percent (75%) of the size and dimensions of the Lowe's sign panel on Lowe's sign or reduce the visibility of any sign serving the Lowe's Parcel.

Section 1.4 Design Review.

(A) The design of any Building on the Outparcel, the design, and layout of the Common Areas on the Outparcel, and the design of the Outparcel Sign and all panels displayed on the Outparcel Sign shall be subject to the prior written approval of the Owner of the Lowe's Parcel.

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(B) At least thirty (30) days prior to construction of any new improvement, exterior alteration, addition, or reconstruction, the Owner of the Outparcel shall submit to the Owner of the Lowe's Parcel: (i) an overall site plan showing the proposed building improvements, parking and points of ingress and egress; (ii) signage plan (including the height and dimensions of all signs); (iii) utility plan (including dry utilities); (iv) grading and drainage plan (including 1' existing and proposed contours, drainage schedule and calculations); (v) erosion control plan; (vi) storm water drainage plans showing the contours and slopes of the Outparcel (including 1' existing and proposed contours, drainage schedule and calculations) with a certification from a licensed engineer that no adverse effect on and no interference with the Lowe's existing storm water system, including, but not limited to, plans for an oil/water separator system, if applicable; (vii) landscaping plan (including irrigation, if applicable); (viii) site lighting plan; (ix) demolition plan (including temporary traffic control), if applicable; and (x) all associated details, elevation drawings and architectural renderings (depicting the exterior elevations of all sides, materials, colors and dimensions), in electronic and 24" by 36" format plan (collectively, the "Plans") along with a construction schedule indicating the timing of the Outparcel Owner's development and construction, have been presented to and approved in writing by Lowe's prior to commencing clearing, grading, or construction activities of any kind on the Outparcel. Lowe's shall provide its written approval of the Plans or provide comments on the Plans to the party that submitted such Plans to Lowe's for approval, within thirty (30) days after receipt of the Plans. Lowe's approval shall not be unreasonably withheld, conditioned or delayed, but all amounts (e.g., due diligence, building-site design, permitting costs, etc.) spent by Outparcel Owner in advance of obtaining such approvals shall be at Outparcel Owner's sole risk. If Lowe's does not provide a written response to any submission of Plans following a second written notification that indicates in bold capitalized letters that a failure to respond will be deemed to constitute a consent and that is provided to Lowe's pursuant to Article V, below, allowing Lowe's an additional ten (10) days to review the same, then, provided the Plans are consistent with the terms of this ECCR, Lowe's shall be deemed to have approved the Plans in the form submitted. This approval will facilitate the compatibility of the design of such site work and other improvements that may be constructed or reconstructed by any owner, tenant, or occupant of the Outparcel and will include, but not be limited to, location of building pad, architectural compatibility, location of the building, entrances, landscaping, parking lot design and circulation, and underground improvements. Such approval by Lowe's will be without warranty or representation, and the responsibility for the successful design, development, and operation of the Outparcel will remain with the party submitting such Plans. Any change to the Plans, except for *de minimis* changes, shall be subject to the prior written consent of Lowe's, which consent may not be unreasonably withheld, conditioned or delayed by Lowe's.

(C) After the initial construction of buildings and other improvements, Outparcel Owner shall not make exterior modifications or alterations that change the footprint, parking, drive aisles, site plan, drainage facilities or retaining walls of any building or improvements or change the color or appearance of the exterior of any building without the consent of Lowe's, such consent not to be unreasonably withheld, conditioned or delayed. Outparcel Owner will maintain in good condition and repair any buildings and other improvements, including landscaping, installed on the Outparcel.

(D) In addition to complying with all applicable federal, state and local laws, Outparcel Owner's responsibility hereunder shall include the obtaining of all permits, filing of all

notices, timely preparing and maintaining all inspection reports and logs and supplying and posting at the job site, or otherwise, all plans and other documentation required by governmental authorities and any of Lowe's site development criteria pertaining to stormwater discharges or potential pollution associated with Outparcel Owner's construction activities. Outparcel Owner's current plans dated June 30, 2023 have been approved by Lowe's. Hereafter, any changes to the drainage plans and patterns must be submitted to Lowe's for approval in the same manner as set forth above.

(E) Within thirty (30) days after completion of construction by Outparcel Owner of a building on the Outparcel, Outparcel Owner agrees to provide Lowe's with as-built plans of all such construction. Such plans will be performed by a surveyor licensed in the jurisdiction in which the Outparcel is located and shall be in a CAD format.

