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RESTRICTION AGREEMENT AND GRANT OF EASEMENTS

BETWEEN

CORSICANA-NAVARRO COUNTY DEVELOPERS, LLC

AND

HOME DEPOT U.S.A., INC.
(Store No. 6817)

When recorded return to:

Terry Flett Barakis
 Kane, Russell, Coleman & Logan, P.C.
 1601 Elm Street, Suite 3700
 Dallas, Texas 75201

RESTRICTION AGREEMENT AND GRANT OF EASEMENTS

(Corsicana, Texas/Store No. 6817/CLMS RE-2003-009843)

This **RESTRICTION AGREEMENT AND GRANT OF EASEMENTS** (this "**Agreement**") is made as of February 13, 2004, by and between **CORSICANA-NAVARRO COUNTY DEVELOPERS, LLC**, a Texas limited liability company ("Developer"), and **HOME DEPOT U.S.A., INC.**, a Delaware corporation ("Home Depot").

ARTICLE 1.
PRELIMINARY

1.1. **Definitions.** The following defined terms shall have the meanings set forth below for purposes of this Agreement.

- (a) **"Agreement"**: This Restriction Agreement and Grant of Easements.
- (b) **"Approved Plans"**: The grading and drainage plans for the Shopping Center approved by the Consenting Owners and referenced on **Exhibit "D"** attached hereto and made a part hereof.
- (c) **"Building"**: Any permanently enclosed structure placed, constructed or located on a Parcel, including any appurtenant canopies and supports.
- (d) **"Building Area"**: All those areas, if any, on each Parcel designated as a "Building Area" on the Site Plan, or if not designated on the Site Plan, then as permitted by applicable Governmental Regulations.
- (e) **"City"**: The city of Corsicana, Texas.
- (f) **"Claims"**: Causes of action, claims, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and court costs.
- (g) **"Common Area"**: All those areas on each Parcel which are not Building Areas or Service Areas, together with those portions of the Building Areas on each Parcel which are not from time to time actually covered by a Building, Garden Center or being used as an Outside Sales Area. Canopies which extend over the Common Area, together

portions may, at any time thereafter, be improved with Buildings and appurtenances as contemplated by this Agreement.

(h) **"Consenting Owners"**: Consenting Owners shall mean: (i) the Owner of the Home Depot Parcel; and (ii) each Owner or Owners owning alone or collectively at least fifty-one percent (51%) of the total of the Land Area of all of the Developer's Parcels collectively; provided, however, that in the event any such Consenting Owner sells its Parcel and becomes the Prime Lessee thereon, such Prime Lessee shall be deemed appointed as the entity to cast the vote or give the consent for the Parcel on behalf of the Consenting Owner so long as it is the Prime Lessee of said Parcel; provided further, however, in the event any such Consenting Owner sells any portion, but not all, of its Parcel, then the Consenting Owner as to such Parcel shall be that Owner who owns the largest portion of Land Area within such Parcel, regardless of any agreement to the contrary.

(i) **"Default Rate"**: The greater of (i) ten percent (10%) per annum or (ii) the prime rate plus three percent (3%). As used herein, "prime rate" shall mean the rate of interest published from time to time as the "Prime Rate" in the *Wall Street Journal* under the heading "Money Rates"; provided, however, that (i) if more than one such rate is published therein, the prime rate shall be the highest such rate; and (ii) if such rate is no longer published in the *Wall Street Journal* or is otherwise unavailable, the prime rate shall be a substantially comparable index of short-term loan interest rates charged by U.S. banks to corporate borrowers selected by the Consenting Owners.

(j) **"Developer"**: Corsicana-Navarro County Developers, LLC, a Texas limited liability company, and its successors and assigns.

(k) **"Developer's Parcels"**: Only those two parcels shown on the Site Plan as Outparcel 2 (known as "Lot 9" and sometimes referred to in this Agreement individually as "Lot 9") and Outparcel 1 (known as Lot "15" and sometimes referred to in this Agreement individually as "Lot 15") and legally described on Exhibit "B-1". Home Depot acknowledges that Developer owns additional real property within the immediate vicinity of the Shopping Center, and such other real property is not included within the term "Developer's Parcels" or "Shopping Center" for the purposes of this Agreement.

(l) **"Development Agreement"**: That certain Development Agreement between the Parties of even date with this Agreement.

(m) **"Easements"**: The easements fixed and established upon the Shopping Center pursuant to this Agreement.

(n) **"Floor Area"**: The total number of square feet of floor space on each floor in a Building, including basement, subterranean, balcony and mezzanine space, irrespective of whether actually occupied, and including any outdoor seating area used exclusively by an Owner or Occupant for its Permittees. Floor Area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components; provided, however, in no event shall the following be included in

such calculations: (i) an Outside Sales Area, (ii) the Garden Center located on the Home Depot Parcel, or (iii) Service Areas.

(o) **"Garden Center"**: A fenced outdoor area within the Building Area located on the Home Depot Parcel, portions of which may be under roof or canopy and other portions of which may be "open air" areas.

(p) **"Governmental Regulations"**: Any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, or conditions of approval or authorization of any governmental entity, agency or political subdivision whether now in force or which may hereafter be in force.

(q) **"Home Depot"**: Home Depot U.S.A., Inc., a Delaware corporation, its successors and assigns.

(r) **"Home Depot Parcel"**: The Parcel legally described on Exhibit "B-2" and identified on the Site Plan as the "The Home Depot".

(s) **"Improvements"**: Any Building, sign or Common Area improvements located in the Shopping Center.

(t) **"Land Area"**: The total gross square footage of a Parcel.

(u) **"Lienholder"**: Any mortgagee under a mortgage, a grantee under a deed to secure debt, or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

(v) **"Occupant"**: Any Person or Prime Lessee from time to time entitled to the use and occupancy of any portion of a Building in the Shopping Center under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

(w) **"Outside Sales Area"**: An area generally unprotected from the elements that may be used for sales and/or storage purposes. An Outside Sales Area shall only be located in the area(s) designated on the Site Plan. Any designation on the Site Plan of "seasonal sales" or "seasonal sales area" shall also be deemed Outside Sales Area.

(x) **"Owner"**: (i) The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns, or (ii) a Prime Lessee as to a Parcel that is subject to a Prime Lease. Each Parcel may have only one Owner, provided that the Owner of a Parcel subject to a Prime Lease shall be jointly and severally liable with the Prime Lessee for any Claims or any default hereunder with regard to the ownership or operation of such Parcel.

(y) **"Parcel" or "Parcels"**: Individually or collectively, the Home Depot Parcel and Developer's Parcels as each is shown on the Site Plan and more particularly described in Exhibits "B-1" and "B-2".

(z) **"Party" or "Parties"**: Home Depot and Developer, and their respective successors and assigns.

(aa) **"Permittee"**: All Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, assignees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended use of the Shopping Center.

(bb) **"Person"**: Individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(cc) **"Prime Lessee"**: An Occupant of an entire Parcel who is not the Owner of such Parcel pursuant to an agreement by which such Prime Lessee is subject to all obligations and responsibilities relating to the ownership and operation of such Parcel and any business thereon.

(dd) **"Restaurant"**: Any operation or business that requires a governmental permit, license and/or authorization to prepare and/or serve food for either on- or off-site consumption.

(ee) **"Restrictions"**: The covenants, restrictions, liens and encumbrances fixed and established upon the Shopping Center pursuant to this Agreement.

(ff) **"Service Areas"**: The sidewalks attached to and/or adjoining a Building, trash compactors and enclosures, exterior lighting attached to a Building, drive-up or drive-thru customer service facilities directly adjacent or in close proximity to a Building, side yards and rear yards used for outdoor storage (provided such outdoor storage does not interfere with the flow of vehicular traffic), loading docks, electrical facilities and transformers, truck ramps and other similar exclusive service facilities and outward extensions, and customer pickup areas directly adjacent or in close proximity to a Building, whether or not described, labeled or depicted as such on the Site Plan. The Service Areas are the exclusive property of the Owner of the Parcel and not part of the Common Area.

(gg) **"Shared Pylon Signs"**: Those certain off-premises pylon signs designated on the Site Plan and described more fully in Section 4.3.

(hh) **"Shopping Center"**: Collectively, the Home Depot Parcel (Exhibit "B-2") and the Developer's Parcels (Exhibit "B-1") only.

(ii) **"Site Plan"**: The site plan of the Shopping Center depicted in Exhibit "A" attached hereto.

(jj) **"Utility Lines"**: Those facilities and systems for the transmission or other provision of utility services, including, but not limited to, water drainage, detention or retention systems or structures, water mains, sewers, lift stations, water sprinkler system lines, electrical conduits or systems, gas mains, other public or private utilities providing service to all Owners of the Shopping Center in common.

1.2. **Purpose.** To promote the effective development and operation of the Parcels, the parties hereby fix and establish the Easements and Restrictions upon and subject to which all of the Shopping Center, or any part thereof, shall be improved, held, leased, sold and/or conveyed. Such Easements and Restrictions shall run with the land and inure and pass with such Parcels (and no other real property of Developer) and shall apply to and bind the respective successors in interests thereof, and all and each Easement and Restriction is imposed upon such Parcels as a mutual equitable servitude in favor of such Parcels and any portion thereof.

ARTICLE 2. BUILDING AND COMMON AREA DEVELOPMENT

2.1. **Building Location.** Buildings may be located (or relocated) anywhere within a Parcel within the Building Area shown on the Site Plan (Page 2), provided the maximum square footage of the Floor Area does not: (i) exceed the maximum amount permitted by Governmental Regulations without a variance, or (ii) exceed the maximum square footage of Floor Area permitted on such Parcel by the application of the minimum parking requirements set forth in Section 4.1 below. If no Building Area is shown on the Site Plan, Buildings may be located anywhere within a Parcel subject to the foregoing restrictions.

