

'02 MAR 27 PM 1:33

When recorded return to:

Jane Rakay Nelson
Lane Powell Spears Lubersky LLP
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101-2338

State of Oregon, County of Klamath
Recorded 03/27/2002 1:33 p.m.
Vol M02, Pg 17988-18045
Linda Smith, County Clerk
Fee \$ 306⁰⁰ # of Pgs 58

K57443
**RESTRICTION AGREEMENT
AND GRANT OF EASEMENTS**

THIS RESTRICTION AGREEMENT AND GRANT OF EASEMENTS (this "**Agreement**") is made as of March 26, 2002, by and between KLAMATH FALLS CENTER, LLC, an Oregon limited liability company ("**Developer**"), and HOME DEPOT U.S.A., INC., a Delaware corporation ("**Home Depot**").

1. **PRELIMINARY.**

1.1 **Parties:** Developer is the Owner of Parcel 2 and the Outparcels; and Home Depot is the Owner of Parcel 1, also known as the Home Depot Parcel. The Parcels are located at the corner of the intersection of South Sixth Street (SR 39) and Unity Street, in the City of Klamath Falls, County of Klamath, State of Oregon, as more clearly delineated on the Site Plan and as legally described on **Exhibit "B"**.

1.2 **Purpose:** The Parties plan to develop the Shopping Center as an integrated retail sales complex for the mutual benefit of all real property in the Shopping Center and, therefore, do hereby fix and establish the Restrictions, upon and subject to which all of the Shopping Center, or any part thereof, shall be improved, held, leased, sold and/or conveyed. Such Restrictions shall run with the land and inure and pass with such property and shall apply to and bind the respective successors in interests thereof, and all and each thereof is imposed upon such property as a mutual equitable servitude in favor of such property and any portion thereof.

1.3 **Definitions:** For the purposes of this Agreement, the terms defined in this Agreement shall have the meanings set forth below whenever such terms are used in this Agreement, unless the content clearly indicates a different meaning.

K306

- (a) **"Agreement"**: This Restriction Agreement and Grant of Easements.
- (b) **"Building"**: Any enclosed structure placed, constructed or located on a Parcel, which for the purpose of this Agreement shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.
- (c) **"Building Area"**: All those areas on each Parcel shown as Building Area on the Site Plan attached hereto and incorporated herein by this reference, together with those portions of the Expansion Area which are from time to time covered by a Building. The aggregate Floor Area of Buildings within a Parcel's Building Area may not exceed the lesser of (i) the maximum square footage allocated thereto on the Site Plan, or (ii) the maximum square footage of Floor Area permitted on such Parcel by the application of the minimum parking requirements set forth in Section 4.1 below. For purposes of Section 11.4, Building Area shall be deemed to be the maximum square footage allowed for a Building until a Building is first constructed within a Parcel, and thereafter the actual square footage of all Buildings constructed on such Parcel, but in no event less than 90% of the maximum building area.
- (d) **"Common Area"**: All those areas on each Parcel which are not Building Area, together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a Building or which cannot under the terms of this Agreement be used for Buildings. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the Building to which they are attached and not a part of the Common Area. The improvement or use of any portion of the Building Area for parking areas or Service Facilities shall not be construed as a permanent inclusion of such portion within the Common Area, and such portions may, at any time thereafter, be improved with Buildings and appurtenances as contemplated by this Agreement. Perimeter Sidewalks or exterior lighting attached to a Building are not part of the Common Area.
- (e) **"Consenting Owners"**: The Owner of the Home Depot Parcel and the Owner of Parcel 2; provided, however, that in the event any such Owner sells its Parcel and becomes the Prime Lessee thereon, such Prime Lessee shall be deemed appointed as the entity to cast the vote or give the consent for the Parcel on behalf of the Owner so long as it is the Prime Lessee of said Parcel; provided further, however, that in the event Developer sells any portion of Parcel 2, then the Consenting Owner as to Parcel 2 shall be that Owner who owns the largest portion of land area within Parcel 2.
- (f) **"Constant Dollars"** means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth (6th) 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 and the denominator of which is the Base Index Number. The "**Base Index Number**" shall be the level of the Index for the month during which this Agreement is dated; the "**Current Index Number**" shall be the level of the Index for the month which this Agreement is dated of the year preceding the adjustment year; the "**Index**" shall be the Consumer Price Index for all urban consumers, U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (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 Consenting Owners 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.

(g) "**Default Rate**": The greater of (i) highest legal rate per annum or (ii) five percent (5%) per annum over the then current prime lending rate of Bank of America.

(h) "**Developer**": Klamath Falls Center, LLC, its successors and assigns.

(i) "**Expansion Area**": All those areas on the Home Depot Parcel located within the "**Expansion Limit Lines**" shown on the Site Plan.

(j) "**Floor Area**": The total number of square feet of floor space on each floor in a Building, including basement, subterranean, balcony and mezzanine space, irrespective of whether actually occupied, provided, however, incidental basement or mezzanine space used for offices or storage ancillary to a retail business shall not be included in the calculation of Floor Area. Floor Area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components; provided, however, in no event shall an Outside Sales Area be included in such calculations. The Parties acknowledge that the garden center located on the Home Depot Parcel constitutes Outside Sales Area and is depicted on the Site Plan.

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

(l) **"Home Depot"**: Home Depot U.S.A., Inc., a Delaware corporation, its successors and assigns, together with any corporation, partnership, limited liability company or other legal entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof, and whose current address is 3800 West Chapman Avenue, Orange, CA 92868.

(m) **"Land Area"**: The total gross square footage of a Parcel less all land dedicated or required to be dedicated for public streets, sidewalks or any other public improvements.

(n) **"Lienholder"**: Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

(o) **"Maintenance Director"**: The Person responsible for the maintenance of the Common Areas under the provisions of **Section 6**.

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

(q) **"Outparcel" or "Outparcels"**: Individually or collectively, Parcels 3, 4, 5, 6 and 7.

(r) **"Outside Sales Area"**: An area generally unprotected from the elements which may be used for sales and/or storage purposes and when used for such purposes shall be enclosed by a fence or other security barrier; an Outside Sales Area shall only be located in the area(s) designated on the Site Plan. Any designation on the Site Plan to **"seasonal sales"** or **"seasonal sales area"** shall be deemed **"Outside Sales Area."**

(s) **"Owner"**: The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns.

(t) **"Parcel" or "Parcels"**: Individually or collectively, the Home Depot Parcel, the Outparcels and Parcel 2 as shown on the Site Plan and more particularly described in **Exhibit "B"**.

(u) **"Party" or "Parties"**: The parties set forth in **Section 1.1** above, their successors and assigns.

(v) **"Perimeter Sidewalk"**: The sidewalks and customer pickup areas directly adjacent to a Building and depicted as Perimeter Sidewalks on the Site Plan. The Perimeter Sidewalks are the exclusive property of the Owner of the Parcel and not part of Common Area.

(w) **"Permittee"**: All Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended use of the Shopping Center. Among others, Persons engaging in the following activities on the Common Area will not be considered to be Permittees: (i) exhibiting any placard, sign, or notice; (ii) distributing any circular, handbill, placard, or booklet; (iii) soliciting memberships or contributions; (iv) parading, picketing, or demonstrating; and (v) failing to follow regulations relating to the use of the Shopping Center.

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

(y) **"Prime Lessee"**: An Owner of a Parcel who sells its entire Parcel to an unaffiliated third party and thereafter enters into a lease for the entire Parcel with such third party or its lessee or sublessee and its successors and assigns.

(z) **"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; provided, however, notwithstanding anything herein to the contrary, a supermarket, a grocery store or similar food operations shall not be deemed a Restaurant.

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

(bb) **"Service Facilities"**: Loading docks, trash compactors and enclosures, electrical facilities, customer pick-up areas and other similar service facilities.

(cc) **"Shopping Center"**: Collectively, the Home Depot Parcel, the Outparcels, and Parcel 2.

(dd) **"Site Plan"**: The site plans of the Shopping Center shown on Exhibit "A-1" and "A-2" (collectively the **"Site Plan"**) attached hereto. Site Plan OR-80h and Site Plan OR-80i are alternative site plans which may be implemented by the Developer in whole only; that is, Developer shall implement either Site Plan OR-80h or Site Plan OR-80i, but shall not implement portions of each. Any request for changes to the Site

Plan subsequent to the recordation of this Agreement shall include a detailed comparison clearly showing all changes, irrespective of materiality, to the proposed modified/amended site plan versus the existing Site Plan. Such comparison shall be interlineated upon the Site Plan. The granting or withholding of consent to any proposed change to the Site Plan may be granted or withheld in each Consenting Owner's sole and absolute discretion.

(ee) **"Utility Lines"**: Those facilities and systems for the transmission or other provision of utility services, including, but not limited to, water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains, other public or private utilities, and drainage and storage of surface water.

2. **BUILDING AND COMMON AREA DEVELOPMENT.**

2.1 **Building Location**: All Buildings and other structures (except those permitted in **Section 2.2** below) shall be placed or constructed upon the Parcels only within the Building Areas; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting any such canopies, eaves and roof overhangs), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Area. Buildings may be located (or relocated) anywhere within the Building Area provided the total Floor Area of all Buildings constructed within a Building Area does not exceed the lesser of (i) the square footage assigned to such Building Area as shown on the Site Plan, or (ii) the maximum square footage of Floor Area permitted on such Parcel by the application of the minimum parking requirements set forth in **Section 4.1** below. All of the foregoing shall be constructed and maintained in accordance with all Governmental Regulations applicable thereto. All Building Areas on which Buildings are not yet constructed or not under construction on the date an Owner first opens its Building for business shall be covered by decomposed granite, sod, hydroseed or as otherwise permitted by Governmental Regulations and kept weed free and clean at the subject Owner's sole cost and expense until such time as Buildings are constructed thereon.

2.2 **Common Area**: The Common Area is hereby reserved for the sole and exclusive use of all Owners and Occupants of the Shopping Center, their Permittees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such Permittees. The Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking) and pedestrian traffic and for no other purpose unless otherwise specifically provided in this Agreement. Improvements in the Common Area shall be limited to: paving, bumper guards and curbs; sidewalks and walkways/paths; landscape planters and other landscaped areas; pylon and monument signs, informational signs (such as **"Handicapped Parking"**), traffic directional signs and other signs permitted under **Article 4**; lighting standards and other lighting fixtures; perimeter walls and fences;

recycle centers; cart corrals; Utility Lines; trash receptacles; benches and other customer service amenities; Service Facilities; and any other improvements, equipment or fixtures specifically permitted elsewhere in this Agreement or approved by the Consenting Owners. The Common Area shall initially be developed in accordance with the Site Plan and shall be kept and maintained as provided for in **Article 6**. After the initial development of the Common Area, no Buildings, structures, or other improvements shall be placed in the Common Area, nor shall the sizes or arrangements of Common Area improvements be changed, except in accordance with **Section 4.5** of this Agreement. All portions of a Building Area which are not from time to time used for Buildings, or an Outside Sales Area not used as such, shall be developed by the Owner thereof, at said Owner's sole cost and expense, in accordance with a site plan approved by the Consenting Owners and maintained as improved Common Area until Buildings are constructed thereon. The Owners acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Buildings, signs and Common Area improvements located in the Shopping Center, all of which are permitted under this Agreement so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Shopping Center.

2.3 **Type and Design of Building:**

(a) Except for the Building constructed on the Home Depot Parcel, all Building improvements constructed or placed upon the Shopping Center shall be of first-class quality construction. Each Owner shall submit to Home Depot grading and drainage plans so that Home Depot may confirm compliance with **Section 2.3(d)** below.

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

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

sole cost and expense of the Owner making the attachment and shall be in strict conformance with the approved drawings and specifications detailing the same.

(d) The Buildings on Parcel 2 shall be single story (with mezzanine permitted for storage of inventory or incidental office use only) and shall not exceed forty (40) feet in height. No Buildings located on the Home Depot Parcel shall exceed forty (40) feet in height, excluding architectural embellishments or television equipment. No Building on the Outparcels shall exceed one (1) story and twenty-four (24) feet in height (including mechanical fixtures, signage, and equipment and screening for same). No mezzanine or basement shall be used for the sale or display of merchandise or for the offer or provision of retail services to the public.

(e) Each Owner shall maintain or cause to be maintained the exterior of any Building located on such Owner's Parcel(s) in a quality and condition comparable to that of shopping centers of comparable size and nature located in the same geographic area as the Shopping Center.

