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BOOK 3099 PAGE 667

CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT

BY AND BETWEEN

HOME DEPOT U.S.A., INC.

AND

NAP CHESTERFIELD, L.P.

FOR THE CHESTERFIELD MARKETPLACE

MIDLOTHIAN, VIRGINIA

DATED: 8 August, 1997

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INDEX

| | |
|--------------------------------------------------------------|----------|
| PRELIMINARY STATEMENT | 1 |
| DEFINITIONS | 2 |
| ARTICLE 1 - GRANT OF EASEMENTS | |
| Section 1.1 Access Easements | 6 |
| Section 1.2 Parking Easements | 7 |
| Section 1.3 Utility Easements | 7 |
| Section 1.4 Temporary Construction Easement | 9 |
| Section 1.5 Restrictions | 10 |
| Section 1.6 Pylon Sign Easement | 10 |
| Section 1.7 Incidental Encroachments | 11 |
| ARTICLE 2 - CONSTRUCTION OBLIGATIONS | |
| Section 2.1 General Requirements | 11 |
| Section 2.2 Common Area | 13 |
| Section 2.3 Building Improvements | 15 |
| ARTICLE 3 - MAINTENANCE AND OPERATION | |
| Section 3.1 Maintenance and Repair | 18 |
| Section 3.2 Building Improvements and Promotional Area | 25 |
| Section 3.3 Taxes and Compliance with Laws | 25 |
| Section 3.4 Lighting | 26 |
| ARTICLE 4 - COVENANTS AND RESTRICTIONS | |
| Section 4.1 Restrictions on Common Areas and Center | 27 |
| Section 4.2 Restrictions on Freestanding Signs | 31 |
| Section 4.3 Liens | 31 |
| ARTICLE 5 - CASUALTY AND EMINENT DOMAIN AND INSURANCE | |
| Section 5.1 Casualty and Eminent Domain (Common Area) | 32 |
| Section 5.2 Casualty to Building and Improvements | 32 |
| Section 5.3 Liability Indemnification | 32 |

| | | |
|----------------------------------|------------------------------------------------------------------|----|
| Section 5.4 | Liability Insurance | 32 |
| Section 5.5 | Mutual Release, Waiver of Subrogation and Mutual Indemnification | 33 |
| Section 5.6 | Property Insurance | 34 |
| Section 5.7 | Builder's Risk Insurance | 34 |
| Section 5.8 | Eminent Domain | 34 |
| | | |
| ARTICLE 6 - TERM | | |
| Section 6.1 | Term | 35 |
| | | |
| ARTICLE 7 - DEFAULT/REMEDIES | | |
| Section 7.1 | Default | 35 |
| Section 7.2 | Interest | 37 |
| Section 7.3 | Estoppel Certificate | 37 |
| | | |
| ARTICLE 8 - EFFECT OF INSTRUMENT | | |
| Section 8.1 | Mortgage Subordination | 38 |
| Section 8.2 | Binding Effect | 38 |
| Section 8.3 | Non-Dedication | 38 |
| Section 8.4 | Responsibility | 38 |
| | | |
| ARTICLE 9 - NOTICES | | |
| Section 9.1 | Notices | 39 |
| | | |
| ARTICLE 10 - MISCELLANEOUS | | |
| Section 10.1 | Interpretation | 40 |
| Section 10.2 | Excusable Delays | 41 |
| Section 10.3 | Mitigation of Damages | 41 |
| Section 10.4 | Agreement Shall Continue Notwithstanding Breach | 41 |
| Section 10.5 | Time | 41 |
| Section 10.6 | Pizza Hut Parcel | 41 |

LIST OF EXHIBITS

BOOK 3099 PAGE 670

- Exhibit "A" - Legal description of Home Depot Parcel
- Exhibit "B" - Legal description of Developer's Parcel (Current)
- Exhibit "C" - Legal description of Toys' Parcel-To be attached
- Exhibit "D" - Intentionally Deleted
- Exhibit "E" - Legal description of the Outparcels-To be attached
- Exhibit "F" - Site Plan
- Exhibit "G" - Pylon Sign Drawings
- Exhibit "H" - Exclusives currently encumbering Toys' Parcel and Outparcels

CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT

This CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (the "Agreement") made as of this 7 day of August 1997, among HOME DEPOT U.S.A., INC., a Delaware corporation, having an office at 2727 Paces Ferry Road, N.W., Atlanta, Georgia 30339 ("Home Depot") and NAP CHESTERFIELD, L.P., a Georgia limited partnership, having an office at 5780 Peachtree-Dunwoody Road, Suite 560, Atlanta, Georgia 30328 ("Developer").

PRELIMINARY STATEMENT

Home Depot is the owner in fee of certain real property, consisting of approximately eleven and 4/1000 (11.067) acres more particularly described in **Exhibit "A"** annexed hereto and hereby made a part hereof (the "Home Depot Parcel"). Home Depot intends to initially occupy the Home Depot Parcel for retail use and to cause to initially be constructed thereon a building(s) (the "HD Store"), consisting of approximately 107,500 total square feet of Floor Area (as hereinafter defined) together with a garden center containing approximately 22,560 square feet, as well as related parking and site facilities for such use, as indicated on the site plan annexed hereto as **Exhibit "F"** and hereby made a part hereof (the "Site Plan").

Developer is the owner in fee of certain real property, consisting of approximately thirty and 169/1000 (30.169) acres (the "Developer's Parcel"), located contiguous to the Home Depot Parcel more particularly described in **Exhibit "B"** annexed hereto and hereby made a part hereof. Developer is also the current Owner (as hereinafter defined) of the Outparcels (as hereinafter defined) and the Toys' Parcel (as hereinafter defined). Developer intends to occupy or lease the Developer's Parcel for retail use and to cause to be constructed thereon buildings, consisting of approximately 225,000 square feet of Floor Area as well as related parking and site facilities for such use, as indicated on the Site Plan.

Toys currently holds contract rights to acquire in fee certain real property consisting of approximately four and 800/1000 (4.800) acres, which real property is more particularly described on **Exhibit "C"** annexed hereto and hereby made a part hereof ("Toys' Parcel"). The Toys' Parcel consists of a portion of the Developer's Parcel. Toys initially intends to occupy Toys' Parcel for retail use and to cause to be constructed thereon a building consisting of approximately 48,000 square feet of Floor Area (the "Toy Store"), as well as related parking and site facilities for such use, as indicated on the Site Plan.

Toys shall become a Party (as hereinafter defined) to this Agreement upon its acquisition of the Toys' Parcel.

The Home Depot Parcel, the Toys' Parcel, the Outparcels and the Developer's Parcel, and any portion thereof hereafter legally subdivided and held or conveyed as an independent portion of any Parcel, are herein collectively referred to as the "Parcels" or the "Center", and each individually as a "Parcel".

The parties recognize that for the most favorable development of the Center, it is necessary that they agree and cooperate in respect of the construction, operation and maintenance of their Parcels.

All easements, obligations and restrictions herein or in the Agreement shall run to the benefit of and bind the respective Parcels and the owners and tenants from time to time of the Center or any portion thereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Home Depot and Developer hereby grant, covenant and agree as follows:

DEFINITIONS

Unless otherwise indicated to the contrary, the following terms shall have the meanings hereinafter set forth:

ADMINISTRATION FEE: As defined in Section 3.1(b) hereof.

BUDGET: As defined in Section 3.1(c) hereof.

BUILDING AREAS: Those portions of the Center that are labeled "Building Areas" on the Site Plan.

CENTER: Collectively, the Home Depot Parcel, the Toys Parcel, the Outparcels and the Developer's Parcel.

COMMON AREA: Those portions of the Center which are intended for, or are available for common use by any and all owners, tenants and users of land and/or buildings within the Center and the customers and business invitees of such owners, tenants and users, including, without limitation, the parking area, lanes, drives and driveways, entrances, means of ingress and/or egress, curb cuts, roadways (including without limitation, the Major Roadway (as hereinafter defined)), passageways, sidewalks (except as hereinafter provided), landscaped areas, common lighting facilities and common drainage facilities, together with all "Building Areas" upon which no building or other structure exists unless and until a building or other structure shall be constructed thereon. The term "Common Area(s)" shall in no event include the loading docks or sidewalks appurtenant to or immediately surrounding the building or buildings on any Parcel or the customer pickup and loading areas contiguous to the building or buildings on any Parcel.

COMMON AREA MAINTENANCE COSTS: As defined in Section 3.1(b) hereof.

COMMUNICATIONS EQUIPMENT: As defined in Section 2.3(f) hereof.

CONSTANT DOLLARS: "Constant Dollars" means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth calendar year following the date of this Agreement, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number (as hereinafter defined) and the denominator of which is the Base Index Number (as hereinafter defined). The "Base Index Number" shall be the level of the Index (as hereinafter defined) for the month during which this Agreement is dated; the "Current Index Number" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for the greater Richmond Metropolitan area, published by the United States Department of Commerce (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

CONSTRUCTION ACTIVITY: As defined in Section 1.4 hereof.

DEFAULTING PARTY: As defined in Section 7.1(a) hereof.

DEVELOPER'S PARCEL: As shown on Exhibit "B" annexed hereto.

ENVIRONMENTAL LAWS: As defined in Section 4.1(i) hereof.

FLOOR AREA: The number of square feet of floor area (exclusive of mezzanines used for storage and related office and non-sales uses, and any unenclosed portion of the garden center located on the Home Depot Parcel) in any structure located on a Parcel or Parcels, as measured from the exterior face of any exterior wall to the center line of any party wall, and shall include the area of any outside sales or publicly accessible storage areas (such as the Home Depot Garden Center (as hereinafter defined).

HAZARDOUS MATERIALS: As defined in Section 4.1(i) hereof.

HOME DEPOT STORE: The building(s) constructed on the Home Depot Parcel as more particularly described in the Preliminary Statement to this Agreement.

HOME DEPOT GARDEN CENTER: That certain garden center located on the Home Depot Parcel as more particularly shown on the Site Plan.

HOME DEPOT PARCEL: As shown on Exhibit "A" annexed hereto.

HOME DEPOT VIEW CORRIDOR: As shown on the Site Plan.

INSURING PARTY: As defined in Section 5.4 hereof.

MAJOR ROADWAY: That certain roadway located within the Center as more particularly identified on the Site Plan.

MAXIMUM FLOOR AREA: As more particularly shown on the Site Plan.

NON-DEFAULTING PARTY: As defined in Section 7.1(a) hereof.

OCCUPANT: The Owners and other persons acquiring the right by lease or other instrument or agreement in writing to possess, use and/or occupy a Parcel, or any portion thereof, or any space within a building thereon.

OPERATOR: The Person designated from time to time by the Parties to maintain and operate the Common Areas of the Center. The Person designated as Operator shall serve in such capacity until he resigns or is removed by the Parties. The Parties hereby designate North American Properties-Atlanta, LLC, as the initial Operator, and North American Properties-Atlanta LLC accepts such appointment.

OUTPARCELS: Collectively, those certain parcels of land which are described on Exhibit "E" annexed hereto and hereby made a part hereof, and which are designated "Outparcel #1" and "Outparcel #2" on the Site Plan. Specific Outparcels shall be referred to herein with reference to the number assigned to such Outparcels on the Site Plan.

OWNER(S): The owner(s), from time to time, of fee title in and to any Parcel, or any portion thereof.

PARTIES: Each Party collectively.

PARTY: Each signatory hereto and, after compliance with the notice requirements set forth below: (a) their respective successors and assigns who become owners in fee of any portion of the Toys' Parcel, (b) their respective successors and assigns who become owners in fee of any portion of the Home Depot Parcel, and (c) their respective successors and assigns who become owners in fee of any portion of the Developer's Parcel, provided, however, that in no event shall the Owner of any Outparcel be a Party for purposes of this Agreement. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Center owned by it which accrue during the period of such ownership, as the case may be, and such liability shall continue with respect to any portion transferred until evidence of the transfer of such portion of the Center is recorded in the records of Chesterfield County, Virginia, and notice of

such transfer is given as hereinbelow provided, at which time the transferring Party's liability for unaccrued obligations shall terminate, provided the transferee expressly assumes the transferring Party's unaccrued liability. However, nothing herein shall be construed as releasing the transferring Party from any liability accruing prior to the date of the transfer. A Party transferring all or any portion of its interest in the Center shall give written notice of such transfer to all other Parties and the Operator and shall include therein at least the following information:

- (i) the name and address of the new Party; and
- (ii) a copy of the legal description of the portion of the Center transferred.

If a Parcel is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Parcel, or fifty-one percent (51%) of the total acreage of the Parcel, as applicable, shall designate one of their number to represent all owners of the Parcel and such designated Person shall be deemed the Party for such Parcel. Until the notice of transfer is given, the transferring Party shall (for the purpose of this Agreement only) be the transferee's agent.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Center prior to receipt of the notice.

PERMITTEE: The customers, employees, agents, vendors, suppliers and business invitees of an Owner or Occupant. Among others, persons engaging in the following activities on the Common Area will not be considered to be Permittees: (a) distributing any circular, handbill, placard or booklet; (b) soliciting memberships or contributions; and (c) parading, picketing or demonstrating.

PERSON: Any individual, partnership, firm, association, corporation, trust, or any form of business or governmental entity.

PIZZA HUT PARCEL: That certain parcel of land identified on the Site Plan and subject to that certain lease (the "Pizza Hut Lease") between Harry J. Bolton (predecessor to Developer) and Pizza Hut of America, Inc. (successor to Pizza Hut of Richmond).

PRELIMINARY BUILDING AREAS: As defined in Section 2.3(c) hereof.

PROMOTIONAL AREA: Those certain areas located within the Center as more particularly identified on the Site Plan.

PYLON SIGNS: The Pylon Signs located within the Center as more particularly identified on the Site Plan, and as set forth on Exhibit "G" annexed hereto.

REQUESTED PARTY: As defined in Section 3.4(c) hereof.

REQUESTING PARTY: As defined in Section 3.4(c) hereof.

RESTAURANT: Any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption,

SITE PLAN: As shown on **Exhibit "F"** annexed hereto.

STAGING AREA: Those certain areas located within the Center as more particularly identified on the Site Plan.

TAKING: As defined in Section 5.7 hereof.

TOY'S PARCEL: As shown on **Exhibit "C"** annexed hereto.