2.2. **Common Areas.** Common Areas are hereby reserved for the sole and exclusive use of all Owners and Occupants of the Shopping Center and their Permittees. Common Areas may be used for vehicular driving and pedestrian traffic and such other purposes as are usual and customary in Shopping Centers in the Corsicana metropolitan area, unless otherwise specifically prohibited in this Agreement. Common Areas shall be maintained as provided in Article 6 below. The Owners acknowledge and agree that incidental temporary encroachments upon Common Areas may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Buildings, signs and/or Common Areas, all of which are permitted under this Agreement so long as all activities requiring the use of such equipment are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of Common Areas or with the normal operation of any business in the Shopping Center.

2.3. **Type and Design of Building**

(a) All Improvements in the Shopping Center shall be constructed in conformity with the Approved Plans to the extent applicable. Prior to constructing any Improvements, each Owner shall submit to the Consenting Owners grading, drainage and utility plans so that the Consenting Owners may confirm compliance with this Section 2.3(a). No Improvements upon a Parcel for which grading, drainage and utility plans have not been approved may be constructed. Unless specifically approved in writing by the Consenting Owners, the drainage, grading and utilities of any Parcel shall not be modified, altered or otherwise changed from the Approved Plans (provided, however, a modification to a Utility Line that does not impact any other Parcel shall not require additional approval). There shall be no interference with the established drainage pattern and system over any portion of the Parcels unless adequate provision is made for proper drainage and such interference is approved by all affected Owners. Developer hereby approves all grading, drainage and utility plans for the construction of the initial improvements on the Home Depot Parcel.

(b) Subject to Section 2.3(e) below, every Building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office, Inc. (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating as determined by local governing agencies of any Building built upon any other Parcel.

(c) No Building shall be built in such a manner as to adversely affect the structural integrity of any other Building in the Shopping Center. No Owner shall have the right to make any attachment whatsoever to another Owner's Building (such other Owner being referred to in this subparagraph only as "Other Owner") without such Other Owner's prior written approval, which may be withheld in such Other Owner's sole and absolute discretion. If the Other Owner approves the requested attachment, the Owner making the attachment shall, prior to making such attachment, obtain the Other Owner's prior written approval (which may be withheld in its sole and absolute discretion) of the drawings and specifications detailing the attachment. Any such attachment shall be at the sole cost and expense of the Owner making the attachment and shall be in strict conformance with the approved drawings and specifications detailing the same. Thereafter, the Owner making the attachment shall maintain and repair such attachment and shall repair any affected portion of the Other Owner's Building due to the attachment to the Other Owner's Building.

(d) No Building on either Lot 9 or Lot 15 (including any landscaping located thereon) shall exceed one (1) story and twenty-two (22) feet in height, inclusive of all architectural embellishments, mechanical fixtures, signage and television equipment, and screening for same. No mezzanine or basement shall be used for the sale or display of merchandise or for the offer or provision of retail services to the public.

(e) The Building to be constructed on the Home Depot Parcel may be built as Category V-NR (non-rated), as that category is defined pursuant to the Uniform Building Code 2000 Edition (UBC). Any Building on any other Parcel within the Shopping Center shall be constructed in such a manner to guarantee that the Building on the Home Depot Parcel may be constructed or otherwise remains at least as broad as Type V-NR pursuant to the UBC 1997 edition.

(f) There shall not be constructed in the Shopping Center any parking structure, whether over or under ground level.

2.4. Construction Requirements.

(a) All work performed in the construction, repair, replacement, alteration or expansion of any Improvements shall be performed as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any Building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center, including, without limitation, access to its Building. In addition, all work performed on Improvements on Lot 9 and/or Lot 15 shall not unreasonably interfere, obstruct or delay (i) construction work being performed on any

other Parcels, or (ii) the use, enjoyment or occupancy of any other Parcels. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all Buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party (as defined in Section 2.4(a) above) shall not permit any mechanics', materialmen's or other professional services liens (as contrasted with consensual monetary liens such as construction and/or permanent financing) to stand against any other Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any Parcel encumbered by any such lien or claim of lien, (i) cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, or (ii) give such assurance as would enable a title insurance company to insure over such lien or claim of lien, failing which the Owner or Prime Lessee of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend, protect and hold harmless the Owners and Occupants for, from and against any and all Claims arising out of or in any way connected with the performance of such work, including an Owner's or Occupant's own negligence, unless such cause of action is solely the result of the negligent or willful misconduct of the indemnified Owner or Occupant.

(c) Staging for the initial construction of Buildings or the replacement, alteration or expansion of any Building, sign or Common Area improvements located in the Shopping Center, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall (i) be located solely on the constructing Owner's Parcel, or (ii) if such is the case, shall be limited to specific areas ("Staging Area") of the Shopping Center designated on the Site Plan, if any, or otherwise approved in writing by the Consenting Owners. Each Staging Area on any Parcel shall be located in such a way that it will not interfere with the use of the Common Area on any other Parcel. At the request of any Consenting Owner, any Staging Area shall be enclosed by a safety fence. Upon completion of such work, the constructing Party shall, at its expense, restore any damaged Common Area to a condition equal to or better than that existing prior to commencement of such work. Notwithstanding the foregoing, Developer hereby grants to Home Depot the temporary right and easement to stage construction and maintain an employee hiring trailer on Lot 15. This right shall terminate upon the opening of business on the Home Depot Parcel or at the expiration of fifteen (15) business days' notice from Developer requiring such termination.

2.5. Temporary License. Each Owner hereby grants to the other Owners a temporary license for access and passage over and across the Common Area located on the granting Owner's Parcel, to the extent reasonably necessary for such Owner to construct and/or maintain

Improvements upon its Parcel; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further that the use of such license shall not unreasonably interfere with the use and operation of (i) any business conducted by an Owner or Occupant, or (ii) the Common Area on the granting Owner's Parcel. Prior to exercising the rights granted herein, an Owner shall provide each granting Owner with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by this Agreement. The Owner shall promptly pay all costs and expenses associated with such work, shall complete such work as quickly as possible, and shall promptly clean and restore the affected portion of the Common Area on the granting Owner's Parcel to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

2.6. **Indemnity.** In addition to the indemnification provided in Section 12.3 below, each Owner shall indemnify, defend, protect and hold every other Owner and their respective officers, directors, shareholders, employees and agents harmless for, from and against any and all Claims arising out of or related to injury to or death of any person or damage to or destruction of any property occurring on any Parcel and arising out of or resulting from any construction activities performed by or at the request of an Owner or its Occupants, including an Owner's or Occupant's own negligence, unless such damage or destruction is caused solely by the negligent or willful act or omission of the indemnified Owner.

2.7. **Approval Procedures.**

(a) Before any action requiring the Consenting Owners' approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a decision as to the proposal. Each Consenting Owner shall have the right to approve or disapprove the proposal in accordance with the manner and time procedures set forth in Section 14.6 below, and if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval.

(b) No Consenting Owner shall be liable in damages or otherwise for any reason, including any mistake in judgment, negligence or nonfeasance, arising out of or in connection with the approval or disapproval or failure to approve or disapprove any proposal submitted pursuant to this Agreement. Each Owner agrees that, by acquiring title to its Parcel and submission of such plans, drawings and/or specifications, it will not bring any action or suit against any Consenting Owner to recover any damages arising out of or connected with the matters subject to the approval or disapproval. In addition, each Owner shall indemnify, defend, protect and hold the Consenting Owners and their respective officers, directors, shareholders, employees and agents harmless for, from and against any and all Claims arising out of or related to the approval or disapproval of any plans, drawings and/or specifications submitted to a Consenting Owner by or on behalf of such Owner or its Occupants. No approval shall be considered an approval of the plans, drawings and/or specifications from an engineering perspective or a determination that they meet building, environmental or engineering design standards, or that any such Improvements have been built in accordance with such plans, drawings and/or specifications.

**ARTICLE 3.
EASEMENTS**

- 3.1. **Ingress and Egress.** (Intentionally Omitted).
- 3.2. **Parking.** (Intentionally Omitted).
- 3.3. **Utility Lines and Facilities.**

(a) Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a nonexclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, removal and replacement of Utility Lines, subject to the written approval of the granting Owner as to the location of such Utility Lines, and otherwise consistent with the Approved Plans for the Shopping Center. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements, except that fire hydrants, ground-mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or improvements located in the Shopping Center) or which have been approved by the Consenting Owners shall be permitted. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a private party. The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use, and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of the easement facilities.

(b) Notwithstanding the grant of easement for sewer lines included within Section 3.3(a) above, any connections to sewer lines, if such connections are not shown on the Approved Plans, may only be made in the event that (i) the Owner of a Parcel benefiting from the sewer line easement (a "Grantee Parcel") makes at its sole expense any and all improvements to the sewer lines and systems (including, without limitation, any lift stations) as are necessary or required in order to increase the capacity of the sewer lines and systems to adequately serve the Grantee Parcel pursuant to plans and specifications that comply with the requirements of all Governmental Regulations and that are first approved by the Consenting Owners and the Owner of the Parcel burdened by the sewer line easement (a "Grantor Parcel"); (ii) the Owner of the Grantee Parcel procures all permits, licenses and approvals and pays any and all tap-on or similar fees required to make any such improvements and to so utilize and connect with such sewer lines and systems; and (iii) the Owner of the Grantee Parcel pays for increased costs of maintenance and repair due to such development work. Notwithstanding the preceding sentence, so long as a Consenting Owner complies with the requirements of all

Governmental Regulations, such Consenting Owner will not be required to obtain the approval of the Owner of the Grantor Parcel as set forth in subsection (b)(i) above.

