

3

9569861  
12/01/2005 03:49 PM #126 - 010  
Book - 9224 Ps - 9448-9500  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UT  
TALON GROUP  
BY: EPM, DEPUTY - MI 53 P.

When recorded return to:

**Parsons Behle & Latimer**  
One Utah Center  
201 South Main Street, Suite 1800  
Post Office Box 45898  
Salt Lake City, Utah 84145-0898  
Attention: Shawn C. Ferrin

THE TALON GROUP  
AW# 148579-1

**RESTRICTION AGREEMENT  
AND GRANT OF EASEMENTS**

THIS RESTRICTION AGREEMENT AND GRANT OF EASEMENTS (this "Agreement") is made as of ~~November~~ <sup>December</sup> 1, 2005, by and between RIVERTON LAND HOLDINGS, L.L.C., a Colorado 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 the Developer Parcel which includes the West Outparcels and East Outparcels, and Home Depot is the Owner of the Home Depot Parcel. The Parcels are located North of 13400 South Street between Bangerter Highway and 3600 West Street, in the City of Riverton, County of Salt Lake, State of Utah, as more clearly delineated on the Site Plan.

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

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

(a) **"Agreement."** This Restriction Agreement and Grant of Easements.

(b) **"Approved Plans."** The grading, drainage, and utility plans for the Shopping Center approved by the Consenting Owners. Such approved grading, drainage, and utility plans are referenced on Exhibit "D" attached hereto and made a part hereof.

(c) **"Building."** Any permanently enclosed structure placed, constructed, or located on a Parcel, which shall include any appurtenant canopies and supports.

(d) **"Building Area."** All those areas on each Parcel designated as "Building Area" on the Site Plan.

(e) **"Center Pylon Sign(s)."** The pylon and/or monument signs designated on the Sign Plan attached hereto as Exhibit "C".

(f) **"City."** The city of Riverton, Utah.

(g) **"Claims."** Causes of action, claims, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and court costs).

(h) **"Common Area."** All those areas on each Parcel which are not Building Area or Service Areas, together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a Building, Garden Center, or being used as Outside Sales Area. 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 as Common Area 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.

(i) **"Consenting Owners."** The Owner of the Home Depot Parcel and the Owner of the Developer Parcel; provided, however, that in the event any such Consenting Owner sells its Parcel and becomes the Prime Lessee thereon, such Prime Lessee shall be deemed appointed as the entity to cast the vote or give the consent for the Parcel on behalf of the Consenting Owner so long as it is the Prime Lessee of said Parcel; provided further, however, in the event any such Consenting Owner sells any portion, but not all, of its Parcel, then the Consenting Owner as to such Parcel shall be that Owner who owns the largest portion of Land Area within such Parcel, regardless of any agreement to the contrary.

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

(k) **"Developer."** Riverton Land Holdings, L.L.C., a Colorado limited liability company, its successors and assigns.

(l) **"Developer Parcel."** The Parcel legally described on Exhibit "B-1", which includes the West Outparcels and East Outparcels.

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

(n) **"East Outparcels."** The real property legally described on Exhibit "B-3" and identified on the Site Plan as Lots 6, 7, 8, 9, 10, 11, 12, and 13.

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

(p) **"Fuel Facilities."** Fuel islands, fuel island canopies and the area thereunder, fuel pumps, fuel storage tanks, piping, tank filling ports, compressed air islands, trash receptacles, air hoses, water hoses, vacuums, signs, safety equipment, access ports, and other structures or equipment associated with selling and dispensing of gasoline, motor fuel and/or other non-packaged petroleum products (collectively, **"Petroleum"**). Fuel Facilities shall not be deemed Common Area or Service Areas.

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

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

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

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

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

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

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

(x) **"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.

(y) **"Outparcel" or "Outparcels."** Individually or collectively, the real property legally described on Exhibit "B-3" and identified on the Site Plan as Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13. Outparcels are a part of the Developer Parcel.