(F) Prior to Outparcel Owner's initial construction on the Outparcel, Outparcel Owner shall notify Lowe's at least thirty (30) days in advance to schedule an on-site construction meeting that shall include representatives of Outparcel Owner, Outparcel Owner's general contractor, Outparcel Owner's engineer, Lowe's Project Manager and Lowe's store manager. No construction shall commence until after the on-site meeting has occurred, unless, however, Lowe's Project Manager and/or Lowe's store manager fail to meet with representatives of Outparcel Owner, Outparcel Owner's general contractor, and Outparcel Owner's engineer within the thirty (30) day period following Outparcel Owner's notice. Upon such failure, Outparcel Owner shall provide written notice of such failure to Lowe's that indicates in bold capitalized letters that a failure to respond will be deemed to constitute a consent. If Lowe's Project Manager and/or Lowe's store manager fail to meet with representatives of Outparcel Owner within ten (10) days of receipt of such notice, the requirement for an on-site construction meeting shall be deemed to be waived. For construction occurring after the initial construction, at least thirty (30) days prior to the commencement of such construction by Outparcel Owner on the Outparcel, Outparcel Owner shall first notify Lowe's that it will be commencing construction on the Outparcel. Thereafter and during Outparcel Owner's construction on the Outparcel, Outparcel Owner agrees to coordinate such construction activities with Lowe's.

ARTICLE II GRANT OF EASEMENTS.

The following grant of easements shall bind and benefit not only the Parties but their successors in interest to the Lowe's Parcel and the Outparcel. The easements granted herein are appurtenant, non-exclusive, irrevocable, and perpetual (unless expressly provided otherwise).

The Parties expressly disclaim any intention to create any reciprocal parking easements between the Lowe's Parcel and the Outparcel or to grant any easement or property interest to the public.

Section 2.1 Lowe's Easement for Utilities. The Owner of the Outparcel hereby grants to the Owner of the Lowe's Parcel (its employees, contractors, and utility providers) for the benefit of the Lowe's Parcel, a non-exclusive easement to install, repair, reconstruct, maintain, operate, relocate, replace, and use all Lowe's Utility Facilities located on the Outparcel as of the date of this ECCR. "**Lowe's Utility Facilities**" shall mean any lateral and/or main lines and

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appurtenances for electricity, gas, telephone, cable, water, stormwater and/or sanitary sewer service to the Lowe's Parcel which is owned by the owner of the Lowe's Parcel or by a utility provider serving the Lowe's Parcel. If the Owner of the Outparcel desires to relocate any of Lowe's Utility Facilities on or affecting the Outparcel, any such relocation shall be completed at no cost to the owner of the Lowe's Parcel, without interruption to Lowe's utility service or drainage and only upon receipt of Lowe's prior written consent.

Section 2.2 Intentionally Deleted

Section 2.3 Lowe's Easement for Surface Drainage. The Owner of the Outparcel hereby grants to the Owner of the Lowe's Parcel, for the benefit of the Lowe's Parcel, a non-exclusive easement for any surface drainage currently crossing onto the Outparcel from the Lowe's Parcel. The Owner of the Outparcel shall design its grading and drainage such that surface drainage from the Lowe's Parcel shall not be prevented from crossing the Outparcel, according to drainage plans submitted to the Owner of the Lowe's Parcel for its prior written approval, not to be unreasonably withheld.

Section 2.4 Outparcel Easement for Access. The Owner of the Lowe's Parcel grants to the Owner of the Outparcel, for the benefit of the Outparcel for use by such Owner and its Permittees, a non-exclusive easement for ingress and egress and the passage of vehicles in the access roads and drive aisles shown on the Site Plan attached as Exhibit A as "**Access Easement.**" The Access Easement granted pursuant to this Section 2.4 shall include the right for and the obligation of the Owner of the Outparcel to construct and install an access cut onto Oak Street substantially in the location depicted on the Site Plan (the "Oak Street Curb Cut"). The Access Easement granted herein shall not be impeded other than for temporary closures for repair and replacement. The Owner of the Lowe's Parcel reserves the right to relocate or modify the Access Easement at Lowe's expense provided any such modification or relocation does not materially restrict or prevent ingress and egress to and from the Outparcel. In connection with any relocation or modification of any portion of the Access Easement that necessitates a revision of the recorded plat that created the Outparcel, the Outparcel Owner shall cooperate in any required re-plating of the Outparcel to depict any such relocation or modification of the Access Easement, provided the terminus points of the Access Easement are unchanged. The Owner of the Outparcel hereby grants the Owner of the Lowe's Parcel a non-exclusive, perpetual easement upon, over and across the Common Areas on the Outparcel for: (a) ingress to and egress from the Lowe's Parcel, (b) the passage of vehicles and (c) the passage and accommodations of pedestrians. As used in this ECCR, "**Permittees**" shall mean the tenants and licensees of an Owner and any agents, employees, subtenants, customers, contractors, occupants, or invitees of such Owners provided, however, that any easement granted herein for use by Permittees is not for the direct benefit of such Permittees and conveys no easement rights or remedies to such Permittees.