(c) At any time and from time to time an Owner shall have the right to install, repair, maintain and/or relocate on its Parcel any Utility Line installed (or to be installed) pursuant to the foregoing grant of easement which is then located (or to be located) on the Parcel of such Owner, provided that (i) in the case of an installation or relocation, such installation or relocation shall be performed only after sixty (60) days' notice in writing of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line; (ii) in the case of a repair and/or maintenance, such repair and/or maintenance shall be performed only after thirty (30) days' notice in writing of the Owner's intention to undertake repair and/or maintenance shall have been given to the Owner of each Parcel served by the Utility Line, except in the case of an emergency (defined as any situation where there is an imminent threat of harm to persons or property), when such notice shall be given a reasonable period in advance of such emergency repair as is practicable; (iii) any such repair, maintenance and/or relocation shall not unreasonably interfere with or diminish utility service to the Parcels served by the Utility Line; (iv) any such repair, maintenance and/or relocation shall not reduce or unreasonably impair the usefulness, capacity or function of the Utility Line; (v) any such repair, maintenance and/or relocation shall be performed without cost or expense to the Owner or Occupant of any other Parcel; (vi) any such repair, maintenance and/or relocation shall provide for the original and relocated area (if applicable) to be restored using materials and design standards which equal or exceed those originally used; (vii) any such repair, maintenance and/or relocation shall not interfere with the business operation of any of the Owners or Occupants of the Shopping Center; (viii) if an electrical line/computer line is being relocated, the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects, without first obtaining the prior written consent of the Owner of the Home Depot Parcel, which consent may be granted or withheld in such Owner's sole and absolute discretion. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

The terms and provisions of this Section 3.3 shall survive the expiration or earlier termination of this Agreement.

3.4. **Signs.** Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a non-exclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the Shared Pylon Sign referred to in Section 4.3 of this Agreement if and to the extent such Parcel Owner has been granted the right to display a face panel on the Shared Pylon Sign, and all Utility Lines appurtenant thereto. No signage (temporary or otherwise, including, but not limited to, an electronic marquee) with respect to Persons who are not Owners or Occupants shall be permitted on the Shared Pylon Sign.

3.5. **Dedication to Public Entities.** Without the prior written consent of the Consenting Owners, which consent may be granted or withheld in the sole and absolute discretion of each Consenting Owner, no Owner shall grant any easement for the benefit of any

property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Parcel to governmental or quasi-governmental authorities or to public utilities to service the granting Owner's Parcel.

3.6. **No Merger.** Notwithstanding an Owner's ownership of more than one Parcel, the easements granted hereunder shall burden and benefit each Parcel individually, without merger as a result of such common ownership, and upon conveyance of a Parcel so that such Parcel ceases to be under common ownership, neither the Owner conveying said Parcel nor the Owner acquiring said Parcel shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date this Agreement is recorded in the office of the recorder of the county in which the Shopping Center is located.

3.7. **Permanent Drives and Shared Driveways.** (Intentionally Omitted).

3.8. **Storm Drainage and Detention Easements.** Each Owner hereby grants and conveys to each other Owner owning an adjacent Parcel the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the grantor's Parcel, upon the following conditions and terms: (i) the grades and the surface water drainage/retention system for the Shopping Center shall remain in strict conformance with the Approved Plans, and (ii) no Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration is not in conformance with the Approved Plans or would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities shall be deemed a Utility Line. All drains, gutters, downspouts, berms, swells, and other drainage facilities and systems (collectively, "Systems") shall be maintained by each Owner, with respect to the portion of each such System located upon an Owner's Parcel, in a neat, orderly, safe and sanitary condition, and in such a manner as to facilitate the orderly discharge of water by means thereof.

ARTICLE 4. OPERATION OF COMMON AREA

4.1. **Parking.**

(a) There shall be no charge for parking in the Common Area without the prior written consent of the Consenting Owners or unless otherwise required by law. Except as set forth in this Section 4.1, the parking area on each Parcel shall contain sufficient ground level parking spaces (exclusive of parking spaces used for cart corrals and/or recycle centers) in order to comply with Governmental Requirements without a variance. The following minimum requirements shall apply solely to Lot 15, without reliance on parking spaces located on Lot 9 or the Home Depot Parcel:

- (i) Five (5) parking spaces for each one thousand (1,000) square feet of Floor Area;
- (ii) if a business use contains a drive-up or drive-thru unit (such as a remote banking teller or food ordering/dispensing facility, but specifically excluding the

customer loading area located on the Home Depot Parcel), then there shall also be created space for stacking not less than ten (10) automobiles (exclusive of any drive-aisle) for each drive-up unit;

(iii) ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area for each single Restaurant which has less than five thousand (5,000) square feet of Floor Area;

(iv) fifteen (15) parking spaces for each one thousand (1,000) square feet of Floor Area for each Restaurant which has at least five thousand (5,000) square feet of Floor Area, but less than seven thousand (7,000) square feet of Floor Area;

(v) twenty (20) parking spaces for each one thousand (1,000) square feet of Floor Area for each Restaurant, which has seven thousand (7,000) square feet of Floor Area or more.

The foregoing parking requirements shall not apply to Lot 9 so long as Lot 9 has no curb cuts providing access to the Home Depot Parcel.

(b) If an Owner or Occupant operates a Restaurant on Lot 15 incidental to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the application of subsections (iii), (iv) and (v) above. For purposes of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. In the event an Occupant utilizes Floor Area for both Restaurant and retail purposes, and such Restaurant purpose is not an "incidental operation", only the portion of Floor Area allocated for Restaurant purposes shall be subject to the application of subsections (iii), (iv) and (v) above.

(c) If the minimum number of parking spaces required by Governmental Regulations is greater than the minimum requirements set forth above, then the minimum number of parking spaces as required by Governmental Regulations shall control. A variance as to Governmental Regulations as to Lot 15 only may be obtained only with the prior consent of Home Depot.

(d) In the event of a condemnation of part of a Parcel or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required in this Section 4.1, the Owner whose Parcel is so affected shall use its best efforts (including, without limitation, using proceeds from the condemnation award or settlement) to restore and/or substitute parking spaces in order to comply with the parking requirements set forth in this Section 4.1. If such compliance is not possible, the Owner whose Parcel is so affected shall not be deemed in default hereunder, but such Owner shall not be permitted to expand the amount of Floor Area located upon its Parcel. If such Floor Area is thereafter reduced other than by casualty, the Floor Area on such Parcel may not subsequently be increased unless the parking requirement is satisfied.

4.2. **Employee Parking.** (Intentionally Omitted)

4.3. Signs

(a) Except as set forth in and subject to the provisions of the other subsections of this Section 4.3, no freestanding, permanent sign structures may be erected or maintained in the Shopping Center by any Party. The parties agree that the Shared Pylon Signs shall be located: (a) within the right of way at the northern end of the access road known as "Corsicana Crossing Blvd." at the intersection with U.S. Highway 287; and (b) the right-of-way at the northern end of the access road known as "Lakeview Boulevard at the intersection with U.S. Highway 45. Developer has made no representations or warranties that the City shall grant such sign easements. If the City does not grant such easements, Developer shall grant to Home Depot such easements on Lot 9 or Lot 15 with respect to the sign at Lakeview Boulevard. Home Depot shall undertake to obtain the necessary easements required for the Shared Pylon Signs on terms approved by the Consenting Owners in their reasonable discretion pursuant to separate "Off-Premises Sign Easement Agreements". Home Depot shall construct the Shared Pylon Signs in accordance with sign plans and construction budgets approved by the Consenting Owners in their reasonable discretion (the "Shared Pylon Sign Plans").

(b) (Intentionally Omitted).

(c) (Intentionally Omitted).

(d) Notwithstanding anything in this Agreement to the contrary or in the Off-Premises Sign Easement Agreements, Home Depot shall have at all times the right to display on the Shared Pylon Sign panels substantially consistent with the prototypical "Home Depot Home Improvement Store" sign panel as now or hereinafter adopted by Home Depot. The Home Depot Parcel Owner may make changes to and/or replace its sign panels, without the prior consent of the Consenting Owners, so long as: (i) all necessary governmental approvals are obtained; (ii) such changes and replacements are made expeditiously and without material interference with the other sign panels on the Pylons; (iii) such signs are not in bad taste (as defined by the standards of the local community); (iv) such signs are reasonably consistent with the aesthetics of the Shopping Center or such signs are the prototypical signs of a "National Retailer" (i.e., a retailer or restaurant operation with no less than thirty (30) locations nationwide) or a "Regional Retailer" (i.e., a retailer or restaurant operation with no less than ten (10) locations in the State of Texas).

(e) (Intentionally Omitted).

(f) The Home Depot Parcel Owner shall be entitled to construct, install and maintain on the Home Depot Parcel such freestanding pylon signs or monument signs as permitted by Governmental Regulations. Except as provided herein and provided the signage otherwise permitted by Governmental Regulations to the Owner of the Home Depot Parcel as to such Parcel and the Shared Pylon Signs is not adversely affected thereby, each of the Developer's Parcels may have, subject to Governmental Regulations without a variance, such signs permitted thereon under Governmental Regulations. There shall be not more than one freestanding pylon or monument sign on each of Lot 9 and Lot 15. If either of said Lots are subdivided, then there shall be permitted at one sign

per tract but not to exceed two (2) signs on Lot 15 and three (3) signs on Lot unless otherwise additional signs are permitted by the mutual written agreement of the Consenting Owners. The location of any freestanding sign on Lot 9 and Lot 15 and the initial design of the sign structure (including, without limitation, height and size) shall be subject to the prior written approval of the Owner of the Home Depot Parcel, which approval shall not unreasonably be withheld, hindered or delayed. Approval shall be withheld solely on the grounds that such sign is in bad taste (as defined by the standards of the local community), or, as to Home Depot, the sign otherwise could, in the minds of the general public, be confused with Home Depot's prototypical "Home Improvement Store" or "Expo Design Center" signs or the signs of any other "National Retailer" or "Regional Retailer" (as defined below). The Consenting Owners shall be deemed to have approved any sign that is consistent with the pylon sign panel of a national retailer or restaurant chain with no less than thirty (30) locations nationwide (a "National Retailer") or a regional retailer or restaurant chain with no less than ten (10) locations (a "Regional Retailer") within the State of Texas. Any change to the initial design of any sign structure on Lot 9 and Lot 15 shall also be subject to the prior written approval of the Owner of the Home Depot Parcel Owner on the same basis as set forth above. The cost of constructing, installing, maintaining, insuring, operating, repairing and replacing any sign structure and sign fascia shall be paid by the applicable Owner of the Parcel upon whose Parcel such sign is located.