(z) **"Outside Sales Area."** An area generally unprotected from the elements which may be used for sales and/or storage purposes. An Outside Sales Area shall only be located in the area(s) designated on the Site Plan. Any designation on the Site Plan of "seasonal sales" or "seasonal sales area" shall be deemed Outside Sales Area. Notwithstanding the foregoing to the contrary, the Owner of any portion of the East Outparcels may conduct outside sales in such areas located on such Owner's Parcel as determined, in the sole discretion, of such Owner.

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

(bb) **"Parcel" or "Parcels."** Individually or collectively, the Home Depot Parcel, the Developer Parcel, which includes the West Outparcels and East Outparcels, as each is shown on the Site Plan and more particularly described in Exhibit "B", subject to future division into smaller Parcels at such time as undeveloped portions of the West Outparcels and the East Outparcels are later developed.

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

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

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

(ff) **"Plat."** The Subdivision Plat for The Home Depot, a Commercial Subdivision, recorded with the Salt Lake County, Utah Recorder's office on November 10, 2005, in Book 2005, Beginning at Page 357.

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

(hh) **"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, including, without limitation, any drive-through service; provided, however, notwithstanding anything herein to the contrary, a supermarket, a grocery store, or other similar food operations shall not be deemed a Restaurant hereunder. This is so even though such establishments may have departments or concessionaires within them that, if looked at alone and in isolation, might themselves be deemed Restaurants.

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

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

(kk) **"Shopping Center."** Collectively, all of the Parcels.

(ll) **"Sign Plan."** The Sign Plan of the Shopping Center shown on Exhibit "C" attached hereto.

(mm) "Site Plan." The Site Plan of the Shopping Center shown on Exhibit "A" attached hereto.

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

(oo) "West Outparcels." The real property legally described on Exhibit "B-3" and identified on the Site Plan as Lots 2, 3, 4, and 5.

## 2. BUILDING AND COMMON AREA DEVELOPMENT

2.1 **Building Location.** All Buildings on Lot 4 and Lot 5 shall be placed or constructed only within the Building Areas. Buildings on Lot 4 and Lot 5 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 maximum square footage assigned to such Building Area as shown on the Site Plan (or as otherwise designated herein), 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. Prior to commencing construction of any Buildings or Improvements on Lot 2 or Lot 3, the Owner of the Home Depot Parcel must approve, in writing, a detailed site and elevation plan, showing the Building Areas, parking, access, automobile stacking, and other matters reasonably requested by the Owner of the Home Depot Parcel, for each of Lot 2 and Lot 3. Home Depot's approval of the site and elevation plan shall not be unreasonably withheld, conditioned, or delayed. All unimproved portions of a Parcel shall be covered by decomposed granite, gravel, 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. Developer and any successor, assignee, or Prime Lessee of Developer with respect to the Developer Parcel, which shall include the West Outparcels and the East Outparcels, at its sole expense, shall maintain all unimproved portions of its applicable Parcel clean and weed free and, if necessary, covered with decomposed granite, gravel, 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 on each Parcel is hereby reserved for the sole and exclusive use of all Owners and Occupants of the Shopping Center and their Permittees. Subject to the provisions of this Agreement, the Common Area may be used for vehicular driving, parking, and pedestrian traffic and such other purposes as are usual and customary in Shopping Centers in the Salt Lake metropolitan area, unless otherwise specifically prohibited in this Agreement. The Common Area shall be maintained as provided for in Article 6. The Owners acknowledge and agree that incidental temporary 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/or the Common Area, all of which are permitted under this Agreement so long as all activities requiring the use of such equipment are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Shopping Center.

## 2.3 Type and Design of Building.

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

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

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

(d) No Building on the West Outparcels (including any landscaping located thereon) and Lot 6 (including any landscaping located thereon) shall exceed one (1) story and twenty-two (22) feet in height, inclusive of all mechanical fixtures, signage, and television equipment, and screening for same other than any architectural embellishment ("Embellishments") of a Building which may not exceed thirty (30) feet in height, except that the Building on Lot 4 may be built to twenty-seven (27) feet in height and any Embellishment thirty (30) feet in height; provided, however, Embellishments on any of the West Outparcels and Lot 6 shall not cover more than twenty percent (20%) of the fascia of each of three (3) sides of a Building. No mezzanine or basement shall be used for the sale or display of merchandise or for the offer or provision of retail services to the public.

