

Prepared by: W. Allen Ames, Esq.
McGuireWoods LLP
One James Center
Richmond, Virginia 23219

DECLARATION OF CONDOMINIUM

OF

HIGHWAY 280 DISTRIBUTION FACILITY, A CONDOMINIUM

THIS DECLARATION, dated as of December 23, 2003, by LOWE'S HOME CENTERS, INC., a North Carolina corporation who, with its successors as "declarant", is hereinafter referred to as "Declarant" provides:

RECITALS:

Declarant is the leasehold owner of certain real estate situated in the City of Birmingham, Shelby County, Alabama, as more particularly described in Exhibit A-1 hereto and desires to create thereon a condominium regime by submitting the leasehold interest in the real estate described in Exhibit A-1 to the provisions of Chapter 8A of Title 35 of the Code of Alabama of 1975, as amended, Sections 35-8A-101 et seq. (the "Condominium Act"), excepting Article 4 thereof. Each reference in the "Condominium Instruments" (as hereinafter defined) to a particular section of the Condominium Act shall be deemed to be a reference to that section as in effect on the date of recordation of the instrument, except where the context clearly indicates a contrary intent.

Declarant has deemed it desirable to establish a means whereby the "Unit Owners" (as hereinafter defined), acting together, may manage, maintain and improve the Condominium and to that end has formed an Alabama nonprofit corporation under the name Highway 280 Distribution Facility Association, hereafter called the "Unit Owners Association".

DECLARATION:

NOW THEREFORE, pursuant to the Condominium Act, Declarant hereby declares that the leasehold interest in the real estate described in Exhibit A-1 hereto is and shall be held, transferred, sold, conveyed, subleased and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I
DEFINITIONS**

Section 1 "Articles of Incorporation" means the Articles of Incorporation of the Unit Owners Association, as the same may from time to time be amended.

Section 2 "Board of Directors" shall mean the Board of Directors of the Unit Owners Association.

Section 3 "Bylaws" shall mean the Bylaws of the Unit Owners Association, as the same may be amended from time to time.

Section 4 "Condominium" means the leasehold interest in the real estate and any incidents thereto or interests therein from time to time submitted to the Condominium Act pursuant to the Declaration.

Section 5 "Common Elements" shall have the meaning set forth in Section 35-8A-103 of the Condominium Act.

Section 6 "Common Expenses" shall have the meaning set forth in Section 35-8A-103 of the Condominium Act. Except as otherwise expressly provided herein, "Common Expenses" shall include, without limitation, any sums hereafter payable from time to time by the tenant under the Ground Lease and the costs of the tenant's performance of its obligations hereafter arising under the Ground Lease.

Section 7 "Condominium Instruments" shall mean this Declaration together with all Exhibits hereto, as any of the same may be amended or supplemented from time to time.

Section 8 "Declaration" shall mean this instrument, as the same may be amended from time to time.

Section 9 "Development Right" shall have the meaning set forth in Section 35-8A-103 of the Condominium Act.

Section 10 "Ground Lease" shall mean the Ground Lease dated August 9, 2002 between Developer's Diversified of Alabama, Inc., an Alabama corporation, and Declarant, a memorandum of which was recorded on August 9, 2002 under instrument number 20020809000378380 in the Office of the Probate Judge of Shelby County, Alabama as such lease may from time to time be amended.

Section 11 "Limited Common Elements" shall have the meaning set forth in Section 35-8A-103 of the Condominium Act.

Section 12 "Mortgagee" shall mean the holder of a note secured by a deed of trust or mortgage encumbering a Unit.

Section 13 "Percentage Interest" shall mean the respective allocated interest appurtenant to each Unit and representing that Unit's interest in Common Elements, voting rights and liability for Common Expenses. As of the date of this instrument, the Percentage Interest appurtenant to each Unit is set forth in Exhibit B hereto.

Section 14 "Person" shall have the meaning set forth in Section 35-8A-103 of the Condominium Act.

Section 15 "Rules and Regulations" shall mean the rules and regulations from time to time adopted by the Board of Directors pursuant to the Bylaws.

Section 16 "Special Declarant Right" shall have the meaning set forth in Section 35-8A-103 of the Condominium Act.

Section 17 "Unit" shall have the meaning set forth in Section 35-8A-103 of the Condominium Act. The boundaries of each Unit are more particularly described in Section 2 of Article II hereof.

Section 18 "Unit Owner" shall mean the owner of a Unit (including Declarant as to any Unit owned by Declarant), but excluding those holding title merely as security for the payment or performance of an obligation.

ARTICLE II CREATION OF THE CONDOMINIUM

Section 1 Declarant does hereby submit the leasehold interest in the real estate situated in the City of Birmingham, Shelby County, Alabama, as more particularly described in Exhibit A-1, to the provisions of the Condominium Act with the purpose and intent to create a condominium regime with respect thereto. The name of the Condominium shall be "Highway 280 Distribution Facility, A Condominium."

Section 2 The boundaries of each Unit are as follows:

(a) Unit 1 (or the "Retail Unit") is a single-level, ground level Unit. The lower (horizontal) boundary of Unit 1 is the horizontal plane of the upper surface of the concrete floor slab of the Unit. The upper (horizontal) boundary of Unit 1 is a plane parallel to and ten (10) feet above the lower (horizontal) boundary of Unit 1. The vertical (perimetric) boundaries of Unit 1 shall be (i) the vertical planes of the perimeter walls as measured from inside face of masonry wall to inside face of masonry wall in the area shown as the "Lowe's Building" on the Plat (as hereinafter defined) (exclusive of the area shown as the "Rear Storage Area" on the Plat which is a part of Unit 2), together with (ii) the vertical planes of the chain link fence enclosing the area shown as the "Garden Center" on the Plat.

(b) Unit 2 (or the "Warehouse Unit") is a dual-level Unit partially adjacent to and on the same level as Unit 1 and partially above Unit 1.

(1) The lower (horizontal) boundary of the portion of Unit 2 above Unit 1 is the upper (horizontal) boundary of Unit 1. The upper (horizontal) boundary of the portion of Unit 2 above Unit 1 is the plane of the lower surfaces of the joist girders which, together with the open web joists, support the metal roof deck, as such plane is extended to the vertical (perimetric) boundaries. The vertical (perimetric) boundaries of the portion of Unit 2 above Unit 1 shall be: (i) the vertical planes of the perimeter walls as measured from inside face of masonry wall to inside face of masonry wall in the area shown as the "Lowe's Building" on the Plat, together with (ii) the vertical planes of the chain link fence enclosing the area shown as the "Garden Center" on the Plat.

(2) The lower (horizontal) boundary of the portion of Unit 2 adjacent to Unit 1 is the horizontal plane of the upper surface of the concrete floor slab of the Unit. The upper (horizontal) boundary of the portion of Unit 2 adjacent to Unit 1 is the plane of the lower surfaces of the joist girders which, together with the open web joists, support the metal roof deck, as such plane is extended to the vertical (perimetric) boundaries. The vertical (perimetric) boundaries of the portion of Unit 2 adjacent to Unit 1 shall be: (i) the vertical planes of the perimeter walls as measured from inside face of masonry wall to inside face of masonry wall in the area shown as the "Rear Storage Area" on the Plat, together with (ii) the vertical planes of the chain link fence enclosing the area shown as the "Rear Outside Storage Area" on the Plat, together with (iii) the vertical planes of the block walls as measured from inside face of masonry wall to inside face of masonry wall in the area shown as the "Loading Area" on the Plat.

(c) Doors, loading docks, restrooms, lighting, electrical and plumbing systems, sprinkler system and heating, air-conditioning and air-handling equipment (wherever located) shall be deemed to be Common Elements.

(d) To the extent not inconsistent with the Condominium Act, the existing physical boundaries of a Unit or Common Elements (including the physical boundaries of a Unit or Common Elements reconstructed in substantial accordance with the original plat and plans thereof) shall prevail over any boundaries expressed in the Condominium Instruments or deed to a Unit, regardless of settling or lateral movement of a building or minor variance between boundaries shown in the Condominium Instruments.

(e) The maximum number of Units to be created by Declarant is two (2) Units.

Section 3 Limited Common Elements appurtenant to the Retail Unit include (i) the rights set forth in subsections 8(d) and 8(e) of the Ground Lease and (ii) all building signage.

Section 4 Each Unit is allocated an undivided interest in the Common Elements in accordance with that Unit's respective Percentage Interest (which Percentage Interest is expressed as a percentage or fraction in Exhibit B hereto).

Section 5 Attached hereto as Exhibit A-2 is a plat of survey (the "Plat") in accordance with Section 35-8A-209 of the Condominium Act and certified in accordance with such Section and in accordance with Subsection 35-8A-201(c).

ARTICLE III **EASEMENTS AND RESERVED RIGHTS**

Section 1 Each Unit shall have an easement for subjacent and lateral support vis a vis the other Units and Common Elements. The Unit Owners Association shall have a right of access through any Unit in order to gain access to the Common Elements (including Limited Common Elements).

Section 2 The Unit Owner of the Warehouse Unit, its agents and invitees, shall have the right of access to the Warehouse Unit through the Retail Unit.

Section 3 The Unit Owner of the Retail Unit shall have the right to erect on the building and on the other Common Elements such identification and advertising signs as it may determine. The Unit Owner of the Retail Unit shall have the right to erect within the Warehouse Unit such signs, lighting and other equipment as shall be desirable to operate the Retail Unit so long as the same do not materially interfere with the operation of the Warehouse Unit.