(g) Except as set forth in subsections (a), (b) and (e) above, if applicable, or otherwise approved by the Consenting Owners, all signs on the Parcels shall conform with the following standards:

(i) All exterior Building signs shall be restricted to identification of the business or service located or provided therein.

(ii) No exterior Building or freestanding sign shall utilize flashing, moving or audible lights or appurtenances except to the extent part of the then current prototype sign of a National or Regional Retailer as defined above.

4.4. **Protection of Common Area.** Each Owner and Occupant shall have the right to take such steps as it deems necessary to prevent those Persons not authorized by this Agreement to use the Common Area from using the Common Area for ingress, egress, parking or any other purpose. Subject to Governmental Regulations, such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Shopping Center except along the common boundary line of any Parcel with any other Parcel; provided, however, that any impairment of vehicular access to or from the Shopping Center, or any part thereof, shall require the Consenting Owners' prior written approval, which may be withheld in such Consenting Owners' sole and absolute discretion.

4.5. **Changes to Common Area.** (Intentionally Omitted).

**ARTICLE 5.
RESTRICTIONS ON USE**

5.1. Home Improvement Store Restrictions. Except as expressly provided in this Section 5.1:

(a) No portion of the Developer's Parcels shall be used as a home improvement center or garden center. Nothing herein shall be deemed to prohibit a general discount retailer [the principal business of which is not a garden center or home improvement center (e.g., Target, K-Mart, Sam's Club, Wal-Mart, Marshall's, Ross Dress for Less, and TJ Maxx, etc.), electronics retailers (e.g., Circuit City, Ultimate Electronics, Best Buy, etc.) office products retailers (e.g., Office Depot, Staples, etc.), supermarkets (e.g., Albertson's, Kroger's, Tom Thumb, etc.) or a sporting goods/recreational goods store (e.g. Oshmans, REA, or Gander Mountain)] or similar stores which may carry home improvement items or which have garden centers as an incidental part of their regular operations.

(b) No portion of the Developer's Parcels shall be used by an owner, tenant or operator which specializes in the sale of single or multiple lines of specific or particular home improvement items or garden supplies (e.g., a flooring store, a lighting store, a wallpaper store, a hardware store, a pool supply company, which retailers are sometimes referred to in the industry as "category killers"). Home improvement items shall include soft flooring, hard flooring, kitchens, lighting, bathrooms, window treatments, wallpaper, patio furniture, patio accessories, barbeques and similar outside cooking equipment, the rental of home improvement equipment and tools; the sale of "white goods" (i.e., major home appliances), lumber, hardware items typically found in a home improvement store, plumbing supplies, electrical supplies, paint, carpeting, cabinets, siding, ceiling fans, gardening supplies, nursery products, outdoor furniture and pool supplies). Nothing herein shall be deemed to prohibit specialty retailers specializing in the sale of general home furniture, furnishing or home fashions (e.g., Bassett Furniture, Weirs, Gabberts, Linens N' Things, Bed Bath & Beyond, Pier One Imports, Crate and Barrel, etc.) or craft and/or hobby stores (e.g., Michaels, M.J. Designs, Jo-Ann's, Amber's, Hobby Lobby, etc.) who may sell various home improvement items or garden center items as an incidental part of their regular operations. Furthermore, specifically excluded from the "category killers" definition is Radio Shack or similar type stores, Aaron Brothers art and picture framing stores and similar type stores, telephone equipment and telephone service stores, and auto supply or "car toy" stores.

The restrictions set forth in this Section 5.1 shall terminate automatically if a home improvement store and/or garden center have ceased to operate on the Home Depot Parcel and another type of retail operation has opened for business on more than seventy-five percent (75%) of the Building Area on the Home Depot Parcel.

5.2. Shopping Center Restrictions.

(a) No portion of the Shopping Center shall be used for any non-retail use or for any of the following purposes: a surplus store; gun range; the sale of guns as a primary use; a warehouse; an animal kennel; theater, auditorium, sports or other

entertainment viewing facility (whether live, film, audio/visual or video); bowling alley; skating rink; fitness center, workout facility, gym, health spa or studio, or exercise facility; Restaurants which derive more than thirty-five percent (35%) of their gross sales from alcohol sales; business office usage (defined as any office that does not provide services directly to a consumer) other than incidental in connection with non-prohibited uses; retail office usage (defined as any office which provides services directly to consumers, including, but not limited to, financial institutions, real estate, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics). In the event that the Home Depot Parcel Owner ceases to use the Home Depot Parcel as a Home Depot Home Improvement Store, then such Owner may use the Home Depot Parcel for the following additional purposes: theater, skating rink, fitness center, workout facility, gym, spa or studio, or exercise facility.

(b) No portion of the Shopping Center shall be used for any of the following purposes: a flea market or a business selling so-called "second-hand" goods (the term "second-hand" shall mean stores which sell goods primarily as a service to the public rather than to a retail customer for a profit); cemetery; mortuary; any establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a so-called "head shop"; off-track betting parlor; junkyard; recycling facility or stockyard; motor vehicle or boat dealership, repair shop (including lubrication and/or service center) that stores vehicles outdoors overnight, body and fender shop, or motor vehicle or boat storage facility (neither the foregoing restriction nor anything else in this Agreement to the contrary shall preclude the Owner of the Home Depot Parcel's sale or rental of delivery vehicles and trailers to its customers as part of its home improvement business); a mini-storage or self-storage facility; a laundromat or dry-cleaning facility (but this shall not be deemed to prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer); a bar, tavern or cocktail lounge; a discotheque, dance hall, comedy club, night club or adult entertainment facility; billiard or pool hall; massage parlor, game parlor or video arcade (which shall be defined as any store containing more than three (3) electronic games); a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees and not to customers (but shall specifically not prohibit a school which is incidental to a primary retail purpose); office usage other than incidental in connection with non-prohibited uses; industrial, residential or manufacturing uses, school or house of worship.

(c) Without the prior written consent of the Consenting Owners, the following shall not be allowed to operate in the Shopping Center or Common Area, except as otherwise permitted in this Agreement: traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fireworks, sales by transient merchants utilizing vehicles or booths and other promotions of any nature. Except as otherwise permitted in this Agreement, in the event that unauthorized Persons, including, without limitation, tenants or invitees of tenants occupying Buildings now or at any future time located in the Shopping Center, utilize the parking area for other than temporary parking by customers while shopping in the Shopping Center, Developer shall, at its sole expense, upon written request by Home Depot, take whatever action as shall be necessary to prevent said unauthorized use.

(d) No portion of the Shopping Center shall be used for a business or use which creates strong, unusual or offensive odors, fumes, dust or vapors; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; creates unusual fire, explosive or other hazards, or materially increases the rate of insurance for any other Parcel, Owner or Occupant; provided, however, the operation of a typical Home Depot home improvement store shall not be deemed to be in violation of this Section 5.2(d).

(e) No oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Parcels, nor shall oil wells, tanks, tunnels, or mineral excavation or shafts be permitted upon the surface of any portion of the Parcels, or within five hundred (500) feet below the surface of any of the Parcels. No derrick or other structure designed for use in boring for water, oil, natural gas or other minerals shall be erected, maintained or permitted on any portion of the Shopping Center.

(f) No portion of the Common Area shall be used for the sale, storage or display of merchandise or food; provided, however, that (i) the display of delivery vehicles and/or automobile/truck trailers for sale and/or rental to its customers as part of the Owner of the Home Depot Parcel's home improvement business shall be permitted, and (ii) the seasonal sale of merchandise by the Owner or Occupant of the Home Depot Parcel shall be permitted from the parking lot located on the Home Depot Parcel.

(g) For purposes of this Agreement, all Service Areas shall be the sole exclusive property of the Owners of the Buildings associated with such areas, and each Owner shall have the exclusive right to use such areas for whatever purpose such Owner deems appropriate, including, without limitation, the sale and display of merchandise.

(h) For purposes of this Agreement, Persons who are not Owners or Occupants engaging in the following activities in any portion of the Shopping Center will not be considered to be Permittees under this Agreement: (i) exhibiting any placard, sign, or notice that does not advertise an existing business in the Shopping Center; (ii) distributing any circular, handbill, placard, or booklet promoting an existing business in the Shopping Center; (iii) soliciting memberships or contributions for an existing business in the Shopping Center; (iv) parading, picketing, or demonstrating; and (v) failing to follow regulations relating to the use of the Shopping Center.

(i) This Agreement is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business in the Shopping Center or on any Parcel.