Section 2.5 Intentionally deleted.

Section 2.6 Outparcel Easements for Storm Drainage. The Owner of the Lowe's Parcel hereby grants to the Owner of the Outparcel a non-exclusive easement to discharge stormwater into the storm drainage lines/detention/retention ponds (the "**Drainage Facilities**") shown on the Site Plan attached as Exhibit A as "Drainage Easement" provided that: (a) such surface drainage shall be with respect to rainwater and not any water or other byproduct that does not occur naturally

(b) the Owner of the Outparcel complies with all laws, statutes, and ordinances, including without limitation, with respect to prudent practices for stormwater management; and (c) no materials considered hazardous or polluting materials are discharged into such common drainage facilities. For clarification, any car wash, oil change facility or other uses that are required pursuant to Section 4.2 to use separate sanitary sewer, water and storm water drainage lines shall not have the benefit of the easement set forth in this Section 2.6, and shall use sanitary sewer and water lines entirely separate from those utilized by the Lowe's Parcel.

Section 2.7 Outparcel Temporary Construction Easements. The Owner of the Lowe's Parcel hereby grants to the Owner of the Outparcel a one-time temporary easement to use those portions of the Lowe's Parcel shown on the Site Plan attached as Exhibit A as "**Construction Access**" for construction equipment and personnel in connection with the initial construction of the improvements, the Oak Street Curb Cut and the access drive connecting the Oak Street Curb Cut to the eastern boundary line of the Outparcel over the common areas on the Lowe's Parcel (the "Oak Street Access Drive") provided: (a) no equipment, materials, debris or earth shall be stored on the Lowe's Parcel; (b) such work shall not impede the flow of pedestrian or vehicular traffic on the Lowe's Parcel; (c) no construction work shall take place on any weekend or holiday; (d) such work shall be undertaken only after giving 15 days prior written notice to Lowe's and (e) the Owner of the Outparcel shall coordinate such work with the store manager for the Lowe's Parcel.

Section 2.8 Relocation Costs Incurred. In the event Easements that are utilized by, or are for the benefit of, the Owner of the Lowe's Parcel or the Owner of the Outparcel are disturbed due to a taking of all or any portion of the Easements by eminent domain or similar taking, each of the Owners agrees to reasonably cooperate with the other to relocate the affected Easement. Each Owner shall be responsible for costs incurred to relocate the improvements, such as signs, utility lines or stormwater drainage lines, that exclusively benefit such Owner, to the relocated Easement area. Parties agree to reasonably cooperate to equitably allocate the cost of relocating improvements that are utilized by, or otherwise benefit, both Parties, to the relocated Easements area.

ARTICLE III OPERATION OF THE PARCELS.

Section 3.1 Sales. There shall be no display or sale of items in the Common Areas of the Outparcel except that seasonal sales may be conducted on the sidewalks immediately adjacent to the Building(s) on the Outparcel. Notwithstanding anything to the contrary in this ECCR (including, without limitation, the easements granted in Article II and the restriction on impediments to use of the Easement Access in Section 2.4 above), the Owner of the Lowe's Parcel may use any portion of the Lowe's Parcel, including parking lots and sidewalks, for the display and sale of goods and services.

Section 3.2 Signs. Other than the Outparcel Sign and the Lowe's Sign, there shall be no freestanding signs on the Outparcel other than directional signs that do not exceed 3'6" in height.

Section 3.3 Lighting. The Common Areas shall be adequately lit for at least the hours during which the business on the Lowe's Parcel is open for business and for one (1) hour after closing of the business on the Lowe's Parcel.

Section 3.4 Repair and Maintenance.