Section 4 Nothing contained in any of the Condominium Instruments shall be deemed to impose upon Declarant any obligation of any nature to build, construct or provide any improvements except to the extent expressly required herein or in the Condominium Act.

Section 5 Any Development Right or Special Declarant Right must be exercised within twenty (20) years after the date of this Declaration. Any Development Right may be exercised with respect to different portions of the real estate at different times, and no assurances are made as to the boundaries of those portions of the real estate or the order in which those portions may be subjected to the exercise of each Development Right. If a Development Right is exercised as to any portion of the real estate, it may but need not be exercised in all or in any other portion of the remainder of that real estate.

ARTICLE IV RELOCATION OF UNIT BOUNDARIES

Boundaries of adjoining Units (including without limitation adjoining Units on different levels) may be relocated in accordance with Section 35-8A-212 of the Condominium Act; provided however, that the prior written consent of any Mortgagee(s) of the Units involved shall be required to permit such relocation.

ARTICLE V RESTRICTIONS

Section 1 Each Unit and the Common Elements shall be occupied and used as follows:

(a) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Condominium without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Condominium or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed in the Common Elements.

(b) No immoral or unlawful use shall be made of the Condominium or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction and relating to any portion of the Condominium shall be complied with, by and at the sole expense of the Unit Owner or the Unit Owners Association, whichever shall have the obligation to maintain or repair such portion of the Condominium.

(c) Except in those areas of the parking lot designated as a "Parking Sales Area" on the Plat, vehicular parking upon the Common Elements may be regulated by the Board of Directors.

Nothing shall be altered or constructed in or removed from the Common Elements except with the prior written consent of the Board of Directors.

(d) No Unit shall be used for "residential purposes" (as defined in Section 35-8A-103 of the Condominium Act). Each "Purchaser" (as defined in Section 35-8A-103 of the Condominium Act), by purchase of a Unit or by entering into a contract to purchase a Unit, agrees that Article 4 of the Condominium Act is hereby waived.

(e) The Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use of the Units.

Section 2 Each Unit and the Common Elements shall be occupied and used in compliance with such Rules and Regulations as may be promulgated and amended from time to time by the Board of Directors.

ARTICLE VI TERMINATION

Termination of the Condominium shall be in accordance with Section 35-8A-218 of the Condominium Act; provided however, that termination shall not occur without such consent of Mortgagees as is required under the Bylaws.

ARTICLE VII UNIT OWNERS ASSOCIATION

Section 1 Attached hereto as Exhibits C and D, respectively, are the Articles of Incorporation and Bylaws. The Articles of Incorporation have or will be filed with the Judge of the Probate Court of Shelby County, Alabama. Any amendments to the Articles of Incorporation will likewise be filed with the Judge of the Probate Court of Shelby County, Alabama but not necessarily recorded in the land records where this Declaration is recorded.

Section 2 All Unit Owners shall be members of the Unit Owners Association during and only during the period of their ownership of a Unit and shall have the voting rights set forth in the Articles of Incorporation. All Unit Owners shall abide by and comply with the Articles of Incorporation and Bylaws of the Unit Owners Association and such Rules and Regulations as are from time to time adopted by the Board of Directors.

Section 3 The establishment, collection and liability for Common Expenses shall be as set forth herein and in the Bylaws.

ARTICLE VIII GROUND LEASE

Section 1 Unless extended, the original term of the Ground Lease expires on 11:59 p.m. (local time) August 8, 2022. Unless terminated by the tenant under the Ground Lease, the term is automatically extended beyond the original term for six (6) additional successive terms of five (5) years each.

Section 2 A legal description of the real estate subject to the Ground Lease is found in Exhibit A-1 hereto.

Section 3 Unit Owners do not have the right to redeem the reversion following expiration of the term of the Ground Lease.

Section 4 Upon termination of the Ground Lease, Unit Owners may remove all trade fixtures and other property placed on the "Demised Premises" (as defined in the Ground Lease) subject to the pertinent provisions of Section 5 of the Ground Lease, a copy of which provisions is attached hereto as Exhibit E.

Section 5 Except as herein otherwise provided, the Unit Owners Association shall perform the obligations of the tenant under the Ground Lease and exercise all rights of the tenant under the Ground Lease, including rights of termination, audit, self help cure, purchase under any right of first offer, consent or approval and enforcement. The Unit Owner of the Retail Unit may also enforce the restrictions set forth in Section 19 of the Ground Lease.

Section 6 No Unit Owner or its tenant(s) shall breach or violate the provisions of the Ground Lease.

ARTICLE IX MISCELLANEOUS

Section 1 Except as otherwise provided herein or in the Condominium Act, this Declaration and the Articles of Incorporation and Bylaws may be amended only in accordance with Section 35-8A-217 of the Condominium Act; provided however, that amendments of this Declaration, the Bylaws or the Articles of Incorporation other than those terminating the Condominium (which is governed by Section 35-8A-218 of the Condominium Act) and other than those requiring a higher percentage vote of Unit Owners and except as otherwise permitted by this Declaration or the Condominium Act shall require the agreement of Unit Owners of Units to which two-thirds of the votes in the Unit Owners Association appertain. There shall be no amendment of this Declaration affecting Declarant's rights (as "Declarant" and not as a Unit Owner generally) under this Declaration without Declarant's prior written consent.

Section 2 Invalidation of any one of these covenants or restrictions shall in no way affect any other provisions hereof, which other provisions shall remain in full force and effect.

Section 3 The provisions hereof shall be binding upon and inure to the benefit of Declarant and the Unit Owners and the Unit Owners Association and their respective heirs, legal representatives, successors and assigns, and, in the event of the failure of any Unit Owner to comply with the provisions of the Condominium Instruments, the same shall give rise to a cause of action in the Unit Owners Association or any aggrieved Unit Owner for the recovery of damages or for injunctive relief, or both.

Section 4 All pronouns shall be construed to be of such number and gender as the context may require. All headings are used for convenience of reference only and shall not be construed so as to affect the construction of this instrument.

Section 5 This Declaration is subject to the terms of that certain Addendum to Declaration of Condominium entered into by Declarant, dated as of even date herewith and attached hereto (the "Addendum"). The Addendum can not be changed without the express written consent of the Overlandlord described therein.

Section 6 The Exhibits hereto initially consist of the following:

Exhibit A-1 : Description of the Land Comprising the Condominium

Exhibit A-2 : Plat

Exhibit B : Percentage Interests

Exhibit C : Articles of Incorporation

Exhibit D : Bylaws

Exhibit E : A portion of Section 5 of the Ground Lease.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

WITNESS:

LOWE'S HOME CENTERS, INC.

ATB [Signature]
William E Hoffner

By David E Shelton
Title:

David E. Shelton
Senior Vice President

*Pub
Dona
KOB
ABS
EH*

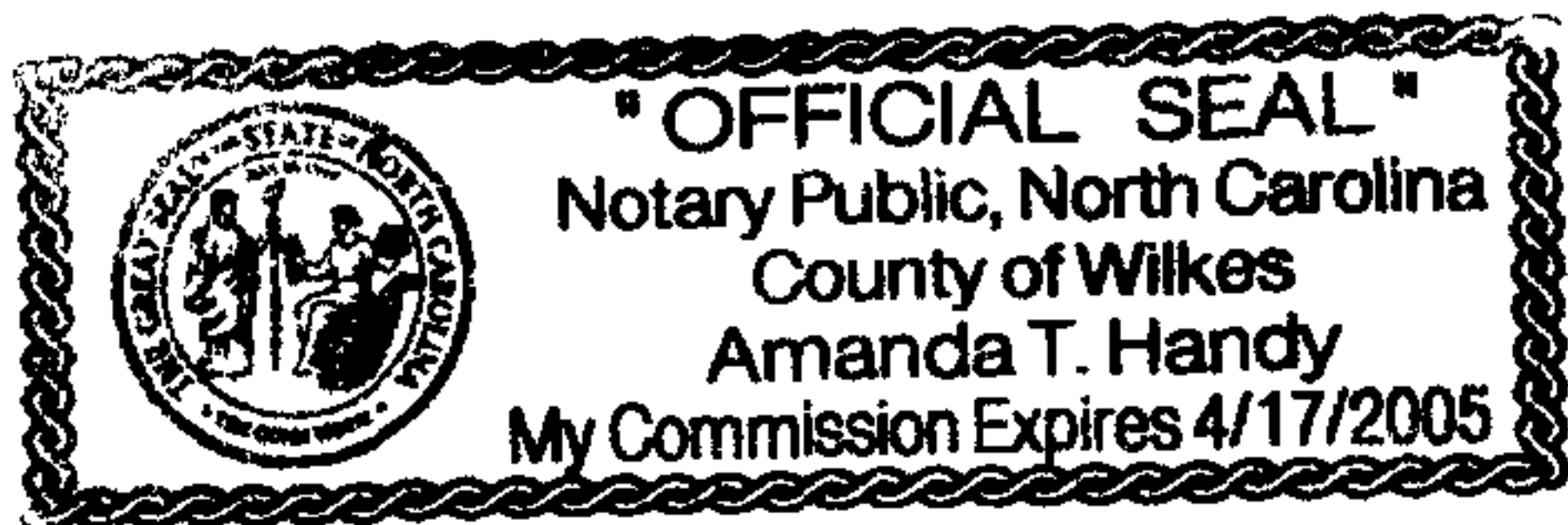
The State of North Carolina
Wilkes COUNTY

I, Amanda T. Handy, a Notary Public in and for said County in said State hereby certify that David E. Shelton, whose name as Sr. Vice President of LOWE'S HOME CENTERS, INC., a North Carolina corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand this 19th day of December, A.D. 2003.