ARTICLE 6. MAINTENANCE STANDARDS

6.1. **Maintenance Obligations.** Each Owner shall, except as hereinafter provided, maintain the Common Area on its Parcel at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and restriping, when necessary, to maintain clearly visible parking stall and traffic control lines;

(b) Removing all papers, debris, filth and refuse from the Common Area and washing or thoroughly sweeping the Common Area to the extent reasonably necessary to keep the Common Area in a clean and orderly condition, unobstructed, and if applicable, free from ice and snow;

(c) Placing, painting, maintaining, repairing, replacing and repainting, as and when necessary, all directional signs, markers, striping and pedestrian crossings upon or within the Common Area;

(d) Maintaining, repairing and replacing, when necessary, (i) Service Areas, and (ii) traffic directional signs, markers and lines, and all informational signs such as "Handicapped Parking", in good repair and condition;

(e) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required, including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contacts. Each Owner shall maintain and provide electricity to all lighting fixtures attached to its respective Building(s) at its sole cost and expense;

(f) Maintaining and watering all landscaped areas; maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; replacing shrubs and other landscaping as necessary;

(g) Maintaining, repairing and replacing, when necessary, all Common Area walls (including, without limitation, all fences, walls or barricades constructed pursuant to Section 4.4 above);

(h) Maintaining, repairing and replacing, when necessary, all Common Area storm drains, sewers, lift stations and other Utility Lines not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the Buildings and improvements located in the Shopping Center;

(i) Performing itself or contracting with a competent third party or parties to perform any of the services described herein;

(j) Maintaining commercial general liability insurance as set forth in Article 12 hereof;

(k) Supervising traffic at entrances and exits to the Shopping Center and within the Shopping Center if necessary as conditions reasonably require in order to maintain an orderly and proper traffic flow; and

(l) Keeping the Common Area and all common Utility Lines free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Agreement.

6.2. **Duty to Maintain.** Each Owner shall be responsible for the maintenance, insurance and lighting of its own Parcel as enumerated in Section 6.1 above. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the notice and cure provisions and remedies of Sections 10.2, 11.1 and 11.2 shall apply.

6.3. **Indemnity Against Liens.** Each Owner shall indemnify, defend, protect and hold all other Owners and Occupants harmless for, from and against any and all Claims in connection with any and all liens arising out of any work performed, materials furnished to or obligations incurred by such Owner in connection with the operation and maintenance of the Common Area hereunder.

ARTICLE 7. LIGHTING

As between the Owners of the Home Depot Parcel and Lot 15 only, after completion of the Common Area lighting system on its Parcel, each such Owner hereby covenants and agrees to keep its Parcel fully illuminated each day from dusk to at least 11:00 p.m. unless the Owners of the Home Depot Parcel and Lot 9 and Lot 15 agree upon a different time. The foregoing requirement shall not apply to Lot 9 as long as Lot 9 has no curb cuts providing access into the Home Depot Parcel. Each Owner further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this Agreement, each of the Owners of Lot 9 and Lot 15 and the Home Depot Parcel Owner grants an irrevocable license to each other for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcels. Unless otherwise approved in writing by the Owner of the Home Depot Parcel, all exterior lighting fixtures and facilities on any portion of Lot 9 and Lot 15 shall (i) be of the type installed on the Home Depot Parcel, and (ii) not exceed an average lighting output of three (3) foot candles.

ARTICLE 8. PAYMENT OF TAXES

8.1. **Taxes and Assessments.** Each Owner shall pay directly to the tax collector, prior to delinquency, the real property taxes and other special taxes and assessments levied and assessed against the Owner's Parcel, including the portion of the Common Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments.

8.2. **Failure to Pay Taxes and Assessments.** Each Owner shall indemnify, defend, protect and hold all other Owners and Occupants harmless for, from and against any and all Claims in connection with any and all liens arising out of the failure of an Owner to pay, prior to delinquency, all taxes and assessments described in Section 8.1 above.

**ARTICLE 9.
SUCCESSORS AND ASSIGNS; LIMITATION ON RELEASE**

This Agreement and the Easements and Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, Occupants, successors and assigns, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, then such selling Owner shall execute and deliver to the Consenting Owners a written statement setting forth the name and address of the new Owner, the effective date of the conveyance, the Parcel conveyed, and, if applicable, the name of a new Party who has taken the position of a Consenting Owner as provided pursuant to the terms of this Agreement, and such selling Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Agreement after the sale and conveyance of title, but shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Agreement with respect to such Parcel or portion thereof after the date of sale and conveyance of title. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify or otherwise affect the liability of the new Owner pursuant to the provisions of this Agreement, but such failure shall constitute a default by the conveying Owner resulting in continued liability hereunder.

**ARTICLE 10.
DEFAULT**

10.1. **Default.** In the event any Owner or Occupant fails to perform any other provision of this Agreement, which failure continues for a period of ten (10) business days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default, and any other Owner or Prime Lessee may thereafter institute legal action against the defaulting Owner or Occupant for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner or Occupant shall not be deemed to be in default if such failure to perform cannot be rectified within said ten (10) business day period and such Owner or Occupant is diligently proceeding to rectify the particulars of such failure and rectifies same within a period not to exceed thirty (30) days; provided further, however, that in the event of an emergency, such failure shall be deemed a default if such failure is not rectified in a period reasonable for the nature and circumstances of such emergency (by way of example, but not as a limitation, the failure to promptly remove snow or otherwise maintain the Common Area such that Owners, Occupants and Permittees can utilize the reciprocal easements granted in Section 3.1 above shall constitute an emergency).

10.2. **Self-Help.** If an Owner or Occupant fails to perform any provision of this Agreement, then, upon the expiration of the cure period provided in Section 10.1, and upon an additional ten (10) calendar days' prior written notice (except that no additional notice shall be required in an emergency), any Consenting Owner shall have the right, but not the obligation, to enter upon the defaulting Owner's or Occupant's Parcel to cure such default for the account of and at the expense of the Owner or Occupant of such Parcel. If a Consenting Owner exercises its self-help right, then, within ten (10) calendar days after receipt of an invoice from such

Consenting Owner, the defaulting Owner and/or Occupant shall reimburse to such Consenting Owner all costs reasonably incurred by the Consenting Owner in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. Furthermore, the Consenting Owner shall have the right, if such invoice is not paid within said ten (10) calendar day period, to record a lien on the Parcel of the defaulting Owner and/or Occupant for the amount of the unpaid costs incurred by the Consenting Owner pursuant to this Section 10.2 and the administrative fee, together with accrued interest at the Default Rate.

10.3. **Remedies Cumulative.** In addition to the remedies set forth in this Agreement, each Person entitled to enforce this Agreement shall be entitled to exercise all other remedies provided by law or in equity to the same extent as if fully set forth herein word for word. No remedy herein conferred upon or reserved to any Person shall exclude any other remedy herein, by law or in equity, but each shall be cumulative.

ARTICLE 11. LIEN FOR EXPENSES OR TAXES

11.1. **Effectiveness of Lien.** The liens provided for in Section 10.2 above shall only be effective when filed as a claim of lien against the defaulting Owner or Occupant in the office of the recorder of the county in which the Shopping Center is located, signed and verified, which shall contain at least:

- (a) An itemized statement of all amounts due and payable pursuant hereto;
- (b) A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien;
- (c) The name of the Owner or Occupant of the property which is the subject of the lien; and
- (d) The name and address of the Owner or Party recording the claim of lien.

The lien shall attach from the date a claim of a lien is recorded and may be enforced in any manner allowed by law, including, but not limited to, by suit in the nature of an action to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State in which the Shopping Center is located. The Owner or Party who recorded the claim of lien shall release the claim of lien once the costs and expenses secured by the lien have been paid in full.

11.2. **Priority of Lien.** The claim of lien, when so established against the real property described in the claim of lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the claim of lien, and shall be subordinate to any others. The claim of lien shall be for the use and benefit of the Person curing the default of the Owner in default.

ARTICLE 12.
LIABILITY INSURANCE; INDEMNIFICATION

12.1. Liability Insurance.

(a) Each Owner shall maintain or cause to be maintained commercial general liability insurance with broad form coverage insuring against claims on account of bodily injury or death, personal and advertising injury, property damage or destruction, and contractual liability (i.e., exclusions for liability assumed under contract must be deleted) that may arise from, or be related to (i) the conduct of the Owner and/or Occupants, or (ii) the condition, use or occupancy of each Owner's Parcel (the "Owner's Liability Insurance").

(b) The Owner's Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State in which the Shopping Center is located with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system), and have limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence and Five Million and No/100 Dollars (\$5,000,000.00) in the aggregate. The insurance required pursuant to this Section 12.1 shall be at least as broad as the most commonly available ISO Commercial General Liability policy form CG 00 01 0798 and shall include the following provisions: (i) the policy may not be canceled or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days' prior written notice by the insurer to each insured and additional insured; (ii) severability of interests; (iii) an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds; (iv) name all other Owners as additional insureds; and (v) endorsed to cover said Owner's agreement to indemnify as set out in this Agreement. Each Owner agrees to furnish to any other Owner requesting same evidence that: (i) such insurance is in full force and effect; (ii) the premiums have been paid in full; and (iii) the appropriate parties are designated as additional insureds on ISO Form CG 2026 1185. The Owners agree that such evidence being readily available on the Internet shall be a satisfactory method of delivering such evidence. If not part of such policy, the Owner's Liability Insurance shall have at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or caused by employees; (iii) providing for blanket contractual liability coverage (including all of an Owner's indemnity obligations contained in this Agreement), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; (iv) providing for coverage of employer's automobile non-ownership liability; and (v) if the use of a Parcel includes the sale of alcoholic beverages, including coverage for employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) per occurrence. The Owner's Liability Insurance shall be written on an "occurrence" basis form and not on a "claims made" form. The insurance referenced in this Section 12.1 may be provided under (i) an individual policy specifically covering such Owner's Parcel, (ii) a blanket policy or policies which includes other

liabilities, properties and locations of such Owner so long as the amount and coverage of insurance required to be carried hereunder is not diminished, (iii) a plan of self-insurance satisfying the criteria set forth in Section 12.1(c) below, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with this Article 12, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed one percent (1%) of an Owner's net worth unless such Owner complies with the requirements regarding self-insurance pursuant to Section 12.1(c) below.

(c) Any insurance required to be maintained by an Owner may be maintained in whole or in part either under a plan of self-insurance, or from a carrier which specializes in providing coverage to or for such Owner or its affiliates, or firms in the same or related businesses if such Owner's net worth during all times of self insurance exceeds One Hundred Million and No/100 Dollars (\$100,000,000.00) as shown in its most recent audited financial statement, or if such Owner's financial statements are reported on a consolidated basis with a parent corporation, then as certified by an officer of such Owner.