UTILITY LINES: As defined in Section 1.3(a) hereof.

ARTICLE I - GRANT OF EASEMENTS

Section 1.1. Access Easements.

(a) Each Owner hereby establishes and creates for the benefit of each Parcel and hereby grants and conveys to each other Owner, a perpetual, non-exclusive easement and right to use all of the Common Areas located from time to time on the respective Parcel of the granting Owner, except as herein otherwise provided, for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians between the Parcels and adjacent publicly dedicated rights-of-way and for the providing of ingress and egress to and from the parking areas of the Center to the buildings and improvements located in the Center. The foregoing grant of easement specifically includes the conveyance by Developer to each Owner of a perpetual, non-exclusive access easement and right to use the Major Roadway. Each Party acknowledges that there shall be granted to (a) the occupant of the Virginia Alcohol Beverage Control store a non-exclusive access easement in the location shown on the Site Plan, (b) Woodlands Associates, an adjacent property owner, a non-exclusive access easement across the Major Roadway, (c) Conotti Corporation, an adjacent property owner, a non-exclusive nature trail access easement in the location shown on the Site Plan and (d) the Occupant of the Pizza Hut Parcel a non-exclusive access easement across the Center.

(b) The easement granted in Section 1.1 shall be for the benefit of, but not restricted solely, to the Owners and the owners of the Outparcels. The Owners each may grant the benefit of such easement to the Occupants of its Parcel for the duration of such occupancy, and to the Permittees thereof, but same is not intended, nor shall it be construed, as creating any rights in, or for the benefit of, the general public nor shall it affect any real property outside of the Center. Such easement areas are reserved for said use for the term of this Agreement.

(c) Each Owner shall have the right to temporarily close the curb cuts to the Center located on such Owner's Parcel to the extent necessary to prevent public dedication of such access to the Center provided such Owner does so on those days and hours (e.g. holidays such as Thanksgiving, Christmas and New Years' Day) when the Occupants shall have the least interruption with business in the Center; provided, however, that in no event shall the Major Roadway be closed to the public for such purpose.

(d) The Parties shall jointly establish reasonable rules and regulations with respect to the Common Areas and the use of the access easements, including, without limitation, speed limits, and the Occupants and Permittees of the Center utilizing the access easements shall be required to comply therewith.

Section 1.2. Parking Easements. (a) Subject to the following limitations, each Owner, for the benefit of each other Owner, and for the benefit of the Occupants and Permittees of each Parcel, hereby grants and conveys, for the term of this Agreement, a non-exclusive easement and right to use, during the term of this Agreement, all of the parking spaces in the Common Areas located on the granting Owner's Parcel, as indicated on the Site Plan (except as herein provided), for the purpose of the parking of motor vehicles. Notwithstanding the foregoing easements, each Owner shall maintain on its respective Parcel the parking ratio set forth in Section 2.2 (e) hereof. However, no easement is granted herein to any Party for the parking of motor vehicles on or within the parking areas of the Outparcels; except as provided for below, no easement is granted herein for the benefit of the owner of any Outparcel for the parking of motor vehicles on or within the parking areas of the Developer's Parcel, Toys' Parcel and Home Depot Parcel; and no easement is granted herein for the benefit of the owner of any Outparcel for the parking of motor vehicles on or within the parking areas of any other Outparcels. The Operator agrees to use all diligent efforts to enforce all of the aforementioned parking restrictions.

(b) The Parties hereby covenant to cooperate with Operator in using all commercially diligent efforts to enforce the parking restrictions imposed in Section 1.2(a) and elsewhere in this Agreement.

Section 1.3. Utility Easements.

(a) Each Owner for the benefit of each other Owner, and for the benefit of the Occupants of each Parcel, hereby grants and conveys to each other Owner a perpetual, non-exclusive easement in, to, over, under and across the Common Areas of the granting Owner's Parcel for the purpose of installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer pipes, storm drainage lines, water detention and retention facilities, septic systems, water and gas mains, electric power lines, telephone lines, cable TV and other communication lines and other underground systems and utility lines (collectively, the "Utility Lines") to serve the benefited Owner's Parcel and the buildings and other improvements thereon. Notwithstanding the foregoing, no such easement shall materially interfere with the use of any portion of a Parcel by its Owner or any Occupant thereof. The installation of any Utility Lines

shall be subject, as to location, to the approval of the Owner of the Parcel on which such Utility Lines will be located, which approval shall not be unreasonably withheld or delayed. The location of Utility Lines installed across another Owner's Parcel shall be restricted to Common Areas and therefore not permitted to run beneath any building to be constructed upon the granting Owner's Parcel as shown on the Site Plan. All systems, mains, sewers, conduits, lines and other public or private Utility Lines shall be installed and maintained below ground level of the Common Areas, except hydrants, standpipes, meters, control valves, transformers and other similar items customarily required to be located above ground.

(b) The Owner or Occupant of a Parcel that is installing and connecting to any of the Utility Lines in the Center that serve more than one (1) Parcel: (i) shall pay all costs and expenses with respect to such work, (ii) shall cause all work in connection therewith (including general cleanup and surface and/or subsurface restoration) to be completed in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the conduct of business within the Center, (iii) shall not interrupt, diminish, or otherwise interfere with, or increase the cost of, the utility services to the other Owners or Occupants served by such Utility Lines, (iv) shall comply in all respects with all applicable governmental laws, regulations, and requirements, and (v) shall promptly, at its sole cost and expense, clean and restore the affected portion of the Center to a condition equal to or better than the condition which existed prior to the commencement of such work.

(c) The Owner or Occupant of a Parcel served exclusively by a Utility Line shall, at its cost and expense, operate, maintain and repair such Utility Line, provided such repair and maintenance are performed expeditiously and with the least possible disturbance to the business conducted in the Center as reasonably possible and only after ten (10) business days' written notice (except in an emergency in which event all practicable notice shall be given) to the Owner and Occupant(s) of the Parcel where the Utility Line is located. The Owner of a Parcel served exclusively by a Utility Line shall also pay the cost of any fees or charges in connection with such Utility Lines.

(d) The Owner of a Parcel shall have the right at any time, and at its sole cost and expense, to relocate elsewhere within its Parcel any Utility Line, or portion thereof, located on its Parcel, which serves another Owner's Parcel, provided that such relocation shall be performed only after thirty (30) days' notice to the benefited Owner(s) and Occupant(s) of such intention to so relocate, and provided such relocation (i) shall not interrupt, materially diminish, or otherwise interfere with, or increase the cost of, the utility services to the Owners(s) or Occupant(s) served by such Utility Lines; (ii) shall be performed without cost or expense to the Owners(s) or Occupant(s) served by such Utility Lines; (iii) shall be completed in a good and workmanlike manner; (iv) shall not unreasonably interfere with the use of the Common Areas or the conduct or operation of the business of any owner or occupant of the Center, and (v) shall comply in all respects with all applicable governmental laws, regulations, and requirements. The Owner or Occupant undertaking such relocation shall promptly, after completion of such relocation, restore those portions of the Center affected by such relocation to no less than their condition and appearance immediately prior to such relocation.

(e) Each Owner performing repairs pursuant to this Section 1.3 shall, at its cost and expense, repair any damage to any Common Areas or other improvements caused by the performance of such repairs. Each Owner or Occupant installing, maintaining, repairing or relocating a Utility Line on another Owner's Parcel shall indemnify and hold the granting Owner and any Occupant of the granting Owner's Parcel harmless from any claims, damage or loss which may result from such activities.

(f) Each Owner shall have the right to dedicate and convey to the appropriate governmental entities and public utility companies any Utility Lines installed within the Center provided such dedication does not diminish the use or capacity of such Utility Lines. It is the intent of the Parties that all Utilities Lines be dedicated to the local utility companies.

(g) Maintenance, repair and replacement of any portion of any common Utility Lines serving more than one Parcel shall be performed by the Operator, but the cost thereof shall be shared on an equitable basis based upon the relative consumption or usage of the utility service furnished by such Utility Line. Any damage or destruction of any Utility Line caused by the negligence or willful misconduct of any Owner or Occupant shall be repaired or replaced at the expense of such Owner or Occupant.

(h) Notwithstanding anything herein to the contrary, from and after the Center has been built, no Owner or Occupant shall, except in the event of any emergency, install, maintain, repair, replace or remove any Utility Line: (i) affecting or located on the Home Depot Parcel during the period between March 1 and June 1 of any year, without the prior consent of the Owner of the Home Depot Parcel, and (ii) affecting or located on the Developer's Parcel or the Toys Parcel during the period between October 15 and December 31 of any year, without the prior consent of the affected Owners (i.e. crosses or serves other property), which consent shall not be unreasonably withheld or delayed. Any emergency installation, maintenance, repair or removal of Utility Lines during the period between March 1 and June 1 (with respect to the Home Depot Parcel) and October 15 and December 31 (with respect to the Developer Parcel and the Toys Parcel) of any year (unless any affected Owner(s) otherwise gives it consent) shall not cause any interference with access to the truck loading facilities of any party, and any areas which may be required for the storage of construction equipment, materials and supplies shall be limited to those areas shown and designated as "Staging Area" on the Site Plan.

Section 1.4. Temporary Construction Easement. In connection with any construction work to be performed in the development, alteration, repair, renovation or restoration of the Center (including the self-help rights granted to the Owner of the Home Depot Parcel pursuant to that certain Development Agreement entered into between Developer and Home Depot dated the date hereof and the terms and provisions of which are hereby incorporated herein by this reference), or any Parcel therein or any building or improvement thereof, or in the installation, repair and maintenance of Utility Lines described in Section 1.3 (any such work herein individually and collectively called "Construction Activity") each Owner hereby grants and conveys to each other Owner temporary easements for incidental encroachments upon the granting Owner's Parcel which may occur as a

result of Construction Activity, so long as such encroachments are kept within the reasonable requirements of construction work expeditiously pursued and so long as adequate casualty and liability insurance is maintained protecting the other Owner or Owners and their Occupants from the risks involved. In addition, Construction Activity (outside of the Outparcels) shall only be staged in the Building Area and in the areas designated on the Site Plan as "Staging Areas". In no event shall the Owners of any Outparcel have the right to perform any Construction Activities outside of the boundaries of their Outparcel, except the Owners of the Outparcels shall have the right during their initial Construction Activity to use the unimproved portions of the Developer's Parcel for incidental staging activities. Each Occupant agrees to defend, indemnify and hold harmless each Owner and other Occupants from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), including liens, and from any accident, injury or loss or damage whatsoever occurring to any person or to the property of any person arising out of or resulting from any construction activities performed or authorized by such indemnifying Occupant; provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of any indemnified Owner or Occupant, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through or under any of them.

Section 1.5. **Restrictions.** The easements granted by this Article I shall be subject to the covenants and restrictions set forth in Article 4 hereof.

Section 1.6. **Pylon Sign Easement.** Each Party hereby grants to the other Parties, and their respective successors and assigns, a perpetual easement to construct, use, operate and maintain the pylon sign structures on the Property in the areas indicated on the Site Plan (the "Pylon Signs"), which shall be the only pylon signs in the Center, without the prior written consent of the Owners, together with the right to install, use and maintain necessary utilities for the operation of such Party's identification sign(s) on the Pylon Signs, and access thereto. The Pylon Signs shall be designed substantially as set forth in the sign exhibit annexed hereto as **Exhibit "G"** and hereby made a part hereof. The Owners of the Toys' Parcel and the Developer's Parcel (and the Occupants of Developer), at their respective cost and expense, shall have the right to display identification sign panels on the Pylon Signs in the areas, and not exceeding the dimensions designated on, **Exhibit "G"** annexed hereto, and the Owner of the Home Depot Parcel, at such Owner's cost and expense, shall have the right to display a panel sign identifying the Home Depot Store (or any uses of the Home Depot Parcel) on the Pylon Signs in the top position in the area and not exceeding the dimensions, designated on **Exhibit "G"** annexed hereto, unless the sign area of such pylon is increased, by variance or otherwise, in which event the respective size of each panel shall be proportionately increased. The Owners of the Toys' Parcel shall have the right from time to time to replace their panel with a panel identifying the then current use of the Toys' Parcel. Further, in the event the Owner of the Home Depot Parcel elects to divide its panel into two (2) or more separate panels, the Owner of the Toys' Parcel shall have the right to move their panels to the lowest position available on the Pylon Signs. The Operator shall maintain and repair the Pylon Signs. Each Owner placing an identification panel on the Pylon Signs shall pay to the Operator a proportionate share of the costs and expenses of maintaining and repairing the Pylon Signs. Each Owner's proportionate share for purposes of this Section 1.6 shall be equal to a fraction the numerator of which is the number of

square feet of surface area of such Owner's identification panel (or in the case of the Developer the square footage of all of its Occupant's panels in the aggregate) on the Pylon Signs and the denominator of which is the number of square feet of surface area of all identification panel signs on the Pylon Signs, not including the sign panel identifying the name of the Center, as shown on Exhibit "G" annexed hereto. In no event shall any Party have the right to modify the Pylon Signs, except with respect to their own sign panels subject to the size limitations set forth in this Section 1.6, without the consent of the other Parties.

Section 1.7. Incidental Encroachments. Each Owner grants to each other Owner an easement for the term of this Agreement under and over an area directly adjoining the property line between adjacent Owner's Parcels for incidental encroachments for, among other things, footings for the support of foundations, piers, piles, or grade beams; or for overhangs for roof projections, signs or similar projections; or access doors for ingress and egress, provided that no such encroachment shall, at the time such encroachment shall first occur, interfere in any way with the actual use of either Owner's Parcel or either Owner's prior use of the easement granted pursuant to this Section 1.7, or in violate Section 2.3 (c) hereof, and the encroachment shall not exceed three (3') feet. However, there shall be a zero lot line between the building to be erected on the Toys' Parcel and the abutting building located to the north on the Developer's Parcel. Notwithstanding the foregoing, in the event an Owner, prior to installation or construction of the encroachment by the encroaching Owner, shall present the encroaching Owner with plans showing the use of the area which is the subject of the easement granted hereunder, the encroaching Owner's use of the easement granted hereunder shall be of no further force or effect. The easements granted in this Section 1.7 shall survive any termination of this Agreement and shall last so long as the encroaching building is standing following its initial construction or following reconstruction where that building is substantially restored to its prior condition after a casualty or condemnation.