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

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

2.4 **Construction Requirements:**

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Building, sign or Common Area improvements located in the Shopping Center (collectively, "**Improvements**") shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any Building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. In addition, all work performed on Improvements on the Outparcels shall not unreasonably interfere, obstruct or delay (i) construction work being performed on any other Parcels, or (ii) the use, enjoyment or occupancy of any other Parcels. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore

or cause to be promptly repaired and restored to its prior condition all Buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

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

(c) Staging for the construction, replacement, alteration or expansion of any Building, sign or Common Area improvements located in the Shopping Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall (i) be located solely on an Owner's Parcel, or (ii) be limited to specific areas ("**Staging Area**") of the Shopping Center approved in writing by the Consenting Owners. Each Staging Area on any Parcel shall be located in such a way that it will not interfere with the use of the Common Area on any other Parcel (including without limitation the Main Access Drive, the Truck Drive and the Secondary Access Drive). The Staging Area for each Outparcel shall be located on that Outparcel unless the Outparcel Owner obtains the consent of the Owner on whose Parcel it proposes to locate said Staging Area. At the request of any Consenting Owner, any Staging Area for an Outparcel shall be enclosed by a safety fence.

(d) Unless specifically approved in writing by Home Depot, the grading of any Parcel shall not be modified, altered or otherwise changed from its originally approved, graded condition. There shall be no interference with the established drainage pattern and system over any portion of the Parcels unless adequate provision is made for proper drainage and such interference is approved by all Owners. If not otherwise maintained by the Maintenance Director, all drains, gutters, downspouts, berms, swells, and other drainage facilities and systems shall be maintained by the Owner of such items in a neat, orderly, safe and sanitary condition, and in such a manner as to facilitate the orderly discharge of water by means thereof.

(e) Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, an easement for any portion of any Building or structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s); provided the easement for footings, piers, piles, grade beams and Building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. The easements granted in this **Section 2.4(e)** shall survive this Agreement and shall last so long as the encroaching Building is standing following its initial construction or following its reconstruction where such Building is substantially restored to its prior condition following a casualty or condemnation.

2.5 Temporary License. Each Owner hereby grants to the other Owners a temporary license for access and passage over and across the Common Area located on the granting Owner's Parcel, to the extent reasonably necessary for such Owner to construct and/or maintain improvements upon its Parcel; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area on the granting Owner's Parcel. Prior to exercising the rights granted herein, an Owner shall provide each granting Owner with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by this Agreement. The Owner shall promptly pay all costs and expenses associated with such work, shall complete such work as quickly as possible, and shall promptly clean and restore the affected portion of the Common Area on the granting Owner's Parcel to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

2.6 Indemnity. In addition to the indemnification provided in **Section 17.4** below, each Owner shall indemnify, defend, protect and hold every other Owner and their respective officers, directors, shareholders, employees and agents harmless for, from and against any and all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and court costs and reasonable attorneys' fees and

court costs on appeal) arising out of or related to injury to or death of any person or damage to or destruction of any property occurring on any Parcel and arising out of or resulting from any construction activities performed by or at the request of an Owner or its Occupants, including an Owner's or Occupant's own negligence, unless caused by the solely negligent, grossly negligent or willful act or omission of the indemnified Owner.

2.7 Approval Procedures.

(a) Before any action requiring Home Depot's approval under this Section 2 is commenced, sufficient information shall be sent to Home Depot to make a reasonable decision as to the proposal, together with a review fee equal to Two Hundred Fifty Dollars (\$250.00) to cover Home Depot's costs incurred in reviewing an Owner's proposal. Home Depot must approve or disapprove the proposal within forty-five (45) days after receipt of the proposal, and, if Home Depot disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

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

3. EASEMENTS

3.1 **Ingress, Egress and Parking:** Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, and for the use of said Owner and its Permittees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas

devoted to Service Facilities or driveup or drive through customer service facilities. The reciprocal rights of ingress and egress set forth in this **Section 3.1** shall apply to the Common Area for each Parcel as such area shall be increased pursuant to **Section 2.2** above.

3.2 **Utility Lines and Facilities:**

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

(b) At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Line installed pursuant to the foregoing grant of easement which is then located on the Parcel of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days notice in writing of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (ii) shall not unreasonably interfere with or diminish utility service to the Parcels served by the Utility Line, (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Line, (iv) shall be performed without cost or expense to the Owner or Occupant of any other Parcel, (v) shall provide for the original and relocated area to be restored using materials and design standards which equal or exceed those originally used, and (vi) shall not interfere with the business operation of the Owners or Occupants served by the Utility Line. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(c) Subject to obtaining the prior written consent of the Owner of the grantor Parcel as to location and form, which consent shall not be unreasonably withheld, conditioned or delayed, each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the Utility Lines described herein provided such easements are not otherwise inconsistent with the provisions of this Agreement.

(d) The terms and provisions of this **Section 3.2** shall survive the expiration or earlier termination of this Agreement.

3.3 Signs: Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a non-exclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in **Section 4.3** of this Agreement and all Utility Lines appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such facilities are located within thirty (30) days after the date of completion of construction of same. No signage with respect to Persons who are not Owners or Occupants shall be permitted on any Pylon or Monument Signage located in or upon the Shopping Center.

3.4 Dedication to Public Entities: Without the prior written consent of the Consenting Owners, which consent may be granted or withheld in the sole and absolute discretion of each Consenting Owner, no Owner shall grant any easement for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Parcel to governmental or quasi-governmental authorities or to public utilities.

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

3.6 **Access Drives:** Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners and for the use of such Owners and their respective Permittees, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across those portions of the Common Area located on the grantor's Parcel(s) shown on the Site Plan as "**Main Access Drive**" "**Secondary Access Drive**" and "**Truck Drive**". The Truck Drive shall be used for truck and service vehicles only.

4. **OPERATION OF COMMON AREA**

4.1 **Parking:** Except for the payment of "**CAM Costs**" (as such term is defined in **Section 6.2** below), there shall be no charge for parking in the Common Area without the prior written consent of Consenting Owners or unless otherwise required by law. Parking spaces on each Parcel shall be a minimum size of 9 feet by 19 feet, with a minimum 25 foot wide aisles in the parking field. The parking area on each Parcel shall contain sufficient ground level parking spaces in order to comply with the following minimum requirements, without reliance on parking spaces located on any other Parcel:

- (i) five (5.0) parking spaces for each one thousand (1,000) square feet of Floor Area; provided, however, that compact car parking spaces shall be located in the areas, if any, designated on the Site Plan; and
- (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 for stacking not less than seven (7) automobiles (exclusive of any drive-aisle) for each drive-up unit; however, Home Depot must approve the location and existence of all drive-up units;
- (iii) for each single Restaurant which has less than five thousand (5,000) square feet of Floor Area, then five (5) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use;
- (iv) for each single Restaurant which has at least five thousand (5,000) square feet of Floor Area, but less than seven thousand (7,000) square feet of Floor Area, then ten (10) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use;

- (v) for each single Restaurant which has seven thousand (7,000) square feet of Floor Area or more, then fifteen (15) additional parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

Ninety percent (90%) of each Parcel's required parking spaces shall be located in front of the Building(s) built or to be built on such Parcel, except if otherwise depicted on the Site Plan.

In the event the minimum number of parking spaces required by Governmental Regulations is greater than the minimum requirements set forth above, then the minimum number of parking spaces as required by Governmental Regulations shall control.

In the event of a condemnation of part of a Parcel or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required in this **Section 4.1**, the Owner whose Parcel is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute parking spaces in order to comply with the parking requirements set forth in this **Section 4.1**. If such compliance is not possible, the Owner whose Parcel is so affected shall not be deemed in default hereunder, but such Owner shall not be permitted to expand the amount of Floor Area located upon its Parcel. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirement is satisfied.

4.2 **Employee Parking:** In no event shall any employees of any business other than Home Depot park on the Home Depot Parcel and Home Depot employees shall not park on other parcels.

4.3 **Signs:**

(a) Subject to Governmental Regulations, a free-standing sign shall be erected by Developer at the location designated "**Center Pylon Sign**" on the Site Plan. Such sign shall display the designation of Home Depot and, provided the amount of signage otherwise permitted by Governmental Regulations to Home Depot is not adversely affected thereby, designations for not more than four (4) other businesses in the Shopping Center. Any such business, in order to display its designation on the Center Pylon Sign, must occupy not less than 15,000 square feet of Floor Area. The cost of constructing, installing, maintaining, repairing and replacing the Center Pylon Sign structure (excluding electrical hookup to the Common Area meter) shall be paid by the Owners of all Parcels entitled to display designations thereon in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon. Each person displaying a designation on the Center Pylon Sign shall

supply and maintain its own sign fascia and can. The design of the Center Pylon Sign structure shall be subject to the prior approval of the Consenting Owners (prior to construction), as shall be the size, design and location of the sign fascia used; provided, however, that the Consenting Owners may use such standard fascia as they from time to time use generally in carrying on their businesses. Home Depot shall have the top designation on the Center Pylon Sign, which shall be divided into thirds with the Shopping Center name in one third (1/3), Home Depot's name in the top one third (1/3) and up to 4 other owners or tenants in the remaining one third (1/3).

(b) In addition to the foregoing Center Pylon Sign, Home Depot may, erect a second free-standing sign at the location designated "**Home Depot Pylon Sign**" on the Site Plan. The Home Depot Pylon Sign may display the designation of Home Depot. The cost of constructing, installing, maintaining, repairing and replacing the Home Depot Pylon Sign structure (excluding electrical hookup to the Common Area meter) shall be paid by Home Depot, except that Developer shall pay for the cost of the electrical conduit to the sign. The design of the Home Depot Pylon Sign structure and sign fascia used shall be subject to the approval of Home Depot only. No other pylon sign shall be located within one hundred (100) feet of the Home Depot Pylon Sign, nor in any area which would obstruct the line of sight of the Home Depot Pylon Sign from surrounding roadways. The Home Depot Pylon Sign shall be designed substantially as set forth on the attached Sign Exhibit and shall be solely utilized by Home Depot. Home Depot may make changes to and/or replace such pylon structure and/or sign.

(c) Provided the signage otherwise permitted by Governmental Regulations to Home Depot is not adversely affected thereby, each Outparcel may have, subject to governmental approval, one freestanding monument sign on said Outparcel, at the location(s) designated therefor on the Site Plan or, if not designated, then as approved by Home Depot. Such monument sign shall display a single designation for the Occupant of the Outparcel. Any change to the initial design of any monument sign structure shall be subject to the prior written approval of the Consenting Owners. The size and design of all sign fascia displayed on any such monument sign shall be subject to the prior written approval of the Consenting Owners. The cost of constructing, installing, maintaining, operating, repairing and replacing such monument sign structure and sign fascia shall be paid by the applicable Outparcel Owner.

(d) Except as set forth in subsections (a), (b) and (c) above, there shall be no other signs, except directional signs, informational signs such as "**Handicapped Parking**," and signs on Buildings, in the Shopping Center.

(e) Except as set forth in subsections (a), (b) and (c) above, all signs shall conform with the following standards:

(i) All exterior Building signs on the Outparcels and Parcel 2 shall be restricted to identification of the business or service located or provided therein.

(ii) No exterior Building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

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

4.5 **Changes to Common Area:**

(a) After the initial development of the Common Area, no Buildings, structures, or other improvements not shown on the Site Plan shall be placed in the Common Area without the prior written approval of the Consenting Owners except: (i) Service Facilities in accordance with the requirements of paragraph (b) below; (ii) public pay telephones provided their location has been approved in writing by the Consenting Owners; (iii) temporary booths, stands, displays, other structures or equipment used for sales in the parking area on the Home Depot Parcel and Parcel 2.

(b) The sizes and arrangements of Common Area improvements may not be changed without the Consenting Owner's prior written approval. Home Depot may withhold its consent to any change to the entrances or exits to or from the Shopping Center in its sole and absolute discretion.

(c) An Owner may not, without the Consenting Owners' prior written consent, which may be withheld in the Consenting Owner's sole and absolute discretion, (i) alter the location or size of any Building or improvement, (ii) change the number, location or layout of parking spaces (it being acknowledged by the parties that such parking spaces shall be "full size" spaces, i.e., 9 feet by 19 feet in dimension or such larger size as may be required by Governmental Regulations), (iii) construct additional structures or Buildings on the Common Area; or (iv) alter the configuration of drives, driveways or curb cuts.

5. RESTRICTIONS ON USE

5.1 No portion of the Shopping Center other than the Home Depot Parcel shall be used for a home improvement center or for any business which sells, displays, leases or distributes such items or materials, singly or in any combination: lumber, hardware, tools, plumbing supplies, pool supplies, electrical supplies, paint, wallpaper and other wallcoverings, window treatments (including draperies, curtains and blinds), kitchen or bathrooms or components thereof (including tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware), hard and soft flooring (including tile [including ceramic tile], wood flooring, rugs and carpeting), siding, ceiling fans, gardening and garden nursery supplies, artificial and natural plants, barbeques and barbeque accessories, patio furniture and patio accessories, Christmas trees, indoor and outdoor lighting systems and light fixtures, cabinets and unfinished and finished furniture, kitchen and household appliances, closet organizing systems, pictures or picture framing, interior design services, or other products generally sold in a retail home improvement center, except for the incidental sale of such items. An "incidental sale of such items" is one in which there is no more than the lesser of (i) five percent (5%) of the total Floor Area of such business, or (ii) 1,000 square feet of sales and/or display area, relating to such items individually or in the aggregate.