12.2. Insurance Coverage During Construction.

(a) Prior to commencing any construction activities within the Shopping Center, each Owner or Occupant shall obtain or require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

(i) Workers' compensation and employer's liability insurance:

(a) Workers' compensation insurance as required by any applicable law or regulation.

(b) Employer's liability insurance in the amount of Five Million and No/100 Dollars (\$5,000,000.00) each accident for bodily injury, Five Million and No/100 Dollars (\$5,000,000.00) policy limit for bodily injury by disease, and Five Million and No/100 Dollars (\$5,000,000.00) each employee for bodily injury by disease.

(ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:

(a) Required coverages:

(1) Premises and Operations;

(2) Products and Completed Operations;

(3) Contractual Liability insuring the indemnity obligations assumed by contractor under the contract documents;

(4) Broad Form Property Damage (including Completed Operations);

- (5) Explosion, Collapse and Underground Hazards;
- (6) Personal Injury Liability; and
- (7) Builders Risk.

(b) Minimum limits of liability:

(1) Two Million and No/100 Dollars (\$2,000,000.00) per occurrence;

(2) Five Million and No/100 Dollars (\$5,000,000.00) aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work); and

(3) Five Million and No/100 Dollars (\$5,000,000.00) general aggregate applied separately to the Shopping Center.

(iii) Automobile Liability Insurance: Automobile liability insurance (bodily injury and property damage liability), including coverage for owned, hired, and non-owned automobiles, with limits of liability of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

(iv) Umbrella/Excess Liability Insurance: The general contractor shall also carry umbrella/excess liability insurance in the amount of Five Million and No/100 Dollars (\$5,000,000.00). If there is no per project aggregate under the Commercial General Liability policy, the limit shall be Ten Million and No/100 Dollars (\$10,000,000.00).

(b) If the construction activity involves the use of another Owner's Parcel, the Owner of such other Parcel shall be added as an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount or coverage below the requirements of this Agreement without at least thirty (30) days' prior written notice to the insureds and each additional insured. The form of additional insured endorsement shall be ISO Form CG 2026 1185. If such insurance is canceled or expires, the constructing Owner shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner with certificate(s) of insurance with respect to all insurance required by this Section 12.2.

12.3. **Indemnification by Owners.** Subject to the provisions of Section 13.4 below regarding waiver of subrogation with respect to damage to property, each Owner shall defend, indemnify, protect and hold the other Owners and Occupants harmless for, from and against any and all Claims in connection with the loss of life, personal injury and/or damage to property (i) arising from or out of any occurrence in or upon the indemnifying Owner's Parcel, including an Owner's or Occupant's own negligence; (ii) occasioned wholly by any negligent or willful act or omission of the indemnifying Owner, its Occupants or their respective agents, contractors, servants or employees; or (iii) in connection with the failure to comply with the provisions of this

Agreement. If a Consenting Owner shall, without fault, be made a party to any litigation commenced by or against the Owner or Occupants of another Parcel, or if a Consenting Owner shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, the indemnifying Owner shall defend such Consenting Owner using attorneys reasonably satisfactory to such Consenting Owner and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. A Consenting Owner shall have the right to engage its own attorneys in connection with any of the provisions of this Section 12.3 or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such Consenting Owner, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Shopping Center is located.

ARTICLE 13. PROPERTY DAMAGE AND EMINENT DOMAIN

13.1. **Damage to Buildings.** If any of the Buildings located on any Parcel are damaged or destroyed by fire or other cause, the Owner of such Parcel shall promptly cause either (i) the repair, restoration, or rebuilding of the Building so damaged or destroyed to at least the condition existing immediately prior to the damage or destruction, (ii) the rebuilding of a completely new Building (subject to the approval process set forth in this Agreement), or (iii) the razing of any damaged Building, the filling of any excavation, and performance of any other work necessary to put such portion of the Shopping Center in a clean, sightly and safe condition. All Building Areas on which Buildings are not reconstructed following a casualty or "Taking" (as defined in Section 13.5 below) shall be (i) graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Shopping Center or any portion thereof, (ii) covered by decomposed granite, gravel, sod, hydroseed or as otherwise permitted by Governmental Regulations, and (iii) kept weed free and clean at the subject Owner's sole cost and expense until such time as Buildings are reconstructed thereon.

13.2. **Casualty Damage to Common Area.** In the event any portion of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this Agreement, the Owner upon whose Parcel such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence. Except to the extent limited by Section 13.4 below, in the event such damage or destruction of a Common Area is caused wholly by the negligent or willful act of another Owner, Occupant or third Person, the Owner obligated to make such repair or restoration reserves and retains the right to proceed against such other Owner or third Person for indemnity, contribution or damages.

13.3. **Property Insurance.** To assure performance of their respective obligations under Sections 13.1 and 13.2 above, the Owners of the respective Parcels shall cause to be carried causes of loss - special form property insurance at least as broad as ISO Special Form Causes of Loss, CP 1030 0695, in an amount not less than eighty percent (80%) of the full insurable replacement cost (excluding footings, foundations or excavations) of all Buildings and improvements (including Common Area improvements) on their respective Parcels, except if the Owner of said Parcel, or party responsible for any required restorations, is permitted to "self insure" pursuant to Section 12.1(c). The insurance referenced in this Section 13.3 may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner, so long as the amount

and coverage of insurance required to be carried hereunder is not diminished, (iii) a plan of self-insurance satisfying the criteria set forth in Section 12.1(c) above, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with this Article 13, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed one percent (1%) of an Owner's net worth unless such Owner complies with the requirements regarding self-insurance pursuant to Section 12.1(c) above. The Owner's property insurance shall be carried by an insurance company or companies qualified to do business in the state in which the Shopping Center is located with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system).

13.4. **Waiver of Subrogation.** The Owners and Occupants each hereby waive any rights one may have against the other on account of any loss or damage occurring to an individual Owner or Occupant, or its respective property, either real or personal, arising from any risk generally covered by ISO Special Form Causes of Loss, CP 1030 0695 and from any risk covered by property insurance then in effect. In addition, the Owners and Occupants, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any insurance company may have against the Owners and Occupants. It is the intent of the parties that with respect to any loss from a named peril required to be covered under a policy of property insurance, the parties shall look solely to their respective insurance companies for recovery. The foregoing waivers of subrogation shall be operative only so long as available in the state where the Shopping Center is situated, and provided further that no policy of insurance is invalidated thereby.

13.5. **Eminent Domain.** In the event all or any part of the Shopping Center is taken or damaged by right of eminent domain or any similar authority of law or any transfer in lieu thereof (in each case, a "Taking"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the Parcel so taken or to such Owner's Lienholders or Occupants, as they may have agreed between or among themselves, and in the absence of any such agreement, as provided by law. No other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Agreement. Any Owner of a Parcel which is not the subject of a Taking may, however, file a collateral claim with the condemning authority over and above the value of the Parcel (or portion thereof) the subject of a Taking to the extent of any damage suffered by such Owner resulting from the severance of the land or improvements in such Taking. In the event of a partial Taking, the Owner of the portion of the Shopping Center shall restore the Improvements located on the Common Area of the Owner's Parcel as nearly as possible to the condition existing prior to the Taking to insure the continued ingress/egress to, from and between all areas of the Shopping Center to the extent reasonably feasible, without contribution from any other Owner.

ARTICLE 14. GENERAL PROVISIONS

14.1. **Covenants Run With the Land.** This Agreement and each Restriction and Easement on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof, and shall run with the land.

14.2. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever. The parties intend that this Agreement shall be strictly limited to and for the purposes herein expressed. Upon no less than thirty (30) days prior written notice to all other Owners, an Owner shall have the right to close, if necessary, all or any portion of the Common Area on its Parcel from time to time as may be necessary, in the opinion of such Owner, to prevent a dedication thereof or the accrual of any rights of the public therein.

14.3. **Duration.** Except as otherwise provided herein, the term of this Agreement shall be for fifty-three (53) years (the "Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Agreement shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless at least ninety (90) days prior to the date of expiration of the Primary Period or the Extension Period then in effect, the Consenting Owners deliver to the other Owners in the Shopping Center written notice of termination, in which event, this Agreement shall automatically expire at the end of the Primary Period or Extension Period then in effect. Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination; and, provided further, that the access easements and the rights and duties related thereto as provided in Section 3.1, the sign easements and the rights and duties related thereto as provided in Sections 3.4 and 4.3, and the utility easements and the rights and duties related thereto as provided in Section 3.3 shall continue in effect in perpetuity as to those access easements, signs and utility lines actually in use at the time of the termination of this Agreement until such time as such access easements, signs and utility lines are abandoned or cease to be used to serve a Building in the Shopping Center.

14.4. **Injunctive Relief.** In the event of any violation or threatened violation by any Person of any of the Easements, Restrictions or other terms of this Agreement, any or all of the Owners and Prime Lessees of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Agreement or provided by law or in equity.

14.5. **Modification and Termination.** Notwithstanding the provisions of Section 14.6 below, this Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of all of the Consenting Owners (and, if applicable, the Prime Lessees of a Consenting Owner's Parcel) at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the Consenting Owners and Prime Lessees and recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of this Agreement as provided herein shall adversely affect the rights of any senior Lienholder unless such Lienholder consents in writing to the modification or termination.

