

**RESOLUTION 22-07**

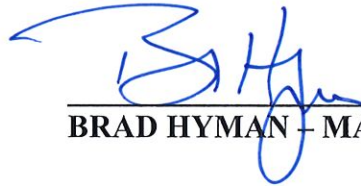
**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MOUNT VERNON, TEXAS, APPROVING A PURCHASE AGREEMENT  
BETWEEN THE MOUNT VERNON ECONOMIC DEVELOPMENT  
CORPORATION AND LOWES HOME'S CENTERS, LLC**

**WHEREAS**, the City Council shall approve the purchase agreement as presented; and,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF MOUNT VERNON, TEXAS, THAT:**

**SECTION 1.** This resolution shall become effective immediately upon its passage.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
MOUNT VERNON, TEXAS, ON THIS THE 14<sup>th</sup> DAY OF FEBRUARY, 2022.**



**BRAD HYMAN – MAYOR**

**ATTEST:**



**KATHY LOVIER – CITY SECRETARY**

## AGREEMENT TO SELL AND PURCHASE REAL ESTATE

THIS AGREEMENT TO SELL AND PURCHASE REAL ESTATE (the "Agreement"), is made and entered into as of the date of the last execution hereof, which date is the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Effective Date") by and between Mount Vernon Economic Development Corp., (hereinafter referred to as the "Seller"), and LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company (hereinafter referred to as the "Buyer"), (Seller and Buyer being sometimes also hereinafter referred to individually as a "Party" or collectively as the "Parties").

### WITNESSETH:

THAT WHEREAS, Seller has warranted to Buyer that it is the owner of the Premises described hereinafter; and

WHEREAS, Seller has offered to sell and Buyer has agreed to purchase the Premises described hereinafter subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the payments to be made by Buyer hereunder and the mutual covenants, conditions and undertakings contained herein, the sufficiency of which consideration is acknowledged by all Parties hereto, IT IS HEREBY AGREED AS FOLLOWS:

1. DESCRIPTION OF REAL PROPERTY. Seller agrees to sell and Buyer agrees to purchase the real property which consists of a tract or tracts of land containing approximately forty seven (47) acres in the County of Franklin, State of Texas, as described or shown upon the attached Exhibit A which is incorporated herein by reference (the "Premises"). This description of the Premises is subject to a boundary survey to be provided hereunder and shall include any improvements and personal property currently located thereon and all and singular the rights, privileges, advantages, and appurtenances belonging or in any way appertaining to the Premises, as well as all easements in or upon the Premises or benefitting the Premises and all roads, alleys, waters, streets, or rights-of-way bounding the Premises (to the centerline thereof), and rights of ingress and egress thereto, as well as any and all utility capacity, if any (to the extent transferable by Seller), including, without limitation, water, drainage, and sanitary sewer, and other utility capacities and rights relating thereto, affecting or applicable to the Premises and currently owned by Seller, as well as Seller's right, title and interest in and to all zoning and utility capacity applications, if any (and to the extent transferable by Seller), made to any governmental authority and all other inchoate rights affecting or applicable to the Premises (including, without limitation, any fees relating thereto and the benefits resulting therefrom) and one hundred percent (100%) of the use and control of the surface of the Premises free and clear of the rights of the owners of any mineral interests or the lessees of any surface lease relating to the Premises, and all of Seller's rights, title and interest, if any, to the water rights associated with the Premises.

2. TIME FOR PERFORMANCE. Closing shall take place and the Seller shall convey the Premises to Buyer in accordance with the terms hereof at the later of:

(a) thirty (30) days following the expiration of the Governmental Approvals Period described in Paragraph 7 hereinafter; or

(b) ten (10) days following written notification by Buyer that all of the requirements set forth in Paragraphs 5, 6, 7 and 8 of this Agreement have been either (i) fulfilled to the full satisfaction and in the opinion of Buyer or (ii) waived by the Buyer, unless this Agreement is terminated as otherwise herein provided (such date for closing and performance being hereinafter sometimes referred to as the "Closing" or "Closing Date").

3. PURCHASE PRICE. The total purchase price for the Premises shall be Fifty Thousand and No Dollars (\$50,000.00) (the "Purchase Price").

4. EARNEST MONEY DEPOSIT. Within ten (10) business days following the Effective Date, Buyer shall deposit with Fidelity National Title Insurance Company (the "Title Company") the Purchase Price in cash (the "Deposit").

The Deposit shall be refunded to Buyer in the event Buyer elects to terminate this Agreement under the terms and conditions defined herein; otherwise, it shall be applied to the Purchase Price at Closing.

Notwithstanding anything contained herein to the contrary, in the event Buyer terminates this Agreement as permitted hereunder, Seller may retain from the Deposit the sum of One Hundred and No/Dollars (\$100.00) (herein called the "Independent Consideration". The adequacy of the Independent Consideration is expressly acknowledged by Seller by Seller's execution of this Agreement.

5. INSPECTION PERIOD. Buyer shall be under no obligation to purchase the Premises or otherwise perform under this Agreement unless Buyer determines the Premises to be, in all respects, suitable for its intended purposes. The decision as to whether the Premises are suitable for its intended purposes shall be the sole decision of Buyer, determined in the absolute discretion of Buyer, with Buyer's decision being final and binding upon both Parties. Buyer shall have ninety (90) days from Effective Date to notify Seller of its termination of this Agreement due to Buyer's determination in its sole and absolute discretion that the Premises are unsuitable (the "Inspection Period"). If Buyer fails to notify Seller of its decision to terminate this Agreement prior to the expiration of the Inspection Period, such failure shall be deemed an election by Buyer to terminate this Agreement and this Agreement shall automatically terminate. If Buyer so elects to terminate or is deemed to have elected to terminate, Seller and the Title Company shall be obligated to return the Deposit (less the Independent Consideration) to Buyer as provided in Paragraph 4 hereof, with neither Party having any other rights or obligations under this Agreement. Seller shall cooperate and assist Buyer in the obtaining of all permits, assurances, approvals from state, municipal, county and federal authorities necessary for Buyer to satisfy itself during the Inspection Period of the suitability of the Premises.

Subject to the indemnification provisions of Paragraph 9(b) hereof, Seller hereby grants to Buyer, its contractors, agents and employees, the right and license to go onto the Premises for the purpose of

conducting surveys, tests, inspections, and evaluations and samplings which Buyer may require in its assessment and inspection of the Premises.