My commission expires: 4-17-2005.

[Notarial Seal]

Amanda T. Handy
Notary Public



Subject to the terms of the Addendum, the undersigned, as successor in title to Developer's Diversified of Alabama, Inc., joins herein pursuant to the requirements of Section 35-8A-206 of the Condominium Act.

WITNESS:

GS II BROOK HIGHLAND LLC,
a Delaware limited liability company,

By: Developers Diversified of Alabama, Inc.
Its Managing Member

Sherril Martz

Kim Henry
Notary Public

By [Signature]
Title: DANIEL B. HURWITZ
EXECUTIVE VICE PRESIDENT

The State of Ohio

Cuyahoga COUNTY

I, Kim Henry, a Notary Public in and for said County in said State hereby certify that Daniel B. Hurwitz, whose name as Executive Vice President of Developers Diversified of Alabama, Inc. ("DD"), the managing member of GS II BROOK HIGHLAND LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer with full authority, executed the same voluntarily for and as the act of said company. Given under my hand this 22 day of December, A.D. 2003.

My commission expires: _____.

[Notarial Seal]

Kim Henry
Notary Public

KIM HENRY
Notary Public, State of Ohio
My Commission Expires 9/11/2007

EXHIBIT A - 1

Description of the Land Comprising the Condominium

Parcel I:

Lot 2-A, according to the Map of Lowe's Addition to Brook Highland Plaza as recorded in Map Book 30, page 11, in the office of the Judge of Probate Office of Shelby County, Alabama.

Said parcel being more particularly described as follows:

Parts of Lot 1 and Lot 2, Brook Highland Plaza Resurvey, Map Book 18, Page 99 as recorded in the Probate Office of Shelby County, Alabama and particularly described as follows:

Begin at the Southeast corner of said Lot 2 and run in a northwesterly direction along the east boundary line of said Lot and the west right of way line of Shelby County Highway 495 for a distance of 621.02 feet; thence turn an interior angle of 90 degrees 06 minutes 26 seconds to the right and run in a southwesterly direction for a distance 471.63 feet; thence turn an interior angle of 166 degrees 31 minutes 24 seconds to the right and run in a southwesterly direction for a distance of 28.54 feet; thence turn an interior angle of 193 degrees 28 minutes 36 seconds to the right and run in a southwesterly direction for a distance of 210.00 feet; thence turn an interior angle of 90 degrees 00 minutes 00 seconds to the right and run in a southeasterly direction for a distance of 46.00 feet; thence turn an interior angle of 270 degrees 00 minutes 00 seconds to the right and run in a southwesterly direction for a distance of 184.32 feet; thence turn an interior angle of 90 degrees 00 minutes 00 seconds to the right and run in a southeasterly direction for a distance of 340.80 feet; thence turn an interior angle of 270 degrees 00 minutes 00 seconds to the right and run in a southwesterly direction for a distance of 51.74 feet to a point on a curve to the right with a radius of 314.45 feet, a central angle of 20 degrees 15 minutes 22 seconds and a chord length of 110.59 feet; thence turn an interior angle to chord of said curve 74 degrees 14 minutes 15 seconds to the right and run along the arc of said curve in a southeasterly direction for a distance of 111.17 feet; thence continue in a southeasterly direction along the tangent extended from said curve for a distance of 204.03 feet; thence turn an interior angle of 51 degrees 17 minutes 18 seconds to the right and run in a northeasterly direction for a distance of 31.72 feet; thence turn an interior angle of 224 degrees 36 minutes 27 seconds to the right and run in a northeasterly direction for a distance of 566.01 feet; thence turn an interior angle of 89 degrees 59 minutes 13 seconds to the right and run in a northwesterly direction for a distance of 63.64 feet; thence turn an interior angle of 270 degrees 00 minutes 00 seconds to the right and run in a northeasterly direction for a distance of 307.56 feet to the Point of Beginning. Said lot containing 585,903 square feet or 13.450 acres more or less.

Parcel II:

Together with the non exclusive easements and rights of ingress and egress, parking, utility and other purposes pursuant to that certain Declaration of Easements and Restrictive Covenants as

recorded in Real Volume 307, page 985 and that certain Easement Agreement recorded under Instrument 1994-37773 re-executed under Instrument Number 1995-27233.

ALSO:

Together with beneficial rights and interests as created by the Covenants, Conditions and Restrictions by and between Developers Diversified of Alabama, Inc. and Lowe's Home Centers, Inc., recorded under Instrument Number 20020809000378390.

EXHIBIT A - 2

PLAT

BUILDING PLANNING AREA

COMMON AREA UNIT 1 & 2

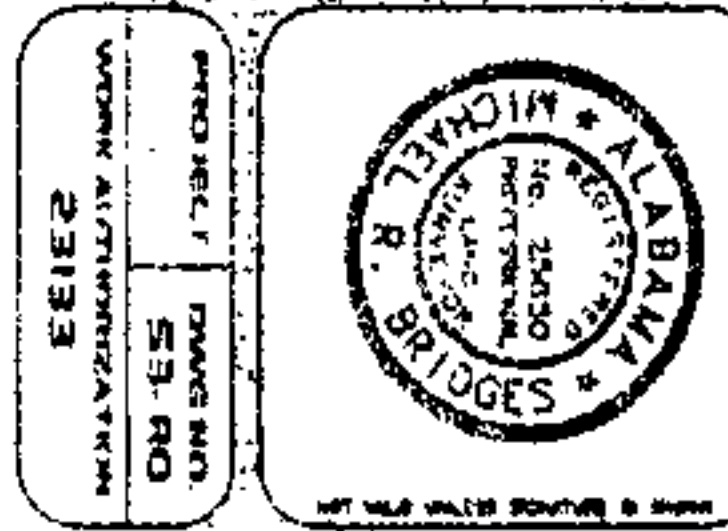
MAIN STORAGE AREA UNIT 1

MAIN STORAGE AREA UNIT 2

COMMON AREA UNIT 1

CARPORT UNIT 1 & 2

1. FLOOR DIMENSIONS ARE BASED UPON ACTUAL FIELD MEASUREMENTS TAKEN AT OUTSIDE FACE OF BUILDING EXTERIOR WALLS. DIMENSIONS SHOWN ARE PER PLANS BY ARCHITECT.
2. SQUARE FOOTAGE CALCULATIONS ARE BASED UPON EXTERIOR WALL THICKNESS.
3. THE PLAN CONTAINS ALL INFORMATION REQUIRED BY SECTION 55-8A-209 OF THE ALABAMA CONDOMINIUM ACT.



GSA

GONZALEZ - STRENGTH & ASSOCIATES, INC.
 ENGINEERING, LAND PLANNING, & SURVEYING
 SUITE 407 - 117 GEMINI CIRCLE
 BIRMINGHAM, ALABAMA 35209
 PHONE: (205) 942-2486
 FAX: (205) 942-3033
 Gonzalez-Strength.com

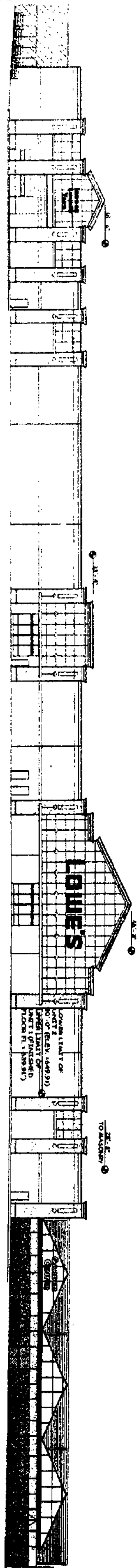
© Copyright 2008

SPECIFIC PURPOSE SURVEY

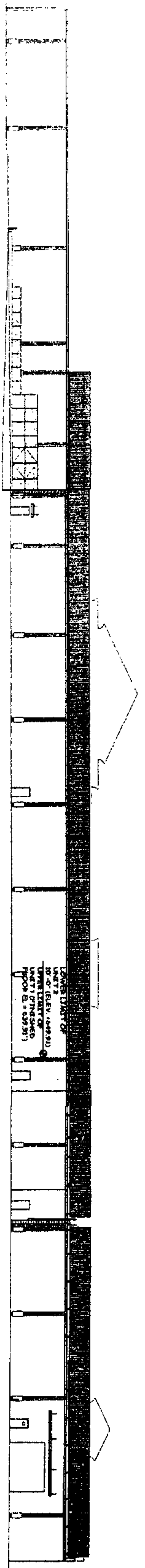
HIGHWAY 280 DISTRIBUTION FACILITY
 A CONDOMINIUM

| | | | |
|------------------------|----------------------|-------------------|-------------------|
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| FIELD BOOK (CON. PAGE) | | MAP BOOK | INDEX |