ARTICLE 2 - CONSTRUCTION OBLIGATIONS

Section 2.1. General Requirements.

(a) Each Party agrees that all Construction Activities performed by it within the Center shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof having jurisdiction.

(b) Each Party further agrees that its Construction Activities shall not:

(i) cause any unreasonable increase in the cost of constructing improvements upon another Party's Tract;

(ii) unreasonably interfere with construction work being performed on any other part of the Center;

(iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Center by any other Party or its Permittees; or

(iv) cause any building located on another Parcel to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof having jurisdiction.

(c) Each Party agrees to defend, indemnify and hold harmless each other Party from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees actually incurred and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from any construction activities performed or authorized by such indemnifying Party, including any access or passage as permitted under Section 2.1(d) below; provided, however, that the foregoing agreement by the indemnifying party under this Section 2.1(c) shall not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them, but the release set forth in Section 5.5 hereof shall be applicable to the extent therein provided. The foregoing agreement by the indemnifying party under this Section 2.1(c) with respect to events occurring or circumstances arising during the term of this Agreement shall survive the expiration of the term of this Agreement.

(d) Each Party hereby grants and conveys to each other Party and to its respective contractors, materialmen and laborers a temporary license, during the initial construction of the Center, for access and passage over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Parcel; provided, however:

(i) such license shall be in effect only during periods when actual construction and/or maintenance is being performed, (ii) the use of such license shall not unreasonably interfere with the use and operation of the Common Area by others, (iii) during any period that a business is open to the public on the Toys' Parcel, no construction traffic in connection with the construction and/or maintenance of improvements on the Developer's Parcel or the Home Depot Parcel shall traverse the Toys' Parcel, except for the portion of the Toys' Parcel lying within the Major Roadway, (iv) during any period that a business is open to the public on the Home Depot Parcel, no construction traffic in connection with the construction and/or maintenance of improvements on the Developer's Parcel shall traverse the Home Depot Parcel, except for the portion of the Home Depot Parcel lying within the Major Roadway, (v) during any period that a business is open to the public on the Developer's Parcel, no construction traffic in connection with the construction and/or maintenance of improvements on the Toys' Parcel and the Home Depot Parcel shall traverse the Developer's Parcel, except for the portion of the Developer's Parcel lying within the Major Roadway. Prior to exercising the rights granted herein, the grantee shall first provide the grantor 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 hereunder. Any Party availing

itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Parcel, but such prohibition shall in no event be applicable with respect to the driveway areas on such Parcel.

(e) Each party agrees that Construction Activity shall only be staged in the Staging Areas as more particularly provided in Section 1.4 hereof.

Section 2.2. Common Area. The Parties have agreed that the Common Area of the Center shall be constructed as shown on the Site Plan, provided, however, no fence or other barrier (other than temporary fencing or other barriers required in connection with restoration or rebuilding following a casualty or condemnation) which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, Staging Areas and Promotional Areas. Contemporaneously with the construction of a building upon its Parcel, the constructing Party shall cause the Common Area on its Parcel to be substantially completed no later than the day the first Occupant of such Parcel opens for business with the public, subject to the provisions of any development agreements entered into between the Parties. Such work shall be done in a good and workmanlike manner and in accordance with good engineering standards; provided, however, the following minimum general design standards shall be complied with throughout the term of this Agreement:

(a) The lighting system shall be designed to produce a minimum maintained lighting intensity measured at grade of 1.5 foot candle at all points in the Common Area of the Center and a maximum of average lighting intensity on each Parcel that does not exceed the average lighting intensity on the Home Depot Parcel; provided, however, that the extreme edge of the parking areas (excluding drive areas) of the Center may have not less than a minimum maintained lighting intensity measured at grade of 1.0 foot candle.

(b) The slope in the parking area shall not exceed a maximum of three percent (3%), nor be less than a minimum of three-fourth percent (.75%).

(c) Intentionally Deleted.

(d) Utility Lines that are placed underground shall be at depths designated by Timmons Engineering. If surface water retention and/or detention areas are located outside of the general parking lots, such areas shall be fenced or otherwise secured to impede public access thereto if and to the extent required by applicable governmental codes, ordinances, regulations or orders.

(e) The parking area on each Parcel and on each Outparcel shall contain sufficient ground level, parking spaces in order to comply with the following minimum requirements:

(i) Four and 4/10 (4.4) parking spaces for each one thousand (1,000) square feet of heated enclosed Floor Area; provided, however, that compact car parking spaces shall be located only in the areas, if any, designated on the Site Plan;

(ii) if a business use contains a drive-up unit (such as remote banking teller or food ordering/dispensing facility), then there shall also be created space on the Outparcel for stacking not less than five (5) automobiles for each drive-up unit, provided, however, that the foregoing shall not be applicable to the lumber loading area located on the HD Parcel;

(iii) for each single Restaurant (regardless of size) on any of the Outparcels, the amount of parking spaces required by applicable governmental code (without variance);

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 herein, the Party whose Parcel is so affected shall use its reasonable efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground level parking spaces in order to comply with the parking requirements set forth above in this Agreement. If such compliance is not possible, such Party shall not be deemed in default hereunder, but such Party 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, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirement is satisfied.

(f) No Party shall alter or relocate the Major Roadway (including any medians therein shown on the Site Plan) without the approval of the Parties and the Owners of the Outparcels #1 and #2 as to the portion of the Major Roadway located immediately adjacent to any such Outparcel, and no Party shall make material changes to the other improved Common Area on its Parcel without the approval of the Parties (which approval shall not be unreasonably withheld), except changes required by any governmental code, ordinance, regulation or order, and except that each Party hereby reserves the right, from time to time, without obtaining the consent or approval of any Party, to make at its own expense any non-material change, modification or alteration in its portion of the Common Area, including the installation of convenience facilities such as mailboxes, public telephones and benches, provided that if :

(i) the accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes outside of the Home Depot Parcel shall remain generally as shown on the Site Plan;

(ii) there shall be maintained at all times within such Common Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth herein, as well as all governmental rules, regulations, and/or ordinances relating to parking requirements, but without reliance on parking spaces that may be available on another Parcel;

(iii) no governmental rule, ordinance or regulation shall be violated as a result of such action, and such action shall not result in any other Party being in violation of any governmental rule, ordinance or regulation;

(iv) no change shall be made in the access points between the Major Roadway, or any other portion of the Common Area, and the public streets, unless such change is required as a result of condemnation or transfer in lieu of condemnation; provided, however, that (1) in the event of condemnation or transfer in lieu of condemnation that changes or materially alters the access point between the Major Roadway and any public streets, Developer shall use all best efforts to relocate and/or reconfigure the Major Roadway for the benefit of the Center, and (2) additional access points may be created with the approval of the Parties, such approval not to be unreasonably withheld, and provided that all necessary approvals and permits from the governmental authorities having jurisdiction are obtained for such additional access points; and

(v) at least thirty (30) days prior to making any such material change, modification or alteration, the Party desiring to do such work shall deliver to each Party and the Owners of the Outparcels copies of the plans therefor, and provided further that such work shall not occur between March 1st and June 1st, or between October 15th and the following January 1st, unless the affected Owner(s) otherwise consent, emergency situations and changes, modifications or alterations resulting from force majeure events excepted.

Section 2.3. Building Improvements.

(a) While it is acknowledged and agreed that no Party shall have an obligation under this Agreement to commence construction or complete construction of any building on its Parcel, the Parties hereby agree once construction has been commenced, such building shall either be completed as a "water-tight shell" (as hereinafter defined) within a reasonable period of time or the partially completed building shall be removed within a reasonable period of time after construction has stopped. For purposes hereunder, the term "water-tight shell" shall mean a building containing four (4) walls, a roof and a floor. If a Building Area is expressly designated on the Site Plan as having a "Maximum Floor Area", such amount shall not be exceeded. Prior to the commencement of construction of any building on an Outparcel (including site work related thereto), such Outparcel shall be maintained in a graded and grassed or paved condition. The cost of maintaining any Outparcel shall be expressly excluded from Common Area Maintenance Costs.

(b) Developer and the Owner of the Toys' Parcel hereby specifically consent to the placement of buildings along the common boundary line between the Toys' Parcel and the Developer's Parcel as shown on the Site Plan, and each agrees to support any request by the other

for a side-yard or setback variance if the same is required in order to accommodate such construction. Developer and Home Depot hereby specifically consent to the placement of buildings along the common boundary line between the Home Depot Parcel and the Developer's Parcel as shown on the Site Plan, and each agrees to support any request by the other for a side-yard or setback variance if the same is required in order to accommodate such construction.

(c) Each Party acknowledges that the other Parties initially propose to construct on their respective Parcels a building which is classified as an "unlimited area" building under certain building codes. (By way of explanation, but not limitation, an "unlimited area" building is designated Type IV unprotected with unlimited building area allowed, under the 1988 Southern Standard Building Code.) The Parties hereto agree that all buildings constructed within the Building Areas on the Site Plan (collectively such Building Areas shall be referred to as the "Preliminary Building Areas") shall comply with the following requirements:

(i) no building shall be constructed within sixty feet (60') of the Building Area on an adjoining Parcel unless such building, hereinafter referred to as the "adjacent building," shall be located immediately adjacent to the common boundary line and is attached to the building, if any, on the adjacent Parcel;

(ii) if an "adjacent building" exists, then no building shall be located within sixty feet (60') of the "adjacent building" unless such building is attached to the "adjacent building"; the "adjacent building" and all other buildings on the Parcel that are attached to the "adjacent building" and to each other are hereinafter referred to as the "building group";

(iii) any building that is not part of the "building group" shall be located at least sixty feet (60') distant from the "building group"; and

(iv) the "adjacent building" or the "adjacent building group," as the case may be, shall comply with the building code requirements applicable to an "unlimited area" building, including without limitation the installation of an approved sprinkler system for fire protection, sixty (60') foot area separation as noted above, and construction in conformance with Type IV unprotected.

In addition to the requirements set forth above, the Parties agree that no building shall initially be placed or constructed on their respective Parcels in a manner which will, based on then existing governmental regulations, either preclude the construction on the Preliminary Building Areas of an "unlimited area" building, or cause an existing "unlimited area" building thereon to no longer be in conformance with applicable building code requirements, it being understood and agreed, however, that subsequent changes in governmental regulations shall not obligate a Party to modify or alter its existing building.

(d) The foregoing requirements set forth in Section 2.3(c)(i) through (iv) above shall not apply to any unenclosed portion of the "Home Depot Garden Center" not covered by roof or

permanent structure unless and to the extent otherwise required by applicable governmental laws, rules, regulations or building codes. In the event that Home Depot elects to enclose any portion of the "Home Depot Garden Center" then, with respect to the enclosed portion thereof, the foregoing requirements of Section 2.3(c) shall apply.

If required by any governmental authority, each Party agrees to join in a recordable declaration which confirms the existence of a sixty foot (60') clear area around the Preliminary Building Areas.

(e) The second Party to construct a building along a common boundary line shall do so in a manner that does not result in damage to the improvements in place on the adjoining Parcel, and further shall undertake and assume at its sole cost the obligation of completing and maintaining a water tight attachment (flashing and seal) of its building to that of the existing building on the other Parcel, it being the intent of the Parties to establish and maintain the appearance of one continuous building complex. In performing such attachment, the wall of one building shall not receive support from nor apply any structural load to the wall of the other building.

(f) No building shall exceed the following height restrictions:

(i) On the Toys' Parcel, Home Depot Parcel and the Developer Parcel: No limit.

(ii) On Outparcel #1, Outparcel #2, Pizza Hut Parcel (if the Pizza Hut Lease is terminated) and Major "H": twenty-four feet (24').

The height of any building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such building. Any Party shall have the right to install, maintain, repair, replace and remove Communications Equipment on the top of the building on its Parcel which may extend above the height limits established above; provided, however, such Communication Equipment shall be set back from the front of the building to reduce visibility thereof by customers. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.

(g) Notwithstanding anything to the contrary, no buildings or improvements shall be constructed within the area designated as the "Home Depot View Corridor" on the Site Plan.

ARTICLE 3 - MAINTENANCE AND OPERATION**Section 3.1. Maintenance and Repair.**

(a) Subject to the joint maintenance provision set forth in Section 3.1 (b) below, each Party shall maintain, or cause to be maintained, the Common Area on its Parcel in a sightly, safe condition and good state of repair. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other comparable retail developments of comparable size in the metropolitan Richmond, Virginia area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this Agreement. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Center as a whole. The maintenance and repair obligation shall include but not be limited to the following:

(i) Drive and Parking Areas. Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing. (For the purpose of this section, an overlay of the drives and parking areas shall be considered a maintenance item.)

(ii) Debris and Refuse. Daily (to the extent necessary) removal of all papers, debris, filth, refuse, ice and snow (if more than 2" on surface and the snow shall be removed as early as possible), including sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition; provided, however, that Occupants trash and/or garbage removal shall not be a Common Area Maintenance Cost. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.

(iii) Non-Occupant Signs and Markers. Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs; restripe parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keep clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks.

(iv) Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers.

(v) Landscaping. Maintaining and replacing of all landscape plantings, trees and shrubs in a live and thriving condition, trimmed and weed free. Maintain and replace landscape planters, including those, if any, adjacent to exterior walls of buildings. Modify irrigation system to satisfy governmental water allocation or emergency requirements.

(vi) Common Utility Lines. Maintaining, cleaning, replacing, and repairing any and all Common Utility Lines.

(vii) Obstructions. Keeping the Common Area (outside of the Promotional Areas) 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.

(viii) Sidewalks. Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to buildings located within the Center. Sidewalks shall be steam cleaned and shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area.

(ix) Supervisory Personnel. Providing of professional supervisory personnel for the Common Area, if reasonably required.

(x) Traffic. Supervision of traffic at entrances and exits to the Center and within the Center if and to the extent approved by the Parties in order to maintain an orderly and proper traffic flow or if required by governmental authorities having jurisdiction.

Notwithstanding anything to the contrary, each Party shall maintain and repair, at its sole cost, in a clean, sightly and safe condition, any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area located on its Parcel.