(A) The Owner of the Outparcel shall maintain the Buildings and Common Areas on the Outparcel 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, maintenance of landscape areas including replacement and replanting, mowing, removal of snow and ice from roads, drives, and sidewalks, and maintenance and repair of lighting standards and signs. In the event that the Owner of the Outparcel fails to maintain the Common Areas as provided herein, the Owner of the Lowe's Parcel may, but is not obligated, to undertake such maintenance in which event that Owner of the Outparcel shall reimburse the Owner of the Lowe's Parcel within ten (10) days of receipt of an invoice, failing which, the Owner of the Lowe's Parcel shall be entitled to lien the Outparcel in the manner provided statutorily for mechanics liens.

(B) The Owner of the Outparcel shall maintain, repair, replace and operate its Monument Sign (including its sign panel), including, without limitation, the electricity for such sign panel, at such Owner's sole cost and expense.

(C) The Owner of the Lowe's Parcel shall be responsible for maintaining, repairing, and replacing: (a) the Access Easement shown on the Site Plan; and (b) the Lowe's Sign. Beginning on the date that a certificate of occupancy (permanent or temporary) is issued for the completion of improvements related to a business located on the Outparcel (the "C/O Date"), the Owner of the Outparcel shall reimburse the Owner of the Lowe's Parcel, annually, a sum equal to One Dollar and 25/100 (\$1.25) for each square foot of Building floor area located on the Outparcel, such amount to be paid in advance on January 1 of each calendar year, without notice or request therefor, which sum shall increase on every fifth anniversary after the first January 1 following the Effective Date of this FCCR by ten percent (10%). For the first partial year, such amount is to be prorated for the period commencing on the C/O Date and ending on December 31st and shall be paid within fifteen (15) business days the end of the first partial year.

(D) In the event of any destruction or damage to any Building or improvement on the Outparcel, the Outparcel Owner shall either diligently commence and complete reconstruction of such Building or improvement or, within one hundred eighty (180) days after such destruction or damage, level such Building or improvement, remove the debris and keep the Outparcel neat, orderly, planted in grass and mowed/trimmed or otherwise treated for dust control until subsequently improved.

Section 3.5 Construction on the Outparcel. Prior to Construction of the Oak Street Curb Cut and the Oak Street Access Drive, during any construction (including repair, alteration, or reconstruction) on the Outparcel, all construction traffic shall be limited to the "Construction Access Easement" and the Access Easement shown on the site plan attached as Exhibit A and materials and equipment may be stored only within that area shown as "Staging Area" on the Site Plan. After the completion of the initial construction of the improvements on the Outparcel and

the construction of the Oak Street Curb Cut and the Oak Street Access Drive during any construction (including repair, alteration, or reconstruction) on the Outparcel any and all construction traffic shall be limited to the Oak Street Curb Cut and the Oak Street Access Drive and no construction traffic shall be allowed on the portion of the Access Easement connecting the right-of-way of U.S. Highway 41 to the southern boundary line of the Outparcel. At no time, shall the Outparcel Owner disrupt any utility services to the Lowe's Parcel. The Owner of the Outparcel shall, at its sole cost, cause the parties undertaking such work on the Outparcel: (a) to provide thirty (30) days advance written notice to the Owner of the Lowe's Parcel and coordinate with the on-site manager for the Lowe's Parcel; (b) to take the necessary measure to minimize disruption and inconvenience caused by such work and shall make adequate provision for the safety and convenience of the Owner of the Lowe's Parcel and its Permittees; (c) to control dust, noise and other effects of the work using methods customarily utilized in order to control the deleterious effects associated with construction projects in a developed area; (d) repair any and all damage caused by such work and restore the Common Areas to a condition equal or better than the condition existing prior to such work; (e) obtain all necessary permits and governmental approvals for such work (f) perform any such work in compliance with all legal requirements, and (g) indemnify and hold harmless the Owner of the Lowe's Parcel against any claims arising from such work including any mechanics lien claims. No work that involves the closure, partial closure or impairment of any access to the Lowe's Parcel shall be performed between the hours of 8:00 a.m. to 5:00 p.m., Monday to Friday or at any time during weekends or holidays. No work within the Common Areas of the Outparcel, on the exterior of the Building on the Outparcel or the Outparcel Utility Facilities located on the Lowe's Parcel or Drainage Facilities located on the Lowe's Parcel that could interfere with Lowe's use of the Lowe's Parcel shall be undertaken between MARCH 20th and JULY 15th of any year (the "Black Out Period").