5.2 Shopping Center Restrictions:

(a) No portion of the Shopping Center other than the Home Depot Parcel shall be used for any non-retail use or for any of the following purposes: a surplus store, a flea market or a business selling so-called "second hand" goods (the term "**second hand**" shall mean stores which sell goods primarily as a service to the public rather than to a retail customer for a profit, such as, by way of example, "**Goodwill Stores**"); cemetery; mortuary; bookstore or establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a so-called "head shop"; off-track betting parlor or any other gaming/gambling use; gun range; the sale of guns as a primary use; junk yard; recycling facility or stockyard; motor vehicle or boat dealership, repair shop (including lubrication and/or service center), body and fender shop, car wash facility or gasoline station, or motor vehicle or boat storage facility (the foregoing restriction shall not apply to Home Depot's sale and/or rental of delivery vehicles to its customers as part of its home improvement business); a laundromat or dry-cleaning facility (but this shall not be deemed to prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer); a warehouse; an animal kennel; a self-storage facility; theater, auditorium, sports or other entertainment viewing facility (whether live, film, audio/visual or video); a bar, tavern or cocktail lounge; discotheque, dance hall, comedy club, night club or adult entertainment facility; bowling alley; skating rink; billiard or pool hall; massage parlor, game parlor, video or other type of gameroom or arcade (which shall be defined as any store containing more than three (3) electronic games); fitness center, workout facility,

gym, health spa or studio, or exercise facility; a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees and not to customers (but shall specifically not prohibit a school which is incidental to a primary retail purpose); restaurants which serve alcohol and more than 20% of their gross sales are derived from alcohol sales; office usage other than incidental in connection with non-prohibited uses; industrial, residential, lodging or manufacturing uses, school or house of worship; any bankruptcy sales or going out of business sales. No portion of the Home Depot Parcel shall be used for any of the following purposes: flea market; cemetery; mortuary; bookstore or establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; so-called "head shop"; off-track batting parlor, or any other gaming/gambling use; junk yard; recycling facility or stock yard; motor vehicle or boat storage facility (other than Home Depot's sale and/or rental of delivery vehicles to its customers as part of its home improvement business); animal kennel (unless part of a pet store); adult entertainment facility; or massage parlor. Motor vehicle repair shops such as "quick lube" or gas stations; dry cleaning facilities; and small office uses (such as banks) may be located on the Outparcels subject to Home Depot's approval and the receipt of indemnities, representations, and warranties in form acceptable to Home Depot.

(b) Without the prior written consent of the Consenting Owners, the following shall not be allowed to operate in the Shopping Center or Common Areas: traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fireworks, sales by transient merchants utilizing vehicles or booths and other promotions of any nature. In the event that unauthorized Persons, including without limitation tenants or invitees of tenants occupying Buildings now or at any future time located in the Shopping Center, utilize the parking area for other than temporary parking by customers while shopping in the Shopping Center, Developer shall at its sole expense, upon written request by Home Depot, take whatever action as shall be reasonably necessary to prevent said unauthorized utilization. If Developer is no longer an owner, then each Owner can take such action.

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

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

or other minerals shall be erected, maintained or permitted on any portion of the Shopping Center.

(e) Notwithstanding anything to the contrary contained herein, no other Owner or Occupant other than Home Depot shall be permitted to conduct the sale of Christmas trees within the Shopping Center.

(f) Except on the Home Depot Parcel and Parcel 2, no portion of the Common Area shall be used for the sale, storage or display of merchandise or for the storage of shopping carts; provided, however, that the seasonal sale of merchandise by the Consenting Owners shall be permitted from the parking lot located on the Home Depot Parcel and Parcel 2, respectively, subject to the following restrictions: (i) (A) all booths, stands, displays and other structures erected in connection with seasonal sales shall be promptly removed by the Owner upon termination of the seasonal sale activity; and (B) the Common Area shall be promptly repaired to its condition immediately prior to the seasonal sale activity at the sole cost and expense of such Owner, and (ii) the display on the Home Depot Parcel of Home Depot's sale and/or rental of delivery vehicles to its customers as part of its home improvement business shall be permitted.

(g) For purposes of this Agreement, all Perimeter Sidewalks shall be the sole exclusive property of the Owners of the Buildings associated with such sidewalks and each Owner shall have the exclusive right to use such sidewalks for whatever purpose such Owner deems appropriate, including, without limitation, the sale and display of merchandise. Each Owner shall have the obligation to maintain the Perimeter Sidewalk on its Parcel in good repair and condition in accordance with the standards set forth herein for the maintenance of the Common Areas.

(h) The Outparcel Owners shall each provide the Consenting Owners with written notification with any proposed change in use (and each subsequent change in use) from the initial use of any business operation located on said Outparcels.

5.3 **General Use Restriction:** The construction and/or operation of a Restaurant on any Outparcel shall be subject to the prior written approval of Home Depot, which approval may be withheld in Home Depot's sole and subjective discretion as to: (i) any single Restaurant over four thousand (4,000) square feet of floor area; (ii) any Restaurant, if the square footage of such Restaurant, when added to the square footage of all other Restaurants on such Outparcel (or approved by Home Depot to be constructed on such Outparcel) would exceed four thousand (4,000) square feet of floor area; and (iii) any Restaurant which serves alcoholic beverages. The Outparcel Owner, at its sole cost and expense, shall keep the parking and Common Areas serving such Restaurant clean and free of all debris and rubbish caused by such use and such costs shall not be chargeable to Home Depot or any other party.

5.4 **Location Restrictions:** No part of Parcel 3 shall be used as a Restaurant or as a medical, dental, professional or business office, other than a bank. The Floor Area of all Restaurants and medical, dental, professional and business offices located on Parcels 2, 3, 4, 5, 6 and 7 shall not exceed the square feet of Building Area depicted for each on the Site Plan.

5.5 **Driveup and Drive Through Facilities:** Except as shown on the Site Plan, no Restaurant, bank or other facility featuring vehicular driveup or drive through customer service shall be located in the Shopping Center unless the Consenting Owners have first given their written consent to the location, parking and drive lanes of such facility. The review of drive up and drive through facilities by the Consenting Owners as provided herein is not intended to prohibit drive up and drive through facilities but is intended to insure that the location, layout and stacking for such drive up and drive through facilities do not negatively affect the access, driveways, circulation and parking for the Shopping Center.

6. **MAINTENANCE STANDARDS.**

6.1 **Maintenance Obligations:** Commencing on the date the first Owner or Occupant is scheduled to open its Building for business ("**Commencement Date**") the Maintenance Director shall, except as hereinafter provided, maintain the Common Area at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

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

(b) Removing all snow, papers, debris, filth and refuse and thoroughly sweeping and periodically vacuuming the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines, and all informational signs such as "**Handicapped Parking**";

(d) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required to the extent not provided directly by an Owner or Occupant, including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contactors. The Maintenance Director shall not be responsible for maintaining or providing electricity to any lighting fixtures

attached to any Building or soffit in the Shopping Center, including “canopy” or “soffit” lighting, and the maintenance and electricity for the same shall not be included in “CAM Costs” (as that term is defined in Section 10.1 below). Each Owner shall maintain and provide electricity to all lighting fixtures attached to its respective Building(s), at its sole cost and expense;

(e) Maintaining and watering all landscaped areas (including, without limitation, those on the perimeter of the Shopping Center); maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary. If any Owner or Occupant requires “special” landscaping (i.e. beyond the standard landscaping requirements for the remainder of the Shopping Center), or if landscaping additions/modifications are required as a result of a Building addition, expansion or remodel, the cost of installation, replacement and maintenance of such special or required landscaping shall be borne solely by such Owner or Occupant and shall not be included in CAM Costs. For so long as required by governing authorities, the landscaping in the rights of way immediately adjoining the Shopping Center (identified on the Site Plan as the “**Perimeter Landscaping Areas**”) shall be maintained by the Maintenance Director;

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

(g) Maintaining, repairing and replacing, when necessary, all Common Area storm drains, sewers and other Utility Lines not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the Buildings and improvements located in the Shopping Center (with the cost of all such items being allocated between the Owners of all Buildings and improvements serviced or to be serviced by said facilities on the basis of their respective Building Areas);

(h) Keeping the Center Pylon Sign and Home Depot Pylon Sign lighted from dusk to dawn or during such other times mutually agreed in writing by the businesses designated thereon. Notwithstanding the other provisions of this Agreement, the cost of lighting the Center Pylon Sign and the Home Depot Pylon Sign shall be paid as set forth in Sections 4.3(a) and 4.3(b) above;

(i) Maintaining, insuring, repairing and replacing, when necessary, the Center Pylon Sign and the Home Depot Pylon Sign (except for the sign fascia and cans which shall be supplied and maintained by the businesses designated thereon). Notwithstanding the other provisions of this Agreement, the cost of maintaining, repairing and replacing the Center Pylon Sign and the Home Depot Pylon Sign shall be paid as set forth in Sections 4.3(a) and 4.3(b) above;

(j) Providing reasonable and customary security services with respect to the Common Areas (subject to the prior written approval of Home Depot as to any security services proposed to be provided);

(k) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall remain responsible and liable for the performance of all of said services in accordance with the terms of this Agreement and for the performance of any such third party or parties under any such contract or contracts;

(l) Maintaining commercial general liability insurance as set forth in **Article 17** hereof;

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

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

6.2 **Exclusions from Common Area Maintenance Obligations:** The Maintenance Director shall expend only such funds as are reasonably necessary for the operation, maintenance and insurance of the Common Area. Anything in this **Article 6** to the contrary notwithstanding, such expenses shall not include, and the Owners shall not be obligated to reimburse the Maintenance Director for, the following:

(a) any late charges, fees or penalties, except to the extent caused by an Owner or Occupant's delinquent payment of its monthly fee, in which case the late charges, fees or penalties allocable to such delinquency shall be paid by the delinquent Owner or Occupant;

(b) any costs to clean or repair the Common Area resulting from promotional activities or from construction, maintenance or replacement of Buildings;

(c) real property taxes and assessments;

(d) Maintenance Director's profit, administrative and overhead costs (such as rent, legal, accounting or administrative services, supplies, utilities and wages or salaries paid to management or supervisory personnel), it being further agreed that if a person is involved with other than Common Area operational and maintenance matters at

the Shopping Center, then the Maintenance Director shall allocate such person's time to properly reflect his/her varied duties;

- (e) entertainment, transportation, meals and lodging of anyone.
- (f) depreciation and amortization, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Maintenance Director to enable the Maintenance Director to supply services the Maintenance Director might otherwise contract for with a third party and where such depreciation and amortization would otherwise have been included in the charge for such third party's services and when depreciation or amortization is permitted or required, the item shall be depreciated over its reasonably anticipated useful life;
- (g) costs incurred by Maintenance Director for alterations which are considered capital improvements and replacements (other than landscaping replacement expenses) unless the prior written approval of Home Depot has first been obtained;
- (h) expenses in connection with services or other benefits which are provided selectively to one or more Owners and/or Occupants of the Shopping Center who are charged directly for such services or other benefits.
- (i) interest, points and fees on debt or amortization on any mortgage or mortgages encumbering the Shopping Center;
- (j) all items and services which the Maintenance Director provides selectively to one or more Owners and/or Occupants without reimbursement;
- (k) electrical power costs for which any Owner and/or Occupant directly contracts with the local public service company;
- (l) any penalties incurred as a result of Maintenance Director's negligence, inability or unwillingness to make any payments when due to the extent not caused by an Owner's and/or Occupant's failure to make timely payments;
- (m) the cost of acquisition of new land or construction of new Buildings;
- (n) the cost to correct any part of the Common Areas that was inadequately designed or defectively constructed;
- (o) costs exceeding those obtainable through competitive bidding;

(p) any expense representing an amount paid to a related corporation, entity, or person which is in excess of the amount which would be paid in the absence of such relationship;

(q) earthquake and/or flood insurance, unless such coverage is available at commercially reasonable rates; and

(r) costs for services provided to one Owner's Parcel that does not provide equal benefits to the Owners as a whole.

In addition, to the extent any Owner is excluded from a service, the cost of such item shall also be excluded from such Owner's share of CAM Costs.