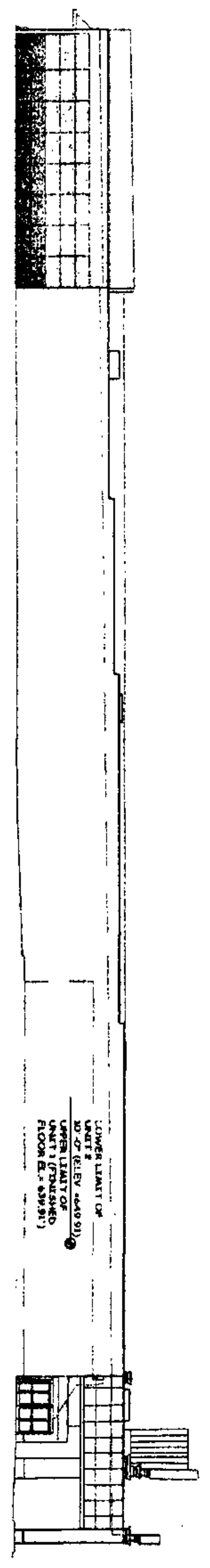
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| LEGAL DESCRIPTION | | |
| SOUTHEAST QUARTER | | |
| SECTION 31 | | TOWNSHIP 8 SOUTH RANGE 1 WEST |



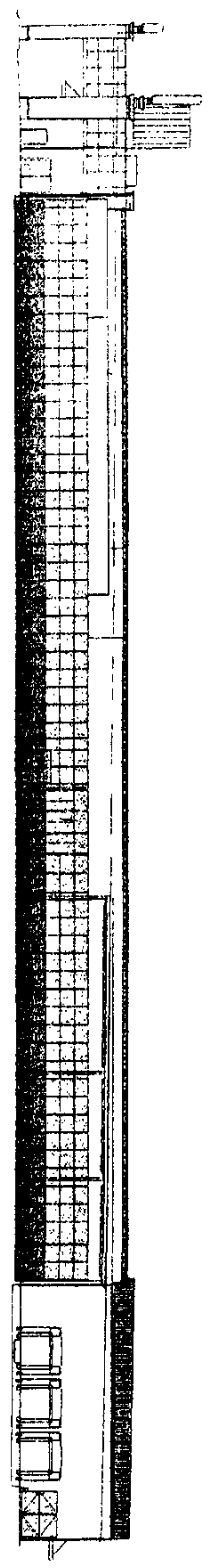
ELEVATION FRONT VIEW
NO SCALE



ELEVATION REAR VIEW
NO SCALE



ELEVATION LEFT SIDE VIEW
NO SCALE



ELEVATION RIGHT SIDE VIEW
NO SCALE

NOTES
 1. THIS DRAWING SET SHOWS THE EXISTING BUILDING AND THE PROPOSED ADDITION. THE PROPOSED ADDITION IS SHOWN WITH DASHED LINES AND DIMENSIONS. THE EXISTING BUILDING IS SHOWN WITH SOLID LINES AND DIMENSIONS.
 2. THE PROPOSED ADDITION IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF DENVER BUILDING CODE AND ALL APPLICABLE REGULATIONS.
 3. THE PROPOSED ADDITION IS TO BE CONSTRUCTED ON THE EXISTING FOUNDATION.
 4. THE PROPOSED ADDITION IS TO BE CONSTRUCTED WITH A CONCRETE FRAME AND BRICK EXTERIOR WALLS.
 5. THE PROPOSED ADDITION IS TO BE CONSTRUCTED WITH A FLAT ROOF.
 6. THE PROPOSED ADDITION IS TO BE CONSTRUCTED WITH A GROUND LEVEL FINISH.

| NO. | REVISIONS | DATE |
|-----|-------------------|--------|
| 1 | DESCRIPTION | 6/8/01 |
| 2 | LAWYER'S COMMENTS | 7/8/01 |
| 3 | LAWYER'S COMMENTS | |
| 4 | | |
| 5 | | |

LEGAL DESCRIPTION

SPECIFIC PURPOSE SURVEY
HIGHWAY 280 DISTRIBUTION FACILITY
 A CONDOMINIUM

GSA
GONZALEZ - STRENGTH & ASSOCIATES, INC.
 ENGINEERING, LAND PLANNING, & SURVEYING
 SUITE 407 - 117 GEMINI CIRCLE



DATE: 7/8/01
 DRAWN BY: [Name]
 CHECKED BY: [Name]

LEGEND

- 1. 1/4" = 100' (AS SHOWN)
- 2. 1/8" = 50' (AS SHOWN)
- 3. 1/16" = 25' (AS SHOWN)
- 4. 1/32" = 12.5' (AS SHOWN)
- 5. 1/64" = 6.25' (AS SHOWN)
- 6. 1/128" = 3.125' (AS SHOWN)
- 7. 1/256" = 1.5625' (AS SHOWN)
- 8. 1/512" = 0.78125' (AS SHOWN)
- 9. 1/1024" = 0.390625' (AS SHOWN)
- 10. 1/2048" = 0.1953125' (AS SHOWN)
- 11. 1/4096" = 0.09765625' (AS SHOWN)
- 12. 1/8192" = 0.048828125' (AS SHOWN)
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EXHIBIT B
PERCENTAGE INTERESTS

| <u>Unit</u> <u>(Unit No.)</u> | <u>Percentage Interest</u> <u>(Fraction or Percentage)</u> |
|----------------------------------|---|
| 1 | 60% |
| 2 | 40% |
| TOTAL | <hr style="width: 100%; border: 0.5px solid black;"/> 1 |

ARTICLES OF INCORPORATION
OF
HIGHWAY 280 DISTRIBUTION FACILITY ASSOCIATION

**ARTICLE I
NAME**

The name of the corporation is Highway 280 Distribution Facility Association, hereafter called the "Corporation" or the "Unit Owners Association".

**ARTICLE II
PURPOSES**

The Unit Owners Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the management, maintenance and care of the leasehold real estate known as "Highway 280 Distribution Facility, A Condominium" located in the City of Birmingham, Shelby County, Alabama, as more particularly described in the Declaration of Condominium of Highway 280 Distribution Facility, A Condominium, recorded in the Office of the Probate Judge of Shelby County, Alabama, as the same may from time to time be amended (the "Declaration"), and to provide a means whereby the Unit Owners, acting together, may provide for the management, maintenance and care of the Condominium and the provision of services to Unit Owners and to occupants of Units, and for this purpose to: (a) enforce the Declaration and Bylaws and exercise all of the powers and privileges and perform all of the duties and obligations of the Unit Owners Association; (b) enforce the rights and pay and perform the obligations of the tenant under the Ground Lease; (c) fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the Declaration and Bylaws; (d) pay all Common Expenses of the Condominium; (e) subject to the Declaration and the Bylaws, acquire, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Unit Owners Association; and (f) have and exercise any and all powers, rights and privileges which a corporation organized under the Alabama Nonprofit Corporation Act and the Condominium Act may by law now or hereafter have or exercise.

**ARTICLE III
DEFINITIONS**

Except as expressly defined herein, all capitalized terms used herein shall have the respective meanings set forth in the Declaration or in the Bylaws of this Corporation.

**ARTICLE IV
MEMBERSHIP**

Every Unit Owner shall be a member of this Unit Owners Association. Upon conveyance of title to any Unit to a purchasing Unit Owner, the purchasing Unit Owner shall

become a member of this Unit Owners Association and the membership of the selling Unit Owner shall terminate.

ARTICLE V VOTING RIGHTS

Each Unit Owner shall have a vote proportionate to the Percentage Interest appertaining to his Unit.

ARTICLE VI REGISTERED OFFICE AND AGENT

The address of the initial registered office of the Unit Owners Association, which is located in Montgomery, Alabama, is 2000 Interstate Park Drive, Ste. 204. The initial registered agent of the Unit Owners Association is The Corporation Company whose business office is identical with the registered office.

ARTICLE VII BOARD OF DIRECTORS

A. The number of directors constituting the initial Board of Directors is three, and their names and addresses are:

Neal Hamilton
Lowe's Companies, Inc.
Highway 268 East
East Dock
N. Wilkesboro, NC 28659

Taft Tucker
Lowe's Companies, Inc.
Highway 268 East
East Dock
N. Wilkesboro, NC 28659

Robin Nickles
Lowe's Companies, Inc.
Highway 268 East
East Dock
N. Wilkesboro, NC 28659

B. At the first annual meeting of the Unit Owners Association, directors shall be elected by the members of the Unit Owners Association. The members of the Board of Directors so elected shall hold office until the next annual meeting of the Unit Owners Association. Thereafter, elected directors shall hold office until the next annual meeting succeeding their election. Members of the Board of Directors shall be elected by oral ballot of the Unit Owners

unless any Unit Owner requests a written ballot, in which event members of the Board of Directors shall be elected by written ballot.

C. At any meeting called for the purpose of removing a director, any one or more of the members of the Board of Directors may be removed with or without cause by a "Majority of the Unit Owners" (as defined in Article II of the Bylaws), and a successor may then and there be elected to fill the vacancy thus created. Notice of such meeting shall state that the purpose, or one of the purposes, of the meeting is the removal of the director(s). A member of the Board of Directors may resign at any time.

D. Vacancies in the Board of Directors shall be filled by a vote of the majority of the remaining directors at a special meeting of the Board of Directors held for such purpose promptly after the occurrence of such vacancy. Each person so elected shall be a member of the Board of Directors until the next meeting of the Unit Owners Association at which directors are elected.

ARTICLE VIII INDEMNIFICATION

A. Definitions. For purposes of this Article the following definitions shall apply:

"Corporation" means this Corporation only and no predecessor entity or other legal entity.

"expenses" include counsel fees, expert witness fees and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification.

"liability" means the obligation to pay a judgment, settlement, penalty, fine or other such obligation, including, without limitation, any excise tax assessed with respect to an employee benefit plan.

"legal entity" means a corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise.

"predecessor entity" means a legal entity, the existence of which ceased upon its acquisition by the Corporation in a merger or otherwise.