(b) Commencing on the date the Parties designate in writing, and in no event later than the date upon which the first building in the Center is open to the public for business, the Operator shall operate, maintain and repair or cause to be operated, maintained and repaired, in accordance with the requirements of (a) above, the portion of the Common Area of the Center which is constructed, including without limitation the Major Roadway, but excluding any Common Area on the Outparcels. The obligations of Operator under the preceding sentence shall include, without limitation, the operation, maintenance and repair obligations under the Access Easement Agreement. Within thirty (30) days following the commencement of such maintenance and operation, Operator shall provide the Parties an estimated budget for the balance of the current calendar year containing the information required by (c) below, and each Party agrees to pay its share thereof in accordance with (d) below. Developer covenants that its management agreement with the Operator is and always will be consistent and competitive with other management agreements between similar developers and unrelated third party management companies for similar shopping centers in the greater Richmond, Virginia area. Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in or about the Center, it being agreed that this provision shall be constructed strictly against Operator. Each Party hereby grants to Operator, its agents, contractors and employees a license to enter upon its Parcel to discharge the duties to operate, maintain and repair the Common Area. Operator shall expend only such funds as are reasonably necessary for the operation, maintenance, repair and insurance of the

Common Area and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred. For the purpose of this Agreement, Common Area Maintenance Costs shall not include:

- (i) any late charges or fees;
- (ii) any charge for electricity to a Party for lighting the Common Area on its Parcel, or for other separately metered utilities serving the Common Area on its Parcel;
- (iii) any costs to clean up or repair the Common Area resulting from promotional activities or from construction, maintenance or replacement of buildings;
- (iv) real property taxes and assessments;
- (v) the pro rata share of insurance costs allocable to the owner of an Outparcel who elects to participate in the Operator's Common Area commercial general liability insurance program as provided in Section 3.1 (f) below;
- (vi) Operator's profit, administrative and overhead costs (including but not limited to: office space, equipment and utilities; legal, accounting or administrative services; Operator's personnel who are not permanently located at the Center);
- (vii) entertainment, transportation, meals and lodging of anyone;
- (viii) Any expenses associated with special requirements of a particular Party or Occupant with respect to any portion of the Common Area of the Center;
- (ix) Any expenses incurred in leasing any space, including without limitation, legal, brokerage, advertising and promotional expenses;
- (x) salaries, fringe benefits and other compensation for Developer's employees who are not engaged in day-to-day management of the Center, including, without limitation, executive managers, accountants, bookkeepers, receptionists, clerks, marketing representatives, secretaries and brokers;
- (xi) costs to compel performance under leases with prior, existing and future tenants of the Center, including, without limitation all legal fees, costs and expenses to recover and collect rent arrearages and recover possession;
- (xii) cost of repairs or replacements incurred by reason of fire or other casualty or condemnation to the extent Developer is compensated therefor by insurance proceeds or a condemnation award;

(xiii) costs for performing tenant installations for any individual tenant or for performing work or furnishing services to or for individual tenants at such tenant's expense and any other contribution by Developer to the costs of tenant improvement or expenses incurred by Developer in connection therewith;

(xiv) costs for performing any corrective or warranty work for twelve (12) months after substantial completion or such longer period pursuant to any express warranty granted or agreed to be provided by Developer in favor of Home Depot or Toys pursuant to the terms of any "Development Agreement";

(xv) financing and refinancing costs and mortgage debt service;

(xvi) franchise, income, inheritance or estate taxes imposed on Developer; and

(xvii) depreciation.

In addition, the total amount of Common Area Maintenance Costs shall be reduced by the following items:

- (aa) amounts recovered from a manufacturer or builder on a warranty claim net of costs incurred in recovery;
- (bb) amounts recovered by the Developer as a result of any act, omission, default or negligence of tenants or by reason of a breach by such tenants of the provisions of their respective leases that reduce the expenses incurred by Developer in operating the Center to the extent they constitute reimbursement for Common Area Maintenance Costs;
- (cc) contributions by tenants to the total cost of operating the Center (including the Common Areas) made by tenants or occupants of space which have not been included in the Floor Area of the Center;
- (dd) the proceeds received by Developer under an insurance policy covering the Common Areas to the extent they constitute reimbursement for Common Area Maintenance Costs;
- (ee) any contributions toward Common Area Maintenance Costs made by temporary tenants or licensees.

In addition to the foregoing exclusions, in calculating Common Area Maintenance Costs, there shall be deducted any amount paid to Operator by the owners of Outparcels. In lieu of Operator's profit, administrative and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Common Area Maintenance Costs (exclusive of taxes, insurance

premiums, fees paid to third Persons who perform the Common Area operation and maintenance on Operator's behalf and utility charges) by five percent (5%). The Administration Fee should also be exclusive of the deductible portion of a loss covered by insurance. If any of Operator's personnel at the Center perform services, functions or tasks in addition to duties associated with the Common Area, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(c) Operator shall, at least seventy-five (75) days prior to the beginning of each calendar year, submit to the Parties an estimated budget ("Budget") for the Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area of the Center (excluding the Outparcels) for the ensuing calendar year. The Budget shall be in a form reasonably acceptable to the Parties and shall identify separate cost estimates for at least the categories specified under Section 3.1(a) above, plus:

(i) premium for commercial general liability insurance covering the Common Area as required by this Agreement;

(ii) rental or purchase of equipment and supplies;

(iii) depreciation or trade-in allowance applicable to items purchased for Common Area purposes; and

(iv) Administration Fee.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to such year (including the area of the Common Area affected), and shall note the anticipated cost and timing (indicating the area of the Common Area affected) of such phased work during succeeding calendar years.

If an Party disapproves the proposed Budget it shall consult with the other Parties and the Operator to establish a final approved Budget. The Parties agree not to unreasonably withhold their approval of a proposed Budget. If a Budget is not approved by December 1st of any calendar year, Operator shall have the right to terminate its maintenance obligation with respect to the Common Area located on the Parcel of the disapproving Party by written notice prior to December 10th, provided that in no event may Operator terminate its maintenance obligation with regard to any portion of the Major Roadway. If the notice is given, then such Party shall maintain and operate the Common Area on its Parcel (other than the Major Roadway and all detention ponds, which shall be maintained by Operator) and the Operator shall maintain and operate the balance of the Common Area, commencing on the following January 1st. If the notice is not given, then Operator shall continue to maintain and operate the Common Area for the next calendar year based on the prior year's Budget until such time as a Budget for such calendar year can be agreed upon by Operator and the Parties,

except that Operator may make increased expenditures for utilities, insurance premiums and other non-discretionary items not included in the prior year's Budget.

Operator shall use its best efforts to operate and maintain the Common Area of the Center (exclusive of the Outparcels) in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to person or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$10,000.00 in Constant Dollars (either for a single event or in the aggregate in any calendar year) then Operator may submit a supplemental billing to each Party, together with evidence supporting such payment, and each Party shall pay its share thereof within thirty (30) days; if the cost limitation set forth above is not exceeded then such costs shall be included as part of the Common Area Maintenance Costs at the year end.

(d) Subject to the prorations and adjustments set forth in this Section 3.1(d), Common Area Maintenance Costs and the Administration Fee shall be allocated as follows:

- (i) To the Developer's Parcel: sixty-one and 40/100 percent (61.40%);
- (ii) To the Toys' Parcel: eleven and 90/100 percent (11.90%); and
- (ii) To the Home Depot Parcel: twenty-six and 70/100 percent (26.70%).

Such allocation has been determined on the basis of the total number of square feet of proposed buildings within the Developer's Parcel (246,472 square feet), the Toys' Parcel (48,028 square feet) and the Home Depot Parcel (107,500 square feet) as compared to the total number of square feet of proposed buildings within the Center [exclusive of the Outparcel(s)] as shown on the Site Plan. No portion of the Common Area Maintenance Costs or Administration Fee shall be allocable to the Outparcels. In the event an existing Parcel (exclusive of the Outparcels) is divided, the Party causing such division shall prorate the allocation attributable to the existing Parcel between the newly created Parcels, file a recorded declaration confirming such allocation and deliver a copy of such declaration to the Operator and each other Party.

Each Party shall pay to the Operator in equal monthly payments, in advance, its share of the Common Area Maintenance Costs and the Administration Fee based either upon the amount set forth in the approved Budget, or if a Budget is not approved, then the lesser of (i) the amount set forth in the unapproved Budget, or (ii) the monthly payment established for the prior year plus Operator's reasonable estimate of the increases in costs for utilities, insurance premiums and other non-discretionary items for such year. The Operator shall reasonably estimate such costs for the partial year during which its maintenance obligations commence and each Party shall make its first payment in the month following Operator's undertaking of such maintenance and repair of the Common Area. Within sixty (60) days after the end of each calendar year, Operator shall provide each Party which is obligated to pay Common Area Maintenance Costs hereunder with a statement certified by an

officer of Operator, setting forth in reasonable detail the actual Common Area Maintenance Costs paid by it for the operation and maintenance of such Common Area, the Administration Fee, such Party's share of the aggregate of the foregoing and the manner of computation of such Party's share. Upon request by any Party which is obligated to pay Common Area Maintenance Costs hereunder, Operator will provide copies of supporting invoices and other materials relating to such Common Area Maintenance Costs. If the amount paid by a Party for such calendar year shall have exceeded its share, Operator shall refund the excess to such Party at the time such certified statement is delivered, or if the amount paid by a Party for such calendar year shall be less than its share, such Party shall pay the balance of its share to Operator within thirty (30) days after receipt of such certified statement.

Within three (3) years after receipt of any such certified statement, each Party which is obligated to pay Common Area Maintenance Costs hereunder shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such certified statement. Any Party desiring to perform such audit shall notify Operator of its intent to audit at least fifteen (15) days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the Common Area Maintenance Costs, the Administration Fee or in the allocation thereof to a Parcel, an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as its share for the calendar year, in which case Operator shall pay the cost of such audit.

(e) So long as Operator shall have received the payment of the Common Area Maintenance Costs and Administration Fee, if any, due and payable with respect to the Parcel owned or leased by a Party, (i) Operator agrees to defend, indemnify and hold such Party harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees actually incurred and court costs, arising out of the maintenance and operation by Operator of the Common Area, and (ii) in the event that any Parcel shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

(f) Notwithstanding anything to the contrary, the Owners of the Home Depot Parcel and Toys' Parcel: (i) may elect by the delivery of at least thirty (30) days prior written notice to Operator to perform all Common Area maintenance work on its Parcel in lieu of the Operator, in which case the Owner(s) of the Parcel(s) so electing to perform their own maintenance shall thereafter have no obligation to pay any of the Common Area Maintenance Costs and Administration Fees hereunder, other than their proportionate share of Operator's actual costs of maintaining the Major Roadway and the detention ponds, which shall be payable on a monthly basis pursuant to the foregoing procedures; and (ii) shall not be responsible for the payment of any Administration Fees. Operator furthermore agrees that notwithstanding anything to the contrary, it shall in all events be responsible for the maintenance of the Major Roadway and the detention ponds.

(g) During the period prior to the commencement of construction of a building on an Outparcel, the Party which is the owner of such Outparcel shall have the right to elect to participate in the Operator's Common Area commercial general liability insurance program by giving written notice of such election to the Operator. In the event the Party which is the owner of an Outparcel shall make such election, such Party shall be responsible for its pro rata share of such insurance costs, which share shall be determined on the basis of the number of square feet of area within such Outparcel as compared to the number of square feet of area of all Parcels (including such Outparcel) whose Common Area is insured under the Operator's Common Area commercial general liability insurance program. The Party owning such Outparcel shall have the right to cease and resume participation in the Operator's Common Area commercial general liability insurance program from time to time by giving written notice thereof to the Operator, provided that such Party may not make any such election to cease or resume participation in such insurance program more than one (1) time in any six (6) month period. Following the commencement of construction of a building on such Outparcel, the right of the Party owning such Outparcel to participate in such insurance program shall automatically cease.

(h) Each Party shall defend, indemnify and hold harmless Operator from all claims, causes of action, liabilities, costs and expenses, including reasonable attorneys' fees actually incurred and court costs, arising out of, or in connection with the malfeasance, non-feasance or misfeasance of such Party with respect to its duties or obligations hereunder or arising out of or in connection with the malfeasance, non-feasance or misfeasance of any Permittee or Occupant of such Party.

Section 3.2. Building Improvements and Promotional Area. After completion of construction, each Party covenants and agrees to maintain and keep the exterior portion of the building improvements and Promotional Area, if any, located on its Parcel in good condition and state of repair, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this Agreement. Each Party further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area (it being understood, however, that such requirements regarding the location of such containers shall not be applicable to the Outparcels, but that such containers located on Outparcels shall be appropriately screened), and to arrange for regular removal of such trash or garbage.

Section 3.3. Taxes and Compliance with Laws.

(a) Each Owner shall pay, or cause to be paid, prior to any penalty attaching thereto, all real estate taxes, assessments and personal property taxes, if any, imposed upon the land and improvements and equipment located on its respective Parcel. Notwithstanding anything herein to the contrary, each Owner shall have the right to contest taxes or increases in tax assessments, provided such contests are diligently pursued and do not adversely affect this Agreement, or the use of the Common Areas for their intended purpose, or the rights granted hereby.

(b) Each Owner shall cause the Common Areas and all buildings and improvements located on its Parcel to comply with all applicable requirements of law and governmental regulation applicable thereto, provided however, that an Owner may contest any such law or regulation so long as such contest would not create any material danger of any or a loss of title to, or impairment in any way of the use of, all or any portion of the Common Areas for their intended purposes.

Section 3.4. Lighting.

(a) The electricity for lighting of each of the Parcels within the Center shall be separately metered to such Parcel (except with regard to the Major Roadway which shall be separately metered and wired as set forth in subparagraph (b) below). After completion of the Common Area lighting system on its Parcel, each Owner hereby covenants and agrees to keep the driveways and parking areas on its Parcel fully illuminated each day from dusk to at least 11:00 p.m. on Monday through Saturday and to at least 7:00 p.m. on Sunday unless the Owners agree upon different times. Each Owner further agrees to keep any exterior building security lights on from dusk until dawn. During the term of this Agreement, each Owner grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Parcel to incidentally shine on any adjoining Parcel. It is the intention of the Parties hereto, that each Party shall have control over its Common Area lighting, and the utility charges associated therewith shall be separately metered.