6.3 **Obligation to Keep Parcels Lien Free:** Maintenance Director shall keep the Parcels free from any and all liens arising out of any work performed, materials furnished to or obligations incurred by the Maintenance Director in connection with the operation and maintenance of the Common Area hereunder. Maintenance Director shall, within thirty (30) days after the date of imposition of any such lien, pay the lien claim in full, unless Maintenance Director contests such lien claim in good faith, in which case Maintenance Director shall, within such thirty (30) day period and as a condition precedent to Maintenance Director's right to so contest, record a bond of a responsible corporate surety in such amount and in such manner as may be required by applicable law to release the lien from the affected Parcel or Parcels. Maintenance Director shall indemnify, defend, protect and hold all Owners and Occupants harmless for, from and against any and all claims, liability, losses, damages, injuries, costs or expenses (including reasonable attorneys' fees) in connection with any such lien claim.

7. **LIGHTING.**

7.1 **General Requirement:** After completion of the Common Area lighting system on its Parcel, each Owner hereby covenants and agrees to keep its Parcel fully illuminated each day from dusk to at least 11:00 p.m. (the "**Closing Time**") unless Home Depot requires a different time. Each Owner further agrees to keep any exterior building security lights, plus each of the lights located on the light standards located adjacent to any main access drive or entry into the Shopping Center on from dusk until dawn. During the term of this Agreement, each Owner grants an irrevocable license to each other Owner for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcels.

8. **PAYMENT OF TAXES.**

8.1 **Taxes and Assessments:** Each Owner shall pay direct to the tax collector, prior to delinquency, the real property taxes and other special taxes and assessments levied and assessed against the Owner's Parcel, including the portion of the Common Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments. Notwithstanding the foregoing, until such time as separate tax bills are obtained for each of the Parcels, each Owner shall pay or cause to be paid its pro rata share of Taxes levied against the Shopping Center in accordance with **Section 11.2** below.

8.2 **Failure to Pay Taxes and Assessments:** In the event an Owner fails to pay prior to delinquency, all taxes and assessments described in **Section 8.1** above (such Owner being herein called a "**Defaulting Owner**"), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and any other Owner or Prime Lessee ("**Curing Owner**") may thereafter pay such taxes if such taxes are delinquent and the Defaulting Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Owner shall then bill the Defaulting Owner for the expenses incurred. The Defaulting Owner shall have fifteen (15) days within which to pay the bill. If the Defaulting Owner does not so pay, the Curing Owner shall have a lien on the Parcel of the Defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on the Defaulting Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

9. **MAINTENANCE DIRECTOR.**

9.1 **Appointment:** The Owners hereby initially appoint Elliott & Associates, Inc. as Maintenance Director of the Shopping Center Common Area from and after the earlier of ninety (90) days prior to the date an Owner first opens its Building on its Parcel for business.

9.2 **Removal of Maintenance Director:** In the event of (i) a default by Maintenance Director in the performance of its duties; (ii) an increase of ten percent (10%) or more in CAM costs over the immediately preceding year, or (iii) the agreement of a majority of the Consenting Owners (for purposes of this **Section 9.2**, in the event a Consenting Owner is the Maintenance Director, then the party which is Consenting Owner/Maintenance Director shall not be permitted to vote), the Maintenance Director may be removed without cause upon written notice to the Owners of the remaining Parcels, in

which event the Consenting Owners shall appoint another Person to be Maintenance Director.

9.3 **Resignation of Maintenance Director:** The Maintenance Director shall have the right, upon giving ninety (90) days prior written notice to the Owners of the Shopping Center, to resign as Maintenance Director, in which event a majority of the Consenting Owners (or in the event such a majority cannot be reached, the Owners of a majority of the Floor Area within the Parcels) shall appoint another Person to be the Maintenance Director.

9.4 **Transfer of Records and Equipment:** Upon assumption by a new Maintenance Director of the Common Area Maintenance duties, the previous Maintenance Director shall transfer to the new Maintenance Director all applicable books and records relating to such duties and shall provide any and all other information and documentation to effectuate the transfer of responsibility hereunder, including notification to insurers and transfer of insurance policies. The previous Maintenance Director shall also transfer to the new Maintenance Director any and all equipment and machinery used by the previous Maintenance Director in connection with the operation and maintenance of the Common Area hereunder, except for such equipment and machinery owned by the Maintenance Director.

10. **REIMBURSEMENT OF MAINTENANCE DIRECTOR/BUDGET BASIS.**

10.1 **Maintenance Contracts:** The Maintenance Director shall contract for all work and pay for all of the costs of operating, maintaining and insuring the Common Area ("CAM Costs") in accordance with **Article 6** and **Article 17**, on a budget basis, pursuant to (and subject to) the provisions of **Articles 10 and 11**. In no event shall the Maintenance Director enter into any contract that cannot be terminated upon thirty (30) days written notice without the prior written approval of the Consenting Owners. All contracts entered into by the Maintenance Director for the services described herein (sometimes referred to as "**Maintenance Contracts**") shall be made expressly assignable to a successor Maintenance Director or the Consenting Owners if no successor Maintenance Director exists. A copy of all Maintenance Contracts shall be distributed to any Owner requesting the same.

10.2 **Bidding:** At least one hundred and twenty (120) days prior to the date the first Owner or Occupant is scheduled to open its Building for business, the Maintenance Director shall put all contracts for Common Area maintenance work out to bid, in accordance with the following. Specifications for all Common Area maintenance items shall be submitted for bid to at least three (3) bidders reasonably approved in writing by the Consenting Owners. Thereafter, the names of the bidding contractors or companies, the specifications and the amount of their respective bids shall be furnished to the Consenting Owners by the Maintenance Director within ten (10) days after the Maintenance Director's

receipt thereof, and the Maintenance Director shall award the pertinent contract to the lowest bidder, unless the Maintenance Director obtains the Consenting Owners' prior written consent to award the contract to a higher bidder. The foregoing bid items and amounts shall be integrated into the pertinent budget.

10.3 **Submission and Approval of Budget:**

(a) The term "**Maintenance Budget Year**" shall mean the period commencing on the first day of the first month following the date the first Owner or Occupant opens its Building on its Parcel for business and ending on that date which is one (1) year later and each corresponding twelve (12) month period thereafter. At least ninety (90) days prior to the commencement of each Maintenance Budget Year, the Maintenance Director shall submit to each Consenting Owner, for such Consenting Owner's review and approval, a proposed annual budget for CAM Costs ("**Budget**") covering the forthcoming Maintenance Budget Year, together with a copy of the bids required herein and any backup materials reasonably requested by any Consenting Owner. The Budget shall be in a form reasonably acceptable to the Consenting Owners and shall identify separate cost estimates for at least the categories specified under **Section 6.1**, plus:

(i) the premium for liability insurance covering the Common Area as required by **Section 17.2**; provided that if the Maintenance Director carries a policy which covers more than one location and insurance premiums allocable to the Shopping Center cannot be segregated from the premiums allocable to other sites, then an estimated premium, agreed upon, in writing, by the Consenting Owners, will be permitted

(ii) rental or purchase of equipment and supplies;

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

(iv) the Maintenance Fee (defined in **Section 10.8**).

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 the ensuing Maintenance Budget Year (specifying the portion of the Common Area affected), and shall note the anticipated cost and timing (specifying the portion of the Common Area affected) of such phased work during succeeding Maintenance Budget Years. In no event shall more than twenty-five percent (25%) of the cost of resurfacing the drive and/or parking areas be included in the Budget for any single Maintenance Budget Year.

(b) Each Consenting Owner shall, within sixty (60) days after receipt of the Budget, deliver written notice of its approval or disapproval of the Budget to the Maintenance Director ("**Budget Approval Notice**"). Notwithstanding the foregoing (and without limiting the provisions of **Section 11.4** below), if the Maintenance Director does not comply with the time frames required herein for submission of the Budget and all back-up materials, any such delay in submission shall entitle the Consenting Owners to a corresponding extension in delivering their Budget Approval Notices. With respect to each submitted Budget, each Consenting Owner shall approve all items of Common Area Expenses ("**CAM Items**") that such Consenting Owner deems acceptable, even if the Budget contains other CAM Items which the Consenting Owner deems unacceptable, such that the Consenting Owner shall have approved as much of the Budget as possible. If a Consenting Owner disapproves of any CAM Items, it must specify its reasons for disapproval in the Budget Approval Notice and the Maintenance Director shall promptly revise and resubmit the same until the Maintenance Director and the Consenting Owner(s) reach agreement on the matters in question. The Maintenance Director and Consenting Owner shall attempt in good faith to reach agreement as to the disapproved items as quickly as reasonably possible and in any event prior to the beginning of the applicable Maintenance Budget Year.

(c) If, prior to the beginning of the applicable Maintenance Budget Year, the Maintenance Director and the majority of the Consenting Owners, despite their good faith efforts, are unable to agree upon the inclusion of a particular CAM Item in the Budget, said disputed CAM Item shall not be included in the Budget.

(d) If the Maintenance Director and the Consenting Owners are unable to agree upon the cost of a particular CAM Item included in the Budget, then the following shall apply:

(i) If the disagreement arises with respect to the first Maintenance Budget Year, the lowest bid for said item, as obtained in **Section 10.2**, shall be incorporated into the Budget, and

(ii) If the disagreement arises with respect to any subsequent Budget, the Maintenance Director shall promptly submit for rebid each disapproved CAM Item in accordance with the procedures in **Section 10.2** (and if the existing Maintenance Budget Year begins during the foregoing bidding process, the Maintenance Director shall continue to maintain the Common Area based upon the approved portions, if any, of the currently submitted Budget and those portions of the just-expired Budget that relate to disputed CAM Items).

10.4 **Insurance Items:** If the Consenting Owners cannot reasonably agree on the insurance costs to be included within any Budget or if the Maintenance Director fails to acquire the necessary insurance for the Common Area and the insurance coverage has lapsed or will soon lapse, any Consenting Owner shall have the option (but not the obligation) of immediately acquiring said insurance, in which event the Maintenance Director shall pay to such Consenting Owner the insurance costs within ten (10) days after its receipt of a statement therefor from said Consenting Owner. Notwithstanding the foregoing, a Consenting Owner shall, prior to acquiring the insurance, give the Maintenance Director reasonable notice (e.g., written or telephonic) and reasonable opportunity to obtain the insurance.

10.5 **Non-Reimbursable Items:** Notwithstanding anything herein to the contrary, an Owner shall not be obligated to reimburse the Maintenance Director for any CAM Item which is not part of the Budget except: (i) emergency expenses in accordance with **Section 10.6**, (ii) unforeseen or extraordinary expenses in accordance with **Section 10.7**, and (iii) necessary expenditures over which the Maintenance Director has no control (such as utility rate increases or extraordinary demand created by forces of nature and governmentally regulated services).

10.6 **Emergency Expenses:** If the Maintenance Director is required to incur an expense for the emergency repair or replacement of any portion of the Common Area, which expense has not been set forth in an approved Budget, then each Owner shall pay its pro rata share of such expense provided that the Maintenance Director has given each Owner the best and earliest notice of the same that is feasible under the circumstances. For purposes of this **Section 10.6** an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of harm to person or property. If the total cost of the emergency action exceeds Twenty-Five Thousand Constant Dollars (\$25,000.00), then the Maintenance Director may submit a supplemental billing to each Owner, together with evidence supporting such payment. Each Owner (subject to its right to contest the validity of the expenditure), 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 CAM Costs at the year end.

10.7 **Unforeseen or Extraordinary Expenses:** If the Maintenance Director reasonably deems it necessary to incur an unforeseen or extraordinary expense (which is not on an emergency basis) for the repair or replacement of any portion of the Common Area, which expense has not been set forth in an approved Budget, the Maintenance Director shall request written approval of such expenditure from the Owners as far in advance of such repair or replacement as is reasonably possible, and such approval shall not be unreasonably withheld, conditioned or delayed. Any such item which is approved by the majority of the Consenting Owners shall be considered a reimbursable expense provided, however that if requested by any Consenting Owner, the Maintenance Director shall follow the bidding

procedures set forth in **Section 10.2** with regard to such item and the lowest bid therefore shall be utilized in the Budget.

10.8 **Maintenance Fee:** The Maintenance Director may, subject to the provisions hereof, charge a maximum charge of ten percent (10%) of CAM Costs (excluding real property taxes, insurance premiums and utilities) incurred by the Maintenance Director to cover management and administration costs ("**Maintenance Fee**"). For all purposes herein other than determining the Maintenance Fee, CAM Costs include the Maintenance Fee. Notwithstanding the foregoing:

(a) In determining the Maintenance Fee, any individual, non-recurring item of CAM Costs which exceeds \$5,000 in Constant Dollars shall be deemed to be \$5,000 in Constant Dollars for purposes of establishing the Maintenance Fee, unless the Consenting Owners each approve in writing a higher amount.