"proceeding" means any threatened, pending or completed action, suit, proceeding or appeal whether civil, criminal, administrative or investigative and whether formal or informal.

B. Limit on Liability. In every instance in which the Alabama Nonprofit Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation or to its members, the directors and officers of this Corporation shall not be liable to the Corporation or to its members.

C. Indemnification of Directors and Officers. The Corporation shall indemnify any individual who is, was or is threatened to be made a party to a proceeding (including a

proceeding by or in the right of the Corporation or by or on behalf of its members) because such individual is or was a director or officer of the Corporation or because such individual is or was serving the Corporation, or any other legal entity in any capacity at the request of the Corporation while a director or officer of the Corporation, against all liabilities and reasonable expenses incurred in the proceeding except such liabilities and expenses as are incurred because of such individual's willful misconduct or knowing violation of the criminal law. Service as a director or officer of a legal entity controlled by the Corporation shall be deemed service at the request of the Corporation. The determination that indemnification under this Section C is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of a director, as provided by law, and in the case of an officer, as provided in Section D of this Article; provided however, that if a majority of the directors of the Corporation has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel agreed upon by the Board of Directors and such person. Unless a determination has been made that indemnification is not permissible, the Corporation shall make advances and reimbursements for expenses incurred by a director or officer in a proceeding upon receipt of an undertaking from such director or officer to repay the same if it is ultimately determined that such director or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the director or officer and shall be accepted without reference to such director's or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that a director or officer acted in such a manner as to make such director or officer ineligible for indemnification. The Corporation is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its directors or officers to the same extent provided in this Section C.

D. Indemnification of Others. The Corporation may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its directors and officers pursuant to Section C, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the directors, officers, employees and agents of its subsidiaries and predecessor entities, and any person serving any other legal entity in any capacity at the request of the Corporation, and may contract in advance to do so. The determination that indemnification under this Section D is permissible, the authorization of such indemnification and the evaluation as to the reasonableness of expenses in a specific case shall be made as authorized from time to time by general or specific action of the Board of Directors, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under Section C of this Article shall be limited by the provisions of this Section D.

E. Miscellaneous. The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the Corporation. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Corporation and indemnification under policies of insurance purchased and maintained by the Corporation or others. However, no person shall be entitled to indemnification by the Corporation to the extent such person is

indemnified by another, including an insurer. The Corporation is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their request of the Corporation regardless of the Corporation's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the Corporation from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

F. Amendments. No amendment, modification or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification or repeal.

ARTICLE IX DURATION

The period of duration of the Unit Owners Association shall be perpetual.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Alabama, I, the undersigned incorporator, have executed these Articles of Incorporation this ____ day of _____, 200__.

LOWE'S HOME CENTERS, INC., Incorporator

By: _____

Name: _____

Title: _____

Address:

Highway 268 East

East Dock

N. Wilkesboro, NC 28659

EXHIBIT D

BYLAWS OF

HIGHWAY 280 DISTRIBUTION FACILITY ASSOCIATION

ARTICLE I

PLAN OF UNIT OWNERSHIP

Section 1 Applicability. These Bylaws provide for the governance of the Condominium pursuant to the requirements of the Condominium Act¹ and the Alabama Nonprofit Corporation Act. The Condominium, located in the City of Birmingham, Shelby County, Alabama and more particularly described in the Declaration, has been submitted to the provisions of the Condominium Act by recordation of the Declaration among the land records of Shelby County, Alabama.

Section 2 Compliance. Every Unit Owner and all those entitled to occupy a Unit shall comply with these Bylaws.

Section 3 Office. The principal office of the Unit Owners Association shall be located at the Condominium or at such other place as may be designated from time to time by the Board of Directors.

ARTICLE II

UNIT OWNERS ASSOCIATION

Section 1 Composition. The Unit Owners Association shall consist of all of the Unit Owners acting as a group pursuant to the Condominium Act and the Condominium Instruments. The Unit Owners Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all of the other acts that may be required or permitted to be performed by the Unit Owners Association by the Condominium Act and the Condominium Instruments. Except as to those matters which the Condominium Act specifically requires to be decided by the vote of the Unit Owners Association, the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth in Article III of these Bylaws.

Section 2 Annual Meetings. The annual meeting of the Unit Owners Association shall be held on a date each year from time to time established by the Board of Directors.

¹ Capitalized terms used herein without definition shall have the meanings specified for such terms in the Declaration of Condominium or, if not defined therein, the meanings specified in Section 35-8A-103 of the Condominium Act.

Section 3 Place of Meetings. Meetings of the Unit Owners Association shall be held at the principal office of the Unit Owners Association or at such other suitable place convenient to the Condominium as may be designated by the Board of Directors.

Section 4 Special Meetings.

(a) The President shall call a special meeting of the Unit Owners Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by Unit Owners of not less than twenty percent of the Percentage Interests of all Unit Owners. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

(b) At the first annual meeting of the Unit Owners Association, the Unit Owners, including the Declarant if the Declarant owns one or more Units, shall elect successor members of the Board of Directors.

Section 5 Notice of Meetings. Except as otherwise required by the Condominium Act or the Alabama Nonprofit Corporation Act, the Secretary shall mail to each Unit Owner a notice of each meeting of the Unit Owners Association at least ten but not more than fifty days before such meeting, stating the time and place thereof and the items on the agenda including the matters described in Section 35-8A-308 of the Condominium Act. The mailing of a notice of meeting in the manner provided in this Section and Section 1 of Article XI of these Bylaws shall be considered service of notice.

Section 6 Title to Units. Title to a Condominium Unit may be taken in the name of one or more Persons in any manner permitted by law. Subject to Section 2 of Article III hereof, the Unit Owners Association may acquire, hold and transfer title to one or more Condominium Units in its own name.

Section 7 Voting. Voting by Unit Owners at all meetings of the Unit Owners Association shall be on the basis of the Percentage Interest allocated to each Unit. Where the ownership of a Unit is in more than one Person, the Person who shall be entitled to cast the vote appurtenant to such Unit shall be the Person owning an interest in such Unit who is present at the meeting. If more than one Person owning an interest in such Unit is present, then such vote shall be cast only with the agreement of a majority in interest pursuant to Section 35-8A-310 of the Condominium Act. Except where a greater number is required by the Condominium Act or the Condominium Instruments, Unit Owners holding at least two-thirds (by Percentage Interests) of the aggregate votes cast in person or by proxy at one time at a duly convened meeting ("Majority of the Unit Owners") are required to render a decision at any meeting of the Unit Owners Association. If Declarant owns or holds title to one or more Units, Declarant shall have the right at any meeting of the Unit Owners Association to cast the vote(s) appurtenant to such Unit(s).

Section 8 Proxies. A vote may be cast in person or by proxy. Proxies shall be duly executed in writing pursuant to the requirements of Section 10-3A-31 of the Alabama Nonprofit Corporation Act and Section 35-8A-310 of the Condominium Act and must be filed with the Secretary at or before the time of the meeting. Such proxy shall be deemed revoked only upon actual receipt of notice of revocation by the person presiding over the meeting from any of the

Persons owning such Unit. No proxy shall in any event be valid for a period in excess of eleven months after the execution thereof.

Section 9 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Unit Owners holding fifty percent (50%) of the aggregate votes shall constitute a quorum at all meetings of the Unit Owners Association.

ARTICLE III

BOARD OF DIRECTORS

Section 1 Management. The affairs of the Unit Owners Association shall be managed under the direction of its Board of Directors.

Section 2 Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Unit Owners Association and may do all such acts and things as are by the Condominium Act or the Condominium Instruments permitted or required to be exercised and done by the Unit Owners Association. In addition to the duties imposed by these Bylaws or by any resolution of the Unit Owners Association that may hereafter be adopted, the Board of Directors shall on behalf of the Unit Owners Association and the Unit Owners:

(a) Prepare and disseminate an annual budget in which there shall be established the assessments of each Unit Owner in respect of the Common Expenses.

(b) Make assessments against Unit Owners to defray the costs and expenses of the Condominium and determine when the same shall commence as to all Units, establish the means and methods of collecting such assessments from the Unit Owners and establish the period of the installment payments of the annual assessment for Common Expenses.

(c) Provide for the operation, care, upkeep, maintenance and servicing of the Common Elements of the Condominium and of the Limited Common Elements and portions of Units to the extent that operation, care, upkeep, maintenance and service of the same is the responsibility of the Unit Owners Association and, except as otherwise provided in the Declaration, pay and perform the obligations of the tenant under the Ground Lease.

(d) Except to the extent the Unit Owners Association contracts with independent contractors for services, designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the Condominium and provide services for the Condominium and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties.

(e) Make commercially reasonable efforts to collect assessments from the Unit Owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the purposes of the Unit Owners Association.

(f) Appoint committees and enact and amend Rules and Regulations from time to time for the use and occupancy of the Units and Common Elements; provided however, that no such Rules and Regulations so adopted shall be in conflict with the Condominium Act or the Condominium Instruments or the Ground Lease; and provided further that no such Rules and Regulations shall bind or be construed so as to impair in any manner the lien of any mortgage or deed of trust with respect to any Unit or the Common Elements.

(g) Open bank accounts on behalf of the Unit Owners Association and designate the signatories thereon.

(h) Make, or contract for the making of, repairs, additions and improvements to or alterations of the Condominium and repairs to and restoration of the Condominium in accordance with these Bylaws after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

(i) Make commercially reasonable efforts to enforce by legal means the provisions of the Condominium Instruments and the Rules and Regulations and act on behalf of the Unit Owners with respect to all matters arising out of any eminent domain proceedings.