6. SURVEY AND TITLE INSURANCE.

(a) Survey. Within sixty (60) days of the date hereof, Buyer shall cause to be prepared, at its sole cost and expense, an on-the-ground, staked, ALTA survey of the Premises drawn in accordance with Buyer's survey requirements (the "Survey"). The metes and bounds description of the Premises resulting from the Survey, if and as accepted by Buyer, shall upon such acceptance supersede and replace the description of the Premises set forth in Paragraph 1 hereof for all purposes hereunder and shall be the description of the Premises used in the Special Warranty Deed, and Owner's Policy of Title Insurance to be furnished hereunder. Additionally, said metes and bounds description should appear on the Survey and be incorporated therein. The area defined by the boundary Survey of the Premises shall contain a minimum of 47 acres as delineated on the attached Exhibit A.

(b) Title Insurance. Buyer shall be under no obligation to purchase the Premises from Seller unless Buyer can obtain from the Title Company, at Buyer's cost and expense, a commitment ("Title Commitment") and an extended 2006 ALTA owner's policy of title insurance satisfactory to Buyer for the Premises ("Title Insurance Policy"). Buyer shall obtain the Title Commitment within sixty (60) days following the Effective Date. The Title Commitment shall identify the Premises and easements appurtenant thereto by the legal description(s) set forth on the Survey. The Title Insurance Policy to be issued pursuant to the Title Commitment shall contain such endorsements as Buyer may require in its discretion (the "Endorsements"). Seller hereby agrees to provide to the Title Company any abstracts of title covering the Premises and/or any other form of title evidence it may have obtained, including any owner's title insurance policy. Buyer's decision as to whether "satisfactory" title insurance can be obtained shall be in Buyer's sole discretion and shall not be subject to question by Seller. Seller shall cooperate fully with Buyer in helping Buyer to eliminate such exceptions from Buyer's Title Commitment as Buyer may desire eliminated, and further, Seller shall cooperate fully with Buyer in order for all requirements of Closing outlined in Buyer's Title Commitment to be accomplished in all respects, including, without limitation, customary owner's affidavits and indemnification agreements with respect to mechanics' liens, leasehold interests and other matters in favor of the Title Company as the Title Company shall reasonably require to issue the Title Insurance Policy.

(c) Review of Survey and Title Commitment. Buyer shall have a period of thirty (30) days from receipt of the Title Commitment, Survey and the documents referred to therein, whichever is later, in which to review such items and to deliver to Seller in writing such objections as Buyer may have to the Title Commitment, Survey, or the other documents referred to therein. Any matters in the Title Commitment, Survey, or the documents referred to therein to which Buyer does not object within the thirty (30) day period shall be deemed approved by Buyer and shall constitute "Permitted Exceptions". In the event Buyer does timely object to the Title Commitment, Survey, or the documents referred to therein as hereinbefore provided, then and in such event, Seller shall have the right, but not the obligation, for a period

of fifteen (15) days (the "Cure Period") following the receipt by Seller of Buyer's objections to attempt to cure such objections. In the event Seller fails or refuses to cure such objections within such Cure Period, then, and in such event, Buyer may either (i) undertake to cure such objections, deducting the cost of such cure from the Purchase Price; (ii) waive such objections and proceed to close; or (iii) terminate this Agreement, whereupon, in the latter event, the Deposit shall be refunded and/or returned to Buyer by the Title Company (except the Independent Consideration) in accordance herewith and the Parties hereto shall have no further rights or obligations hereunder except as may specifically survive under the express terms hereof. Buyer's election to cure or waive such objections or terminate this Agreement must be exercised within thirty (30) days following the expiration of the Cure Period, and Buyer's failure to exercise such election within the said thirty (30) day period shall be deemed an election by Buyer to terminate this Agreement and this Agreement shall automatically terminate.

In the event any additional matters appear in any updated Title Commitment, which were not contained in the original Title Commitment, such matters shall automatically be deemed to be unacceptable to Buyer and shall not constitute Permitted Exceptions unless Buyer expressly accepts in writing such additional matters.

Buyer reserves the right to terminate this Agreement and receive the return of the Deposit (less the Independent Consideration), at any time between expiration of the Inspection Period and Closing ("Intervening Period") if during such Intervening Period there shall occur any change in title condition which, in Buyer's sole judgment, materially adversely affects the Premises or Buyer's intended development and/or prospective use thereof.

7. ENTITLEMENTS. Buyer shall be under no obligation to purchase the Premises unless and until each of the following requirements of Buyer is satisfied (the "Governmental Approvals"):

(a) Governmental Approvals. Buyer must be able to obtain the appropriate Governmental Approvals without conditions or costs which Buyer deems, in its sole and absolute discretion, to be unacceptable. For purposes of this Paragraph 7, "Governmental Approvals" shall include all discretionary approvals and permits required by municipal, county, state and federal authorities to permit Buyer's intended use, including but not limited to the following: conditional use permits for Buyer's intended use; drainage or storm water management approvals; environmental and wetlands approvals; road and highway access and curb cut approvals; off-site improvements approvals required by any governmental entity or utility provider, impacts and exactions; fire protection approvals; architectural, historic preservation or other design or landscaping approvals; building permits for planned improvements including approval for the construction of utilities; and if and as required by any governmental entity, site plan, plat and development plan approvals and approvals of the elevations of Buyer's building to be constructed on the Premises (but not including obtaining building permits) and the expiration without challenge of all applicable periods to appeal or review such approvals and permits, but excluding the building permit related to Buyer's construction of improvements on the Premises. Buyer must have approved (i) all requirements imposed

on Buyer as conditions to obtain such approvals and permits; and (ii) all charges and fees imposed on Buyer to obtain such approvals and permits.

(b) Zoning and Permits. Governmental Approvals shall also include the following requirements. The zoning classification of the Premises must permit Buyer's intended use. Buyer must have obtained all necessary permits, approvals and/or variances, free from (i) conditions and restrictions for which compliance would result in extraordinary costs of construction, development or use, the determination of the such being in the sole and absolute discretion of Buyer, or (ii) restrictions on Buyer's ability to use any part of the Premises for Buyer's intended use. Seller shall cooperate and assist Buyer in the obtaining of all permits, assurances, approvals from state, municipal, county and federal authorities necessary for Buyer to satisfy itself during the Inspection Period of the suitability of the Premises.