Section 3.6 Outparcel Construction Insurance. Prior to commencing any construction described in Section 3.5 on the Outparcel, the Owner of the Outparcel shall obtain or cause its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage naming the Owner of the Lowe's Parcel an additional insured, and shall provide an insurance certificate evidencing such insurance coverage: (a) Worker's Compensation in accordance with statutory requirements and Employer's liability insurance with a minimum of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease, (b) Commercial General Liability Insurance with a minimum coverage of \$2,000,000 each occurrence for bodily injury, death and property damage; \$5,000,000 per project aggregate for products and completed operation (to be maintained for a three (3) year period following completion of the work), and \$5,000,000 per project general aggregate and shall include coverage for contractual liability for the indemnifications provided herein and be endorsed to include coverage for Explosion, Collapse and Underground (XCU) hazard, if applicable; and (c) Automobile liability insurance with a combined single limit of \$1,000,000 for bodily injury, death and property damage (the general contractor shall require each of its subcontractors to maintain automobile liability insurance covering any auto with minimum combined single limit of \$1,000,000 for bodily injury, death and property damage). The foregoing insurance shall be by companies rated by A.M. Best at not less than A-/VII.

Section 3.7 Owner's Insurance.

(A) Each Owner will at all times maintain or cause to be maintained with respect to its Parcel and all Buildings and Improvements thereon: (i) commercial property insurance insuring against risk of direct physical loss or damage, including the perils of flood and earthquake, for the full replacement cost of the Building(s) and 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 with minimum limits of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and FIVE MILLION DOLLARS (\$5,000,000) general aggregate (may include excess liability policies). Notwithstanding the foregoing, Lowe's and/or its affiliates shall have the right to self-insure all insurance coverages required pursuant to this ECCR. All insurance required pursuant to this Section shall be written on an occurrence form utilizing the most current ISO policy form (or equivalent). Each Owner agrees to furnish to any other Owner requesting in writing, evidence that the insurance required to be carried by such Owner is in full force and effect.

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

(C) Each Owner (the "Releaser") hereby releases the other Owners (the "Releasees"), to the extent of their agreed insurance coverage or any amounts covered under a program of self-insurance provided for herein, from any and all liability for any loss or damage caused by fire or any of the losses covered by the releasing party's property insurance or loss covered by the releasing party's commercial general liability insurance, even if such property or casualty loss shall be brought about by the fault or negligence of the other Owner. The Owners agree to include in their insurance a clause permitting such release. Failure by any Owner to include this release in their insurance policies shall relieve all other Owners from the obligation to grant the release as to such failing Owner. Except as provided herein, nothing contained in this agreement shall be deemed to release any party from liability for damages resulting from the fault or negligence of that party or its agents, contractors or employees.

(D) In addition, the Owner of the Outparcel hereby agrees to indemnify, defend (with counsel reasonably acceptable to the Owner of the Lowe's Parcel) and hold harmless the Owner of the Lowe's Parcel, and all affiliates and subsidiaries thereto, and all officers, directors, shareholders, employees, and agents thereof from any and all claims, losses, demands, damages, liabilities, expenses, actions, causes of action, claims, penalties, fines, costs or losses (including those of an environmental nature, and reasonable fees for attorneys, consultants and experts) resulting or arising from (i) any unpaid work by the Owner of the Outparcel, its agents, employees and contractors on or related to the Outparcel, and (ii) from the presence or suspected presence, release or suspected release, of any petroleum substance, per and poly-fluoroalkyl substances (including perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA)), radon, urea formaldehyde, asbestos, or other hazardous substance or hazardous waste materials regulated

under any applicable Federal, State or local laws in or on the Outparcel, migrating from the Outparcel, or transported from the Outparcel, that is or are related directly or indirectly to the activities of the Owner of the Outparcel, its agents, employees, and contractors after the Effective Date. In addition, Owner of the Outparcel will indemnify, defend and hold harmless the Owner of the Lowe's Parcel against any claims arising from the use of the Drainage Facilities by the Outparcel Owner, the exercise of the easement granted in Section 2.6 by the Outparcel Owner and any materials discharged from the Outparcel into the Drainage Facilities.

ARTICLE IV RESTRICTIONS AND EXCLUSIVE USE.

Section 4.1 Exclusive Use.