14.6. **Method of Approval.** Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction (collectively, an "approval") is specifically required of an Owner pursuant to the express terms of this Agreement (or any Exhibit hereto), it shall not be unreasonably withheld, conditioned or delayed. Unless provision is made for a specific time period, approval or disapproval shall be given within forty-five (45) days after receipt of written request for approval; provided, however, for purposes of this Section 14.6, as between the Consenting Owners, all references to "forty-five (45) days" shall be deemed to be "thirty (30) days". If an Owner neither approves nor disapproves within the required time period, then the Owner requesting approval shall have the right to send a second written request for approval. If such second request states on its face in all capital letters that failure to respond thereto within fifteen (15) days shall be deemed approval, then the failure to respond within such fifteen (15) day period shall constitute the approval of the Owner from whom approval was requested. Except with respect to approvals, which are deemed approved pursuant to the preceding sentence, all approvals (including conditional approvals) and disapprovals shall not be effective unless given or made in writing. If an Owner disapproves, the reasons therefor shall be stated in reasonable detail in writing. An Owner's approval of any act or request by another Owner shall not be deemed to waive or render unnecessary approval of any similar or subsequent acts or requests. Unless otherwise provided in this Agreement, whenever approval of the Consenting Owners is specifically required pursuant to the express terms of this Agreement (or any Exhibit hereto), such approval shall require the agreement of all of the Consenting Owners. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may consider any proposed amendment to this Agreement in its sole and absolute discretion without regard to reasonableness or timeliness.

14.7. **Multiple Owners.** In the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or consent or give the consent for said Parcel on behalf of the Owner thereof (except as otherwise required in Section 14.5) and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Agreement to the contrary notwithstanding.

14.8. **Estoppel Certificates.** Any Owner may, at any time and from time to time, in connection with the sale or lease of the Owner's Parcel, or in connection with the financing or refinancing of the Owner's Parcel by bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Owners requesting such Owners to execute certificates certifying that to the best knowledge of the other Owners, (i) neither the requesting Owner nor any other Owner is in default in the performance of its obligations under this Agreement, or, if a default is alleged, specifically describing the nature and amount thereof, and (ii) confirming that this Agreement has not been amended (or, if so, identifying the amendments), and is in full force and effect. Each Owner shall execute and return such a certificate within thirty (30) days after receipt of a request. The Owners acknowledge that such certificates may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback lessor. Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such

Person to disclose correct and/or relevant information (but it shall estop such person from making assertions contrary to those set forth in the certificate for the period covered by the certificate), nor shall such issuance be construed to waive any rights of the issuer to challenge acts committed by other Owners for which approval by the Consenting Owners was required but not sought or obtained.

14.9. **Breach Shall Not Permit Termination.** A breach of this Agreement shall not entitle any Owner to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement. Any breach of this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Agreement shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

14.10. **Notices**

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by facsimile, by personal delivery, by United States mail or United States express mail postage or delivery charge prepaid, return receipt requested, or by an established express delivery service (such as FedEx or United Parcel Service), sent to the person and address or facsimile number designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. Notices given by attorneys on behalf of their client(s) in the manner provided in this subsection are effective and recognized notice pursuant to this Agreement. All notices to Developer and the Owner of the Home Depot Parcel shall be sent to the person and address set forth below:

Developer: Corsicana-Navarro County Developers, LLC
14060 23rd Avenue North
Plymouth, Minnesota 55447
Attention: Dick Martenson
Facsimile Number: (800) 366-3308

With a copy to: Moe & York, PLLC
1200 W. 2nd Avenue
Corsicana, Texas 75110
Attention: Barbara S. Moe
Facsimile Number: (903) 875-0681

Home Depot: Home Depot U.S.A., Inc.
2455 Paces Ferry Road NW
Atlanta, Georgia 30339-4024
Attention: Vice President Real Estate Law
Facsimile Number: (770) 384-3042

With a copy to: Home Depot U.S.A., Inc.
 2800 Forest Lane
 Dallas, Texas 75234
 Attention: Corporate Counsel – Real Estate Law Group
 Facsimile Number: (972) 402-3956

The Person and address to which notices are to be given may be changed at any time by any Party upon written notice to the other Parties. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, (iii) in the case of a facsimile, the date and time of receipt as shown on the confirmation of the facsimile transmission; (iv) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

14.11. **Waiver.** The failure of a Person to insist upon strict performance of any of the Restrictions or other terms and provisions contained herein shall not be deemed a waiver of any rights or remedies that Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions or other terms and provisions contained herein by the same or any other Person.

14.12. **Attorneys' Fees.** In the event any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the non-prevailing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

14.13. **Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

14.14. **Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties. Each Party shall be considered a separate Party, and no Party shall have the right to act as agent for another unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

14.15. **Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

14.16. **Interpretation.** Whenever the context requires construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar importance) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party. Unless otherwise provided, references to Articles and Sections refer to the Articles and Sections of this Agreement.

14.17. **Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, oral or written, with respect to the Easements, Restrictions and other terms and conditions contained in this Agreement affecting the Parcels.

14.18. **Joint and Several Obligations.** In the event any Party is composed of more than one person, the obligations of said Party shall be joint and several.

14.19. **Recordation.** This Agreement shall be recorded in the office of the recorder of the County in which the Shopping Center is located.

14.20. **Limitation on Liability.** Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons or corporations who constitute a respective Consenting Owner hereunder, including, but not limited to, officers, directors, employees or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Agreement. In the event of a default of a respective Consenting Owner hereunder, the Owner who seeks recovery from such Consenting Owner shall look solely to the interest of such Consenting Owner in such Consenting Owner's Parcel for the satisfaction of each and every remedy of the non-defaulting Owner; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Owner (i) to pursue equitable relief in connection with any Restriction of this Agreement, including a proceeding for a temporary restraining order, preliminary injunction, permanent injunction or specific performance; and (ii) to recover from such Consenting Owner all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, a Consenting Owner's breach of its obligation to carry Owner Liability Insurance, or to fund its self-insurance obligation, if applicable.

14.21. **Lienholder Protection.** For the purposes of this Section, the term "Mortgage" shall include mortgages, deeds of trust, deeds to secure debt or other similar instruments, and any modifications or extensions of the same. As of the Effective Date of this Agreement, Developer warrants and represents that Lot 9 and Lot 15 are encumbered solely by the Mortgages described in Exhibit "C" attached hereto and made a part hereof. Developer shall have the right to enter into a new Mortgage so long as the Mortgagee (as defined below) enters into a Non-Disturbance Agreement as generally described below with the Owner of the Home Depot Parcel. Absent such Non-Disturbance Agreement, the terms of this Agreement shall be

superior to the lien of any future Mortgage or other security instrument placed by the Owners of Lot 9 and Lot 15 upon said Lots with the intent of the parties being that a foreclosure of any of such Owner's Mortgage shall in no event eliminate or terminate this Agreement. Upon the written request of Developer, the Owner of the Home Depot Parcel shall subordinate this Agreement to the lien of any new Mortgage upon Lots 9 and/or 15, provided that the holder of any such Mortgage ("Mortgagee") enters into a written Non-Disturbance Agreement with the Owner of the Home Depot Parcel providing that (i) in the event of foreclosure or other action taken under the Mortgage by Mortgagee, this Agreement and the rights of Home Depot hereunder shall not be disturbed or diminished, but shall continue in full force and effect so long as Home Depot complies with the terms hereof; and (ii) in no event shall any term or provision of this Agreement be altered. Such agreement shall be in form and substance reasonably satisfactory to Home Depot in its reasonable discretion. Should any Mortgagee succeed to the interest of Developer through foreclosure or deed in lieu thereof, then said Mortgage shall assume all of the duties and obligations of its predecessor in interest under this Agreement.

14.22. **Variances.** Where appropriate, the Consenting Owners may, in their sole and absolute discretion, grant written variances to the provisions this Agreement (in lieu of an amendment), signed by all of the Consenting Owners, where strict adherence to the requirements of this Agreement would, in the judgment of the Consenting Owners, cause undue hardship. The granting of a waiver or variance to one Owner shall not automatically entitle another Owner to the same waiver or variance, it being understood that each request for a waiver or variance shall be treated on its own individual merits.

14.23. **Time of Essence.** Time is of the essence with respect to the performance of each obligation of this Agreement.

EXECUTED as of the day and year first above written.

LIST OF EXHIBITS

- | | | |
|-----|---|--|
| A | = | Site Plan |
| B-1 | = | Legal Description of the Developer's Parcels |
| B-2 | = | Legal Description of the Home Depot Parcel |
| C | = | Existing Lienholder/Mortgagees |
| D | = | Approved Grading, Drainage and Utility Plans |

SEPARATE SIGNATURE PAGES FOLLOW

(Remainder of Page Intentionally Left Blank)

SEPARATE SIGNATURE PAGE OF HOME DEPOT

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By [Signature]
Name: Jacob R. Pritcher, Jr.
Its: Corporate Counsel

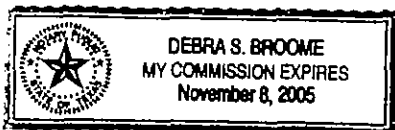
STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

On February 10, 2004, before me, a notary public in and for said state, personally appeared Jacob R. Pritcher, Jr., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as Corporate Counsel for **HOME DEPOT U.S.A., INC.**, a Delaware corporation, and that by his signature on the instrument, he acknowledged that he executed the instrument on behalf of said corporation.

WITNESS my hand and official seal.

[Signature]
Notary Public in and for the State of Texas

(This area for official notarial seal)



SEPARATE SIGNATURE PAGE OF DEVELOPER

CORSICANA-NAVARRO COUNTY
DEVELOPERS, LLC,
a Texas limited liability company

By: [Signature]
Name: Richard Martenson
Title: Member

By: [Signature]
Name: Thomas J. Schuler Pres
Title: Member

By: _____
Name: _____
Title: Member

Federal Tax ID No.: 75-2968993

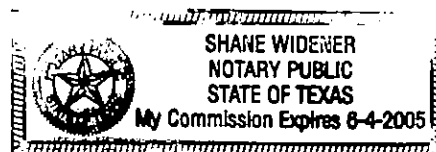
STATE OF Texas)
COUNTY OF Navarro) ss.