(b) If the Maintenance Director contracts with a management company pursuant to **Section 6.1(k)** ("**Management Company**"), then the Maintenance Director shall not be entitled to a Maintenance Fee. The fee of the Management Company shall be a reimbursable expense (subject to the provisions of this **Article 10**), provided however, that if such fee is an amount which exceeds ten percent (10%) of all out-of-pocket expenses (excluding real property taxes, insurance premiums and utilities) incurred by the Maintenance Director in performing the services described in **Section 6.1**, such excess amount shall not be reimbursable by the Owners without their prior written approval, and

(c) The CAM Costs shall not include any costs incurred by the Maintenance Director or its agent for office overhead or compensation of its employees except to the extent included in the Maintenance Fee.

10.9 **Nonprofit Basis:** The Maintenance Director shall perform the maintenance obligations under this Agreement on a nonprofit basis with the objective of keeping such expenses at a reasonable minimum.

11. **BILLING FOR EXPENSES.**

11.1 **Monthly Payment:** Beginning on the first day of the first Maintenance Budget Year and continuing on the first day of each calendar month thereafter, the Owner of each Parcel (or its respective Occupants, as it may direct) shall pay to the Maintenance Director one-twelfth (1/12) of such Owner's pro rata share (set forth in **Section 11.5**) of the total annual CAM Costs, as set forth in the approved Budget for said first Maintenance Budget Year and every Maintenance Budget Year thereafter; provided, however, a Consenting Owner shall have no obligation to pay any CAM Costs until an Owner or Occupant first opens for business on such Consenting Owner's Parcel, not to exceed twelve

(12) months after the date the first Owner opens for business. For each Parcel on which a business is open on the Commencement Date, the first of such payments shall include such Owner's pro rata share of the Budget amounts for the period between the Commencement Date and the first day of the first Maintenance Budget Year, calculated on a per diem basis for those days.

11.2 Year-End Reconciliation: Within ninety (90) days after the end of each Maintenance Budget Year, the Maintenance Director shall send to each Owner a written statement, certified by an authorized Person, of the total CAM Costs actually paid by the Maintenance Director during said Maintenance Budget Year ("**Actual Expenses**") and the difference between said Owner's pro rata share of the Actual Expenses and the sum of all the monthly payments made by each Owner relative to said Maintenance Budget Year ("**Reconciliation Statement**"). The first Reconciliation Statement shall also include corresponding information for the period between the Commencement Date and the beginning of the first Maintenance Budget Year. The Maintenance Director shall, within fifteen (15) days after receipt of an Owner's written request, provide to such Owner, at such Owner's cost and expense, complete copies of invoices, statements and documents supporting the expenses covered by said statement (collectively, "**Backup Invoices**"), and such additional documentation as the Owner may reasonably request to substantiate the expenses (sometimes referred to herein as "**Additional Documentation**"), and such Owner's obligation to pay any invoice submitted by the Maintenance Director in the Reconciliation Statement shall be contingent upon its receipt of said Backup Invoices and Additional Documentation. The Owners and the Maintenance Director shall, within thirty (30) days after the Maintenance Director submits the Reconciliation Statement to the Owners, make such adjustments and payments as necessary so that the Maintenance Director receives the entire amount (but no more) of each Owner's pro rata share of the Actual Expenses for the applicable Maintenance Budget Year. Notwithstanding the foregoing, if the Actual Expenses for any single CAM Item exceeds the budgeted cost of said item by more than ten percent (10%), or if the total CAM Costs exceed the aggregate Budget by more than ten percent (10%), the Owners shall not be liable for such excess unless the Consenting Owners have approved such excess in writing. Any reimbursement that may be due by the Maintenance Director to an Owner may, if the Maintenance Director and said Owner so agree, take the form of a credit on the Owner's next succeeding installment(s).

11.3 No Reimbursement for Late Billings: Without limiting any provisions of Article 10 or 11, the Maintenance Director shall not be entitled to reimbursement from any Owner (or its respective Occupants) for any item of CAM Costs (including the Maintenance Fee) for which a bill is not submitted to said Owner within one (1) year after all Backup Invoices and any Additional Documentation requested.

11.4 **Pro Rata Shares:** The pro rata share of the total CAM Costs to be borne by each Owner shall be the percentage obtained by dividing the Land Area of such Owner's Parcel by the total Land Area in the Shopping Center. If any Parcel line(s) within the Shopping Center is(are) relocated by a lot line adjustment, new parcel map or otherwise, the above percentages shall be recalculated to reflect any changes in the Land Area included in each Parcel. If any Owner elects to assume the obligations of the Maintenance Director to maintain, repair, replace and insure the Common Area on such Owner's Parcel pursuant to **Article 15**, the percentages set forth above shall be re-calculated based on the Land Area of the remaining Parcels.

11.5 **Audit Rights:** A Consenting Owner may, upon not less than ten (10) days prior written notice to the Maintenance Director, inspect the Maintenance Director's records for all Common Area maintenance and insurance expenses incurred during any Maintenance Budget Year at the Maintenance Director's general offices or at such other location reasonably designated by the Maintenance Director at any time during reasonable business hours within three (3) years after the end of said Maintenance Budget Year. If said inspection reveals an overpayment of CAM Costs, the Maintenance Director shall reimburse the Owner of each Parcel (or its respective Occupants, as it may direct) its proportionate share of any such overpayment. If the inspection reveals an underpayment of CAM Costs (including the Maintenance Fee but excluding all expenses for which a statement was not timely submitted pursuant to **Section 11.2** above), the Owner of each Parcel shall reimburse the Maintenance Director its pro rata share of any such underpayment within thirty (30) days after receipt of proper billing in accordance with **Section 11.2**. If the inspection reveals that the Maintenance Director overstated CAM Costs by more than three percent (3%), the Maintenance Director shall also reimburse the Person making such inspection for all costs reasonably incurred in making such inspection within thirty (30) days after receipt of notice of determination, and of the amount, of any such overstatement.

12. **SUCCESSORS AND ASSIGNS.**

This Agreement and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, and such Owner complies with the provisions of the final sentence of this **Section 12**, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Agreement with respect to such Parcel or portion thereof after

the date of sale and conveyance of title. Concurrently with the transfer of all right, title and interest in any Parcel, the Owner transferring such interest shall execute and deliver to the Consenting Owners and the Maintenance Director a written statement in which the name and address of the new Owner shall be set forth, the effective date of the conveyance, and the Parcel conveyed. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify or otherwise affect the liability of the new Owner pursuant to the provisions of this Agreement, but such failure shall constitute a default by conveying Owner resulting in continued liability hereunder.

13. **DEFAULT.**

13.1 **CAM Costs:** In the event any Owner fails or refuses to pay when due its share of any bill for the CAM Costs described above, which failure continues for a period of ten (10) days after receipt of written notice thereof from the Maintenance Director or a Curing Party (as defined below), such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the CAM Costs (including the Maintenance Fee) of the defaulting Owner ("**Curing Party**") for reimbursement plus interest from and after the date the bill was due and payable to and including the date the bill is paid at the Default Rate. Furthermore, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of the unpaid CAM Costs plus accrued interest at the Default Rate. Notwithstanding the foregoing, if there is a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

13.2 **Non-Monetary Default:** In the event any Owner or Occupant fails to perform any other provision of this Agreement, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner or Prime Lessee may thereafter institute legal action against the defaulting Owner or Occupant for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner or Occupant shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) day period and such Owner or Occupant is diligently proceeding to rectify the particulars of such failure and does not rectify same within a period not to exceed sixty (60) days; provided further, however, that in the event of an emergency, such failure shall be deemed a default if such failure is not rectified in a period reasonable for the nature and circumstances of such emergency (by way of example, but not as a limitation, the failure to promptly remove snow or otherwise maintain the Common Areas such that Owners, Occupants and Permittees can utilize the reciprocal easements granted in **Section 3.1** above shall constitute an emergency). Notwithstanding the preceding sentence, Home Depot shall not be deemed to

be in default under this Agreement if its failure to perform cannot be rectified within the thirty (30) day period and Home Depot is diligently proceeding to rectify the particulars of such failure.

13.3 Default By Maintenance Director: In the event the Maintenance Director fails to perform any of the provisions of this Agreement, which failure continues for a period of thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from any Owner or Prime Lessee specifying the particulars of such failure, such failure shall constitute a default and any Owner or Prime Lessee may thereafter institute legal action against the Maintenance Director for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law and/or may perform the obligations of the Maintenance Director specified in said notice of default and offset the cost thereof from amounts due the Maintenance Director; provided, however, that the Maintenance Director shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Maintenance Director is diligently proceeding to rectify the particulars of such failure and does rectify same within a period not to exceed sixty (60) days; provided further, however, that in the event of an emergency, such failure shall be deemed a default if such failure is not rectified in a period reasonable for the nature and circumstances of such emergency (by way of example, but not as a limitation, the failure to promptly remove snow or otherwise maintain the Common Areas such that Owners, Occupants and Permittees can utilize the reciprocal easements granted in **Section 3.1** above shall constitute an emergency).

13.4 Self-Help: If an Owner or Occupant of any Parcel or Outparcel fails to perform any provision of this Agreement, then, upon the expiration of the cure period provided in **Section 13.2**, and upon an additional ten (10) days prior written notice (except that no additional notice shall be required in an emergency), any Consenting Owner shall have the right, but not the obligation, to enter upon the defaulting Owner's or Occupant's Parcel to cure such default for the account of and at the expense of the Owner or Occupant of such Parcel, unless in a non-emergency situation, the Owner and/or Occupant of such Parcel commences to cure such default within such ten (10) day period and thereafter diligently pursues such cure to completion. If a Consenting Owner exercises its self-help right, then, within ten (10) days after receipt of an invoice from such Consenting Owner, the defaulting Owner and/or Occupant shall reimburse to such Consenting Owner all costs reasonably incurred by the Consenting Owner in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. Furthermore, the Consenting Owner shall have a lien on the Parcel of the defaulting Owner and/or Occupant for the amount of the unpaid costs incurred by the Consenting Owner pursuant to this **Section 13.4** and the administrative fee, together with accrued interest at the Default Rate.

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

14. **LIEN FOR EXPENSES OR TAXES.**

14.1 **Effectiveness of Lien:** The liens provided for in **Sections 8.2, 13.1 and 13.4** above shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner or Occupant in the office of the recorder of the county in which the Shopping Center is located, signed and verified, which shall contain at least:

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

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

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

15. **RIGHT TO MAINTAIN PARCEL SEPARATELY.**

15.1 **Withdrawal from Common Area Maintenance by Home Depot:** In addition to its other rights herein, Home Depot shall have the right to remove the Maintenance Director with respect to its Parcel upon thirty (30) days written notice to Maintenance Director. In the event of such removal, Home Depot shall manage, maintain, repair, replace and insure the Common Area on the Home Depot's Parcel, except for the following items which the Consenting Owners agree cannot be practicably segregated or allocated between the Parcels ("**Non-Segregable Costs**"): (i) Main Access Drive and its lighting; (ii) Secondary Access Drive and Truck Drive; (iii) Perimeter Landscaping; (iv) common main utilities; (v) security; and (vii) Common Area Liability Insurance (as hereinafter defined), all of which are depicted on the Site Plan, if possible. Any other items which the Consenting Owners agree in writing after the date of this Agreement cannot be practicably segregated or allocated between the Parcels shall be included within the definition of Non-Segregable Costs. Each Owner (or its respective Occupants, as it may direct) shall continue to proportionately pay the Non-Segregable Costs pursuant to the formula in **Section 11.4**. In the event of any such assumption by any Owner, such Owner shall no longer contribute its proportionate share of the segregable maintenance items, and shall maintain, repair and replace its portion of the Common Area at its sole cost and expense and in a manner and at a level of quality at least comparable to other similar retail shopping centers in the geographic area where the Shopping Center is located. Home Depot may also elect to terminate its option to maintain, repair, replace and insure its portion of the Common Area by providing thirty (30) days prior written notice to the Maintenance Director, in which event the Maintenance Director shall resume its duties with respect to said Parcel and Home Depot will thereafter resume paying for its pro rata share of all CAM Costs thereafter incurred by the Maintenance Director in accordance with this Agreement.