(A) The Owner of the Outparcel, along with its successors and assigns, shall not use or permit the occupancy or use of any space upon the Outparcel for or in support of the following purposes set forth below and shall not use or permit the occupancy or use of any space upon any adjoining real property that makes use of the Outparcel for access, parking or as part of a larger unified development for the following purposes:

- (1) A hardware store or center;
- (2) An appliance, home electronics, lighting store or center; or any store selling grills and/or barbecues;
- (3) A nursery and/or lawn and garden store or center (including any store selling typical nursery or lawn and garden store products in outdoor areas, such as the seasonal sale of Christmas trees);
- (4) A paint, wallpaper, tile, flooring, carpeting and/or home decor store or center;
- (5) A business selling or renting large construction equipment, earthmoving equipment, landscaping machinery and equipment, or material handling equipment (such as, but not limited to, excavators, skid steers, backhoes, trencher, forklifts, aerial lifts, dump trailers, telehandlers, and related supplies and accessories) or selling or renting small equipment and tools related to construction, home improvement, disaster relief or recovery, building maintenance, site work, or landscaping (including, without limitation, portable power products, floor care and pressure washing machines, climate control equipment, air compressors and nail guns, power tools, tile saws, concrete tools, paint and drywall tools and equipment, restoration and remediation equipment, drain cleaning and plumbing tools, demolition equipment, moving dollies, air compressors, augers, aerators, tillers and related supplies and accessories); and
- (6) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoy's, Menard's, stores operating under the Sears name (including, without limitation, Sears Hardware and Sears Home Appliance Showroom) or selling Sears branded goods (e.g. Craftsman, Kenmore), Great Indoors, Pacific Sales, hhgregg, Conn's, Sutherlands, Scotty's and/or Orchard Supply.

Section 4.2 Exclusive Rights Applicability. The restrictions or exclusive rights contained in Section 4.1(B)(1) to Section 4.1(B)(6) shall also apply to prohibit a larger business from having space in its store devoted to selling or renting the categories of merchandise commonly sold by the above-referenced types of businesses.

Section 4.3 Enforceability. All covenants, conditions, restrictions, and approval rights shall remain in effect for a period of **fifty (50) years** from the date first written above or the maximum period allowed by Law, whichever is shorter. During said period, in the event a retail and/or warehouse home improvement center, lumber yard, and/or building materials supply center is not operated on the Lowe's Parcel, or within five (5) miles of the Lowe's Parcel, for a period in excess of **three (3) consecutive years** (excluding temporary closings due to alterations, casualty, condemnation, or other unavoidable delays beyond the reasonable control of the Owner of the Lowe's Parcel), the restrictions or exclusive rights contained in Section 4.1(A) to Section 4.1(B)(6) above shall be of no further force and/or effect until such time as Lowe's, its successors, assigns or tenants shall re-open a store on any portion of the Lowe's 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 4.4 Use Restrictions.

(A) No portion of the Outparcel may be used for any of the following purposes without the written consent of Lowe's which may be withheld in Lowe's sole and absolute discretion:

- (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 less than thirty (30%) percent of the restaurant's gross revenues;
- (ii) A store selling liquor, or other store selling alcoholic beverages for off-premises consumption.
- (iii) An adult-type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult-type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts);
- (iv) A landfill, garbage dump or other such facility for the dumping, disposing, incineration, or reduction of garbage;
- (v) An assembling, manufacturing, industrial, distilling, refining, smelting, agricultural, drilling, mining, or quarry operation;
- (vi) A mortuary, crematorium, or funeral home;
- (vii) A bowling alley, billiard parlor, bingo parlor, arcade, game room, skating rink or other amusement center;
- (viii) A theater (motion picture or live performance);