(c) Cooperation in Obtaining Governmental Approvals. Buyer shall promptly commence efforts to obtain any and all such permits and approvals at its own expense. Seller shall cooperate with Buyer in this regard and shall, if requested to do so, execute such applications or requests as may be necessary for the owner of the Premises to execute and to provide any information privy to, known to, or in possession of Seller which may be necessary or useful in completing applications or requests.

(d) Delays and Termination Right. Buyer shall have until the date Two Hundred and Seventy (270) days after the Effective Date to notify the Seller of its termination of this Agreement due to Buyer's determination, in its sole and absolute discretion, that it has not obtained Governmental Approvals (or has obtained Governmental Approvals with conditions that in Buyer's sole and absolute discretion adversely impact on Buyer's Intended Use) (the "Governmental Approvals Period"). Buyer may extend the Governmental Approvals Period for an additional One Hundred and Eighty (180) days to secure wetlands permits. If Buyer fails to notify Seller of its decision to terminate this Agreement prior to such date, such failure shall be deemed an election by Buyer to terminate this Agreement and this Agreement shall automatically terminate. In such event, Seller and the Title Company shall be obligated to return the Deposit (except for the Independent Consideration) to Buyer, with neither party having any other rights or obligations under this Agreement. If, while in compliance with the requirements of this Agreement, Buyer shall experience delay in obtaining Governmental Approvals, Buyer will be entitled to and may by written notice to Seller elect one of the following:

(i) to extend the Governmental Approval Period and the Closing Date for a period not to exceed thirty (30) days to obtain the Governmental Approvals, and, if not obtained prior to the expiration of such thirty (30) day extension, to elect whether (ii), (iii) or (iv) below applies;

(ii) to further extend the Governmental Approval Period and the Closing Date by an additional thirty (30) days, as in (i) above;

(iii) to waive such Governmental Approvals and to close the transaction in accordance with the terms of this Agreement; or

(iv) to terminate this Agreement and to receive a refund of the Deposit, except for the Independent Consideration, in which event neither Seller nor Buyer will have any further rights, duties or obligations under this Agreement, except as expressly provided herein; provided, however, that if Buyer elects to terminate this Agreement as a result of Seller's failure to diligently assist Buyer in obtaining the Governmental Approvals, Buyer's termination will be without prejudice to Buyer's right to sue Seller for damages suffered or incurred by Buyer as a result of Seller's breach hereof.

(v) If Buyer fails to waive or terminate this Agreement as provided above, such failure and/or waiver shall be deemed an election by Buyer to terminate this Agreement and this Agreement shall automatically terminate.

8. ADDITIONAL CONDITIONS TO CLOSING. Buyer must be able to obtain any third party approvals required pursuant to matters of records without conditions or costs which Buyer deems, in its sole and absolute discretion, to be unacceptable.

9. ENVIRONMENTAL DISCLOSURE, REPRESENTATIONS, INVESTIGATION AND WARRANTIES.

(a) Seller Disclosures. Within ten (10) business days after the Effective Date, Seller shall inform Buyer of any Hazardous Materials or Release, as defined hereinafter, and of any underground structures or utilities which are or may be present on the Premises and Seller shall deliver to Buyer any documentation (for example, any title evidence, surveys, reports, studies, test results, engineering drawings, permits or tank registrations) Seller has within its possession or control regarding such conditions, structures or utilities. Seller shall immediately notify Buyer, in writing, of any Release, as defined hereinafter, or change to any environmental information previously given by Seller to Buyer, or Seller understands that Buyer needs this information in order to properly evaluate the Premises, to avoid damaging underground structures and utilities and to avoid causing, contributing to or exacerbating the Release of a Hazardous Substance in the course of its investigations.

(b) Buyer Indemnification. Buyer agrees to pay all of the costs and expenses associated with its investigation and testing and to repair and restore any damage to the Premises caused by Buyer's investigations or testing, at Buyer's expense. Buyer also agrees to indemnify and hold Seller harmless from all costs, expenses and liabilities arising out of Buyer's negligence or willful misconduct or that of its employees, agents, consultants or contractors in performing its evaluation of the Premises, except that Buyer shall have no responsibility to Seller and Seller hereby releases Buyer and agrees to indemnify and hold Buyer harmless from all costs, expenses and liabilities arising in connection with environmental conditions, Hazardous Materials Release or underground structures or utilities that were not disclosed to Buyer as provided in this paragraph.

Soil, rock, water, asbestos, and other samples taken from the Premises shall remain the property of Seller. At Seller's request and expense, Buyer will assist in making arrangements for the lawful disposal of any contaminated samples and related transportation of disposal fees, but only if Seller signs the manifest and any other documents required in connection with the disposal of contaminated samples.

If Seller is not willing to sign the required documentation, Buyer's only obligation shall be to return the contaminated samples to Seller.

(c) Seller Environmental Representations and Warranties. With respect to Hazardous Materials and represents and warrants to Buyer that, except as disclosed and delivered to Buyer hereunder:

- (i) Reserved.
- (ii) As of the Effective Date, Seller shall not bring or store any Hazardous Materials at the Premises.
- (iii) Reserved.
- (iv) Reserved.
- (v) Seller has not received written notice that an inspection, audit, inquiry or other investigation has been or is being conducted by any Governmental Authority (as hereinafter defined in this Paragraph 9(c)(vi)) with respect to the presence or discharge of Hazardous Materials at the Premises or the quality of the air, or surface or subsurface conditions at the Premises.

(vi) Definitions. For purposes of this Paragraph 9 and this Agreement: "Environmental Laws" shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) ("CERCLA"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA"); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300f et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 1100 et seq.).

"Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or



identified as hazardous or toxic under any Environmental Law including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include:

"Hazardous Substances as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder;

"Hazardous Waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

Materials as defined as "Hazardous Materials" in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

"Chemical Substance or Mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

"Governmental Authorities" means the United States, the State of Texas and any political subdivision thereof, and any and all agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing of Hazardous Materials into the environment.

Seller further agrees to execute any documents as may be required by Buyer at the Closing to evidence the continued effectiveness of the warranties, representations and covenants contained within this Paragraph 9.