(b) The Owner of the Developer's Parcel shall be responsible for the lighting of the Major Roadway throughout the term of this Agreement. The Major Roadway shall remain lighted for at least the minimum hours of operation provided above in Section 3.4(a). The lighting for the Major Roadway shall be separately wired from all other lighting in Developer's Parcel, and the Owner of the Toy's Parcel and the Home Depot Parcel shall have access to the electrical panel for the operation of the lighting system for the Major Roadway.

(c) It is recognized that Occupants within the Center may be open for business at different hours, and that a Party may wish to have the Common Area lights on another Parcel to be illuminated before or after the required period. Accordingly, a Party ("Requesting Party") shall have the right at any time to require another Party ("Requested Party") to keep its Common Area lights operating as stipulated by the Requesting Party; provided that the Requesting Party notifies the Requested Party of such request not less than fifteen (15) days in advance. The Requesting Party shall state the period during which it wishes the lights to be kept operating and shall pay to the Requested Party a prepayment as follows:

(i) If the period is less than thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the estimated reasonable cost for such additional operation (including electrical power, bulbs and manpower), as reasonably estimated by the Requested Party; or

(ii) If the period is greater than or equal to thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the estimated reasonable cost for such additional operation (including electrical power, bulbs and manpower) for thirty (30) days, as

reasonably estimated by the Requested Party. If the period is greater than thirty (30) days, then the Requesting Party shall renew such prepayment at the end of each thirty (30) day period.

The Requesting Party agrees to pay one hundred ten percent (110%) of the cost to the Requested Party of electrical power to provide such extra-hours illumination, and the prepayment shall be applied to such obligation as incurred. If the Requested Party is of the opinion that the prepayment made by the Requesting Party does not cover one hundred ten percent (110%) of such costs, the Parties shall attempt to agree to the cost of such electrical power and if they cannot do so, then the amount the Requesting Party is obligated to pay shall be determined from the power costs as estimated by the electrical utility company furnishing such power, or if the utility fails to do so, by a reputable engineer. In the event the actual cost to the Requested Party of keeping its Common Area lights operating for any such period shall be more or less than the prepayment made by the Requesting Party, appropriate adjustments and payments shall be made by the Requesting Party and the Requested Party within thirty (30) days after receipt of the electrical power bill for such period. Upon the failure of a Requesting Party to pay the applicable estimated amount or renew a prepayment as required hereby, the Requested Party shall have the right to discontinue such additional lighting and to exercise other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours may be made from time to time.

ARTICLE 4 - COVENANTS AND RESTRICTIONS

Section 4.1. Restrictions on Common Areas and Center. The Center shall be subject to the following restrictions which shall be binding on each Owner and Occupant:

(a) No obstruction to the free flow of traffic and use of the parking and delivery facilities shall be permitted (other than in the Promotional Areas), except to the extent, if any, indicated on the Site Plan or herein expressly provided for.

(b) Any construction within the Center shall be conducted in a manner that will limit to the maximum extent practicable any interference with the operation of the balance of the Center. After the initial Construction Activity, no exterior Construction Activity shall, except in the event of an emergency, be permitted within the Center during the period between March 1 and June 1 without the prior consent of the Owner of the Home Depot Parcel and during the period between October 15 and December 31 of any year without the prior consent of the Owner of the Toys' Parcel. Any emergency Construction Activity during the periods between March 1 and June 1 and/or October 15 and December 31 of any year shall not cause any interference with access to the truck loading facilities of any party, and any areas (outside of the Outparcels) which may be required for the storage of construction equipment, materials and supplies shall be limited to those areas shown and designated as "Staging Area" on the Site Plan.

(c) No building or other structure (temporary or permanent) of any kind shall be permitted in the Center, except in the areas designated "Building Areas" or "Promotional Area" on the Site Plan.

(d) No Permittee shall be charged for the right to use the Common Area, provided however the foregoing shall not be deemed or construed to prohibit an agreement requiring an Owner or Occupant to pay a proportionate share of the cost of operation, maintenance and repair of the Common Areas and/or the Pylon Sign, provided such Owner or Occupant is a party to such agreement.

(e) Each Owner shall use reasonable efforts to cause the employees of the Occupants of its Parcel to park their vehicles only on such Parcel, subject to the rights of the Owner of Outparcel #3 as more particularly set forth in Section 1.2 (a) hereof.

(f) No portion of the Center shall be leased, used or occupied for:

(i) A business or use which creates strong, unusual or offensive odors (other than such odors normally associated with uses permitted hereunder), fumes, dust or vapors; is a public or private nuisance; emits noise or sounds which are unreasonably objectionable due to intermittence, beat, frequency, shrillness or loudness; or creates unusual fire, explosive or other hazards;

(ii) An adult bookstore or establishment, selling exhibiting or distributing pornographic or obscene materials (except that this restriction shall not preclude the sale or rental of adult books or videos as an incidental part of the business of a bona fide book or video sale or rental store (or book or video department of a store), massage parlor, so-called "head shop", unsupervised amusement arcade or game room (however, this shall not be deemed to limit or restrict electronic games, pinball machines and other similar coin operated amusement machines so long as the area occupied by such machines and games does not exceed the lesser of 200 square feet of Floor Area or seven percent (7%) of the Occupant's Floor Area and so long as such area does not have a separate customer entry/exit door to the outside of the building), body and fender shop, car wash or off-track betting parlor;

(iii) Any operation primarily used as a warehouse operation (other than incidental to a retail operation) and any assembling, manufacturing (other than incidental to a retail operation), distilling, refining, smelting, agricultural, processing or rendering, or mining operation; provided, however, that for as long as a Home Depot store is operated on the Home Depot Parcel, the foregoing restriction shall not restrict the Owner of the Home Depot Parcel from operating a recycling drop-off center for collection (located within the "Promotional Area" on the Home Depot Parcel), but not processing, of recyclable materials;

(iv) Any "second hand" store or "surplus" store;

(v) Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance in the Staging Area or Promotional Areas set forth on the Site Plan);

(vi) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);

(vii) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an Occupant to determine its own selling prices, nor shall it preclude the conduct of periodic seasonal, sales promotional or clearance sales or legitimate going out of business sales);

(viii) Any central laundry, dry cleaning plant or laundromat;

(ix) Any automobile, truck, trailer or recreational vehicles sales, leasing, display or repair, except that this restriction shall not be applicable (1) to any truck leasing program operated by Home Depot as an incidental part of its use of the Home Depot Parcel for the operation of a home improvement store, or (2) to the sale or display of boat trailers if same is incidental to a general sports merchandise retail use;

(x) Any living quarters, sleeping apartments, motels, hotels or lodging rooms;

(xi) Any veterinary hospital or animal raising facility (except that this prohibition shall not prohibit pet supply stores such as PETS MART which offer ancillary veterinary services);

(xii) Any mortuary or funeral home;

(xiii) Any flea market, amusement or video arcade, pool or billiard hall, car wash, auditorium, meeting hall or like place of public assembly, sporting events or other sports facility (other than sale of sporting goods and related promotions in connection with a retail operation) or dance hall;

(xiv) Any church or training or educational facility, including, but not limited to, beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees other than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Center;

(xv) A discotheque or bar (unrelated to a permitted restaurant use);

(xvi) Fast food operation incorporating coin-operated amusements or showing movies to its customers other than as an incidental or immaterial part of its business;

(xvii) Any theater, skating rink, bowling alley, grocery store or health spa located within four hundred feet (400') of the Toys Store or within the "Home Depot Restricted Area" as shown on the Site Plan; or

(xviii) Any governmental, professional or non-retail offices located within four hundred feet (400') of the exterior wall of the Home Depot Store and the Toys Store (this restriction shall not apply to the Outparcels).

(g) No portion of the Center (other than the Outparcels) may be used:

(i) for general offices, except to the extent such offices are incidental to a retail use or are used as a regional office for an Occupant, and

(ii) for a restaurant located within four hundred feet (400') of the exterior wall of the Home Depot Store and the Toys Store, except (x) Developer shall have the right to use a portion of the Developer's Parcel not adjacent to either the Home Depot Parcel or the Toys' Parcel, not to exceed 2,500 square feet of Floor Area, as a restaurant that specializes in the sale of any the following items: ice cream, frozen yogurt, bagels, coffee, but in no event shall such restaurant seat more than 25 customers, (y) Home Depot shall have the right to integrate into the HD Store a luncheon/snack bar or restaurant, not to exceed 3,500 square feet of Floor Area and (z) the Owner of the Toys' Parcel shall have the right to integrate into the Toy Store a luncheon/snack bar or restaurant, not to exceed 3,500 square feet.

(h) There shall be no display or sale of merchandise or any sales, promotions, entertainment, amusement or other activities in the Common Areas that would interfere with the use of the Common Areas and related facilities for their intended purposes. Notwithstanding the foregoing each Owner or Occupant may use, for promotional purposes, those portions of the Common Areas shown and designated on the Site Plan as "Promotional Area" for such Owner or Occupant, and an Owner or Occupant may use the sidewalks immediately in front of the buildings upon such Owner's Parcel for the sale or display of merchandise.

(i) No Owner or Occupant shall use or permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in its Parcel, or the Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws (as hereinafter defined). Each Owner hereto shall indemnify, protect, defend and hold harmless the other Owners hereto from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including, but not limited to, costs of investigation, litigation and remedial response arising out of any Hazardous Material used or permitted to be used by such Owner, whether or not in the ordinary course of business.

For the purpose of this section, the term (i) "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or

identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

(j) No portion of the Center outside of the Toys' Parcel (other than the Home Depot Parcel as shown on the Site Plan) shall be used for the sale of toys and video, electronic and computer games and equipment for such games. Notwithstanding the foregoing, the restrictions set forth therein shall not apply to a store which is used or occupied for the sale of any of said items if such sale is "incidental" to the business of the Occupant therein. For purposes of this section, "incidental" in connection with the sale of toys shall mean a use which comprises lesser of (i) 2,000 square feet of Floor Area within such store or (ii) ten (10%) percent of the overall square footage within such store. With respect to the sale of video, electronic and computer games and equipment for such games "incidental" shall mean less than 400 square feet of Floor Area within such store.

(l) Intentionally deleted.

(m) No portion of the Toys' Parcel or the Outparcels shall be used for any purpose in violation of the exclusive uses set forth on Exhibit "H" annexed hereto and hereby made a part hereof.

Section 4.2. Restrictions on Freestanding Signs. No freestanding sign other than the Pylon Sign shall be permitted within the Center unless constructed in areas designated on the Site Plan. This restriction shall not apply to the Outparcels. All signage shall be in accordance with applicable governmental laws and regulations.

Section 4.3. Liens. In the event any mechanic's lien is filed against the Parcel of an Owner as a result of services performed or materials furnished for the use of another Owner, the Owner permitting or causing such lien to be so filed agrees to cause such lien to be discharged prior to entry of final judgment (after all appeals) for the foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the affected Owner and its Parcel against liability, loss, damage, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon request of the Owner whose Parcel is subject to such lien, the Owner permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Owner permitting or causing such lien from contesting the validity thereof in any manner such Owner chooses, so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), the Owner permitting or causing such lien shall promptly pay in full the required amount, together with any interest, penalties, costs or other charges necessary to release such lien.

ARTICLE 5 - CASUALTY AND EMINENT DOMAIN AND INSURANCE

Section 5.1. Casualty and Eminent Domain (Common Areas). In the event any Common Area improvements are damaged or destroyed or taken by eminent domain or similar act of government, the Owner or Occupant of the Parcel to which such damage or taking has occurred shall as soon as practicable cause the repair, restoration or rebuilding of the Common Area improvements, or remaining portions thereof, to their condition preceding the damage, destruction or taking to the extent not restricted by conditions outside its control, but at a minimum, to the extent necessary to avoid interference with the remaining Common Areas of the Center and to adhere to the greater of (x) any required parking ratios required by law, and (y) any required parking ratios otherwise set forth herein. If any Common Area improvements are destroyed or damaged as a result of negligence or willful acts of any Owner or Occupant, or its agents, contractors or employees, then such Owner or Occupant shall pay the costs and expenses of the repair and restoration required, except as otherwise provided in Section 5.5 hereof. In no event shall the costs incurred to comply with this Section be included in Common Area Maintenance Costs.

Section 5.2. Casualty to Buildings and Improvements. In the event that any building or other improvements are damaged by fire or other casualty (whether insured or not), the Owner or Occupant upon whose Parcel such building or other improvements are located immediately shall remove the debris resulting from such event and provide a sightly barrier (which barrier shall in no event contain any advertising), and within a reasonable time thereafter shall either (i) repair or restore the building and/or other improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all applicable provisions of this Agreement, or (ii) erect another building or improvements in such location, such construction to be performed in accordance with all applicable provisions of this Agreement, or (iii) demolish the damaged portion and/or the balance of such building and/or other improvements and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be Common Area until a replacement building, if any, is erected. Such Owner or Occupant shall have the option to choose which of the foregoing alternatives to perform, but such Owner or Occupant shall be obligated to perform one of such alternatives. Such Owner or Occupant shall give notice to each other Owner within ninety (90) days from the date of such casualty of which alternative it elects. In no event shall the costs incurred to comply with this Section be included in Common Area Maintenance Costs.

Section 5.3. Liability Indemnification. Each Owner shall indemnify and hold every other Owner of the Center harmless (except for loss or damage resulting from the negligent and willful acts of such other Owner or its Occupants) from and against any damages, liability actions, claims and expenses (including, without limitation, attorneys' fees in a reasonable amount and costs of suit) in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon such Owner's Parcel, or occasioned wholly or in part by any negligent or willful act or omission of said Owner or its Occupants, its agents, contractors or employees.