(j) Obtain and carry insurance as provided in Article VI of these Bylaws, pay the premiums therefor and adjust and settle any claims thereunder.

(k) Pay the cost of all authorized services rendered to the Unit Owners Association and not billed to Unit Owners of individual Units or otherwise provided for in these Bylaws.

(l) Keep books with detailed accounts in chronological order of the Unit Owners Association's receipts and expenditures affecting the Condominium and the administration of the Condominium and cause these books to be audited from time to time if and when determined by the Board of Directors. All books and records shall be kept in accordance with generally accepted accounting principles consistently applied (but may be on the cash method of accounting) and shall be open for inspection by Unit Owners.

(m) Acquire, hold and dispose of Condominium Units and mortgage the same if such expenditures and mortgage are included in the budget adopted by the Unit Owners Association or authorized by a Majority of the Unit Owners or when the acquisition is the consequence of the realization upon the Unit Owners Association's lien for delinquent assessments.

(n) Do such other things and acts not inconsistent with the Condominium Act or the Condominium Instruments or the Ground Lease which the Board of Directors may be authorized to do under the Condominium Act or Condominium Instruments or by a resolution of the Unit Owners.

(o) Grant permits, licenses and easements under, through and over the Common Elements for drainage, utilities, roads and access and other purposes.

(p) Contract for the discharge of any power or responsibility of the Unit Owners Association.

(q) Provide other services to Unit Owners and to occupants of Units.

(r) Except as otherwise provided in the Declaration, exercise all rights of the tenant under the Ground Lease.

The Board of Directors may delegate to another Person any powers except for those in clauses (b), (f), (m), (o) and (r).

Section 3 Number, Election and Term of Office. The number of directors shall be three. The election and term of office of members of the Board of Directors shall be as set forth in the Articles of Incorporation, the provisions of which are incorporated herein by reference.

Section 4 Removal or Resignation of Members of the Board of Directors. Removal and resignation of directors shall be as set forth in the Articles of Incorporation, the provisions of which are incorporated herein by reference.

Section 5 Vacancies. Vacancies in the Board of Directors shall be filled in the manner specified by the Articles of Incorporation, the provisions of which are incorporated herein by reference.

Section 6 Organization Meeting. The first meeting of the Board of Directors following the meeting of the Unit Owners Association at which directors are elected shall be held within thirty days thereafter at such time and place as shall be fixed by the Board of Directors at the meeting at which such Board of Directors shall have been elected. Notice of the meeting shall be given to the newly elected members of the Board of Directors in accordance with Section 10-3A-64 of the Alabama Nonprofit Corporation Act.

Section 7 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but such meetings shall be held at least once during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each director by mail, telegraph or facsimile at least three business days before the day named for such meeting.

Section 8 Special Meetings. Special meetings of the Board of Directors may be called by the President on three business days notice to each director, given by mail, telegraph or facsimile, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and with like notice on the written request of a majority of the directors.

Section 9 Waiver of Notice. Any director may at any time, in writing signed by such director, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Except in the circumstances described in Section 10-3A-39 of the Alabama Nonprofit Corporation Act, attendance by a director at any meeting of the Board of Directors shall constitute a waiver of notice by him of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 10 Quorum of Board of Directors. At all meetings of the Board of Directors a majority of the directors shall constitute a quorum for the transaction of business, and the vote of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 11 Compensation. No director shall receive any compensation from the Unit Owners Association for acting as such; however, any director may be reimbursed for actual expenses incurred.

Section 12 Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

ARTICLE IV OFFICERS

Section 1 Designation. The principal officers of the Unit Owners Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint such other officers as in its judgment may be necessary. The President shall be a member of the Board of Directors. Any other officers may, but need not, be members of the Board of Directors.

Section 2 Election of Officers. The officers of the Unit Owners Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors.

Section 3 Removal of Officers. Upon the affirmative vote of a majority of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

Section 4 President. The President shall be the chief executive officer of the Unit Owners Association, preside at all meetings of the Unit Owners Association and of the Board of Directors, prepare, execute, certify and record amendments to the Declaration on behalf of the Unit Owners Association and have all of the powers and duties which are incident to the office of president of a corporation organized under the Condominium Act and the Alabama Nonprofit Corporation Act.

Section 5 Vice President. The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

Section 6 Secretary. The Secretary shall keep the minutes of all meetings of the Unit Owners Association and of the Board of Directors, have charge of such books and papers as the Board of Directors may direct, maintain a register setting forth the place to which all notices to Unit Owners and Mortgagees hereunder shall be delivered and, in general, perform all the duties incident to the office of secretary of a corporation organized under the Condominium Act and the Alabama Nonprofit Corporation Act.

Section 7 Treasurer. The Treasurer shall have the responsibility for Unit Owners Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data, be responsible for the deposit of all monies and other valuables in the name of the Unit Owners Association in such depositories as may from time to time be designated by the Board of Directors and, in general, perform all the duties incident to the office of treasurer of a corporation organized under the Condominium Act and the Alabama Nonprofit Corporation Act.

ARTICLE V

OPERATION OF THE CONDOMINIUM

Section 1 Determination of Common Expenses and Assessments Against Unit Owners.

(a) Fiscal Year. The fiscal year of the Unit Owners Association shall be the calendar year unless otherwise determined by the Board of Directors.

(b) Preparation and Approval of Budget.

(i) The Board of Directors shall annually adopt a budget for the Unit Owners Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements which the Unit Owners Association is obligated to maintain and those aspects of the Units and Limited Common Elements as to which it is the responsibility of or which the the Unit Owners Association undertakes (pursuant to Section 5 of this Article) to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Unit Owners Association or which may be part of the definition of "Common Expenses" under the Declaration and which will be required during the ensuing fiscal year for the administration, operation, maintenance or repair of the Condominium and the rendering of all services. Such budget shall also include such amounts as the Board of Directors considers necessary to provide working capital and reserves.

(ii) Within thirty (30) days after adoption of any proposed budget, the Board of Directors shall provide a copy of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after delivery or mailing of the budget to the Unit Owners. Unless at that meeting a Majority of the Unit Owners reject the budget, the

budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed the Board.

(c) Assessment and Payment of Common Expenses. Subject to the provisions of Section 1(a) of Article IX hereof and Section 5 of Article V hereof, the total amount of the estimated funds required for the operation of the Condominium set forth in the budget adopted by the Board of Directors shall be assessed against each Unit Owner in proportion to his respective Percentage Interest and shall be a lien against each Unit Owner's Unit as provided in Article IX, Section 2 of these Bylaws and in the Condominium Act. Within 90 days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, if the Board of Directors deems it advisable, be credited either to reserves or according to each Unit Owner's Percentage Interest to the next installment(s) due from Unit Owners under the current fiscal year's budget, until exhausted. Any net shortage may be assessed promptly against each Unit Owner in accordance with his Percentage Interest or other appropriate share and shall be payable as the Board of Directors may determine.

(d) Reserves. The Board of Directors may, as a part of the Common Expenses and regular assessments therefor, build up and maintain a reserve for periodic maintenance, repair and replacement of the Common Elements and other items which the Unit Owners Association is obligated or undertakes pursuant to Section 5 of this Article V and to cover the amount of any insurance deductible or for other purposes; however, the Board of Directors and the Declarant shall not be personally liable for the inadequacy of any reserve. Extraordinary expenditures not originally included in the annual budget but which becomes necessary during the year may be charged against such reserve. If the reserve is inadequate for any reason, including nonpayment of any Unit Owner's assessment, the Board of Directors may at any time levy a further assessment which shall be assessed against each Unit Owner according to his Percentage Interest or other appropriate share and which shall be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next installment payment which is due more than ten days after the delivery of such notice of further assessment. All Unit Owners shall be obligated to pay the adjusted installment amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessment shall be a lien as of its effective date as set forth in Article IX, Section 2 of these Bylaws and in the Condominium Act.

(e) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his Percentage Interest or other appropriate share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each installment at the rate established for the previous fiscal year until notice of

the installment payment which is due more than ten days after such new annual or adjusted budget shall have been delivered.

(f) Accounts. All sums collected with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund.

Section 2 Payment of Common Expenses. Each Unit Owner shall pay his Percentage Interest or other appropriate share of the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 1 of this Article V. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit or by failure to utilize services provided through the Unit Owners Association. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit and due subsequent to the date of recordation of a conveyance by him of such Unit to a successor Unit Owner (except a conveyance as security for the performance of an obligation). Each Unit Owner waives the benefit of the homestead exemption as to any assessments levied hereunder against either the Unit or the Unit Owner. Each such assessment, together with the interest, late charges and costs of collection (including attorney's fees) shall also be the personal obligation of the Unit Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them.

Section 3 Collection of Assessments. The Board of Directors may take action to collect any assessments due from any Unit Owner. Any assessment, or installment thereof, not paid within ten days after due shall, at the option of the Board of Directors, accrue a late charge in the amount of five percent of the overdue assessment or installment. Each defaulting Unit Owner shall also pay all costs of collection, including without limitation attorney's fees, incurred in the collection of any unpaid assessment and shall also pay any expense incurred as a result of a check being returned to the Unit Owners Association without payment. The Board of Directors shall have the power to accelerate all remaining installments of any annual assessment in the event an assessment is not paid within 30 days of its due date.