10. POSSESSION. Buyer shall be given sole and exclusive possession of the Premises at such time as the Deed described in Paragraph 11 below is delivered by Seller to Buyer conveying the Premises to Buyer and Buyer pays the Purchase Price as described in Paragraph 3 of this Agreement at Closing. On or prior to the Closing, Seller shall remove any and all trash and/or debris located on the Premises.

11. CLOSING. At the Closing Seller shall prepare and deliver at its cost a special warranty deed in a form substantially similar to the attached Exhibit B, which deed shall contain covenants of title satisfactory to Buyer, and shall state that Seller is seized of the Premises in fee, Seller has bargained, sold and conveyed unto Buyer and its successors and/or assigns in title the Premises in fee simple, and that Seller will warrant and defend title against the claims of all persons or entities by through or under Seller (the "Deed"). Title to the Premises at Closing shall be indefeasible and good of record and in fact and

zoned to permit Buyer's intended use. At the Closing, Seller shall convey indefeasible title to the Premises in fee simple by means of the Deed, free and clear of any and all liens, mortgages, deeds of trust, security interests, covenants, conditions, restrictions, easements, rights-of-way, licenses, encroachments, judgments or encumbrances of any kind except:

- (a) the lien of real estate taxes not yet due and payable; and
- (b) Permitted Exceptions.

At the Closing, the Parties shall execute the settlement statement prepared by the Title Company and such transfer tax forms as may be required by local or state requirements. In addition, on the Closing Date Seller shall have the responsibility of paying all state, county or municipal transfer taxes and documentary stamps, if any, occasioned by the conveyance of the Premises as well as any notary fees incurred. The cost of Title Insurance shall be allocated as set forth in Paragraph 6(b) and the cost of the Survey shall be allocated as set forth in Paragraph 6(a). All unpaid ad valorem taxes due and payable within the calendar year of the Closing shall be prorated between Seller and Buyer as of the Closing Date. Seller shall pay all rollback taxes, recoupment fees or taxes occasioned by a change in use of the Premises. Seller shall pay all broker's fees or real estate sales commissions, or any similar fees occasioned by the sale of the Premises, and Buyer shall have no obligation or responsibility toward the payment of any such costs. Seller agrees to promptly forward to Buyer any property tax statements for the Premises received by Seller after Closing and if Seller fails to do so, Seller shall be liable for any penalties Buyer has to pay because of Seller's failure. The cost of recording the Deed shall be paid by Seller. Buyer and Seller shall split the cost of any escrow fees.

Seller and Buyer agree that Buyer may extend the Closing Date for up to an additional fifteen (15) days to (a) complete, obtain signatures, and deliver to Title Company all documentation necessary for Closing, or (b) complete any title examination necessary for Closing. This fifteen (15) day extension may extend beyond the time set in Paragraph 2.

Seller agrees to indemnify and hold Buyer harmless from any claims of brokers or real estate agents by, through or under Seller for fees or commissions arising out of this sale of the Premises to Buyer. Buyer represents to Seller that Buyer has not employed nor engaged any real estate agents or brokers to be involved in this transaction except for Jones Lang LaSalle Brokerage, Inc.

Further, if the sale of the Premises to Buyer constitutes or requires a subdivision of the Premises owned by Seller, Seller shall pay all subdivision and platting expenses and obtain all necessary governmental approvals. In the event Seller has not theretofore paid the same, Buyer shall be entitled to a credit for such amounts from Seller against the Purchase Price at Closing.

12. ASSIGNMENT BY BUYER. This Agreement and the rights, duties, interests, and obligations of Buyer hereunder may be assigned by Buyer. If such assignment is made, then the sale of the Premises contemplated by this Agreement will be consummated in the name of any such assignee, and, after any such assignment, Seller will look solely to such assignee for the performance and discharge

of all the obligations and liabilities of Buyer hereunder, the Buyer, in such event, being relieved of any obligation and liability hereunder.

13. NOTICES. All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and must be (i) delivered personally (with written confirmation thereof); (ii) sent by a nationally recognized overnight courier (subject to written delivery confirmation thereof); (iii) faxed to the appropriate numbers listed below (subject to overnight delivery of the original pursuant to the terms set forth herein); or (iv) sent by United States certified mail, return receipt requested, postage prepaid and addressed to the Parties at their respective addresses set forth below. The same shall be effective upon receipt or refusal. The initial addresses and fax numbers of the Parties shall be:

To Seller:

City of Mt Vernon  
PO BOX 597  
MT VERNON TX 75457  
Facsimile: 903-537-2634

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

To Lowe's:

Lowe's Home Centers, LLC  
1000 Lowe's Blvd  
Mooresville, NC 28117  
Attention: Mike Reid, Real Estate Manager  
Email: mike.reid01@lowes.com

With a copy to:

Lowe's Home Centers, LLC  
1000 Lowe's Blvd.  
Mooresville, NC 28117  
Attention: Legal Real Estate, (LGL)  
Email: law@lowes.com

Upon at least ten (10) days' prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

14. DESTRUCTION, CONDEMNATION. In the event of any material damage to or destruction of the Premises or any material portion thereof or in the event of any taking or threat of taking by condemnation (or any conveyance in lieu thereof of the Premises or any portion thereof by anyone having the power of eminent domain), Buyer shall, by written notice to Seller delivered within fifteen (15) days of receiving written notice from Seller of such event, elect to: (i) terminate this Agreement and all of Buyer's obligations under this Agreement, whereupon the Deposit, except for the Independent Consideration, shall be returned to Buyer and this Agreement shall become null and void and no Party shall have any right, duty

or obligation under this Agreement, or (ii) consummate the purchase of the Premises. If Buyer fails to notify Seller of its election to either terminate this Agreement or consummate the purchase of the Premises as provided above, such failure shall be deemed Buyer's election to terminate this Agreement and this Agreement shall automatically terminate. If Buyer does not elect to terminate this Agreement, then Seller shall on the Closing Date pay to Buyer all insurance proceeds then received by Seller plus an amount equal to any deductible, or self insurance retention related to the casualty coverage, and all condemnation awards and compensation then received by Seller. In addition, Seller shall transfer and assign to Buyer, in form reasonably satisfactory to Buyer, all rights and claims of Seller with respect to payment for damages and compensation on account of such damage, destruction or taking.

Seller will not settle any condemnation or eminent domain claim or proceeding nor receive any award or payment in connection with a change in the grade of any street, road, highway or avenue in respect of or in connection with the Premises without obtaining Buyer's prior consent in each case.

