

DECLARATION OF RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND EASEMENTS (the "Declaration") is made as of this 24 day of March, 1994, by TRICOR INVESTMENT CORPORATION, a North Carolina corporation (the "Outparcel Owner").

RECITALS

WHEREAS, Outparcel Owner owns all of that certain real property shown on the site plan attached hereto as Exhibit "A" (the "Site Plan") comprised of a parcel containing approximately 15.152 acres (the "Lowe's Parcel") described on Exhibit "B" attached hereto and incorporated herein by this reference, and a parcel containing approximately 1.00 acres (the "Outparcel") described on Exhibit "C" attached hereto and incorporated herein by this reference (the Lowe's Parcel and the Outparcel are sometimes hereinafter referred to collectively as the "Parcels" and individually as a "Parcel");

WHEREAS, contemporaneously herewith, Outparcel Owner intends to convey the Lowe's Parcel to Asheboro Retail Associates Limited Partnership, and Asheboro Retail Associates Limited Partnership has leased the Lowe's Parcel to Lowe's Companies, Inc., a North Carolina corporation ("Lowe's") under the terms of a Lease, dated January 24, 1994 (the "Lease"); and

WHEREAS, the Outparcel Owner will retain fee simple title to the Outparcel; and

WHEREAS, Outparcel Owner desires to provide for the maintenance and operation of certain areas and improvements which benefit both Parcels, and in that regard desires to create certain rights, privileges, and easements and to impose certain restrictions and covenants upon the Parcels as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual rights and privileges granted herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Outparcel Owner does hereby declare as follows:

ARTICLE 1

DEFINITIONS AND DOCUMENTATIONS

Section 1.1 Definitions.

For purposes of this Declaration, the following definitions will apply:

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(a) The term "Owner" shall mean each and every person, firm, entity or corporation owning any portion of the Parcels.

(b) The term "User" shall mean an Owner, a tenant or subtenant of an Owner, or any employe, agent, business licensee, customer, or invitee of an Owner or of any such tenant or subtenant.

(c) 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.

(d) The grant of an easement by an Owner shall bind and burden the Parcel of such Owner, which shall, for the purpose of this Declaration, be deemed to be the servient tenement (provided that if only a portion of a Parcel is bound and burdened by the easement, only that portion shall be deemed to be the servient tenement).

(e) The grant of an easement to an Owner shall benefit the Parcel owned by such Owner, as an appurtenance thereto, which shall, for the purpose of this Declaration, be deemed to be the dominant tenement (provided that if only a portion of a Parcel is so benefitted, only that portion shall be deemed to be the dominant tenement).

(f) The phrase "Drive Aisles" shall mean the paved drive aisles located on the Lowe's Parcel shown on the Site Plan, including without limitation, all entrances into the Lowe's Parcel from Brower's Chapel Road and U.S. Highway 64.

(g) Unless provided otherwise, all easements granted herein are nonexclusive in common with all Users and irrevocable, and the Owners reserve and retain the right to convey similar easements to such other parties as the Owners may deem proper so long as such easements do not burden or otherwise affect any other Owner's Parcel or interfere with the easements granted hereunder.

All easements granted hereunder shall exist by virtue of this Declaration, without necessity of confirmation by any other document. However, upon the request of an Owner, the other Owner (or Owners) will sign and acknowledge a document memorializing the existence of any easement, provided the form and substance of the document is reasonably acceptable to said Owner.

ARTICLE 2

EASEMENTS

Section 2.1 Easements for Vehicular and Pedestrian Access.