On February 10th, 2004, before me, a notary public in and for said state, personally appeared Richard Martenson, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as a Member of CORSICANA-NAVARRO COUNTY DEVELOPERS, LLC, a Texas limited liability company and the entity executing this instrument, and that by his signature on the instrument the person acknowledged that executed the instrument on behalf of said company.

WITNESS my hand and official seal.

[Signature]
Notary Public in and for the State of Texas

(This area for official notarial seal)



SEPARATE SIGNATURE PAGE OF DEVELOPER

CORSICANA-NAVARRO COUNTY
DEVELOPERS, LLC,
a Texas limited liability company

By: *Gerald J. Bayer*
Name: GERALD J. BAYER
Title: Member

By: _____
Name: _____
Title: Member

By: _____
Name: _____
Title: Member

Federal Tax ID No.: 75-2968993

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

On February 10, 2004, before me, a notary public in and for said state, personally appeared GERALD J. BAYER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as a Member of CORSICANA-NAVARRO COUNTY DEVELOPERS, LLC, a Texas limited liability company and the entity executing this instrument, and that by his signature on the instrument the person acknowledged that executed the instrument on behalf of said company.

WITNESS my hand and official seal.



Sarah Elizabeth Greene
Notary Public in and for the State of MINNESOTA

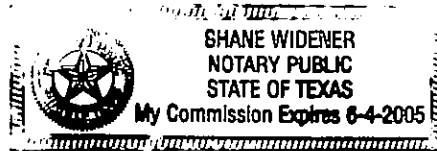
STATE OF Texas)
) ss.
 COUNTY OF Navarro)

On February 10th, 2004, before me, a notary public in and for said state, personally appeared Thomas J. Shorade, Pres. T+F Consultants, Inc., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as a Member of CORSICANA-NAVARRO COUNTY DEVELOPERS, LLC, a Texas limited liability company and the entity executing this instrument, and that by his signature on the instrument the person acknowledged that executed the instrument on behalf of said company.

WITNESS my hand and official seal.

Shane Widener
 Notary Public in and for the State of Texas

(This area for official notarial seal)



STATE OF _____)
) ss.
 COUNTY OF _____)

On February ____, 2004, before me, a notary public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as a Member of CORSICANA-NAVARRO COUNTY DEVELOPERS, LLC, a Texas limited liability company and the entity executing this instrument, and that by his signature on the instrument the person acknowledged that executed the instrument on behalf of said company.

WITNESS my hand and official seal.

 Notary Public in and for the State of _____

(This area for official notarial seal)

EXHIBIT A
Site Plan (2 Pages)

BOOK 1678 PAGE 0451



GREENBERG FARROW ARCHITECTURE
 ARCHITECTS
 1541 WALL STREET, SUITE 1000
 NEW YORK, NY 10036
 TEL: 212-693-1000
 FAX: 212-693-1001

PROJECT INFORMATION

SITE AREA
 THE HOME DEPOT - LOT 13 411,873 ACRES

BUILDING AREA
 THE HOME DEPOT 102,213 SF
 CANAL CENTER 21,433 SF
 TOTAL 123,646 SF

PLANNING SUMMARY

USE
 THE HOME DEPOT 123,646 SF
 CANAL CENTER 21,433 SF
 TOTAL 123,646 SF

HOME DEPOT BUILDING
 HOME DEPOT BUILDING 123,646 SF
 HOME DEPOT BUILDING 123,646 SF

LANDSCAPE ARCHITECTURE
 LANDSCAPE ARCHITECTURE 123,646 SF
 LANDSCAPE ARCHITECTURE 123,646 SF

PLANNING SUMMARY
 PLANNING SUMMARY 123,646 SF
 PLANNING SUMMARY 123,646 SF

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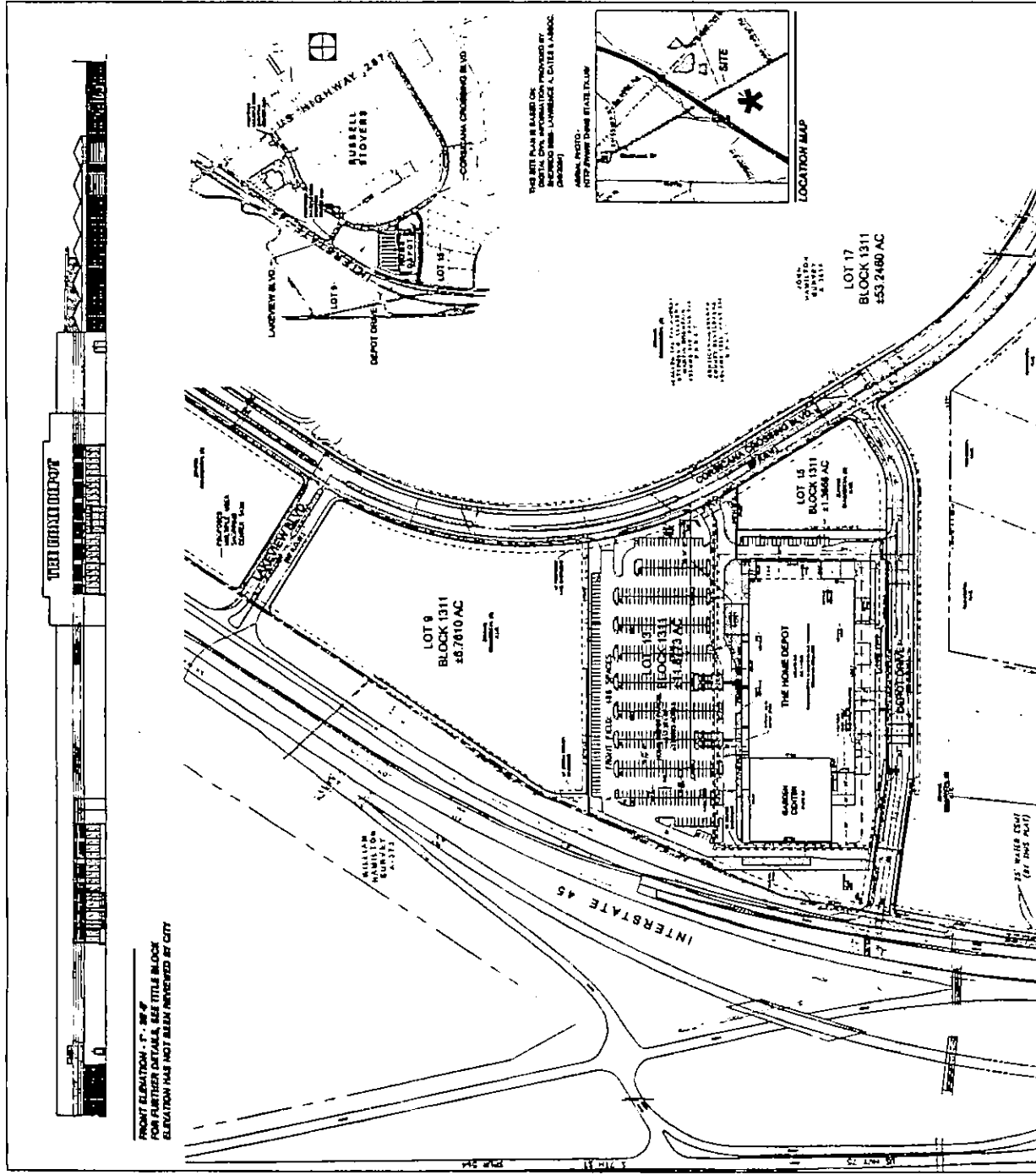


EXHIBIT "A"

1 of 2

EXHIBIT B-1

Legal Description of the Developer's Parcels

Legal Description for Outparcel 2 ("Lot 9"):

All that certain lot, tract or parcel of land situated in Navarro County, Texas, being Lot 9, Block 1, of Corsicana Crossing Addition, as per Final Plat recorded in Volume 7, Page 243, Plat Records, Navarro County, Texas.

Legal Description for Outparcel 1 ("Lot 15"):

All that certain lot, tract or parcel of land situated in Navarro County, Texas, being Lot 15, Block 1, of Corsicana Crossing Addition, as per Final Plat recorded in Volume 7, Page 243, Plat Records, Navarro County, Texas.



State of Texas
County of Navarro
I, Sherry Dowd, Clerk of the County Court in and for Navarro County, Texas, do hereby certify that this instrument was FILED FOR RECORD and RECORDED in the volume and page of the named record and at the time and date stamped hereon by me.

Sherry Dowd
County Clerk of Navarro County, Texas

EXHIBIT B-2

Legal Description of the Home Depot Parcel

All that certain lot, tract or parcel of land situated in Navarro County, Texas, being Lot 13, Block 1, of Corsicana Crossing Addition, as per Final Plat recorded in Volume 7, Page 243, Plat Records, Navarro County, Texas.

EXHIBIT C

BOOK 1678 PAGE 0456

Existing Lienholder/Mortgagees

Deed of Trust dated December 18, 2001, between Corsicana-Navarro County Developers, L.L.C., to Kevin Tucker, Trustee, recorded in Volume 1555, page 516, Official Public Records of Navarro County, Texas, securing the payment of a note in the original sum of \$700,000.00 payable to City National Bank; and Transfer of Lien dated August 20, 2003, to Corsicana Industrial Foundation, Inc., recorded in Volume 1650, page 335, Official Public Records of Navarro County, Texas.

EXHIBIT DApproved Grading, Drainage and Utility Plans

Those certain plans and specifications prepared by Lawrence A. Cates & Assoc., Inc. (the "Engineers"), first issued as of October 20, 2003, amended in part by Addendum No. 2 dated as of November 11, 2003, entitled "Roadway Improvement Plans", used by Home Depot to obtain bids for the construction of the Site Work pursuant to that certain Development Agreement executed between Home Depot and Developers of even date herewith.

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