15. DEFAULT.

(a) Seller's Default. One of the purposes of this Agreement is to bind Seller to sell the Premises described in Paragraph 1. If the sale and purchase of the Premises contemplated by this Agreement is not consummated on account of Seller's default or failure to perform hereunder, the Deposit, together with all interest earned thereon, shall be refunded to Buyer on notice by Buyer to the Title Company holding such Deposit, without prejudice to any other rights or remedies of Buyer hereunder, at law or in equity, which shall include that of specific performance.

(b) Buyer's Default. IF THE SALE AND PURCHASE OF THE PREMISES CONTEMPLATED BY THIS AGREEMENT IS NOT CONSUMMATED ON ACCOUNT OF BUYER'S DEFAULT HEREUNDER, SELLER SHALL BE ENTITLED, AS ITS SOLE AND EXCLUSIVE REMEDY HEREUNDER, TO RECEIPT OF THE DEPOSIT AMOUNT AS FULL AND COMPLETE LIQUIDATED DAMAGES FOR SUCH DEFAULT OF BUYER, THE PARTIES HERETO ACKNOWLEDGING THAT IT IS IMPOSSIBLE TO ESTIMATE MORE PRECISELY THE DAMAGES WHICH MIGHT BE SUFFERED BY SELLER UPON BUYER'S DEFAULT OF THIS AGREEMENT OR ANY DUTY ARISING IN CONNECTION OR RELATING HEREWITH. SELLER'S ENTITLEMENT TO AND RECEIPT OF THE DEPOSIT IS INTENDED NOT AS A PENALTY, BUT AS FULL AND COMPLETE LIQUIDATED DAMAGES. THE RIGHT TO RETAIN SUCH SUMS AS FULL LIQUIDATED DAMAGES IS SELLER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF DEFAULT OR FAILURE TO PERFORM HEREUNDER BY BUYER, AND SELLER HEREBY WAIVES AND RELEASES ANY RIGHT TO (AND HEREBY COVENANTS THAT IT SHALL NOT) SUE BUYER AS TO ANY CLAIMS, INJURY OR LOSS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT: (i) FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT, OR (ii) TO RECOVER ACTUAL DAMAGES IN EXCESS OF SUCH SUMS. BY INITIALING THIS PROVISION, EACH OF THE PARTIES (A) AGREES HERETO AND (B) ACKNOWLEDGES THAT IT HAS REVIEWED THIS PROVISION WITH ITS LEGAL COUNSEL AND UNDERSTANDS THE CONSEQUENCES OF THIS PROVISION.

Seller: \_\_\_\_\_

Buyer: RJG  
RJG

(c) Notice and Cure. Before terminating this Agreement based upon a default, the non-defaulting Party shall give the defaulting Party written notice in accordance with Paragraph 13 hereof. The defaulting Party shall have ten (10) days from the receipt of such notice to cure the default. If the default is timely cured, this Agreement shall continue in full force and effect. If the default is not timely cured, the non-defaulting Party may pursue its termination rights.

16. EASEMENTS AND RIGHT-OF-WAYS. Seller covenants and agrees that during the term of this Agreement, it shall not grant or enter into any easements, rights-of-way, contracts for work, or other agreements affecting the Premises, or the title thereto, without first obtaining the prior written consent of Buyer.

17. WARRANTIES, REPRESENTATIONS AND COVENANTS TO SURVIVE CLOSING. The warranties, representations and covenants made by the Parties shall survive the Closing contemplated by this Agreement and the Closing Date and shall continue in full force and effect without termination. Also, wherever in this Agreement Seller or Buyer shall have agreed or promised to perform certain acts or grant certain easements or other rights where the context of the Agreement would require such performance or grants to occur after the Closing, then those agreements and covenants expressed herein shall survive Closing and continue to bind Seller and Buyer. In addition, the warranties, representations and covenants made by the Parties shall survive the Closing of the purchase of the Premises and shall continue to bind Seller and Buyer.

18. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS. As an inducement to Buyer to enter into this Agreement and to purchase the Premises, Seller warrants, represents and covenants to Buyer, as follows:

(a) Authority. Seller (i) is a lawfully constituted corporation, duly organized, validly existing, and in good standing under the laws of the State of Texas; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Buyer in accordance with the terms and provisions of this Agreement.

(b) Title and Characteristics of Premises. Seller as of the Effective Date owns the Premises in fee and has marketable and good title of public record and in fact and the Premises at closing shall have the title status as described in Paragraphs 6 and 11 above.

(c) Conflicts. The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Premises as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller is bound. On the Closing Date all necessary and appropriate action



will have been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Premises as contemplated herein.

(d) Condemnation. Seller has received no notice of, nor is Seller aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Premises being taken by condemnation or conveyed in lieu thereof.

(e) Litigation. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened by or against or affecting Seller or the Premises which does or will involve or affect the Premises or title thereto. Seller will defend, indemnify and otherwise hold Buyer harmless from any and all claims of any person due to, arising out of or relating to the Premises, including any and all costs, expenses, and attorneys' fees which Buyer may incur as a result of Seller's breach of its warranty and/or representations hereunder. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Buyer written notice thereof.

(f) Assessments and Taxes. No assessments have been made against any portion of the Premises which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens, and Seller shall notify Buyer of any such assessments which are brought to Seller's attention after the execution of this Agreement. Seller will pay or cause to be paid promptly all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental charges levied or imposed upon or assessed against the Premises and due on or prior to the Closing Date.

(g) Boundaries. (i) There is no dispute involving or concerning the location of the lines and corners of the Premises, and such lines and corners are clearly marked; (ii) to Seller's knowledge there are no encroachments on the Premises and no portion of the Premises is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and (iii) no portion of the Premises is located within a watershed area imposing restrictions upon use of the Premises or any part thereof.

(h) No Violations. To Seller's knowledge, there are no violations of state or federal laws, municipal or county ordinances, or other legal requirements with respect to the Premises. Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are such violations. In the event Seller receives notice of any such violations prior to the Closing affecting the Premises, Seller shall promptly notify Buyer thereof, and shall promptly and diligently defend any prosecution thereof and take any and all necessary actions to eliminate said violations.

(i) Foreign Ownership. Seller is not a "foreign person" as that term is defined in the U. S. Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto, and Buyer has no obligation under Section 1445 of the U. S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U. S. Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby (as such term is defined in the regulations issued under said Section 1445).