(a) Outparcel Owner does hereby give, grant and convey, to itself and to all Owners of the Outparcel, for their and their Users' general use, convenience, and benefit, the right, privilege, and easement in common with all other Users, solely for pedestrian and vehicular ingress, egress, and regress, in and over the Drive Aisles located upon the Lowe's Parcel. The configuration of the Drive Aisles, the configuration of the parking lot on the Lowe's Parcel, and the traffic design or circulation pattern into, through, and out of the Lowe's Parcel, may be changed by the Owner of the Lowe's Parcel from the configuration shown on the Site Plan from time to time, provided, however, that: (i) there shall be no change from the Site Plan in ingress and egress to, from and between Brower's Chapel Road, the Lowe's Parcel, and the Outparcel, without the prior written consent of the Owner of the Outparcel, which consent may be granted or withheld by such Owner in its sole discretion; (ii) there shall be no change in the locations of the points of access from Highway 64 and Brower's Chapel Road into the Lowe's Parcel from the locations shown on the Site Plan without the prior written consent of the Owner of the Outparcel, which consent may be granted or withheld by such Owner in its sole discretion; and (iii) there shall be no change in the parking lot configuration or traffic design or circulation pattern on any portion of the Lowe's Parcel within twenty (20) feet of the boundaries of the Outparcel without the prior written consent of the Owner of the Outparcel, which consent may be granted or withheld by such Owner in its sole discretion. There shall always be at least one Drive Aisle connecting to a curb cut into the Outparcel along its southerly boundary, and one Drive Aisle connecting to a curb cut into the Outparcel along its easterly boundary, in the approximate locations shown on the Site Plan. Furthermore, the Owner of the Outparcel shall have the right to review and approve the finished pavement elevations on the Lowe's Parcel which lie within fifty (50) feet of the common boundaries between the Outparcel and the Lowe's Parcel prior to the commencement of construction on the Lowe's Parcel.

(b) The Owner of the Lowe's Parcel shall have the right and obligation to operate, maintain, clean, repair, and replace the Drive Aisles and shall keep the Drive Aisles and entrances in a state of good order and repair and in a safe, clean and sanitary condition, free and clear of rubbish, debris, snow, ice, or other hazards, and shall in all other respects maintain the Drive Aisles so they will provide ingress and egress to the Users of the Outparcel. The Outparcel Owner

shall pay to the Lowe's Parcel Owner, or its successors or assigns, annually in advance, the sum of \$200.00, increased annually by three (3.0%) percent, as a contribution toward the cost of such operation, maintenance, cleaning, repair and replacement of the Drive Aisles. Such contribution shall be payable on January 1 of the first full year following the commencement of any construction on the Outparcel and on or before each January 1 thereafter. Should Lowe's, or its successors and assigns, fail to operate, maintain, clean, repair, and replace the Drive Aisles in accordance with this provision, after thirty (30) days' written notice (except in the case of emergency) the Outparcel Owner shall have the right to undertake such operation, maintenance, cleaning, repair, and replacement and be reimbursed in accordance with the provisions of Section 4.3 below.

(c) The easements granted in this Section 2.1 are granted solely to the Owners and Users, and are not intended and shall not be construed as creating any rights in or for the benefit of the general public. Any Owner shall have the right to eject from its Parcel any persons not authorized to use the same. In addition, the Owners shall have the right, one day in each calendar year, but more often if legally desirable, to erect barriers or chains for the purpose of blocking off access to any Parcel to avoid the possibility of dedicating same for public use, it being mutually agreed, nevertheless, that if possible, such barriers or chains shall be erected for such purpose at a time, or upon a day, when the businesses operating on the Parcel are not open for business. Provided, however, that before closing off any part of such areas, the Owner so closing shall give notice to the other non-closing Owner of its intention to do so and must coordinate its closing with the activities of the other non-closing Owner so that no unreasonable interference with the operation of the non-closing Owner's business occurs.

(d) No fence, structure, or other permanent obstruction of any kind shall be placed, kept, permitted, or maintained on any portion of the Drive Aisles or curb cuts which are the subject of the easements granted in this Article 2.

Section 2.2 Easements for Utilities.