Section 4 Statement of Assessments and Access to Records. The Unit Owners Association shall promptly provide any Unit Owner, contract purchaser or Mortgagee so requesting the same in writing with a written statement of all unpaid assessments against the relevant Unit. The Board of Directors may impose a reasonable charge for the preparation of such statement. The Unit Owners Association shall make available during normal business hours for inspection, upon request by Unit Owners, lenders and the holders, insurers and guarantors of the mortgage on any Unit, and prospective purchasers, and their authorized agents current copies of the Condominium Instruments and any Rules and Regulations governing the Condominium and other books, records and financial statements of the Unit Owners Association (including, if such is prepared, the most recent audited financial statement of the Unit Owners Association). If and so long as there is no audited statement available, any Mortgagee or Unit Owner may have an audited statement prepared at its expense.

Section 5 Maintenance, Repair, Replacement and Other Common Expenses.

(a) By the Unit Owners Association. Except as may otherwise be expressly provided, the Unit Owners Association shall be responsible for the maintenance, repair and replacement of all of the Common Elements but only such Limited Common Elements or aspects of Limited Common Elements and only such aspects of Units as the Board of Directors may from time to time determine. If and to the extent the Board of Directors determines to provide any service with respect to Units or Limited Common Elements, such service shall be only on such a cycle and subject to such other conditions and qualifications as the Board of Directors may from time to time determine. The Common Elements shall be kept in good order, condition and repair and in a clean and sanitary condition.

(b) By the Unit Owner. Except as otherwise expressly provided and except to the extent the Board of Directors elects to provide services with respect to specific aspects of Units or Limited Common Elements, each Unit Owner shall keep his Unit and its appurtenant Limited Common Elements in good order, condition and repair and in a clean and sanitary condition, and shall do all such things as may at any time be necessary to maintain the good appearance and condition of his Unit and its appurtenant Limited Common Elements. Each Unit Owner shall also keep any area visible to others and assigned to his Unit as a Limited Common Element in a neat and clean condition, free of debris and unsightly accumulations. In the event of a Unit Owner's failure to perform in accordance with this Subsection 5(b), the Unit Owners Association may effect the same and any expense thus incurred shall be paid by the affected Unit Owner as a special assessment against his Unit secured and collectible in the same manner as other assessments hereunder. In addition, each Unit Owner shall be responsible for all damage to his or any other Units or to the Common Elements resulting from his failure to make any of the repairs required by this Subsection or due to such Unit Owner's (or his tenant's) negligence or willful act, except to the extent covered by insurance maintained by the Unit Owners Association. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb the other Unit Owners. Each Unit Owner shall promptly report to the Board of Directors any known defect or known need for repairs for which the Unit Owners Association is responsible. Nothing herein shall be deemed to release any insurer of its obligations under any insurance policy or to create rights of subrogation against any Unit Owner.

(c) Except as otherwise expressly provided, expenditures with respect to the Common Elements shall be Common Expenses assessed in accordance with Percentage Interests. To the extent the Unit Owners Association is obligated, or to the extent the Board of Directors elects that the Unit Owners Association undertake, to provide a service with respect to Units or Limited Common Elements, then the cost of that service shall also be Common Expenses for purposes of the Unit Owners Association's lien and collection rights, but such Common Expenses shall be allocated among the Unit Owners in such manner as the Board of Directors, in its discretion, shall determine.

(d) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of good quality.

Section 6 Additions, Alterations or Improvements by Board of Directors. If, in the opinion of not less than two-thirds of the members of the Board of Directors, any additions, alterations or improvements to the Common Elements are exclusively or substantially exclusively for the benefit of the Unit Owner or Unit Owners requesting the same, such

requesting Unit Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportions as may be determined by the Board of Directors.

Section 7 Additions, Alterations or Improvements by Unit Owners. No Unit Owner shall make any structural or exterior addition, alteration or improvement in or to his Unit without the prior written consent of the Board of Directors and, to the extent applicable, any approval required under the Ground Lease. No Unit Owner shall paint or alter the aspects of his Unit visible from the exterior or the Limited Common Elements appurtenant thereto, without the prior written consent of the Board of Directors. If any application to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit requires execution by the Unit Owners Association, and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of the Unit Owners Association without however incurring any liability on the part of the Unit Owners Association or its Board of Directors or officers or any of them to any contractor, subcontractor or supplier on account of such addition, alteration or improvement, or to any person having a claim for injury to person or damage to property arising therefrom.

Section 8 Right of Access. By acceptance of a deed to his Unit, each Unit Owner thereby grants a right of access to his Unit and a right of access to the Limited Common Elements appurtenant to that Unit, to the Unit Owners Association or to any other Person authorized by the Board of Directors, or to any group of the foregoing, for the purpose of enabling the exercise and discharge of their respective powers and responsibilities, including without limitation making inspections, correcting any condition originating in the Unit or Limited Common Elements and threatening another Unit or the Common Elements, performing installations, alterations or repairs to the mechanical or electrical services or to heating and air conditioning systems or the Common Elements in his Unit or elsewhere in the Condominium. The Unit Owners Association shall repair any damage to a Unit or Limited Common Elements caused by its exercise of rights hereunder.

ARTICLE VI **INSURANCE**

Section 1 Authority to Purchase.

(a) Except as otherwise provided in Section 4 of this Article VI, all insurance policies relating to the Condominium shall be purchased by the Unit Owners Association. Neither the Board of Directors nor the Declarant shall be liable for failure to obtain any coverage required by this Article VI or for any loss or damage resulting from such failure if such failure is due to the general unavailability of such coverage from reputable insurance companies, or if such coverage is available only at unreasonable cost.

(b) Each such policy shall provide that:

(1) The insurer waives any right to claim (i) by way of subrogation against the Declarant, the Unit Owners Association, the Board of Directors and the Unit Owners and their

respective agents, employees and tenants, and to the extent required by the Ground Lease, the Landlord, and (ii) invalidity arising from acts of the insured.

(2) Such policy may not be cancelled or not renewed without at least 30 days prior written notice to the Landlord (to the extent required by the Ground Lease), to the Unit Owners Association and, in the case of physical damage insurance, to all Unit Owners and Mortgagees to whom a memorandum or certificate of insurance has been issued at their last known addresses.

(c) Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.

Section 2 Insurance. The Unit Owners Association shall purchase such insurance as is required to be maintained (i) by the tenant pursuant to Section 10 of the Ground Lease and (ii) pursuant to Section 35-8A-313 of the Condominium Act.

Section 3 Other Insurance. The Unit Owners Association shall also obtain and maintain:

(a) Workmen's compensation insurance if and to the extent necessary to meet the requirements of law; and

(b) Such other insurance (such as, for example, directors and officers liability insurance) as the Board of Directors may determine.

Section 4 Separate Insurance. Each Unit Owner shall have the right and responsibility, at his own expense, to obtain insurance for his own Unit and for his own benefit and upon his personal property and equipment and Unit betterments and improvements; provided however, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Unit Owners Association, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Unit Owners Association or to cause any insurance coverage maintained by the Unit Owners Association to be brought into contribution with insurance coverage obtained by a Unit Owner.

Section 5 Board of Directors as Agent. The Board of Directors is hereby irrevocably appointed the agent and attorney-in-fact for each Unit Owner, each Mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in the Condominium to adjust and settle all claims arising under insurance policies purchased by the Unit Owners Association and to execute and deliver releases upon the payment of claims and to pursue and settle all claims arising out of the taking by way of eminent domain of any of the Common Elements.

ARTICLE VII

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section 1 When Repair and Reconstruction are Required. Except as otherwise provided in Section 4 of this Article, in the event of damage to or destruction of all or any of the

improvements as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the improvements (including any damaged Units, and equipment initially installed therein by the Declarant and replacements thereof, but not including any furniture, furnishings, fixtures, equipment or other personal property or Unit betterments or improvements supplied or installed by the Unit Owners in their Units). Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of the interior of his own Unit.

Section 2 Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any improvements, the Board of Directors shall obtain estimates of the cost of repairing and restoring such improvements (including any damaged Units and any floor coverings and fixtures and appliances initially installed by Declarant and the replacements thereof, but not including any other furniture, furnishings, fixtures, improvements, betterments or equipment installed by the Unit Owner in the Unit) to a condition as good as that existing before such casualty. Such costs may also include professional and consulting fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from any appropriate reserve for replacement funds and/or shall be deemed Common Expenses and a special assessment therefor (not subject to the approval of Unit Owners) shall be levied against all Unit Owners in accordance with their respective Percentage Interests.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the improvements.

Section 3 Disbursements of Construction Funds.

(a) Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty and the sums received by the Board of Directors from collections of assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction.

(b) Surplus. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, at the direction of the Board of Directors such balance shall either be added to reserves or divided among all Unit Owners and their Mortgagees as their interests may appear and in proportion to their Percentage Interests.

(c) Common Elements. When the damage is to both Common Elements and Units, the insurance proceeds shall, if practicable, be applied first to the cost of repairing the Common Elements and thereafter to the cost of repairing the Units.

Section 4 When Reconstruction is Not Required. In the event of insubstantial damage to the Common Elements not materially affecting the use or occupancy of any Unit and if the Board of Directors shall elect not to repair the same, then in such event any insurance proceeds received on account of such damage shall either be added to reserves or distributed among all Unit Owners and their Mortgagees as their interests may appear and in proportion to their respective Percentage Interests. If the Condominium shall be terminated pursuant to Section 35-8A-218 of the Condominium Act, then subject to Section 15 of the Ground Lease, the net assets of the Condominium together with the net proceeds of insurance policies, if any, shall be divided by the Board of Directors among all Unit Owners in proportion to their respective Percentage Interests, after first paying out of the share of each Unit Owner, to the extent sufficient therefor, the amount of any unpaid liens on his Unit in the order of priority of such liens.