Section 5.4. Liability Insurance. Each Party shall, at such Party's cost and expense, maintain, or cause to be maintained, commercial general liability insurance (1986 ISO Form or Equivalent) with

limits not less than \$5,000,000.00 each occurrence and general aggregate per location, single limit bodily injury and property damage combined, for liability or damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas in the Center by the Party and its tenants, agents, contractor, employees, licensees, customers and invitees, except as herein provided. Said insurance shall be carried by a reputable insurance company or companies admitted to do business in the State in which the Center is located, having a policyholders rating of not less than A- and a financial rating of not less than VIII in the latest edition of Best's Rating Guide on Property and Casualty Insurance Companies and consider this Agreement to be an insured contract as it relates to said Owner's agreement to indemnify as set out in Section 5.3 and shall name each other Party as an additional insured. Notwithstanding the foregoing, any Party or party responsible to maintain such insurance (hereinafter called the "Insuring Party") may "self insure", or provide for a deductible under the insurance policies and coverage required hereunder with respect to the Parcel of the Insuring Party, to the extent such Insuring Party's net worth during said period of self-insurance exceeds One Hundred Million Dollars (\$100,000,000.00) in its last annual or fiscal year as certified by an independent certified public accountant and computed in accordance with generally accepted accounting principles (GAAP) consistently applied. Such insurance may be carried under a "blanket" policy or policies covering other properties of the "Insuring Party" and its subsidiaries, controlling or affiliated corporations. Said Insuring Party shall indemnify, defend and hold other the other parties harmless from and against any claim, liability, obligation, damage cost or expense (including, without limitation, court costs and reasonable attorney's fees) arising out, relating to or in any manner connected with said Insuring Party's failure to provide total first dollar Commercial General Liability insurance coverage for the benefit of the other parties, their employees, contractors and agents pursuant to this Agreement; such indemnity to cover, among other matters, any amount of exposure resulting from (i) the Insuring Party's election to self-insure its obligation under this Agreement, (ii) the deductible amount under any otherwise applicable insured coverage for which the Insuring Party is responsible under this Agreement, (iii) liability in excess of the amount of any applicable insurance coverage for which the Insuring Party is responsible under this Agreement, or (iv) any other uninsured or underinsured liability for which the Insuring Party is responsible under this Agreement. Each Party shall on or before the execution of this Agreement and annually thereafter furnish to the other parties certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section, or evidence of a self-insurance capacity as hereinabove provided, as the case may be. The limits set forth in this Section 5.4 shall be increased by ten (10%) after every ten (10) year period of this Agreement or by such other amount as agreed upon by the Parties.

Section 5.5. Mutual Release, Waiver of Subrogation and Mutual Indemnification. The Owners and Occupants hereby release each other and anyone claiming through or under them by way of subrogation or otherwise from any and all liability for any loss or damage to property, whether caused by the negligence or fault of the released Owner or Occupant, to the extent of any recovery made by the releasing Owner or Occupant for such loss or damage under the equivalent ISO Special Form Property Insurance policy now or hereafter obtained or in effect covering the releasing Owner or Occupant and/or its Parcel, or to the extent of any recovery the releasing Owner or Occupant would have received under any policy of insurance required to be maintained by the releasing Owner or Occupant hereunder. In addition, the Owners and Occupants shall each cause every such property

insurance policy carried by them, or required to be carried hereunder, insuring the buildings or improvements on their respective Parcels or the contents thereof to be written to provide that the insurer waives all rights of recovery by way of subrogation against the non-releasing Owner or Occupant in connection with any loss or damage covered by the property insurance policy.

Section 5.6. Property Insurance. In order to assure performance of their respective obligations under Section 5.2 hereof, each Insuring Party shall cause to be carried the equivalent of ISO Special Form Property Insurance on all buildings and improvements on its respective Parcel in the amount of the replacement cost of such improvements, and in amounts at least sufficient to avoid the effect of any co-insurance provisions of such policies, except if the Owner or Occupant of said Parcel, or party responsible for any required restorations, is permitted to self-insure. Notwithstanding the foregoing, any Insuring Party may self-insure, or provide for a deductible under the insurance policies and coverage required hereunder with respect to the Parcel of the Insuring Party, to the extent such Insuring Party's net worth during said period of self-insurance exceeds One Hundred Million Dollars (\$100,000,000) in its last annual or fiscal year as certified by an independent certified public accountant and computed in accordance with generally accepted accounting principles (GAAP) consistently applied. Such insurance may be carried under a "blanket" policy or policies covering other properties of the "Insuring Party" and its subsidiaries, controlling or affiliated corporations. Said Insuring Party shall indemnify, defend and hold other the other parties harmless from and against any claim, liability, obligation, damage cost or expense (including, without limitation, court costs and reasonable attorney's fees) arising out, relating to or in any manner connected with said Insuring Party's failure to provide the equivalent of total first dollar Special Form Property Insurance coverage for the benefit of the other parties, their employees, contractors and agents pursuant to this Agreement; such indemnity to cover, among other matters, any amount of exposure resulting from (i) the Insuring Party's election to self-insure its obligation under this Agreement, (ii) the deductible amount under any otherwise applicable insured coverage for which the Insuring Party is responsible under this Agreement, (iii) liability in excess of the amount of any applicable insurance coverage for which the Insuring Party is responsible under this Agreement, or (iv) any other uninsured or underinsured liability for which the Insuring Party is responsible under this Agreement. Each Party shall on or before the execution of this Agreement and annually thereafter furnish to the other parties certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section, or evidence of a self-insurance capacity as hereinabove provided, as the case may be. For purposes of the waivers and releases set forth in Section 5.5 hereof, any risks self-insured hereunder, and/or deductibles maintained by an Owner or Occupant, shall be deemed to be an insured risk for which recovery was received.

Section 5.7. Builder's Risk Insurance. Prior to commencing a Construction Activity each Party shall procure or provide a policy of builder's risk insurance containing limits and other provisions that are consistent with those limits and other provisions carried by similarly sized owners performing construction activities in the greater Richmond, Virginia area.

Section 5.8. Eminent Domain. In the event the whole or any part of the Center shall be taken by right of eminent domain or any similar authority of law or in the event of any agreement or

conveyance in lieu of condemnation (a "Taking"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the property so taken or to such Owner's Occupants or mortgagees, as their interest may appear, and no other Owner or Occupant shall have a right to claim any portion of such award by virtue of any interest created by this Agreement. Any Owner or Occupant 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 land and improvements being so taken to the extent of any damage suffered by such Owner or Occupant resulting from the severance of the land or improvements so taken if such claim shall not operate to reduce the award allocable to the Owner and Occupants of the Parcel taken. In the event of a partial Taking, the Owner or Occupant of the portion of the Center so taken shall restore the improvements located on the Common Areas of the affected Parcel as nearly as possible to the condition existing prior to the Taking without contribution from any other Owner or Occupant and any portion of any condemnation award necessary therefor shall be held in trust and applied for such purpose.

ARTICLE 6 - TERM

Section 6.1. **Term.** This Agreement and the easements, rights, obligations and liabilities created hereby shall commence as of the date hereof, and shall run with the land for the benefit and burden of the respective Parcels for a period of fifty (50) years from and after the recording of this Agreement in the Public Records of Chesterfield County, Virginia, and shall automatically renew for successive terms of twenty-five (25) years each unless one hundred (100%) percent of the Owners holding fee simple title to the Parcels agree to an earlier termination by written agreement recorded in said Public Records prior to expiration of the fifty (50) year period or prior to the expiration of any automatic extension of the term hereof; provided, however, that notwithstanding the foregoing any easements granted in this Agreement that are expressly provided as perpetual easements, shall survive any expiration or termination of this Agreement and shall be perpetual.

ARTICLE 7 - DEFAULT/REMEDIES

Section 7.1. **Default.** (a) The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by the nonperforming Party or Owner (collectively, the "Defaulting Party"):

(i) The failure to make any payment required to be made hereunder within ten (10) days after receipt of written notice that such payment was not received on the due date, or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this Agreement, other than as described in (i) above, within thirty (30) days after the issuance of a notice by an Owner (the "Non-Defaulting Party") specifying the nature of the default claimed.

(b) With respect to any default under Section 7.1(a)(ii) above, any Non-Defaulting Party shall have the right, but not the obligation, to cure such default by the payment of money or the

performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Parcel of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Owner shall be responsible for the default of its Occupants. In the event that any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

(c) Costs and expenses accruing and/or assessed pursuant to Section 6.1(b) above shall constitute a lien against the Defaulting Party's Parcel. Such lien shall attach and take effect and priority only upon recordation of a claim of lien in the office of the Recorder of Deeds of the County of the State in which the Center is located by the Non-Defaulting Party making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as the Non-Defaulting Party;
- (iii) An identification of the Owner or reputed Owner of the Parcel or interest therein against which the lien is claimed;
- (iv) A description of the Parcel against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
- (vi) A statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date of recordation and the recorded document number hereof.

The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 9.1 below. Such lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the Commonwealth of Virginia.

(d) No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.

(e) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party or any other person violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by any Owner or Occupant of any of the terms, covenants or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an Owner under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

Section 7.2. Interest. Any time an Owner or Occupant shall not pay any sum payable hereunder to another within ten (10) days of the due date, such delinquent Owner or Occupant shall pay interest on such amount from the due date to and including the date such payment is received by the Owner or Occupant entitled thereto, at the lesser of:

(i) The highest rate permitted by law (but in no event in excess of 12% per annum) to be paid on such type and amount of obligation; or

(ii) Three percent (3%) per annum in excess of the prime rate or base rate from time to time publicly announced by NationsBank, N.A. or its successor.

Section 7.3. Estoppel Certificate. Each Owner and Occupant agrees that upon the written request (which shall not be more frequent than three (3) times during any calendar year) of any Owner, the requested Owner or Occupant will issue to the requesting Owner, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(i) whether it knows of any default under this Agreement by the requesting Owner, and if there are known defaults, specifying the nature thereof;

(ii) whether this Agreement has been assigned, modified or amended in any way and if so, then stating the nature thereof; and

(iii) whether this Agreement is in full force and effect.

Notwithstanding anything contained herein to the contrary, the issuance of an estoppel certificate shall in no event subject the Owner or Occupant furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner or Occupant to disclose correct and/or relevant information.

ARTICLE 8 - EFFECT OF INSTRUMENT

Section 8.1. **Mortgage Subordination.** Any mortgage affecting any portion of the Center shall at all times be subject and subordinate to the terms of this Agreement, except to the extent expressly otherwise provided herein, and any party foreclosing any such mortgage or acquiring title by deed in lieu of foreclosure shall acquire title subject to all of the terms and provisions of this Agreement, provided, however, any mortgagee shall not be liable for any indemnification obligations arising hereunder prior to the date that such mortgagee acquires title to any portion of the Center. Home Depot and the Developer each represents and warrants to the other that there is no presently existing mortgage or other lien on its Parcel, other than mortgages or liens that are expressly subordinate to the covenants of this Agreement.

Section 8.2. **Binding Effect.** Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by either party to this Agreement is made by such party not only personally for the benefit of the other party but also as an Owner of a portion of the Center and shall constitute equitable servitude on the portion of the Center owned by such party appurtenant to and for the benefit of the other portions of the Center. Any transferee of any part of the Center shall automatically be deemed, by acceptance of the title to any portion of the Center, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in its Parcel and to have agreed with the then Owners of the other portions of the Center to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement. The transferor shall upon the completion of such transfer be relieved of all further liability under this Agreement except unsatisfied liabilities that may have arisen during its period of ownership of the portion of the Center so conveyed or except as may be specifically provided herein (including but not limited to hazardous waste indemnities and insurance indemnities).

Section 8.3. **Non-Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Center to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 8.4. **Responsibility.** Notwithstanding anything to the contrary contained in this instrument, each Owner shall be liable and responsible for the obligations, covenants, agreements and

responsibilities created by this Agreement and for any judgment rendered thereon only to the extent of its respective interest in the land and improvements on its respective Parcel.

ARTICLE 9 - NOTICES

Section 9.1. Any notice, report, demand or other communication required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is mailed by registered or certified mail, return receipt requested, sent via overnight courier or hand delivered to the respective parties addressed as follows, or to such other addresses as the parties may from time to time designate by like notice, on the third business day following the date of such mailing, on the first business day following the date deposited with an overnight courier or on the date of hand delivery:

If to Home Depot: Home Depot U.S.A., Inc.
2455 Paces Ferry Road, N.W.
Building C, 20th Floor
Atlanta, Georgia 30339
Attention: Legal Department

with a copy to: Altman, Kritzer & Levick, P.C.
6400 Powers Ferry Road, N.W..
Suite 224
Atlanta, Georgia 30339
Attention: Charles L. Wood, Esq.

If to Developer or Operator: North American Properties-Atlanta LLC
5780 Peachtree-Dunwoody Road
Suite 560
Atlanta, Georgia 30328
Attention: Mark C. Toro

with a copy to: Altman, Kritzer & Levick, P.C.
6400 Powers Ferry Road, N.W..
Suite 224
Atlanta, Georgia 30339
Attention: Peter M. Hartman, Esq.

If to Toys Toys "R" Us, Inc.
461 From Road
Paramus, New Jersey 07652
Attention: Senior Vice President-
Real Estate

with a copy under separate cover to the attention of Toys' Vice President and Counsel. There shall be no notice required to be sent to Toys until Toys has become a Party to this Agreement.

ARTICLE 10 - MISCELLANEOUS

Section 10.1. Interpretation.

(a) If any provision of this Agreement, or portion hereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

(c) The Article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part thereof.

(d) Nothing in this Agreement shall be construed to make the parties hereto partners or joint ventures or render any of said parties liable for the debts or obligations of the other.

(e) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

(f) This Agreement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by the fee simple Owners of title to the Developer's Parcel, the Toys' Parcel and the Home Depot Parcel, respectively along with any mortgagee holding a valid mortgage upon any of the Developer's Parcel, the Toys' Parcel or the Home Depot Parcel; this Agreement shall not be otherwise amended, modified or terminated during the term hereof. The Parties agree that this Agreement shall not be amended in any way that adversely affects the rights or the operation of any Owner without the prior written consent of the affected Owner.

(g) This Agreement has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this Agreement; and, based on the foregoing, the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(h) Whenever required by the context of this Agreement, (i) the singular shall include the plural and vice versa, and the masculine shall include the feminine and neuter genders and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

(i) This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages and when attached to this Agreement shall constitute one complete document.

Section 10.2. Excusable Delays. Whenever performance is required of any Owner or Occupant hereunder, such owner or Occupant shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, adverse weather conditions preventing the performance of work as certified to by an architect, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this Agreement. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

Section 10.3. Mitigation of Damages. In all situations arising out of this Agreement, each Owner and/or Occupant shall attempt to avoid and mitigate the damages resulting from the conduct of any other Owner and/or Occupant. Each Owner and Occupant shall take all reasonable measures to effectuate the provisions of this Agreement.