Outparcel Owner, for itself, and its successors and assigns, does hereby grant, for the benefit of the Owners, from time to time, of the Outparcel and the Lowe's Parcel, nonexclusive rights and easements in both Parcels to install, connect, tap in, maintain, relocate, repair and replace, at locations reasonably acceptable to the affected party or parties, and at times reasonably acceptable to such parties so as not to adversely affect the commercial operations of such affected parties, any reasonably required utility facilities,

including, but not limited to, water, gas, electricity, telephone, storm and sanitary sewers, septic systems, water retention and drainage facilities, to provide proper service for the improvements built or to be built on the Outparcel and the Lowe's Parcel, respectively. Provided, however, the utility easements granted hereunder shall not interfere with any structural improvements on the affected Parcels or the operation of the facilities thereon, with the exception of any temporary construction required to provide for said easement and the temporary closing of any reasonable amount of parking area therefor. The party requiring such utility facilities shall be responsible for the cost and expense of the construction, repair and restoration of any damage to the Parcel of the affected party or any improvements thereon, including third party liability claims, resulting from or arising out of the exercise of the rights granted under this paragraph.

ARTICLE 3

RESTRICTIVE COVENANTS

Section 3.1 Construction.

Any building, sign, structure, or other improvement (hereinafter a "Building") constructed on the Outparcel shall be constructed in accordance with all applicable governmental codes and shall be at least twenty (20) feet from the property lines of the Outparcel, except that storage buildings and trash enclosures may be located less than twenty (20) feet from such property lines. All construction equipment and building materials used in connection with the construction of any Building (and any renovations or alterations thereto) shall access the Outparcel solely from Brower's Chapel Road and the Drive Aisle adjacent thereto. The Owner of the Outparcel shall be responsible for the cost of repairing all damage to said Drive Aisle caused by such Owner's construction, renovation, or alteration of a Building on the Outparcel. During the construction period, the Owner of the Outparcel shall keep such Drive Aisle free and clear of debris and shall clean such Drive Aisle on a daily basis.

Any Building constructed on the Lowe's Parcel shall be constructed in accordance with all applicable governmental codes and shall not unreasonably affect the visibility of any Building located on the Outparcel.

Section 3.2 Use and Operation.

Lowe's shall have the exclusive right, during the term of the Lease to operate within the Parcels a building material supplies or home center store. During the term of the Lease,

the Owner of the Outparcel shall not use or occupy the Outparcel, or directly or indirectly allow the use or occupancy of any space in the Outparcel, for any of the following purposes without the prior written consent of Lowe's, or any successor, assign, or subtenant of Lowe's under the Lease:

- (a) Hardware store of 5,000 square feet or more;
- (b) Appliance and/or home electronics store over 3,000 square feet;
- (c) Any lawn or garden center over 3,000 square feet;
- (d) Any paint and/or decor center over 5,000 square feet;
- (e) Any home center operation;
- (f) Any lumber yard operation;
- (g) Any warehouse home center operation; and
- (h) Any building supply operation.

Section 3.3 Development Restrictions.

(a) No portion of any space on the Parcels may be used for any of the following purposes without the written consent of all the Owners, and of Lowe's for so long as the Lease is in effect, which consents shall not be unreasonably withheld:

- (i) A tavern, bar, nightclub, discotheque or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant and the sale of alcoholic beverages therein incidental to the serving of food.
- (ii) A bowling alley or game room.
- (iii) A theater (motion picture or legitimate).
- (iv) A health club or spa.
- (v) An adult-type bookstore or other establishment selling or exhibiting pornographic materials.
- (vi) A massage parlor.
- (vii) A skating rink.
- (viii) A mortuary.
- (ix) A mobile home or trailer court, labor camp, junkyard or stockyard.
- (x) A land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage.