ARTICLE VIII **MORTGAGES**

Section 1 Notice to Board of Directors. A Unit Owner who mortgages his Unit may notify the Unit Owners Association of the name and address of his Mortgagee. Any Mortgagee may give written notice to the Unit Owners Association of its name and address and the Unit number or the address of the Unit to which its lien applies.

Section 2 Notice of Default, Casualty or Condemnation. Upon request, the Unit Owners Association shall give notice to any Mortgagee of a default in paying an assessment or any other default with respect to that Mortgagee's Unit which has not been cured within sixty days. Each Mortgagee requesting same shall also be promptly notified of any taking in condemnation or by eminent domain and actions of the Unit Owners Association with respect thereto, any lapse or cancellation of any insurance policy maintained by the Unit Owners Association and any proposed action that requires the consent of a specified percentage of Mortgagees.

Section 3 Mortgagees' Approvals. Unless two-thirds of the Mortgagees holding first liens on Units (voting on the basis on one vote for each Mortgage owned except as provided below), or Unit Owners (other than Declarant), have given their prior written approval, the Unit Owners Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the Condominium; or
- (b) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (except that the granting of easements for utilities or for other purposes consistent with the Condominium Instruments or the intended use of the Common Elements by the Condominium shall not be deemed a transfer within the meaning of this clause); or
- (c) Use hazard insurance proceeds for losses to any portion of the Condominium for other than the repair, replacement or reconstruction of the Condominium.

Section 4 Other Rights of Mortgagees. Upon request, any Mortgagee shall be entitled to receive written notice of meetings of the Unit Owners Association and all Mortgagees

or their designees shall be entitled to attend meetings of the Unit Owners Association and shall have the right to speak thereat. All Mortgagees shall have the right to examine the books and records of the Unit Owners Association.

ARTICLE IX **COMPLIANCE AND DEFAULT**

Section 1 Relief. Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Condominium Instruments and the Condominium Act as any of the same may be amended from time to time. In addition to the remedies provided in Section 35-8A-316 of the Condominium Act, a default by a Unit Owner shall entitle the Unit Owners Association, acting through its Board of Directors, to the following relief:

(a) Additional Liability. Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of his employees, agents, licensees, tenants and guests but only to the extent that such expense is not covered by the proceeds of insurance carried by the Unit Owners Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or the Common Elements.

(b) Costs and Attorney's Fees. In any proceedings arising out of any alleged default by a Unit Owner, the Unit Owners Association, if it prevails, shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

(c) No Waiver of Rights. The failure of the Unit Owners Association, the Board of Directors or a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Instruments or the Condominium Act or the Ground Lease shall not constitute a waiver of the right of the Unit Owners Association, the Board of Directors or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Unit Owners Association, the Board of Directors or any Unit Owner pursuant to any term, provision, covenant or condition of the Condominium Instruments or the Condominium Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies; nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Condominium Instruments or the Condominium Act or at law or in equity.

(d) Interest. In the event of a default by any Unit Owner in paying any sum assessed against his Condominium Unit which continues for a period in excess of ten days, then the amount unpaid shall, at the option of the Unit Owners Association, bear interest from its due date until paid at the lesser of the maximum rate permitted by law without being subject to the defense of usury or eighteen percent per annum.

(e) Abating and Enjoining Violations by Unit Owners. The violation of any of the Rules and Regulations adopted by the Board of Directors or the breach of any provision of the Condominium Instruments or the Condominium Act or the Ground Lease shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws: (a) to enter the portion of the Condominium in which, or as to which, such violation or breach exists and

summarily to abate and remove, at the expense of the defaulting Unit Owner, any condition that may exist therein contrary to the intent and meaning of the provisions hereof or of the Condominium Instruments, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach.

(f) Legal Proceedings. Failure to comply with any of the terms of the Condominium Instruments and the Rules and Regulations or the Ground Lease shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or in the Condominium Act or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Unit Owners Association, the Board of Directors or by any aggrieved Unit Owner and shall not constitute an election of remedies.

Section 2 Lien for Assessments.

(a) The total annual assessment of each Unit Owner for Common Expenses or any special or other assessment made pursuant to these Bylaws or the Declaration, together with any interest or late charge applicable to such assessment and together with any costs of collection (including attorney's fees), is hereby declared to be a lien against the Unit of such Unit Owner as provided in Section 35-8A-316 of the Condominium Act.

(b) The lien for assessments may be enforced and foreclosed in the manner provided by the Condominium Act by action in the name of the Unit Owners Association.

(c) A suit to recover a money judgment for unpaid contributions may be maintained without foreclosure or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 3 Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these Bylaws upon any Unit (and any penalties, interest on assessments, late charges and the like) shall be subordinate to the extent set forth in Subsection 35-8A-316(b) of the Condominium Act.

ARTICLE X AMENDMENTS TO BYLAWS

These Bylaws may not be modified or amended except as provided in the Declaration. All amendments to the Bylaws shall be prepared and recorded by the Secretary.

ARTICLE XI MISCELLANEOUS

Section 1 Notices. All notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, postage prepaid (or otherwise as the Condominium Act may permit), (i) if to a Unit Owner, at the address which the

Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or (ii) if to the Unit Owners Association or the Board of Directors or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section, or (iii) if to a Mortgagee, to the address provided to the Unit Owners Association by the Unit Owner or to such other address as the Mortgagee may specify by written notice to the Unit Owners Association.

Section 2 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

Section 3 Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section 4 Construction. These Bylaws are intended to comply with all of the applicable provisions of the Condominium Act and the Alabama Nonprofit Corporation Act and shall be so interpreted and applied.

EXHIBIT E

A PORTION OF SECTION 5 OF THE GROUND LEASE

Tenant's Building(s) and the other improvements which are placed on the Demised Premises by Tenant and which are permanently a part of Demised Premises (the "Tenant Improvements") shall become the property of Landlord upon the termination of this Lease, subject to the terms described below. However, Tenant, upon the termination of this Lease for any cause, may go upon the Demised Premises and remove all trade fixtures placed on the Demised Premises by Tenant and all other property placed on the Demised Premises, provided that such removal does not unreasonably damage the structural portion of Tenant's Building(s) located on the Demised Premises and Tenant shall repair any damage caused by such removal; notwithstanding the foregoing, in the event that Tenant fails to remove all trade fixtures placed on the Demised Premises by Tenant and all other property placed on the Demised Premises prior to the date of the expiration of the Term or, in the event of an earlier termination of this Lease, prior to the date that is thirty (30) days after the date of such earlier termination (provided that Tenant shall remain liable for the payment of rent otherwise payable during such period from the date of such earlier termination until the earliest to occur of (i) the date that Tenant has removed all such trade fixtures and other property placed on the Demised Premises, (ii) the date that Tenant notifies Landlord in writing that Tenant has removed all such trade fixtures and other property that it intends to remove, or (iii) the date that is thirty [30] days after the date of such earlier termination), any such trade fixture or other property shall become Landlord's property without the need for further documentation and without Landlord being liable for prosecution or any claim for damages for the removal or disposal thereof. Heating, plumbing, electrical and air conditioning, duct work, floor and wall coverings, ceiling, and equipment attached to the Demised Premises shall be deemed structural portions of Tenant's Building and may not be removed upon the termination of this Lease. Tenant shall, during the Term, own all Tenant Improvements placed upon the Demised Premises; provided that in the event this Lease expires or is earlier terminated, then the Tenant Improvements shall, upon termination or expiration of this Lease, become Landlord's property without the need for further documentation.

ADDENDUM TO DECLARATION OF CONDOMINIUM

THIS ADDENDUM TO DECLARATION OF CONDOMINIUM (this "Addendum") is made and entered into as of this 23rd day of December, 2003, by **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation (hereinafter referred to as "Lowe's").

RECITALS

A. Lowe's entered into that certain Declaration of Condominium dated as of even date herewith (the "Declaration"), a copy of which is attached hereto as **Exhibit A**.

B. Lowe's entered into that certain Ground Lease with Developers Diversified of Alabama, Inc. an Alabama corporation ("Developers Diversified"), dated August 9, 2002 (the "Overlease").

C. Developers Diversified entered into an assignment agreement with GS II Brook Highland LLC, a Delaware Limited Liability Company ("Overlandlord").

D. Lowe's intends to enter into a certain Lease Agreement with The Cooperative District of the City of Birmingham – Highway 280 Distribution Facility (the "District"), a public corporation under the laws of the State of Alabama.

E. The District then intends to enter into a certain Sublease Agreement with Lowe's.

NOW, THEREFORE, the premises considered, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Lowe's does hereby covenant, stipulate and agree as follows:

1. The Declaration shall terminate upon the expiration or earlier termination of the Overlease.

2. Except as modified in this Addendum, the Declaration is ratified and confirmed in all respects.

3. All capitalized terms not otherwise defined in this Addendum shall have the same meaning as set forth in the Declaration.

4. The provisions of this Addendum shall be binding upon, and shall inure to the benefit of, Lowe's and its permitted successors, assigns, heirs and legal representatives.

5. This Addendum shall be governed by and construed in accordance with the Laws of the State of Alabama.

(Signature on Following Page)

IN WITNESS WHEREOF, Lowe's Home Centers, Inc, has hereunto set its hand and seal the day and year first above written.

LOWE'S:

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

ABS
KOB
PJP ZH
pms

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