15.2 **Withdrawal from Common Area Maintenance:** If in an Owner's reasonable opinion the Maintenance Director is not adequately managing and/or maintaining the Shopping Center in the manner required herein and consistent with the level of management reasonably expected in shopping centers of the quality and type of similar shopping centers in the same metropolitan area, such Owner may upon at least sixty (60) days prior written notice to the Maintenance Director and the other Owners, elect to assume the obligations of the Maintenance Director to maintain, repair, replace and insure the Common Area on such Owner's Parcel, **except for Non-Segregable Costs**, which costs shall continue to be proportionately paid for by each Owner (or its respective Occupants, as it may direct) pursuant to the formula in **Section 11.4**. In the event of any such assumption by any Owner, such Owner agrees to maintain (including the providing of security services), repair, replace and insure its portion of the Common Area at its sole cost and expense and in a manner and at a level of quality at least comparable to that of the balance of the Common Area. Any such Owner may also elect to terminate its obligation to maintain,

repair, replace and insure its portion of the Common Area by giving at least sixty (60) days prior written notice to the Maintenance Director, in which event the Maintenance Director shall resume its duties with respect to said Parcel and the Owner will thereafter resume paying for its pro rata share of all CAM Costs thereafter incurred by the Maintenance Director in accordance with this Agreement. Anything in the preceding sentence to the contrary notwithstanding, the Owner electing to terminate its obligation to maintain, repair, replace and insure its portion of the Common Area shall return said Common Area to the Maintenance Director in the same quality and condition as the balance of the Common Area, any failure of which shall be corrected at the sole cost and expense of said Owner.

16. **RESPONSIBILITY IF NO MAINTENANCE DIRECTOR.**

In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the maintenance, insurance and lighting of its own Parcel as if each such Owner had the responsibilities of the Maintenance Director enumerated in **Section 6.1** above and Home Depot shall be responsible for the Non-Segregable Costs Items, which costs shall continue to be proportionately paid for by each Owner (or its respective Occupants, as it may direct) pursuant to the formula in **Section 11.4**. All such maintenance of the Common Areas shall be consistent with other first-class shopping centers in the Klamath Falls metropolitan area. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of **Sections 13.2, 13.4, 13.5, 14.1 and 14.2** shall apply.

17. **LIABILITY INSURANCE; INDEMNIFICATION.**

17.1 **Liability Insurance:**

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

(b) The Owner's Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State in which the Shopping Center is located with a Best's Key Rating Guide Property-Casualty United States rating of at least an A- and a financial rating of VII or better, and having limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to

property, in an amount of not less than Five Million and No/100 Constant Dollars (\$5,000,000.00) combined single limit per occurrence/aggregate. The insurance required pursuant to this **Section 17.1** shall be at least as broad as the most commonly available ISO Commercial General Liability policy form CG 00 01 0798 and shall include the following provisions: (i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured; (ii) shall provide for severability of interests; (iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; and (iv) name all other Owners as additional insureds, endorsed to cover said Owner's agreement to indemnify as set out in this Agreement. Each Owner agrees to furnish to any other Owner requesting same a certificate evidencing that: (i) such insurance is in full force and effect; (ii) the premiums have been paid in full; and (iii) the appropriate parties are designated as additional insureds on ISO Form CG 2026 1185. If not part of such policy, the Owner's Liability Insurance shall have at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or caused by employees; (iii) providing for blanket contractual liability coverage (including an Owner's indemnity obligations contained in this Agreement), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage, (iv) providing for coverage of employers automobile non-ownership liability; and (v) if the use of a Parcel includes the sale of alcoholic beverages, including coverage for employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of not less than Three Million and No/100 Constant Dollars (\$3,000,000.00) per occurrence. The Owner's Liability Insurance shall be written on an "occurrence" basis form and not on a "claims made" form. The insurance referenced in this **Section 17.1**, may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner; so long as the amount and coverage of insurance required to be carried hereunder is not diminished, (iii) a plan of self-insurance satisfying the criteria set forth in **Section 17.1(c)** below, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with **Article 17**, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Fifty Thousand and No/100 Constant Dollars (\$50,000.00) unless such Owner complies with the requirements regarding self-insurance pursuant to **Section 17.1(c)** below. Notwithstanding the preceding sentence, there shall be no limitations on the deductible maintained by Home Depot so long as such limits are consistent with its risk management policy affecting its stores generally.

(c) Any insurance required to be maintained by a Consenting Owner hereunder may be maintained in whole or in part either under a plan of self-insurance, or from a carrier which specializes in providing coverage to or for such Consenting Owner or its affiliates, or firms in the same or related businesses, if such Consenting Owner's net worth exceeds \$100,000,000 Constant Dollars as shown in its most recent audited financial statement, or if such Consenting Owner's financial statements are reported on a consolidated basis with a parent corporation, then as certified by an officer of such Consenting Owner.

17.2 Common Area Liability Insurance: In addition to the foregoing insurance to be maintained by the Owners, the Maintenance Director (or, for purposes of this **Section 17.2**, if there is no Maintenance Director, then the individual Owners) shall provide and maintain commercial general liability insurance with broad form coverage insuring the Maintenance Director against claims for bodily injury or death, personal and advertising injury, property damage or destruction, and contractual liability (i.e., exclusions for liability assumed under contract) must be deleted, occurring in, on or about the Common Area ("**Common Area Liability Insurance**") and for Maintenance Director's indemnification obligations hereunder. All Owners shall be named on the policy as additional insureds without limitation as to the scope of coverage or terms of the policy applicable to such party. The form of additional insured endorsement shall be ISO Form CG 2026 1185; coverage for any additional insured to be primary and noncontributory with any insurance carried by the additional insured. In addition to the Owners, all Persons who own or hold portions of the Shopping Center or any Building within the Shopping Center or any leasehold estate or other interest therein (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds as their respective interests may appear. The Common Area Liability Insurance shall be carried by an insurance company or companies qualified to do business in the state in which the Shopping Center is located with a Best Key Rating Guide Property-Casualty United States rating of at least an A- and a financial rating of VII or better, and having limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Five Million and No/100 Constant Dollars (\$5,000,000.00) combined single limit per occurrence/aggregate, such coverage to be in a commercial general liability form at least as broad as the most commonly available ISO Commercial General Liability policy form CG 00 01 0798 and, if not part of such policy, shall have at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or caused by employees; and (iii) providing for blanket contractual liability coverage (including the Maintenance Director's indemnity obligations contained in this Agreement), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; and (iv) shall be primary and non-contributory. The Common Area Liability Insurance shall be written on an "occurrence basis" form and not on a "claims made" form. Maintenance Director shall furnish to all Owners, on or before each effective date of the

policy of insurance required to be carried under this Section, a certificate stating that: (i) such insurance is in full force and effect; (ii) the premiums have been paid in full; (iii) all Owners (and any other Person of whom Maintenance Director has notice in accordance with this Section) are designated as additional insureds (with a copy of the additional insureds endorsement attached); and (iv) such insurance may not be canceled or coverage reduced below the levels required to be maintained hereunder without at least thirty (30) days prior written notice to all insureds and additional insureds.

17.3 **Maintenance Director's Insurance:** Maintenance Director shall also procure and maintain the following insurance coverages:

(a) Worker's compensation at statutory limits, with a waiver of subrogation in favor of the Owners, if reasonably obtainable. Maintenance Director shall notify its insurer of the waiver of subrogation requirement and use commercially reasonable efforts to cause said insurer to issue a waiver of subrogation endorsement in favor of the Owners;

(b) Employer's liability with limits of not less than \$1,000,000, containing a waiver of subrogation in favor of the Owners'; and

(c) Business automobile liability with limits of not less than \$5,000,000, naming the Owners as additional insureds, and containing a waiver of subrogation in favor of the Owners.

Each of the foregoing policies shall provide that the additional insureds will be given thirty (30) days prior written notice of cancellation, non-renewal or material modification of such policy. The Maintenance Director shall be solely responsible for paying expenses for the foregoing insurance coverages without contribution from the Owners. Failure by the Maintenance Director to provide and maintain all insurance which the Maintenance Director is obligated to maintain pursuant to this **Article 17** shall not relieve the Maintenance Director of its indemnification obligations under **Section 17.6**.

17.4 **Insurance Coverage During Construction:**

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

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

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

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

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

(a) Required coverages:

- (1) Premises and Operations;
- (2) Products and Completed Operations;
- (3) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
- (4) Broad Form Property Damage (including Completed Operations);
- (5) Explosion, Collapse and Underground Hazards; and
- (6) Personal Injury Liability.

(b) Minimum limits of liability:

- (1) Five Million and No/100 Constant Dollars (\$5,000,000) each occurrence (for bodily injury and property damage)
- (2) Five Million and No/100 Constant Dollars (\$5,000,000) for Personal Injury Liability,

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

(4) Five Million and No/100 Constant Dollars (\$5,000,000) general aggregate applying separately to this Shopping Center.

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

(iv) Umbrella/Excess Liability Insurance: The general contractor shall also carry umbrella/excess liability insurance in the amount of Five Million and No/100 Constant Dollars (\$5,000,000). If there is not per project aggregate under the Commercial General Liability policy, the limit shall be Ten Million and No/100 Constant Dollars (\$10,000,000).

(b) If the construction activity involves the use of another Owner's Parcel, then the Owner of such Parcel shall be an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days prior written notice to the insureds and each additional insured. The form of additional insured endorsement shall be ISO Form CG 2026 1185. If such insurance is canceled or expires then the constructing Owner shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner and the Maintenance Director with certificates furnished on ACCORD Form 27 with respect to all insurance required by this **Section 17.4**.

17.5 Indemnification by Owners: To the extent not covered by any insurance required to be maintained by the Maintenance Director pursuant to this Agreement, each Owner shall defend, indemnify and hold the other Owners and Occupants harmless for, from and against any and all damages, liabilities, losses, actions, claims, costs and expenses (including reasonable attorneys' fees and court costs and reasonable attorneys' fees and court costs on appeal) (i) in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the indemnifying Owner's Parcel, including an Owner's or Occupant's own negligence, or occasioned wholly or in part by any solely negligent, grossly negligent or willful act or omission of the indemnifying Owner, its Occupants or their respective its agents, contractors, servants or employees upon or within the Parcel of another Owner; (ii) occurring in the interior of any Building

constructed on the indemnifying Owner's Parcel, unless caused by the solely negligent, grossly negligent or willful act or omission of the indemnified Owner or its Permittees; and (iii) in connection with the failure to comply with the provisions of this Agreement. If a Consenting Owner shall, without fault, be made a party to any litigation commenced by or against the Owner or Occupants of another Parcel, or if a Consenting Owner shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, then the indemnifying Owner shall defend such Consenting Owner using attorneys reasonably satisfactory to such Consenting Owner and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. A Consenting Owner shall have the right to engage its own attorneys in connection with any of the provisions of this **Section 17.5** or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such Consenting Owner, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Shopping Center is located.

17.6 Indemnification by Maintenance Director: The Maintenance Director agrees to indemnify, defend and hold harmless the Owners and Occupants of all Parcels for, from and against any and all damages, liabilities, losses, actions, claims, costs and expenses (including reasonable attorneys' fees and court costs and reasonable attorneys' fees and court costs on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about the Common Area (exclusive of any Service Facilities or driveup or drive through customer service facilities) and arising out of the performance or nonperformance of any of the obligations of the Maintenance Director set forth in this Agreement, including an Owner's or Occupant's own negligence, unless caused by the solely negligent, grossly negligent or willful act or omission of the indemnified Owner or Occupant. If an Owner or Occupant shall, without fault, be made a party to any litigation commenced by or against the Maintenance Director, or if an Owner or Occupant shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, then the Maintenance Director shall defend such Owner or Occupant using attorneys reasonably satisfactory to such Owner or Occupant and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. An Owner or Occupant shall have the right to engage its own attorneys in connection with any of the provisions of this **Section 17.6** or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such Owner or Occupant, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Shopping Center is located.

18. **PROPERTY DAMAGE AND EMINENT DOMAIN.**

18.1 **Damage to Buildings:** If any of the Buildings located on any Parcel are damaged or destroyed by fire or other cause, the Owner of such Parcel shall promptly cause either: (i) the repair, restoration, or rebuilding of the Building so damaged or destroyed to a condition existing immediately prior to the damage or destruction, or (ii) the razing of any damaged Building, the filling of any excavation, and performance of any other work necessary to put such portion of the Shopping Center in a clean, sightly and safe condition. All Building Areas on which Buildings are not reconstructed following a casualty or "Taking" (as defined in **Section 18.5** below) shall be (i) graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Shopping Center or any portion thereof, (ii) shall be covered by decomposed granite, sod, hydroseed or as otherwise permitted by Governmental Regulations, and (iii) shall be kept weed free and clean at the subject Owner's sole cost and expense until such time as Buildings are reconstructed thereon.

18.2 **Casualty Damage to Common Areas:** In the event any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this Agreement, other than damage caused by ordinary use or wear and tear, the Owner upon whose Parcel such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence. Except to the extent limited by **Section 18.4** below, in the event such damage or destruction of Common Area is caused in whole or in part by the solely negligent, grossly negligent or willful act of another Owner, Occupant or third Person, the Owner obligated to make such repair or restoration reserves and retains the right to proceed against such other Owner or third Person for indemnity, contribution or damages.