(b) In addition, the Outparcel will be developed under the following guidelines:

- (i) Any building constructed on the Outparcel shall not exceed twenty-four (24) feet in height (exclusive of any screening of rooftop equipment);
- (ii) Any building constructed on the Outparcel shall not exceed 8,000 square feet;

(iii) Any rooftop equipment installed on any Outparcel shall be reasonably screened from view (such screening shall not be included in the above height restriction);

(iv) No rooftop signs shall be erected on any building constructed on the Outparcel, unless such signs are an integral part of a professional building design, as, for example, is the case for some Burger King and McDonald's restaurants;

(v) A freestanding identification sign may be erected on the Outparcel. Such freestanding identification sign must be located so as not to unreasonably block the visibility of the Lowe's building or pylon sign. There also may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height.

(vi) The Outparcel shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.

(vii) Any Owner of the Outparcel shall repair any damage caused to any of the utility facilities serving the Lowe's Parcel caused by its construction on or use of the Outparcel.

(viii) In the event a Building on the Outparcel shall be damaged or destroyed by any casualty, the Owner of the Outparcel shall, within a reasonable time after such damage or destruction: (a) commence to repair and/or reconstruct the Building; or (b) commence to level the building, remove the debris from the Outparcel and keep the Outparcel neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

(c) In addition, the Lowe's Parcel will be developed under the following guidelines:

(i) Any Owner of the Lowe's Parcel shall repair any damage caused to any of the utility facilities serving the Outparcel caused by its construction on or use of the Lowe's Parcel.

(ii) In the event a Building on the Lowe's Parcel shall be damaged or destroyed by any casualty, the Owner of the Lowe's Parcel shall, within a reasonable time after such damage or destruction: (a) commence to repair and/or reconstruct the Building; or (b) commence to level the Building, remove the debris from the Lowe's Parcel, and keep the Lowe's Parcel neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

Section 3.4. Maintenance.

The Owners shall maintain the landscaping on or about the Parcels by keeping all grass, trees, shrubs and other

plantings property and neatly trimmed and removing all dead or diseased vegetation. In the event an Owner fails to so maintain the landscaping, the other Owner shall, after delivering notice of same to the defaulting Owner, have the option to provide said maintenance. In such event, the defaulting Owner shall pay the reasonable cost of such maintenance assumed by the non-defaulting Owner. All such costs shall also include a five percent (5%) administrative charge.

Section 3.5 Term.

The rights granted and restrictions imposed under this Article 3 shall inure and be binding upon the parties hereto for a period of fifty (50) years after the execution of this Declaration; provided, however, that the easements created under Article 2 above shall be perpetual. Anything to the contrary notwithstanding, the provisions and guidelines contained in Sections 3.2, 3.3(b) and 3.3(c) shall remain in force and effect only for so long as Lowe's, or its successors, assigns, or subtenants under the Lease, operate home improvement center or any of the other uses or operations described in Section 3.2 above on the Lowe's Parcel. In the event Lowe's or its successors, assigns or subtenants under the Lease, ceases to operate a home improvement center or other use or operation as described in Section 3.2 above, for a period of twelve (12) consecutive months, unrelated to reconstruction or remodeling necessitated by a casualty, then the restrictions and guidelines contained in Sections 3.2, 3.3(b) and 3.3(c) shall automatically terminate and be of no further force or effect.

ARTICLE 4

RIGHT TO CURE, EMERGENCY CONDITION, RIGHT TO REIMBURSEMENT

Section 4.1 Right to Cure.

In the event any Owner defaults in the performance of its cleaning, maintenance, repair, or replacement obligations set forth herein, and if such default shall continue for a period of thirty (30) days after written notice specifying said default and reasonable detail shall have been given to said defaulting Owner by the other Owner, then the non-defaulting Owner shall thereafter have the right to cure or cause to be cured said default; provided, however, that in case of a default which cannot reasonably be cured within such thirty (30) days, the non-defaulting Owner shall have no cure rights, so long as the defaulting Owner has commenced the correction of said default within said thirty (30) day period and diligently pursues the correction to completion. Provided, further, that any mortgagee of an Owner shall also have the

right to cure any such default for a period of thirty (30) days after written notice is given to such mortgagee, provided that the non-defaulting Owner has been given written notice of such mortgagee and has been given an address for such mortgagee.