Section 10.4. Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall (i) entitle any Owner to cancel, rescind or otherwise terminate this Agreement, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Center. However, such limitation shall not affect in any manner any other rights or remedies which an Owner may have hereunder by reason of any such breach.

Section 10.5. Time. Time is of the essence of this Agreement.

Section 10.6. Pizza Hut Parcel. Until such time as the Pizza Hut Lease is terminated or expires pursuant to its terms or the Occupant of Pizza Hut Parcel fails to exercise its option to purchase the Pizza Hut Parcel as provided for in the Pizza Hut Lease, Pizza Hut Parcel shall not be subject to the terms and conditions of this Agreement. However, upon such termination or failure the Pizza Hut Parcel shall be deemed to be part of the Developer's Parcel.

IN WITNESS WHEREOF, Home Depot and Developer have executed this Agreement as of the date first above written.

WITNESSES:

"Home Depot":

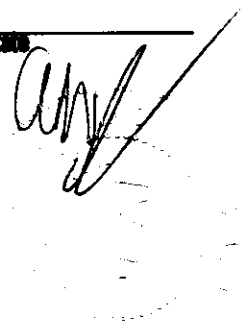
HOME DEPOT U.S.A., INC.

Sheila Johnston
Printed Name: Sheila Johnston

Wanda B. Peratta
Printed Name: Wanda B. Peratta

By: Kathryn Lee
Name: KATHRYN E. LEE
Its: Senior Corporate Counsel Real Estate

(Corporate Seal)



STATE OF GEORGIA
COUNTY OF COBB

Before me, Joanna Paulsen, a Notary Public of the State and County aforesaid, personally appeared Kathryn E. Lee, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be Sr. Corp. Counsel - Real Estate of Home Depot U.S.A., Inc. the within named bargainor, a corporation, and that he/she, as such Sr. Corp. Counsel - Real Estate being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as Sr. Corp. Counsel - Real Estate

WITNESS my hand and seal at office in Atlanta GA, this 7th day of ~~February, 1996~~ August, 1997

Joanna Paulsen
Notary Public
JOANNA PAULSEN

My Commission Expires:
MY COMMISSION EXPIRES
1/18/98
Fulton County, Georgia


[SIGNATURES CONTINUED ON FOLLOWING PAGE]


WITNESSES:

"Developer" BOOK 3099 PAGE 713

NAP CHESTERFIELD, L.P.

~~By: North American Properties Investors-
Atlanta, LLC~~


Printed Name: ROBERT EVANS
Printed Name: _____

By: 
Name: MARK C. TORO
Title: AUTHORIZED AGENT

~~WITNESS my hand and seal at office in _____, this
day of _____, 1997.~~

~~Notary Public~~

~~My Commission Expires:~~

STATE OF VIRGINIA
CITY OF RICHMOND, to-wit:

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, by
Mark C. Toro, Authorized Agent for NAP Chesterfield, L.P., a Georgia limited
partnership, on behalf of the partnership, this 8th day of August, 1997.

My commission expires: 4/30/2000


Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF HOME DEPOT PARCEL

LEGAL DESCRIPTION - HOME DEPOT PARCEL

BOOK 3099 PAGE 715

NEW PARCELS:

HOME DEPOT U.S.A., INC.

BEGINNING AT A POINT ON THE SOUTH LINE OF WEST KOGER CENTER BOULEVARD, SAID POINT BEING 457.28' FROM THE EAST LINE OF MALL DRIVE (ROUTE 819), SAID POINT BEING N08°38'49"E 0.41' FROM A ROD FOUND AND BEING THE TRUE AND ACTUAL POINT OF BEGINNING; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 628.64', AN ARC LENGTH OF 348.94', AN INCLUDED ANGLE OF 31°48'12" AND A CHORD OF S77°36'34"E 344.48' TO A ROD FOUND; THENCE S61°42'28"E 18.85' TO A ROD FOUND; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1199.58', AN ARC LENGTH OF 324.25', AN INCLUDED ANGLE OF 15°29'14" AND A CHORD OF S69°27'05"E 323.26' TO A ROD FOUND; THENCE S77°11'42"E 16.11' TO A POINT, SAID POINT BEING N77°10'35"W 0.82' FROM A ROD FOUND; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1260.00', AN ARC LENGTH OF 15.68', AN INCLUDED ANGLE OF 00°42'47" AND A CHORD OF S76°50'19"E 15.68' TO A ROD FOUND; THENCE S06°51'26"E 346.02' TO A ROD SET; THENCE S82°44'38"W 24.13' TO A ROD SET; THENCE S07°15'22"E 162.33' TO A ROD SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00', AN ARC LENGTH OF 6.55', AN INCLUDED ANGLE OF 12°30'14" AND A CHORD OF S01°00'15"E 6.53' TO A ROD SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 341.63', AN ARC LENGTH OF 140.61', AN INCLUDED ANGLE OF 23°34'52" AND A CHORD OF S17°02'19"W 139.62' TO A ROD SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 49.40', AN ARC LENGTH OF 47.25', AN INCLUDED ANGLE OF 54°48'32" AND A CHORD OF S56°04'01"W 45.47' TO A ROD SET; THENCE S82°44'20"W 275.54' TO A ROD SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 507.56', AN ARC LENGTH OF 93.22', AN INCLUDED ANGLE OF 10°31'23" AND A CHORD OF N88°05'59"W 93.09' TO A ROD SET; THENCE N79°50'12"W 67.10' TO A ROD SET; THENCE N78°43'01"W 62.10' TO A LEAD HUB AND TACK SET; THENCE N06°51'26"W 848.13' TO A ROD FOUND; THENCE N50°41'25"W 66.57' TO A POINT ON THE SOUTH LINE OF WEST KOGER CENTER BOULEVARD, SAID POINT BEING THE TRUE AND ACTUAL POINT OF BEGINNING; CONTAINING 11.067 ACRES AS SHOWN ON A PLAT OF SURVEY BY TIMMONS DATED JULY 23, 1997, ENTITLED "ALTA/ACSM LAND TITLE SURVEY SHOWING 41.236 ACRES OF LAND SITUATED ALONG THE NORTH LINE OF MIDLOTHIAN TURNPIKE AND THE WEST LINE OF KOGER CENTER BOULEVARD, MIDLOTHIAN DISTRICT, CHESTERFIELD COUNTY, VIRGINIA".

Exhibit "A"

SCHEDULE B

LEGAL DESCRIPTION - DEVELOPER PARCEL

BOOK 3099 PAGE 716

OVERALL PARCEL:

BEGINNING AT A POINT ON THE NORTH LINE OF MIDLOTHIAN TURNPIKE (U.S. ROUTE 60); SAID POINT BEING 1137.18' FROM THE WEST LINE OF KOGER CENTER BOULEVARD EXTENDED AND LABELED POB ON THIS PLAT, AND BEING THE TRUE AND ACTUAL POINT OF BEGINNING; THENCE ALONG THE NORTH LINE OF MIDLOTHIAN TURNPIKE S82°13'35"W 190.00' TO A ROD SET; THENCE LEAVING THE NORTH LINE OF MIDLOTHIAN TURNPIKE N07°53'00"W 243.80' TO A ROD SET; THENCE S82°11'08"W 201.95' TO A ROD FOUND; THENCE N08°58'47"W 199.35' TO A POINT, SAID POINT BEING S71°09'07"W 0.22' FROM A ROD FOUND; THENCE S82°07'58"W 208.00' TO A ROD FOUND; THENCE N06°51'26"W 1548.43' TO A ROD FOUND; THENCE N50°41'25"W 66.57' TO A POINT ON THE SOUTH LINE OF WEST KOGER CENTER BOULEVARD, SAID POINT BEING N08°38'49"E 0.41' FROM A ROD FOUND; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 628.64', AN ARC LENGTH OF 348.94', AN INCLUDED ANGLE OF 31°48'12" AND A CHORD OF S77°36'34"E 344.48' TO A ROD FOUND; THENCE S61°42'28"E 18.85' TO A ROD FOUND; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1199.58', AN ARC LENGTH OF 324.25', AN INCLUDED ANGLE OF 15°29'14" AND A CHORD OF S69°27'05"E 323.26' TO A ROD FOUND; THENCE S77°11'42"E 16.11' TO A POINT, SAID POINT BEING N77°10'35"W 0.82' FROM A ROD FOUND; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1260.00', AN ARC LENGTH OF 950.87', AN INCLUDED ANGLE OF 43°14'19" AND A CHORD OF S55°34'33"E 928.46' TO A ROD FOUND ON THE WEST LINE OF KOGER CENTER BOULEVARD; THENCE S33°57'23"E 424.99' TO A POINT, SAID POINT BEING N56°25'05"E 0.39' FROM A ROD FOUND; THENCE LEAVING THE WEST LINE OF KOGER CENTER BOULEVARD S56°02'37"W 246.13' TO A ROD FOUND; THENCE S13°54'39"E 42.98' TO A ROD FOUND; THENCE S48°03'55"W 325.66' TO A ROD FOUND; THENCE N84°33'35"W 164.02' TO A POINT, SAID POINT BEING N36°18'35"E 0.39' FROM A ROD FOUND; THENCE N84°38'15"W 102.57' TO A POINT, SAID POINT BEING S29°11'16"W 0.49' FROM A ROD FOUND; THENCE S06°40'05"E 183.39' TO A ROD SET; THENCE S82°13'35"W 134.55' TO A ROD SET; THENCE S06°46'43"E 289.00' TO A POINT ON THE NORTH LINE OF MIDLOTHIAN TURNPIKE (U.S. ROUTE 60), SAID POINT BEING S29°39'01"W 0.21' FROM A ROD FOUND AND BEING THE TRUE AND ACTUAL POINT OF BEGINNING; CONTAINING 41.236 ACRES AS SHOWN ON A PLAT OF SURVEY BY TIMMONS DATED JULY 23, 1997, ENTITLED "ALTA/ACSM LAND TITLE SURVEY SHOWING 41.236 ACRES OF LAND SITUATED ALONG THE NORTH LINE OF MIDLOTHIAN TURNPIKE AND THE WEST LINE OF KOGER CENTER BOULEVARD, MIDLOTHIAN DISTRICT, CHESTERFIELD COUNTY, VIRGINIA". **Less and except**

HOME DEPOT U.S.A., INC.

BEGINNING AT A POINT ON THE SOUTH LINE OF WEST KOGER CENTER BOULEVARD, SAID POINT BEING 457.28' FROM THE EAST LINE OF MALL DRIVE (ROUTE 819), SAID POINT BEING N08°38'49"E 0.41' FROM A ROD FOUND AND BEING THE TRUE AND ACTUAL POINT OF BEGINNING; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 628.64', AN ARC LENGTH OF 348.94', AN INCLUDED ANGLE OF 31°48'12" AND A CHORD OF S77°36'34"E 344.48' TO A ROD FOUND; THENCE S61°42'28"E 18.85' TO A ROD FOUND; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1199.58', AN ARC LENGTH OF 324.25', AN INCLUDED ANGLE OF 15°29'14" AND A CHORD OF S69°27'05"E 323.26' TO A ROD FOUND; THENCE S77°11'42"E 16.11' TO A POINT, SAID POINT BEING N77°10'35"W 0.82' FROM A ROD FOUND; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1260.00', AN ARC LENGTH OF 15.68', AN INCLUDED ANGLE OF 00°42'47" AND A CHORD OF S76°50'19"E 15.68' TO A ROD FOUND; THENCE S06°51'26"E 346.02' TO A ROD SET; THENCE S82°44'38"W 24.13' TO A ROD SET; THENCE S07°15'22"E 162.33' TO A ROD SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00', AN ARC LENGTH OF 6.55', AN INCLUDED ANGLE OF 12°30'14" AND A CHORD OF S01°00'15"E 6.53' TO A ROD SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 341.63', AN ARC LENGTH OF 140.61', AN INCLUDED ANGLE OF 23°34'52" AND A CHORD OF S17°02'19"W 139.62' TO A ROD SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 49.40', AN ARC LENGTH OF 47.25', AN INCLUDED ANGLE OF 54°48'32" AND A CHORD OF S56°04'01"W 45.47' TO A ROD SET; THENCE S82°44'20"W 275.54' TO A ROD SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 507.56', AN ARC LENGTH OF 93.22', AN INCLUDED ANGLE OF 10°31'23" AND A CHORD OF S88°05'59"W 93.09' TO A ROD SET; THENCE N79°50'12"W 67.10' TO A ROD SET; THENCE N78°43'01"W 62.10' TO A LEAD HUB AND TACK SET; THENCE N06°51'26"W 848.13' TO A ROD FOUND; THENCE N50°41'25"W 66.57' TO A POINT ON THE SOUTH LINE OF WEST KOGER CENTER BOULEVARD, SAID POINT BEING THE TRUE AND ACTUAL POINT OF BEGINNING; CONTAINING 11.067 ACRES AS SHOWN ON A PLAT OF SURVEY BY TIMMONS DATED JULY 23, 1997, ENTITLED "ALTA/ACSM LAND TITLE SURVEY SHOWING 41.236 ACRES OF LAND SITUATED ALONG THE NORTH LINE OF MIDLOTHIAN TURNPIKE AND THE WEST LINE OF KOGER CENTER BOULEVARD, MIDLOTHIAN DISTRICT, CHESTERFIELD COUNTY, VIRGINIA".