18.3 **Property Insurance:** To assure performance of their respective obligations under **Sections 18.1 and 18.2** above, the Owners of the respective Parcels shall cause to be carried causes of loss - special form property insurance at least as broad as ISO Special Form Causes of Loss, CP 1030 0695, in an amount not less than one hundred percent (100%) of the full insurable replacement cost (excluding footings, foundations or excavations) of all Buildings and improvements (including Common Area improvements but excluding Pylon or Monument Signs) on their respective Parcels, except if the Owner of said Parcel, or party responsible for any required restorations, is permitted to "self insure" pursuant to **Section 17.1(c)**. The insurance referenced in this **Section 18.3**, may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner; so long as the amount and coverage of insurance required to be carried hereunder is not diminished, (iii) a plan of self-insurance satisfying the criteria set forth in **Section 17.1(c)** above, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance

with **Article 18**, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Fifty Thousand and No/100 Constant Dollars (\$50,000.00) unless such Owner complies with the requirements regarding self-insurance pursuant to **Section 17.1(c)** above.

Notwithstanding the preceding sentence, there shall be no limitations on the deductible maintained by Home Depot so long as such limits are consistent with its risk management policy affecting its stores generally. The Owner's property insurance shall be carried by an insurance company or companies qualified to do business in the state in which the Shopping Center is located with a Best's Key Rating Guide Property-Casualty United States rating of at least an A- and a financial rating of VII or better.

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

18.5 Eminent Domain: In the event the whole or any part of the Shopping Center shall be taken or damaged by right of eminent domain or any similar authority of law or any transfer in lieu thereof (a "**Taking**"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the Parcel so taken or to such Owner's Lienholders or Occupants, as they may have agreed between or among themselves, and in the absence of any such agreement, as provided by law, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Agreement.

Any Owner of a Parcel which is not the subject of a Taking may, however, file a collateral claim with the condemning authority over and above the value of the Parcel (or portion thereof) being so taken to the extent of any damage suffered by such Owner resulting from the severance of the land or improvements so taken if such claim does not operate to reduce the award allocable to the Parcel taken. In the event of a partial Taking, the Owner of the portion of the Shopping Center so taken shall restore the improvements located on the Common Areas of the Owner's Parcel as nearly as possible to the condition existing prior to the Taking to insure the continued ingress/egress to, from and between all areas of the Shopping Center to the extent reasonably feasible, without contribution from any other Owner.

19. **GENERAL PROVISIONS.**

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

19.2 **Third Party Beneficiaries:** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed. Except as specifically set forth in this Agreement, no right, privileges or immunities of any party shall inure to the benefit of any third party Person, nor shall any third party Person be deemed to be a beneficiary of any of the provisions contained in this Agreement. An Owner shall have the right to close, if necessary, all or any portion of the Common Areas on its Parcel from time to time as may be necessary, in the opinion of such Owner's counsel, to prevent a dedication thereof or the accrual of any rights of the public therein.

19.3 **Duration:** Except as otherwise provided herein, the term of this Agreement shall be for sixty-five (65) years (the "**Primary Period**") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Agreement shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "**Extension Period**") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, the Consenting Owners deliver to the other Owners in the Shopping Center written notice of termination, in which event, this Agreement shall automatically expire at the end of the Primary Period or Extension Period then in effect. Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of the Agreement shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination, and, provided further, that the access easements and the rights and duties related thereto as provided in **Section 3.1**, the sign easements and the rights and duties related thereto as provided in **Sections 3.3 and 4.3**, and the utility easements and the rights and duties related thereto as provided in **Section 3.2** shall continue in effect in perpetuity as to those access easements, signs and utility lines actually in use at the time of the termination of this Agreement until such time as such access easements, signs and utility lines are abandoned or ceased to be used to serve a Building in the Shopping Center.

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

19.5 **Modification and Termination:** Notwithstanding the provisions of **Section 19.6** below, this Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of all of the Consenting Owners (and, if applicable, the Prime Lessees of a Consenting Owner's Parcel) at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the Consenting Owners and Prime Lessee and recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of this Agreement as provided herein shall adversely affect the rights of any senior Lienholder unless such Lienholder consents in writing to the modification or termination.

19.6 **Method of Approval:** Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction (collectively, an "approval") is required of an Owner pursuant to this Agreement (or any Exhibit hereto), it shall not be unreasonably withheld, conditioned or delayed. Unless provision is made for a specific time period, approval or disapproval shall be given within thirty (30) days after receipt of written request for approval. If an Owner neither approves nor disapproves within the required time period, then the Owner requesting approval shall have the right to send a second written request for approval. If such second request states on its face in all capital letters that failure to respond thereto within thirty (30) days shall be deemed approval, then the failure to respond within such thirty (30) day period shall constitute the approval of the Owner from whom approval was requested. Except with respect to approvals which are deemed approved pursuant to the preceding sentence, all approvals (including conditional approvals) and disapprovals shall be given or made in writing. If an Owner disapproves, the reasons therefor shall be stated in reasonable detail in writing. An Owner's approval of any act or request by another Owner shall not be deemed to waive or render unnecessary approval of any similar or subsequent acts or requests.

19.7 **Multiple Owners:** In the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or consent or give the consent for said Parcel on behalf of the Owner thereof (except as otherwise required in **Section 19.5**) and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Agreement to the contrary notwithstanding.

19.8 **Estoppel Certificates:** Any Owner may, at any time and from time to time, in connection with the sale or lease of the Owner's Parcel, or in connection with the financing or refinancing of the Owner's Parcel by bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Owners and the Maintenance Director requesting such Owners and the Maintenance Director to execute certificates certifying that to the best knowledge of the other Owners, (i) neither the requesting Owner nor any other Owner is in default in the performance of its obligations under this Agreement, or, if a default is alleged, specifically describing the nature and amount thereof, and (ii) confirming that this Agreement has not been amended (or, if so, identifying the amendments), and is in full force and effect. Each Owner shall execute and return such a certificate within thirty (30) days after receipt of a request therefore. The Owners acknowledge that such certificates may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback lessors. Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such person to disclose correct and/or relevant information (but it shall estop such person from making assertions contrary to those set forth in this certificate for the period covered by this certificate), nor shall such issuance be construed to waive any rights of the issuer to either request an audit of CAM Costs for any year it is entitled to do so, or challenge acts committed by other Owners for which approval by the Consenting Owners was required but not sought or obtained.

19.9 **Breach Shall Not Permit Termination:** It is expressly agreed that no breach of this Agreement shall entitle any Owner to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement. Any breach of this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Agreement shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

19.10 **Notices:**

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by facsimile, by electronic mail, by personal delivery, by United States mail or United States express mail postage or delivery charge prepaid, return receipt requested, or by an established express delivery service (such as Federal Express), sent to the person and address or facsimile number designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. The Parties expressly agree that notices given by attorneys

on behalf of their client(s) in the manner provided in this subsection are effective and recognized notice pursuant to this Agreement. All notices to Developer, Home Depot, and Maintenance Director shall be sent to the person and address set forth below:

Developer:	Klamath Falls Center, LLC 990 N. Phoenix Road, Suite 105 Medford, OR 97504 Attn.: C.A. Galpin
Home Depot:	Home Depot U.S.A., Inc. 3800 West Chapman Avenue Orange, CA 92868 Attention: Real Estate and Legal Departments
With a copy to:	Home Depot U.S.A., Inc. 2455 Paces Ferry Road Atlanta, Georgia 30339-9998 Attention: Property Management
Maintenance Director:	Elliot & Associates, Inc. 50 SW Pine Street Suite 200 Portland, OR 97204 Attention: _____
Other Owners:	To the address for mailing tax bills set forth in the latest real property tax rolls available at the time the notice is given.

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Agreement shall be deemed given upon receipt. When the recipient opens an e-mail containing a notice, request, demand or other communication required under this Agreement, the recipient shall acknowledge receipt of such e-mail if requested by the sender.

(b) For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, (iii) in the case of a facsimile, the date and time of receipt as shown on the confirmation of the facsimile transmission; (iv) in the case of electronic

mail, when the e-mail has reached the recipient's internal e-mail system or server, or (v) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

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

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

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

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

19.15 **Third Party Beneficiary Rights:** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

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

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

19.18 **Entire Agreement:** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the Restrictions affecting the Parcels.

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

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

19.21 **Limitation on Liability:** Except as specifically provided below, there shall be absolutely no corporate or personal liability of Home Depot hereunder, including, but not limited to, officers, directors, employees or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Agreement. In the event of a default of Home Depot hereunder, the Owner who seeks recovery from Home Depot shall look solely to the interest of Home Depot in Home Depot's Parcel for the satisfaction of each and every remedy of the non-defaulting Owner.

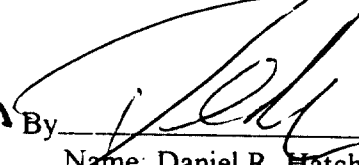
19.22 **Lienholder Protection:** This Agreement and the Restrictions established hereby with respect to each Owner and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but all the Restrictions and other provisions, terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including, but not limited to, any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

19.23 **Variances:** Where appropriate, the Consenting Owners may, in their sole and subjective discretion, grant written variances to the provisions hereof, signed by all of the Consenting Owners, where strict adherence to the requirements of this Agreement or any architectural standards established by the Consenting Owners would, in the judgment of the Consenting Owners, cause undue hardship.

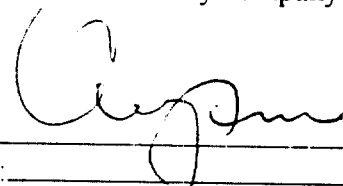
19.24 **Time of Essence: Force Majeure:** Time is of the essence with respect to the performance of each obligation of this Agreement. Whenever performance is required by any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; 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, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be extended by the amount of the delay actually so caused. Notwithstanding the foregoing, the provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this Agreement.

EXECUTED as of the day and year first above written.

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

jm By 
Name: Daniel R. Hatch, Senior
Corporate Counsel, Western Region

KLAMATH FALLS, LLC,
an Oregon limited liability company

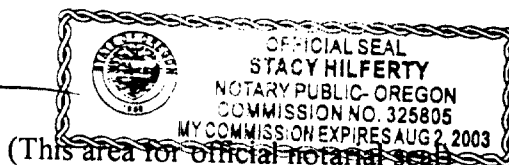
By 
Name: _____
Its: _____

STATE OF Oregon }
COUNTY OF Klamath } ss.

On March 20, 2002, before me, a notary public in and for said state, personally appeared C.A. Galtin, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



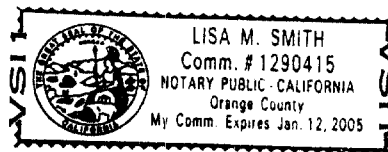
STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.

On March 20, 2002, before me, a notary public in and for said state, personally appeared **Daniel R. Hatch**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature

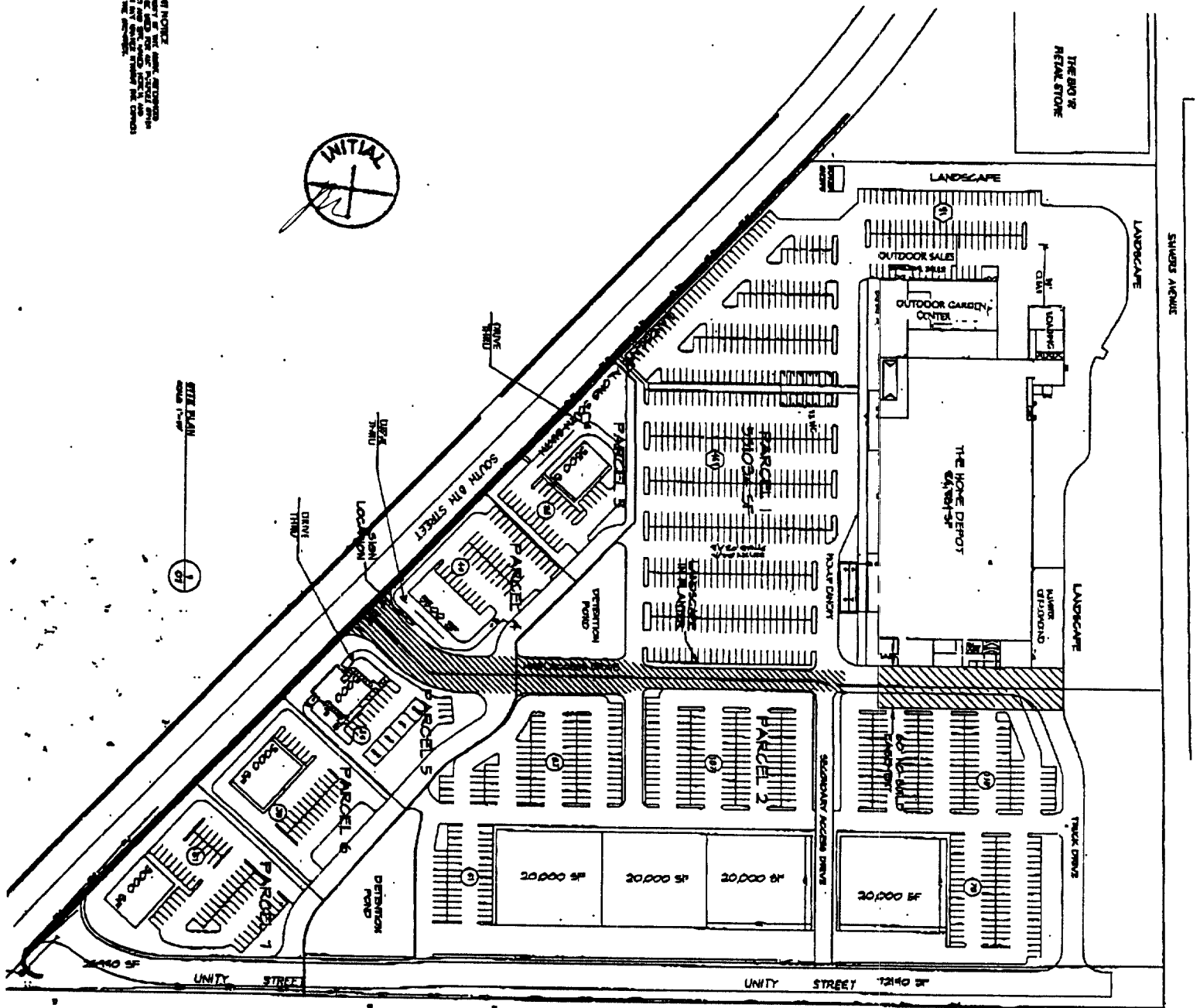
(This area for official notarial seal)