Section 4.2 Emergency Condition.

In the case of an emergency condition posing an imminent danger of injury to persons or property, where the condition is not remedied in a timely and adequate manner, the Owner threatened by such condition, without complying with the notification requirements of Section 4.1, may proceed with such reasonable cure as is necessary to reduce the hazard or risk to a standard which would be acceptable under this Declaration.

Section 4.3 Right to Reimbursement.

All costs and expenses incurred by the applicable Owner who cures a cleaning, maintenance, repair, or replacement default of another Owner as provided in Section 4.1 above, or who remedies an emergency condition as provided in Section 4.2 above, shall be reimbursed by the defaulting Owner to the Owner so curing or remedying. Said cost and expense shall be reimbursed within fifteen (15) days after receipt of an invoice for such costs and expenses, together with reasonable backup information therefor.

ARTICLE 5

MISCELLANEOUS

Section 5.1 Notices.

Any notice, demand, consent, refusal, approval, statement, or other communication by and between Owners which may be given, served, made, or obtained under this Declaration shall be served in person or mailed by United States registered or certified mail, postage prepaid, to any Owner, and shall be deemed to have been given when actually received (or if receipt is refused, when physically tendered for receipt). Notices shall be addressed to the Owner of any Parcel at the addresses set forth in any conveyance document of record evidencing the conveyance of said Parcel to an Owner. Any notice to Lowe's shall be addressed and sent to P.O. Box 1111, North Wilkesboro, NC 28658. An Owner may, however, at any time change its address for the above purposes by giving written notice stating the change and setting forth the new address. Any Owner may also request that notice be given to its mortgagee, by giving the other Owners notice of such mortgagee and an address to which notice is to be sent.

Section 5.2 Amendment.

This Declaration may be amended or otherwise modified only by writing, signed and acknowledged by all of the Owners, or their successors and assigns.

Section 5.3 Exhibits.

Each reference herein to an exhibit refers to the applicable exhibit that is attached to this Declaration, which exhibit may be amended by the parties from time to time in accordance with Section 5.2. All such exhibits constitute a part of this Declaration and by this Section 5.3 are expressly made a part hereof. The following is a list of said exhibits:

Exhibit "A"	-	Site Plan
Exhibit "B"	-	Description of the Lowe's Parcel
Exhibit "C"	-	Description of the Outparcel

Section 5.4 Captions.

The captions of this Declaration are intended only as a matter of convenience and for reference. They do not define, limit, or describe the scope of intent of this Declaration, and they shall not affect the interpretation hereof.

Section 5.5 Waiver of Default.

The consent or approval by a party to or of any act or request by the other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. The rights and remedies given to a party by this Declaration shall be deemed to be cumulative, and no one such right and remedy shall be exclusive of any of the others, or any other right or remedy at law or in equity which a party might otherwise have by virtue of a default under this Declaration. The exercise of a right or remedy by a party shall not impair such party's right to exercise any other right or remedy.

Section 5.6 No Partnership, Joint Venture, or Principal Agent Relationship.

Nothing in this Declaration nor any acts of the parties shall be deemed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties, and no provisions of this Declaration are intended to create or constitute any person or third party beneficiary hereof.

Section 5.7 Successors.

This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the parties.

Section 5.8 Severability.

If any provision of this Declaration shall to any extent be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

Section 5.9 Governing Law.

This Declaration shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

Section 5.10 Written Consent Required.

Whenever a party is required to consent or approve of any matter with respect to which its consent or approval is required by this Declaration, such consent or approval shall be given in writing and shall (except as otherwise provided in this Declaration) not be unreasonably withheld, conditioned, or delayed.

Section 5.11 Covenants Run With the Land.