(j) Prior Agreements. No prior agreements, options or rights of first refusal have been granted by Seller to any third parties to purchase or lease any interest in the Premises, or any part thereof, which are effective as of the Effective Date.

(k) Mechanics and Materialmen. On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Premises for which any person could claim a lien against the Premises and shall not have done any work on the Premises within one hundred eighty (180) days prior to the Closing Date.

(l) Patriot Act Representation. Neither the undersigned, nor any member, partner or shareholder of the Seller, nor any owner of a direct interest in the Seller (i) is listed on any Government Lists (as defined below), (ii) has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (iv) is currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (i) the criminal laws against terrorism; (ii) the criminal laws against money laundering; (iii) the Bank Secrecy Act, as amended; (iv) the Money Laundering Control Act of 1986, as amended; or (v) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit and aiding or abetting another to commit a Patriot Act Offense. For purposes hereof, the term "Governmental Lists" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control ("OFAC"); (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC; or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America.

19. WAIVER. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either Party of any of its rights hereunder, nor shall it be deemed

to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the Party to be bound.

20. DATE FOR PERFORMANCE. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period will be automatically extended through the close of business on the next following business day.

21. FURTHER ASSURANCES. The Parties agree that they will each take such steps and execute such documents as may be reasonably required by the other Party or Parties to carry out the intent and purposes of this Agreement.

22. SEVERABILITY. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

23. CUMULATIVE REMEDIES. The rights, privileges and remedies granted by Seller to Buyer hereunder shall be deemed to be cumulative and may be exercised by Buyer at its discretion. In the event of any conflict or apparent conflict between any such rights, privileges or remedies, Seller expressly agrees that Buyer shall have the right to choose to enforce any or all such rights, privileges or remedies.

24. AUTHORITY. The undersigned officers of Seller and Buyer hereby represent, covenant and warrant that all actions necessary by their respective members, managers, Boards of Directors, and shareholders and partners will have been obtained and that they have been specifically authorized to enter into this Agreement and that no additional action will be necessary by Seller and Buyer in order to make this Agreement legally binding upon them in all respects. Buyer and Seller covenant to provide written evidence of compliance with this Paragraph 24 prior to or on the Closing Date.

25. SUCCESSORS AND ASSIGNS. The designation Seller and Buyer as used herein shall include said Parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

26. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties and there are no other terms, conditions, promises, undertakings, or representations, express or implied, concerning the sale contemplated by this Agreement. This Agreement shall become binding and enforceable between the Parties hereto upon the full and complete execution and unconditional delivery of this Agreement by all Parties hereto. No amendment to this Agreement (express or implied) shall be binding upon the Parties unless such amendment shall be in writing and shall be signed and unconditionally delivered by all Parties hereto. No conduct, statements or activities outside the express terms of this Agreement shall be construed as an amendment (express or implied) to this Agreement unless such matters are reduced to writing in an amendment that is signed and unconditionally delivered by all Parties hereto.



27. LITIGATION. In the event of any litigation between the Parties in relation to or in connection with this Agreement or the transaction contemplated hereby, the unsuccessful Party, in addition to all other sums that the unsuccessful Party may be required to pay, shall be required to pay all costs of court and a reasonable sum for the successful Party's reasonable attorney's fees.

28. DISCLOSURE OF TAX ITEMS. Buyer and its employees, officers, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structures of this transaction or agreement and all materials or documents of any kind (including opinions or other tax analyses) that are provided to us relating to such tax treatment and tax structure.

29. RELATIONSHIP OF THE PARTIES. Nothing contained herein shall be construed or interpreted as creating a partnership or joint venture between the Parties. It is understood that the relationship is an arm's length one that shall at all times be and remain that of Buyer and Seller.

30. CONSTRUCTION OF DOCUMENT. Since the Parties hereto have participated in extensive negotiations in the drafting of the terms and provisions of this Agreement, the Parties agree that this Agreement shall be construed without regard to the identity of the person or party who drafted the various provisions and any rule of construction that the document is to be construed against the drafting party shall not be applicable.

31. CONFIDENTIALITY. Until the Closing or earlier termination of this Agreement, Seller agrees to maintain this Agreement and the information in this Agreement as confidential, and will not disclose such information to any other person without the prior written consent of Buyer. However, Seller may disclose such confidential information to its legal counsel, broker, to other professional advisors or consultants of Seller, to the Title Company and surveyor, to governmental authorities in seeking to obtain permits, approvals and licenses, and as required by law or legal process or to perform under this Agreement.

32. INCENTIVES. Seller represents and warrants to Buyer that: (i) Seller has not applied for, (ii) Seller has not received or been approved to receive, and (iii) without Buyer's prior written consent, Seller shall not apply for or receive in the future any Incentives (defined below) from any governmental or quasi-governmental authority (including, without limitation, business districts or special improvement districts) attributable to or in connection with development of the Premises or the Shopping Center. For purposes of this section, "Incentives" shall include, to the extent available under state or local laws, grants, tax credits or tax exemptions attributable to Buyer's employment, sales tax, real estate tax payments or payment of site work costs, incentive financing, tax rebates, tax abatements, fee waivers or reductions, or similar financial incentives. Buyer will not consent to provide any sales or valuation information regarding its proposed store to any party. If in the future Seller desires to apply for any Incentives, Seller shall first obtain Buyer's written consent to do so and shall provide Buyer with copies of all applications and other submissions and information related thereto. Seller shall not make any representations to any party about the future performance of Buyer's proposed store in connection with any Incentives, including but not limited to sales, construction costs, real estate value or employment. In the event any Incentive is obtained by

Seller, the benefit of such Incentive shall be shared equitably between Seller and Buyer (for example, by offset of amounts due Seller for site work costs). For the purpose of this provision, Seller includes any person or entity which has legal or practical control of or is controlled by Seller. This provision shall survive the Closing and is intended to be construed with the terms and conditions of the SDA.

33. 1031 TAX-FREE EXCHANGE.