- (ix) A gambling establishment or betting parlor;
- (x) A health club, gymnasium, or spa;
- (xi) A massage parlor;
- (xii) A tattoo parlor;
- (xiii) A service station or gas station, automotive repair shop or truck stop
- (xiv) A flea market, thrift store or pawn shop;
- (xv) A training or educational facility (including without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers); provided, however, that this prohibition shall not be applicable to on site employee training by any occupant incidental to the conduct of its business so long as a use not otherwise prohibited hereunder, nor shall it prohibit the offering of classes directly to its customers by an occupant that is incidental to the conduct of its business.
- (xvi) A car wash, except where the same shall have constructed and shall use sanitary sewer and water lines entirely separate from those utilized by Lowe's;
- (xvii) A medical clinic or office;
- (xviii) A veterinary hospital or animal raising or keeping facilities;
- (xix) A dry cleaning plant, central laundry or laundromat;
- (xx) An establishment for sale or storage (either temporary or permanent) of automobiles, trucks, motorcycles, mobile homes, boats, recreational motor vehicles or similar vehicles;
- (xxi) A telephone call center;
- (xxii) A child day care facility;
- (xxiii) A hotel or motel;
- (xxiv) A storage or mini-warehouse facility;
- (xxv) A mobile home or trailer court, labor camp, junkyard or stockyard;
- (xxvi) Governmental offices; or
- (xxvii) Carnival or amusement park; or
- (xxviii) Meeting hall, sporting event or other sports facility, auditorium, or any other like place of public assembly; or
- (xxvix) Any business used for, or in support of, the promotion, growing, storage, delivery, use, consumption, or selling of Cannabis Sativa plants, seeds, products, extracts, foods, or derivatives (such as, but not by way of limitation, CBD, marijuana, hemp, and/or hashish); any substance chemically similar to any of the foregoing, such as, but not by way of limitation, synthetic substances containing delta-9-tetrahydrocannabinol (e.g., Marinol or dronabinol); or any paraphernalia, merchandise, or materials related thereto, whether any of the foregoing are authorized pursuant to the law (such as, but not by way of limitation, by prescription or medical referral) or otherwise.

ARTICLE V MISCELLANEOUS.

Section 5.1 Notices. Any notice required or permitted to be given under this ECCR shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as certified mail, return receipt requested, postage prepaid or deposit with a nationally recognized overnight delivery service, and addressed to the Party being notified at the address given below

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[Schererville, IN Store #1601]

(or such other address which any party may designate for itself from time to time hereafter by written notice to the other Party):

To the Owner of the Lowe's Parcel: Lowe's Home Centers, LLC
1000 Lowe's Boulevard
 Mooresville, NC 28117
Attention: Property Management (PMT-62)

With a copy to: Lowe's Home Centers, LLC
1000 Lowe's Boulevard
 Mooresville, NC 28117
Attention: Legal Department-Real Estate (LGL)

To the Owner of the Outparcel: Dahm No. 69, LLC
11700 Exit 5 Parkway
 Fishers, IN 46037
Attention: Bill Dahm

In the event that any person or entity (the "**Acquiring Party**") shall acquire a fee or mortgage interest in any Parcel subject to this ECCR, or any portion thereof, the Acquiring Party shall execute and file in the land records of Lake County, State of Indiana, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this ECCR may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "**Notice Statement**"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, or deposit with a nationally recognized overnight delivery service, a copy of such Notice Statement to all other Owners of any Parcel subject to this ECCR, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Lake County, State of Indiana (the "**Existing Interest Holders**"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Section, it shall not be entitled to receive any notice required or permitted to be given under this ECCR, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. Until such time as the Notice Statement for such change of address is effective pursuant to the terms of this Section, the last address of said party shall be deemed the proper address of said party.

Section 5.2 **Prior Obligations.** This ECCR supplements the covenants and restrictions set forth in that certain Declaration of Restrictive Easements, Covenants and Restrictions Agreement recorded June 2, 2004 as Instrument No. 2004-45756 in the Lake County Indiana Records. To the extent that there is any conflict between the documents, the more restrictive provisions of each shall apply and as between the Parties, the provisions of this ECCR shall control.

Section 5.3 **Severability.** In the event any provision or portion of this ECCR is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same

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

Section 5.4 Governing Law. This ECCR is governed by the laws of the State in which the Lowe's Parcel and the Outparcel are located.

Section 5.5 Amendments and Modifications. This ECCR may not be amended or modified unless the Owners of the Outparcel and the Lowe's Parcel each execute a written agreement amending this ECCR which amendment specifically references the terms and conditions of this ECCR which are to be modified. Said amendment shall not be effective until recorded in the real property records of Lake County, Indiana.

Section 5.6 Breach. In the event of breach or threatened breach of this ECCR, only the record Owners of the Outparcel or the record owner of Lowe's Parcel, or Lowe's so long as it is an owner or lessee of any portion of the Lowe's Parcel, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In addition, Lowe's, its parent corporation or its corporate successor shall have the right to enforce the provisions of Section 4.4 for so long as the restrictions therein are effective and so long as such restrictions are in effect, Section 4.4 shall not be terminated or amended without the prior written approval of Lowe's, its parent corporation or corporate successor, which provision shall survive any earlier termination of this ECCR.