It is intended that the covenants, easements, agreements, promises, and duties of each party as set forth in this Declaration shall be construed as covenants and not as conditions, and that to the fullest extent legally possible, all such covenants shall run with the land or constitute equitable servitudes as between the Parcel of the covenantor, as the servient tenement, and the Parcel of the covenantee, as the dominant tenement.

Section 5.12 Counterparts.

This Declaration may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signature of all parties shall constitute an original of this Declaration.

Section 5.13 Limitations on Liability.

The obligations of this Declaration shall run with the land, and this Declaration shall be binding upon and inure to the benefit of the Owners and their respective successors, assigns and grantees, except that the Outparcel Owner and each successive Owner of any of the Parcels or any portion thereof shall be liable only for the obligations accruing during the period of its ownership. The obligations of any Owner shall be binding upon the assets of Owner insofar as such assets are comprised of such Owner's interest in the Parcel or portion thereof owned by such Owner and the Building and other improvements thereon, but not upon other assets of such Owner. No partner, trustee, stockholder, officer, director, employee or beneficiary of any Owner shall be personally or corporately liable for the obligations and liabilities of an Owner under this Declaration, and any party seeking to enforce the terms of this Declaration shall look solely to such Owners interest in the Parcel and Building and other improvements thereon to satisfy any judgment against such Owner for such Owner's default hereunder, and no assets of the partners, trustees, stockholders, officers, directors, employees or beneficiaries of an Owner shall be subject to levy, execution or other enforcement procedure for the satisfaction of remedies hereunder. However, nothing in this Declaration shall prevent any Owner from exercising any remedies available to it to enforce the obligations of any other Owner or other party under this Declaration, including the filing of appropriate legal action against an Owner and any other liable parties, the intent of the foregoing provisions being only to limit the assets of an Owner and any other liable party that shall be available to satisfy any judgment obtained against an Owner or any other liable party.

5.14 Estoppel Certificates.

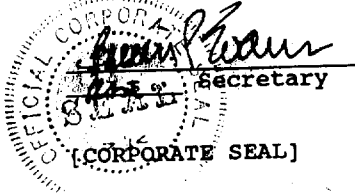
Any Owner, upon the written request of any other Owner, shall give the requesting Owner an estoppel certificate stating: (a) that this Declaration is in full force and effect, and has not been modified, or, if modified, identifying the modification or modifications; (b) that it is not aware of any default by any other Owner hereunder or, if it is aware of any such default, identifying any such default of which it is aware. Such certificate may be relied upon by the requesting Owner, or any purchaser or mortgagee of such Owner.

IN WITNESS WHEREOF, each party has caused its duly authorized officers to sign and seal this Declaration as of the date and year first above written.

ATTEST:

TRICOR INVESTMENT CORPORATION

By: [Signature] President



STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, MADELEINE C. HEFFERNAN a Notary Public for said County and State do hereby certify that BRIAN P. EVANS personally came before me this day and acknowledged that he is Asst. Secretary of TRICOR INVESTMENT CORPORATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by BRIAN P. EVANS as its Asst. Secretary.

[Signature]
Notary Public

My Commission Expires:

Sept. 27, 1998

[NOTARIAL SEAL]



NORTH CAROLINA — Randolph County

The foregoing certificate(s) of madeleine C. Heffernan, N.P.

is (are) certified to be correct. This instrument was presented for registration and recorded in this office at Book 1387, Page 1864, This 25 day of March, 19 94 at 3:30 o'clock P. M.

By [Signature] Ann Shaw, Register of Deeds Deputy Register of Deeds

EXHIBIT B

BEING located in Asheboro Township, Randolph County, North Carolina, and being all of Tract "C" of Asheboro Retail Center as shown on map thereof recorded in Map Book 39 at page 23 of the Randolph County Registry.

BK 1387 PG 1879

EXHIBIT C

BEING located in Asheboro Township, Randolph County, North Carolina, and being all of Tract "A" of Asheboro Retail Center as shown on map thereof recorded in Map Book 39 at page 23 of the Randolph County Registry.

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