(a) Seller's Exchange Cooperation. If requested to do so by Buyer, Seller shall cooperate in a simultaneous or deferred exchange by transferring the Premises to a third party (also an "Exchange Facilitator"), should Buyer assign this Agreement to the Exchange Facilitator. The assignment may take effect only simultaneously with the Closing under this Agreement, and in no event shall Buyer be relieved of any liability under this Agreement by reason of the assignment to an Exchange Facilitator and in no event shall the Exchange Facilitator have any right to enforce this Agreement that Buyer would not have if there had been no assignment. Seller shall not be required to bear any escrow, title, or other expenses in excess of those Seller would bear if there were no exchange, nor shall Seller be required to expend any sums of money in connection with the exchange. Seller shall not be required to execute any document creating personal liability or assume or be exposed to any liability in connection with an exchange, nor shall the Closing Date be extended to consummate an exchange. In no event shall Seller be required to take title to any property other than the Premises, and in no event shall Seller be responsible for any tax consequences to Buyer or any other party in connection with an exchange. Buyer agrees and covenants to defend, indemnify, protect, and save harmless Seller from any liability, damages, loss, cost and expense (including reasonable attorneys' fees) of whatsoever kind and nature arising out of any exchange.

(b) Buyer's Exchange Cooperation. If requested to do so by Seller, Buyer shall cooperate in a simultaneous or deferred exchange by permitting Seller to assign this Agreement to a third party (an "Exchange Facilitator") and by accepting a conveyance of the Premises from the Exchange Facilitator. This assignment may take effect only simultaneously with the Closing under this Agreement, and in no event shall Seller be relieved of any liability under this Agreement by reason of the assignment and in no event shall the Exchange Facilitator have any right to enforce this Agreement that Seller would not have if there had been no assignment. Buyer shall not be required to bear any escrow, title, or other expenses in excess of those Buyer would bear if there were no exchange, nor shall Buyer be required to expend any sums of money in connection with the exchange. Buyer shall not be required to execute any document creating personal liability or assume or be exposed to any liability in connection with an exchange, nor shall the Closing Date be extended to consummate an exchange. In no event shall Buyer be required to take title to any property other than the Premises or accept a deed from anyone other than Seller, and in no event shall Buyer be responsible for any tax consequences to Seller or any other party in connection with an exchange. Seller agrees and covenants to defend, indemnify, protect, and save harmless Buyer from any liability, damages, loss, cost and expense (including reasonable attorneys' fees) of whatsoever kind and nature arising out of any exchange.

34. ADEQUACY OF CONSIDERATION. Seller and Buyer acknowledge that each is either a sophisticated real estate investor and/or developer (in the case of Seller) or a sophisticated buyer (in the case of Buyer) of real property and that each Party has a sophisticated understanding of the real property development process. The Parties further acknowledge that because of legitimate and significant economic and legal concerns (including, but not limited to, land use constraints and potential environmental liability), it is not prudent or reasonable to purchase real property for development purposes without conducting due diligence and seeking assurances that the intended use of the real property will be legally permitted on terms that make business sense as this Agreement so provides and Seller agrees that those instances in which this Agreement affords Buyer the right to exercise its sole and absolute discretion are entirely reasonable under the circumstances. Each Party agrees that the agreements, undertakings, covenants, conditions and payments contained in this Agreement are adequate and sufficient consideration to support the enforcement of this Agreement in accordance with the terms and conditions of this Agreement and each of the Parties (for itself and its successors) irrevocably, completely, and unconditionally waives the right to assert any claim, in any forum or under any theory, now and in the future on behalf of such waiving Party and its successors and assigns that this Agreement is not enforceable, in whole or in any part, due to any claims that the Agreement is an option contract and/or that the Agreement lacks adequate or sufficient consideration.

35. ESCROW TERMS. The Title Company, as escrow agent, will provide Seller and Buyer with a written statement acknowledging receipt of any and all "Deposits", as herein defined, when received. The Title Company will invest all Deposits in an interest-bearing account in a federally insured banking institution. Seller and Buyer agree that in the event of a Closing any interest earned on the Deposit shall be credited to Buyer. Otherwise, interest shall be credited to the Party entitled to the Deposit under the terms of this Agreement. In performing its duties as escrow agent hereunder, the Title Company shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence or willful misconduct, and it shall accordingly not incur any such liability with respect to any action taken or omitted: (a) in good faith upon advice of its counsel, or (b) in reliance upon any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein that the Title Company shall in good faith believe to be genuine, to have been signed or presented by a proper person and to conform to the provisions of this Agreement. The Title Company shall disburse all Deposits in accordance with the terms of this Agreement within five (5) days after receipt of written notice to the Title Company and each other Party, provided that the Title Company has not received a written objection from any other Party. If any dispute shall arise between Seller and Buyer sufficient in the discretion of the Title Company to justify doing so, the Title Company shall be entitled to tender into the registry or custody of the clerk of the appropriate court having jurisdiction in the state where the Premises is located, any or all money, property or documents in its hands relating to this Agreement, together with such pleadings as it shall deem appropriate, and thereupon be discharged from all further duties under this

Agreement. The losing Party shall bear all costs and expenses incurred by the Title Company in connection with its duties as escrow agent hereunder in any such legal proceedings (collectively, the "Escrow Terms").

36. COUNTERPARTS. This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument.

37. GOVERNING LAW. This Agreement shall be governed by the laws of, and venue shall be located within, the state in which the Premises is located.

38. SELLER ACKNOWLEDGEMENT. SELLER ACKNOWLEDGES THAT UNTIL THE CLOSING, ANY SITE WORK, GRADING OR OTHER WORK SELLER UNDERTAKES ON THE PREMISES, [SHOPPING CENTER] OR ON SELLER'S ADJACENT PROPERTY, AND ANY OTHER ACTION, MONEY SPENT OR ACTIVITY SELLER UNDERTAKES IN ANTICIPATION OF BUYER PURCHASING THE PREMISES IS STRICTLY AT SELLER'S SOLE RISK AND EXPENSE.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal to be effective as of the date first above written.