Section 5.7 Term and Perpetuity. Except as otherwise set forth herein, the agreements, conditions, covenants, approval rights 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, and assigns for a term of fifty (50) years from the date hereof, or the maximum period allowed by Law, whichever is shorter. Notwithstanding the foregoing, the easements contained herein binding and benefiting the Parcels shall be perpetual and shall run with the land. Upon termination of the agreements, conditions, covenants, approval rights and restrictions of this ECCR, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this ECCR, except as related to the easements cited and mentioned herein, shall terminate and have no further force or effect.

Section 5.8 No Obligation to Operate. The Owner of the Lowe's Parcel is not obligated to continuously operate a business on the Lowe's Parcel and, specifically, is not obligated to continuously operate or operate for any specific period of time a Lowe's building supply or home improvement retail warehouse or any store on the Lowe's Parcel. Nothing contained in this ECCR shall be construed, interpreted or otherwise read to require the Owner of the Lowe's Parcel to operate a business on the Lowe's Parcel or to prevent the Owner of the Lowe's Parcel from closing its business on the Lowe's Parcel.

Section 5.9 Attorneys' Fees. In the event of a breach hereof, the non-prevailing Owner shall pay the reasonable attorneys' fees (and the reasonable attorneys' fees on appeal) of the prevailing Owner.

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Section 5.10 Counterparts. This ECCR 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 5.11 Entire Agreement. This ECCR, together with any Exhibits referred to herein, constitute the entire agreement between the parties hereto. The Parties do not rely upon any statement, promise or representation no herein expressed.

Section 5.12 Limitation on Liability. Notwithstanding the foregoing, and subject to Section 3.7(B) and (C), any person acquiring fee or leasehold title to a Parcel, or any portion thereof, shall be bound by this Agreement only as to the Parcel or portion of the Parcel acquired or possessed by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold Owner or occupant of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section 5.12, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Parcels running with the land.

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SIGNATURES ON FOLLOWING PAGE(S)

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

LOWE'S:

LOWE'S HOME CENTERS, LLC,
a North Carolina limited liability company

Date: November 20, 2023

By: _____

Jill S. Miller
Vice President, Enterprise Strategy

Ⓢ NK KY TJS
JF RRR

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

Before me, Crystal E. Knoff, a Notary Public, this 20 day of November, 2023, personally appeared Jill S. Miller, Vice President, Enterprise Strategy of **LOWE'S HOME CENTERS, LLC**, and acknowledged the execution of the foregoing instrument.

My commission expires: 2-9-2028

Crystal E. Knoff
Notary Public



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OUTPARCEL OWNER:

DAHM NO. 69, LLC, an Indiana limited liability Company

By: Dahm Property, LLC, its sole member

Date: Nov 15, 2023

By: *William Dahm*
William Dahm, Manager

STATE OF INDIANA
COUNTY OF MARION

Before me, Anita Graves, a Notary Public, this 15 day of November, 2023, personally appeared William Dahm, Manager of **DAHM PROPERTY, LLC**, the sole member of **DAHM NO. 69, LLC**, an Indiana limited liability company, and acknowledged the execution of the foregoing instrument.

My commission expires: Sept 4, 2024

ANITA R. GRAVES
Notary Public

SEAL

Marion County, State of Indiana
My Commission Expires September 04, 2024

LICENSE NO. NP0688198

Anita R Graves
Notary Public

This instrument prepared by Robert W. Allen, Attorney No. _____, Moore & Van Allen, 100 North Tryon Street, Suite 4700, Charlotte, NC 28202-4003, NC State Bar #12841.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Robert W. Allen.

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[Schererville, IN Store #1601]

Exhibit B

[INTENTIONALLY DELETED]

Property of Lake County Recorder

Schedule 1

Legal Description of Lowe's Parcel

Lot 1 in Lowe's Subdivision, an addition to the Town of Schererville, Lake County, Indiana, as per plat thereof, recorded in Plat Book 90, Page 90 in the Office of the Recorder of Lake County, Indiana.

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[Schererville, IN Store #1601]

Schedule 2

Legal Description of Outparcel

Lot 2 in the Resubdivision of Lot 1 Lowe's Subdivision, an Addition to the Town of Schererville, Lake County, Indiana, as per plat thereof recorded in Plat Book 117, page 65, in the Office of the Recorder of Lake County, Indiana.

Property of Lake County Recorder