Exhibit "B"

Comprising of 30.169 acres

EXHIBIT "C"

LEGAL DESCRIPTION OF TOYS' PARCEL

(TO BE ATTACHED)

BOOK **3099** PAGE **717**

EXHIBIT "D"

INTENTIONALLY DELETED

BOOK 3099 PAGE 718

EXHIBIT "E"

LEGAL DESCRIPTIONS OF OUTPARCELS

(TO BE ATTACHED)

BOOK 3099 PAGE 719

EXHIBIT "F"

SITE PLAN

BOOK 3099 PAGE 720

BOOK 3099 PAGE 721



KOGER CENTER
BOULEVARD

MAX. BLDG. AREA
210,000 SF

PYLON SIGN

HOME DEPOT PARCEL
11.06 ACRES

DETENTION

Center
Center

DETENTION

HOME DEPOT PARCEL

HOME DEPOT PARCEL

HOME DEPOT PARCEL

HOME DEPOT PARCEL

HOME DEPOT PARCEL

HOME DEPOT PARCEL

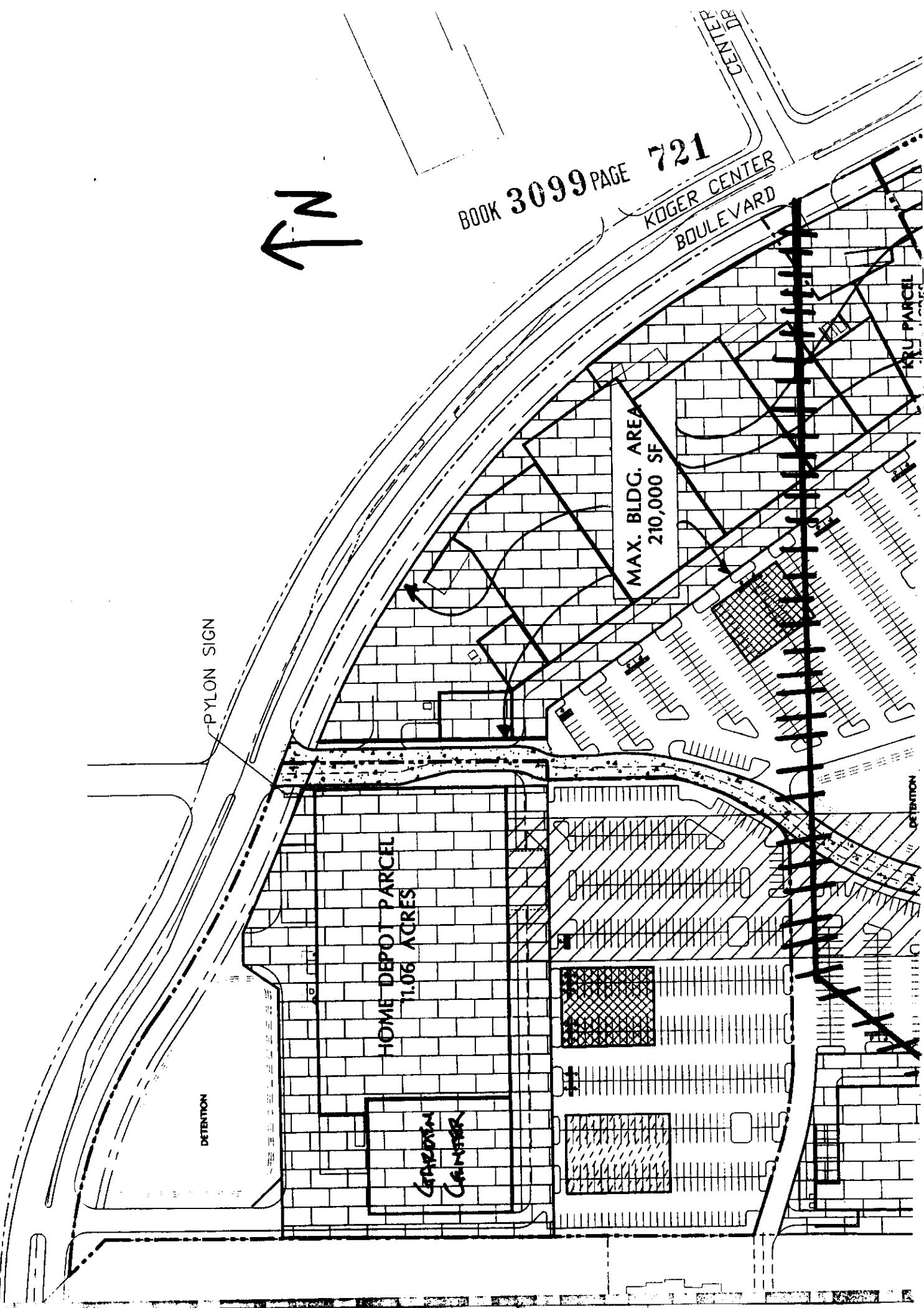


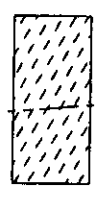
Exhibit "F"



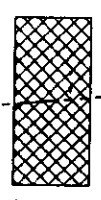
Approximate location of Nature Trail



HOME DEPOT RESTRICTIVE AREA IS ALL OF THE PROPERTY LYING NORTH OF THIS LINE



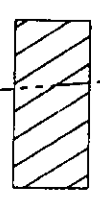
PROMOTIONAL AREA



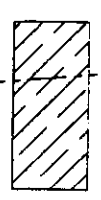
STAGING AREA



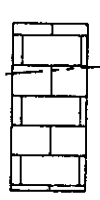
MAJOR ROADWAY



HOME DEPOT VIEW CORRIDOR



TOYS VIEW CORRIDOR



BUILDING AREA

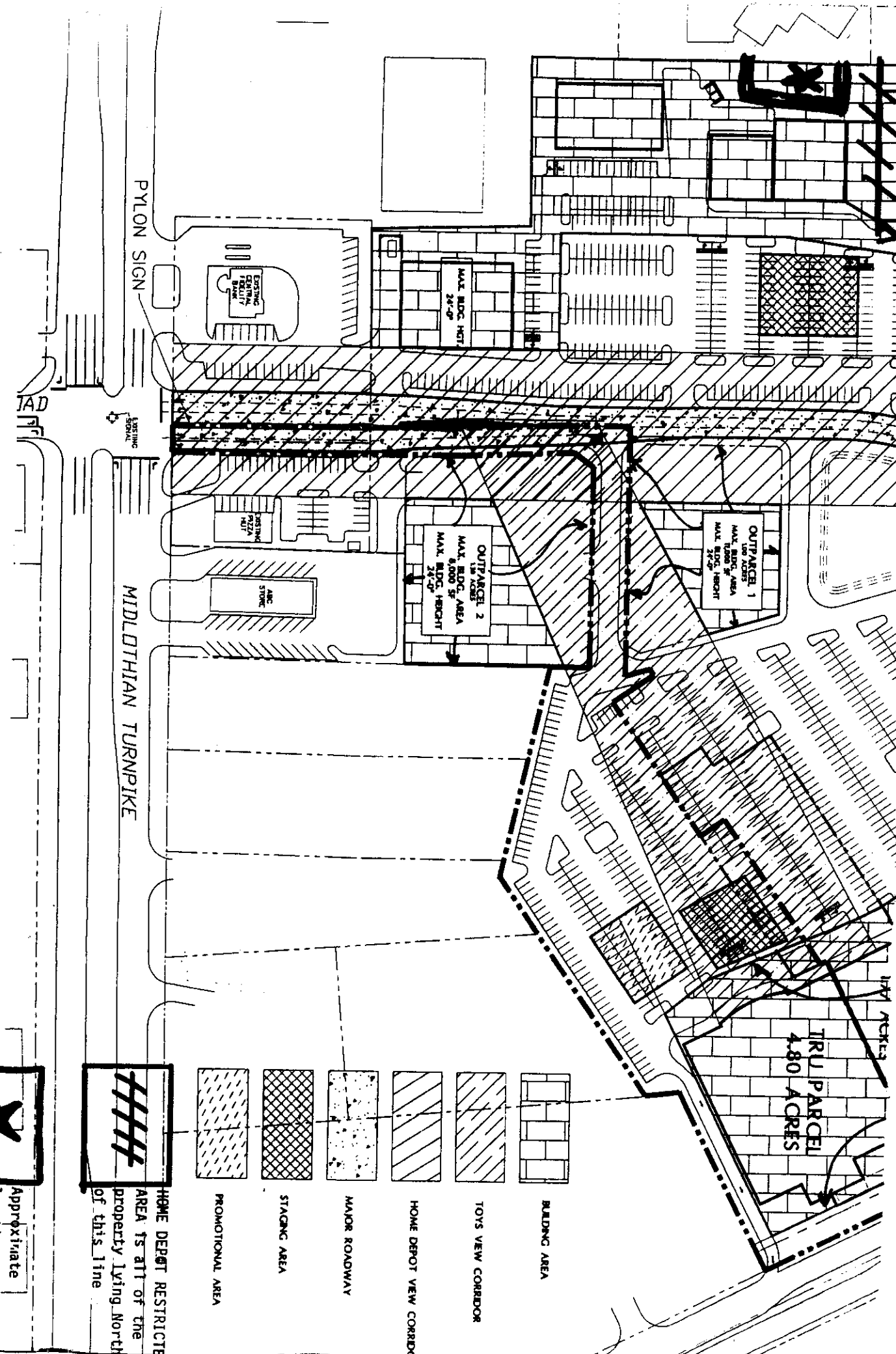
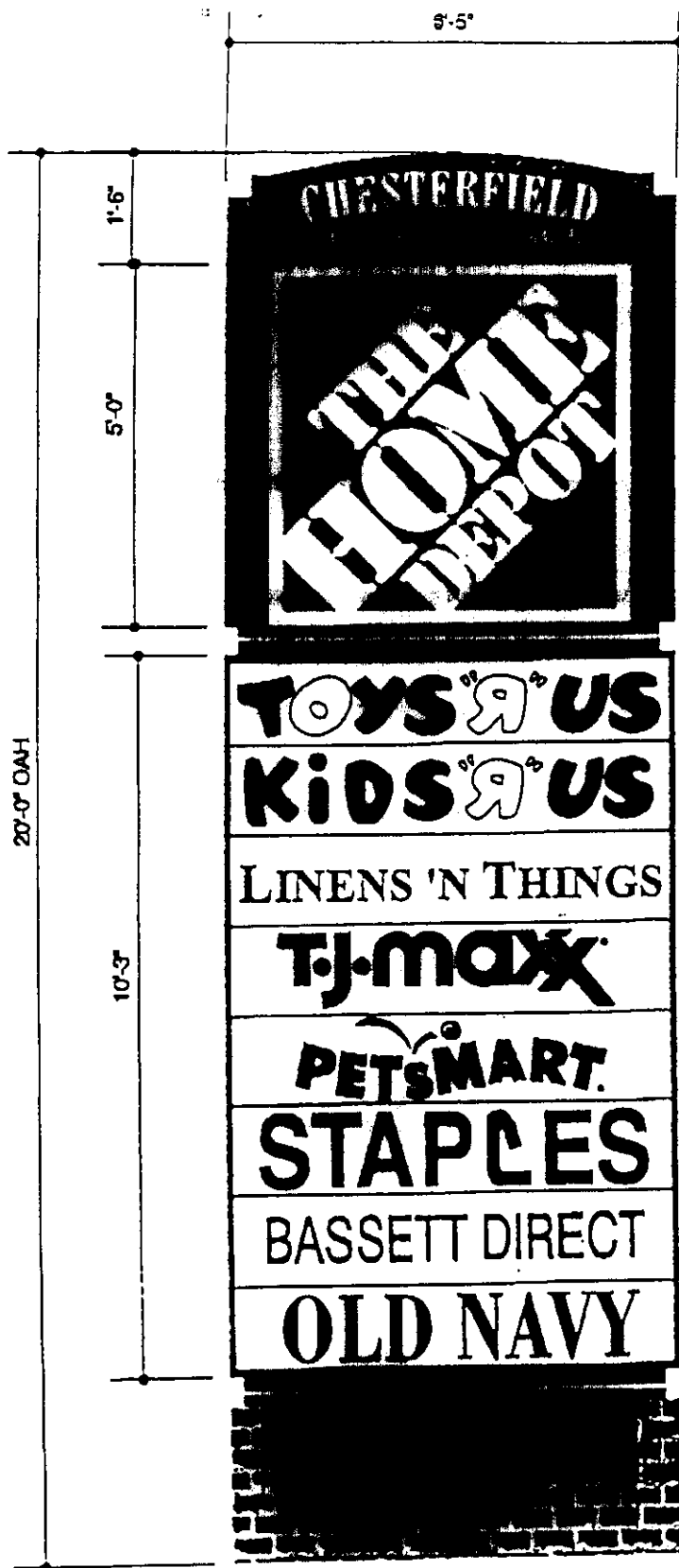


EXHIBIT "G"

PYLON SIGN DRAWINGS

BOOK 3099 PAGE 723



BOOK 3099 PAGE 724

9.63 sq. ft.

25.00 sq. ft.

65.77 sq. ft.

THD1797.CDR/042197 (042397)(042997)

Color renderings are for presentation only and should not be considered as a manufacturing drawing.

Exhibit "G"

COLLINS SIGNS



EXCLUSIVES CURRENTLY ENCUMBERING TOYS' PARCEL AND OUTPARCELS

TJ MAXX-

Landlord agrees, during the term of this Lease, no other single premises in the Shopping Center (excluding a typical Old Navy store, a typical Linens 'N Things store and a typical Kids R Us store, and excluding the Home Depot Parcel) shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of apparel, but excluding shoes, including in the computation of such floor area one-half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of apparel.

LINENS 'N THINGS-

During the Term, Landlord represents, warrants, covenants, and agrees that, within the Shopping center, no premises (other than the Premises and the Home Depot Parcel) shall be leased, rented, used or occupied for the operation of a store which devotes more than ten (10%) percent of its sales floor area to items comprising the Permitted Use. However, this restriction shall not prohibit Mikasa or Redding China from selling gifts, crafts, wicker products, apparel and other items typically sold in Mikasa or Redding China stores. For purposes hereof, the term "Permitted Use" shall mean:

- (1) Bed linens and related items: sheets, comforters, comforter covers, bedspreads, drapes blinds, decorative pillows, blankets, bed pillows and mattress pads.
- (2) Bath accessories: towels, shower curtains, waste baskets, hampers, and bathroom rugs.
- (3) Kitchen and tabletop items: cookware, cutlery, kitchen gadgets, dinnerware, flatware and glassware.
- (4) Small electric appliances (such as blenders, coffee makers and toaster ovens).
- (5) Basic housewares: storage items closet-related items (such as hangers, organizers, show racks), general housewares (such as brooms, garbage pails and ironing boards) and lifestyle accessories (such as lamps, chairs, wicker, silk and dried flowers).

VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF CHESTERFIELD COUNTY, THE 11 DAY OF AUG 1997, THIS DEED WAS PRESENTED AND WITH THE CERTIFICATE...., ADMITTED TO RECORD AT 9:12 O'CLOCK. THE TAX IMPOSED BY SECTION 58.1-802 IN THE AMOUNT OF \$.00 HAS BEEN PAID.