SELLER:

  
\_\_\_\_\_

BUYER:

LOWE'S HOME CENTERS, LLC

By: Richard Goodman  
Richard Goodman (Feb 10, 2022 10:19 EST)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

|                  |                 |                   |                   |
|------------------|-----------------|-------------------|-------------------|
| <u>SJL</u><br>SL | <u>MR</u><br>MR | <u>TAD</u><br>TAD | <u>RRR</u><br>RRR |
| <u>SW</u><br>SW  | <u>AF</u><br>AF | <u>MB</u><br>MB   | <u>JG</u><br>JG   |

Escrow Terms Agreed and Escrow Accepted by:

\_\_\_\_\_  
Title Company

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A

All that certain tract or parcel of land located in the John Humphries Survey Abstract 215, Franklin County, Texas, and being all of a called 47.164 acre tract (called 50.280 acre tract, save and except 3.116 acres), as described by Deed from Franklin County Industrial Fund, Inc. to The Mount Vernon Economic Development Corporation, dated April 13, 2018 and recorded in Volume 353 Page 469 in the Official Public Records of Franklin County, Texas, and being more completely described as follows;

BEGINNING at a 1/2 inch iron rod (found) for the northwest corner of the above referenced 47.164 acre tract, same being the northeast corner of the above referenced 3.116 acre save and except tract and being a northern northeast corner of a called 205.310 acre tract as described by Deed to Lowes Home Centers, Inc, dated January 31, 1998 and recorded in Volume 239 Page 810 in said Public Records and being in the westernmost south line a called 46.555 acre tract as described by Deed to Carmela Lusk-Harris, dated July 22, 2018 and recorded in Volume 362 Page 331 in said Public Records, from which a 1/2 inch iron rod (found) for the westernmost southwest corner of said 46.555 acre tract, same being the northwest corner of said 3.116 acre tract and an interior ell corner of said 205.310 acre tract, bears South 88 deg. 27 min. 24 sec. West a distance of 100.00 feet;

THENCE North 88 deg. 27 min. 24 sec. East with the north line of said 47.164 acre tract and the south line of said 46.555 acre tract, a distance of 1,510.68 feet a crimped 1/2 inch iron pipe (found) for the northeast corner of said 47.164 acre tract, same being an interior ell corner of said 46.555 acre tract;

THENCE South 02 deg. 16 min. 12 sec. East with the east line of said 47.164 acre tract and a southern west line of said 46.555 acre tract, at a distance of 245.97 feet pass a 1/2 inch iron rod "Denney" (found) for a southwest corner of said 46.555 acre tract, same being the northwest corner of a called 46.555 acre tract as described by Deed to Terry Richardson, et al, dated July 5, 2018 and recorded in Volume 362 Page 327 in said Public Records and continuing with said east line and the west line of said 46.555 acre tract for a total distance of 1,361.93 feet to a 1/2 inch iron rod (found) for the southeast corner of said 47.164 acre tract, same being a northeast corner of the aforementioned 205.310 acre tract, from which a 3/4 inch sucker rod (found) for the southwest corner of said 46.555 acre tract bears, South 02 deg. 22 min. 02 sec. East a distance of 245.99 feet;

THENCE South 88 deg. 38 min. 10 sec. West with the south line of said 47.164 acre tract and a north line of said 205.310 acre tract, a distance of 1,510.68 feet to a 1/2 inch iron rod (found) for the southwest corner of said 47.164 acre tract, same being an interior ell corner of said 205.310 acre tract and the southeast corner of the above referenced 3.116 acre tract, from which a 1/2 inch iron rod (found) for the southwest corner of said 3.116 acre tract and an ell corner of said 205.310 acre tract bears, South 88 deg. 52 min. 18 sec. West a distance of 100.05 feet;

THENCE North 02 deg. 16 min. 22 sec. West with the west line of said 47.164 acre tract and the east line of said 3.116 acre tract, same being an east line of said 205.310 acre tract, a distance of 1,357.20 feet to the PLACE OF BEGINNING and containing 47.146 acres of land.

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Exhibit B  
SPECIAL WARRANTY DEED

Prepared by:

Return to: \_\_\_\_\_

TEXAS                                 )  
  )  
\_\_\_\_\_ COUNTY                 )

This SPECIAL WARRANTY DEED made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between MOUNT VERNON ECONOMIC DEVELOPMENT CORP., with an office at [insert], hereinafter referred to as "GRANTOR" and LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company, whose mailing address is 1000 Lowe's Blvd., Mooresville, NC 28117 Attention: Real Estate Legal (LGL), hereinafter referred to as "GRANTEE". The designation GRANTOR and GRANTEE, as used herein, shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter, as required by context.

**WITNESSETH:**

THAT GRANTOR, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, to it in hand paid by GRANTEE, the receipt and sufficiency of which is hereby acknowledged, does hereby forever grant, sell and convey unto the GRANTEE, and its successors and assigns, a certain tract of land, containing 47 acres, more or less, situated, lying and being in the City of Mount Vernon, Franklin County, Texas and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

This conveyance is made and accepted subject to the following matters, to the extent the same are still in force and effect:

See attached Exhibit B.

**TO HAVE AND TO HOLD** the above-described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the above-named Grantee and Grantee's heirs, successors, and assigns forever. Grantor does bind Grantor and Grantor's heirs, successors, and assigns to **WARRANT AND DEFEND**, all and singular, the said Property unto the said Grantee and Grantee's heirs,

successors, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof, by, through, or under Grantor, but not otherwise.



IN WITNESS WHEREOF, the GRANTOR has caused this instrument to be executed in its name by its Senior Vice President, of the GRANTOR the day and year first above written.

WITNESS:

By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA )

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is \_\_\_\_\_ of Lowe's \*\*[Home Centers, LLC, a North Carolina limited liability company]\*\*, and that he, as \_\_\_\_\_, being authorized to do so, executed the foregoing on behalf of the \*\*[company]\*\*.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT A to Special Warranty Deed

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LEGAL DESCRIPTION OF THE PROPERTY

All of that parcel of land containing approximately \_\_\_\_ acres in the \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_ and more particularly described as follows:

[Add description.]

LESS AND EXCEPT all oil, gas and other mineral rights appurtenant to the Property which Grantor reserves unto Grantor, its successors and assigns, forever. However, neither GRANTOR nor GRANTOR's successors or assigns shall have the right for any purpose whatsoever to enter upon, into or through the surface of the Property in connection therewith, or to undermine the lateral and subjacent support of the surface of the Property or any improvements located thereon. GRANTOR shall have no right to place or maintain any structures, improvements, equipment, or pipelines in, on, under or across the Property or to install any fixtures or facilities on the surface of the Property; provided, however, that such surface waiver shall not prohibit subterranean underground activities that begin upon and are conducted from the surface of real property other than the Property, provided that such activities at all times are sufficiently below the surface of the Property such that they do not interfere with or disturb in any manner the present or future use to which the owner of the Property desires to devote the Property or undermine the lateral subjacent support of the surface of the Property or any improvements located thereon.