LIST OF EXHIBITS

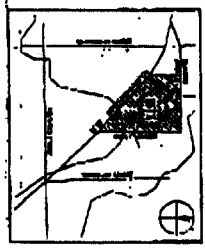
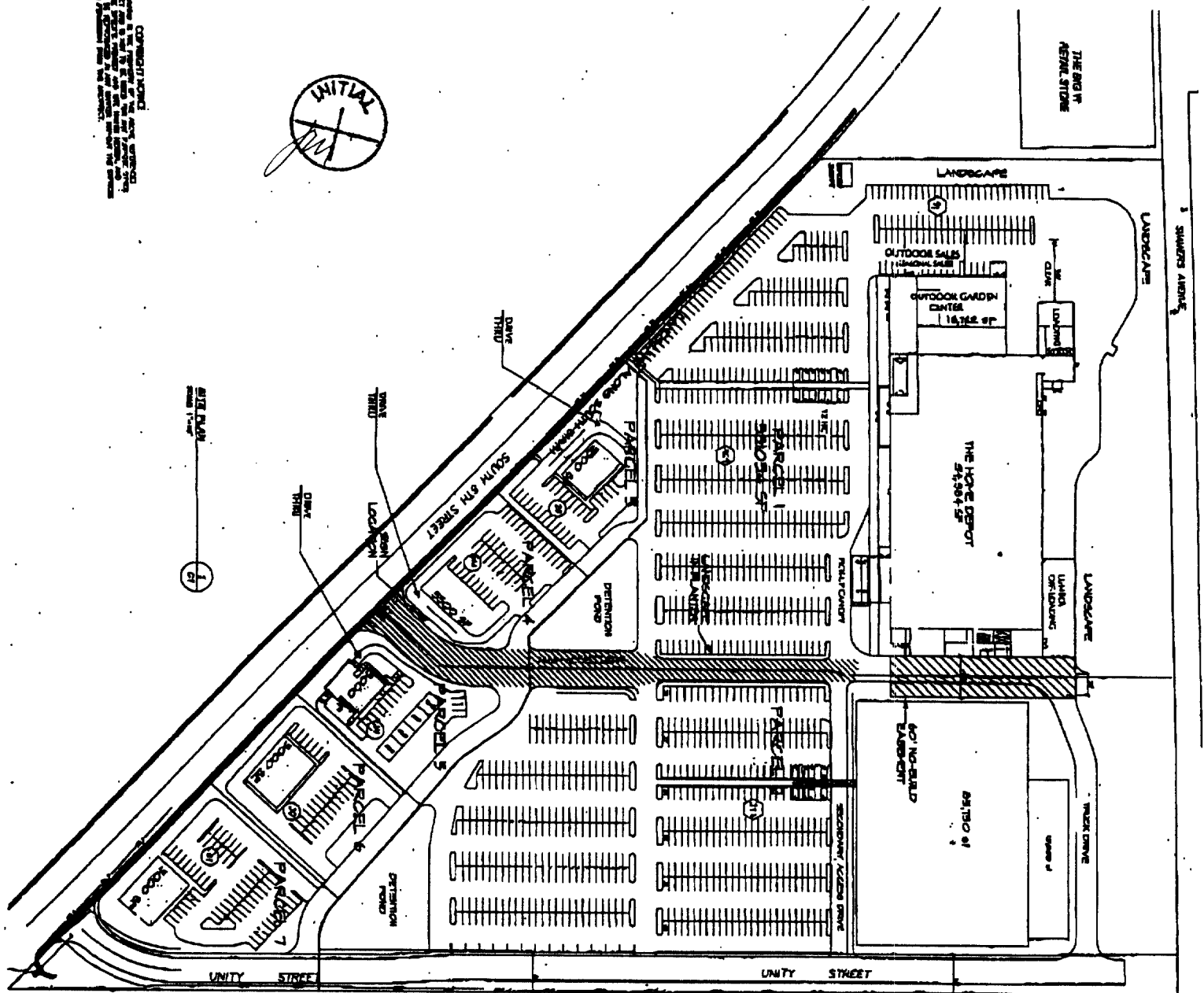
- A-1 = Site Plan OR 80-h
A-2 = Site Plan OR 80-i
B = Legal Description of Shopping Center, Home Depot Parcel, Parcel 2
 and Outparcels

COPYRIGHT NOTICE
This document is the property of the United States Government and is loaned to you by the National Archives and Records Administration. It and its contents are not to be distributed outside your agency without the express written permission of the National Archives and Records Administration. It is to be stored in accordance with the instructions of the National Archives and Records Administration.



OR-80h

[illegible]



LAWRENCE BLASHIER, ARCHITECT
INTERIOR DESIGN CONSULTING PLANNING
13101 BELLIS AVE. SUITE 200, CA 94701
VOICE 770-551-8800 FAX 770-551-8800

PROJECT INFORMATION

SOUTH AFRICA		SOUTH AFRICA		SOUTH AFRICA	
AREA	POPULATION	AREA	POPULATION	AREA	POPULATION
1	1,000,000	1	1,000,000	1	1,000,000
2	2,000,000	2	2,000,000	2	2,000,000
3	3,000,000	3	3,000,000	3	3,000,000
4	4,000,000	4	4,000,000	4	4,000,000
5	5,000,000	5	5,000,000	5	5,000,000
6	6,000,000	6	6,000,000	6	6,000,000
7	7,000,000	7	7,000,000	7	7,000,000
8	8,000,000	8	8,000,000	8	8,000,000
9	9,000,000	9	9,000,000	9	9,000,000
10	10,000,000	10	10,000,000	10	10,000,000
11	11,000,000	11	11,000,000	11	11,000,000
12	12,000,000	12	12,000,000	12	12,000,000
13	13,000,000	13	13,000,000	13	13,000,000
14	14,000,000	14	14,000,000	14	14,000,000
15	15,000,000	15	15,000,000	15	15,000,000
16	16,000,000	16	16,000,000	16	16,000,000
17	17,000,000	17	17,000,000	17	17,000,000
18	18,000,000	18	18,000,000	18	18,000,000
19	19,000,000	19	19,000,000	19	19,000,000
20	20,000,000	20	20,000,000	20	20,000,000
21	21,000,000	21	21,000,000	21	21,000,000
22	22,000,000	22	22,000,000	22	22,000,000
23	23,000,000	23	23,000,000	23	23,000,000
24	24,000,000	24	24,000,000	24	24,000,000
25	25,000,000	25	25,000,000	25	25,000,000
26	26,000,000	26	26,000,000	26	26,000,000
27	27,000,000	27	27,000,000	27	27,000,000
28	28,000,000	28	28,000,000	28	28,000,000
29	29,000,000	29	29,000,000	29	29,000,000
30	30,000,000	30	30,000,000	30	30,000,000
31	31,000,000	31	31,000,000	31	31,000,000
32	32,000,000	32	32,000,000	32	32,000,000
33	33,000,000	33	33,000,000	33	33,000,000
34	34,000,000	34	34,000,000	34	34,000,000
35	35,000,000	35	35,000,000	35	35,000,000
36	36,000,000	36	36,000,000	36	36,000,000
37	37,000,000	37	37,000,000	37	37,000,000
38	38,000,000	38	38,000,000	38	38,000,000
39	39,000,000	39	39,000,000	39	39,000,000
40	40,000,000	40	40,000,000	40	40,000,000
41	41,000,000	41	41,000,000	41	41,000,000
42	42,000,000	42	42,000,000	42	42,000,000
43	43,000,000	43	43,000,000	43	43,000,000
44	44,000,000	44	44,000,000	44	44,000,000
45	45,000,000	45	45,000,000	45	45,000,000
46	46,000,000	46	46,000,000	46	46,000,000
47	47,000,000	47	47,000,000	47	47,000,000
48	48,000,000	48	48,000,000	48	48,000,000
49	49,000,000	49	49,000,000	49	49,000,000
50	50,000,000	50	50,000,000	50	50,000,000
51	51,000,000	51	51,000,000	51	51,000,000

PAINTING, COULT & WARD
INCORPORATED BY CHY 1/24/74
FOR THE STATE OF TEXAS

**THE NEW YORK & 100th
-Including Queens County
-THIRD, SECOND, FIRST**

THESE ARE THE

THE UNIVERSITY OF CHICAGO

THE

RENTAL PRICES

NO	PROVIDED	4-78
NO	PROVIDED	5-13

DATE OF REVISION 03/2004

STUDY ABSTRACTS

UNION THE PLAN REVIEW FIRM INC.
PATRICK LEE DUNN AND ASSOC
30000 17TH AVENUE
DENVER, COLORADO 80202

SUBJECT NOTES

PURCHASE AND USE SPECIALS
AS EXISTING EXHAUSTING. FURNISH
UNUSABLE RECOVERABLES ONLY IN V

2. ALL CURRICULUM AND INSTRUCTIONAL MATERIALS MUST BE APPROVED BY THE BOARD OF EDUCATION.

ON LUD PROTEST IN N.Y.-A PROTEST
AGAINST BART MURDER TRIAL.
THEY SAY "A LIE" ON MAY 1

PHOTO. ON 02/26/77 AND X-RODS.
BAR: ON CONCRETE THERMAL ROOT
FROM 20 INCHES ABOVE THE

PLANNING BOARD MEMBERS

১৯৭৩

[illegible]

THE HOME D

KLAMATH FALLS

FORCING QUALITY OF LIFE
FOR ALL

THE

NBS
 NATIONAL BUREAU OF STANDARDS
 123

Order

07-01

KLAMATH FALLS, OR

HOW'S YOUR IN-SITUITY BIOMASS? IS YOUR BROWN
AND PRODUCTION INFLUENCE? © 2007 GARDEN

三

 24
 140
 120
 80
 30

Don't

CH-301

**SOUTH SIXTH STREET COMMERCIAL CENTER
SITE PLAN**

ALMA ELIZABETH
SEAL 2

Page 3

PROJECT NO.

ORANGE FILE NAME

EXHIBIT



Planen • Bauen • Betreiben • Lebewerte erhalten

OF-80i

EXHIBIT "B"**SHOPPING CENTER LEGAL DESCRIPTION**

PARCELS 1, 2 AND 3 OF LAND PARTITION 42-01, RECORDED IN THE OFFICE OF THE CLERK OF KLAMATH COUNTY, OREGON.

HOME DEPOT LEGAL DESCRIPTION (ALSO KNOWN AS PARCEL 1)

PARCEL 1 OF LAND PARTITION 42-01, RECORDED IN THE OFFICE OF THE CLERK OF KLAMATH COUNTY, OREGON.

PARCEL 2 LEGAL DESCRIPTION

PARCEL 2 OF LAND PARTITION 42-01, RECORDED IN THE OFFICE OF THE CLERK OF KLAMATH COUNTY, OREGON.

OUTPARCEL LEGAL DESCRIPTION

PARCEL 3 OF LAND PARTITION 42-01, RECORDED IN THE OFFICE OF THE CLERK OF KLAMATH COUNTY, OREGON.