(e) The Building to be constructed on the Home Depot Parcel may be built as Category V-NR (non-rated), as that category is defined pursuant to the Uniform Building Code 2000 Edition (UBC). Any Building on Lot 2 or Lot 3 within the Shopping Center shall be constructed in such a manner to guarantee that the Building on the Home Depot Parcel may be constructed or otherwise remains as at least as broad as Type V-NR pursuant to the UBC 1997 edition.

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

(g) No approval from the Consenting Owners shall be required for Improvements on the East Outparcels or the Home Depot Parcel.

(h) Notwithstanding anything set forth herein to the contrary, the construction of a prototype retail building for a national or regional retailer or Restaurant on any of the East Outparcels is hereby expressly permitted.

#### 2.4 Construction Requirements.

(a) All work performed in the construction, repair, replacement, alteration, or expansion of any Improvements shall be performed as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct, or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any Building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center, including, without limitation, access to its Building. In addition, all work performed on Improvements on 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 (as defined in Section 2.4(a) above) shall not permit any mechanics', materialmen's, or other professional services liens (as contrasted with consensual monetary liens such as construction and/or permanent financing) to stand against any other Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any Parcel encumbered by any such lien or claim of lien, (i) cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, or (ii) give such assurance as would enable a title insurance company to insure over such lien or claim of lien, failing which the Owner or Prime Lessee of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend, protect, and hold harmless the Owners and Occupants for, from, and against any and all 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 such cause of action is solely the result of the negligent or willful misconduct of the indemnified Owner or Occupant.

(c) Staging for the initial construction of Buildings, or the replacement, alteration, or expansion of any Building, sign, or Common Area improvements located in the Shopping Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be located solely on the constructing Owner's Parcel or otherwise be 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. In no event shall any Owner other than the Owner of the Home Depot Parcel establish a staging area within 100 feet of any point of the Home Depot Parcel, except prior to establishing such staging area, the Owner of Lot 2 and Lot 3 may propose a staging plan to the Owner of the Home Depot Parcel to obtain consent to establish a staging area within 100 feet of any point of the Home Depot Parcel, which consent shall not be unreasonably withheld or delayed. Should consent be granted by the Owner of the Home Depot Parcel, the staging area on Lot 2 and Lot 3 shall be located in such a manner as to minimize any interference with the normal operation of the Home Depot Parcel, including but not limited to, the placement of all temporary buildings, construction sheds, building materials, construction vehicles, and equipment on the southeast corners of Lot 2 and Lot 3. The staging area for each Outparcel shall be located on that Outparcel unless the Owner of the Outparcel 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. Upon completion of such work, the constructing Party shall, at its expense, restore any damaged Common Area to a condition equal to or better than that existing prior to commencement of such work.

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

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

**2.7 Approval Procedures.**

(a) Before any action requiring the Consenting Owners' approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a decision as to the proposal, together with a review fee equal to Five Hundred and No/100 Dollars (\$500.00) to cover each respective Consenting Owner's costs incurred in reviewing an Owner's proposal, provided, however, the Consenting Owners agree that as between themselves, no review fee shall be required. Each Consenting Owner shall have the right to approve or disapprove the proposal in accordance with the manner and time procedures set forth in Section 14.6 below, and if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. No approvals shall be required with respect to the initial building improvements constructed on the East Outparcel. Furthermore, no review fee shall be required with respect to approvals of site plans.



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

### 3. EASEMENTS

3.1 **Ingress and Egress.** 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 upon, over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Areas, including, without limitation, the Permanent Drives. The easements provided for in this Section 3.1 shall not benefit and, without the written approval of the Consenting Owners, may not be assigned or granted to or for the benefit of any property outside the Shopping Center.

3.2 **Parking.** There shall be no cross-parking between the Home Depot Parcel and the Developer Parcels.

#### 3.3 **Utility Lines and Facilities.**

(a) Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a nonexclusive easement under, through, and across the "Sewer Easement," "Waterline Easement," and "Utility Easement" shown on the Plat for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, removal, and replacement of Utility Lines and otherwise consistent with the Approved Plans for the Shopping Center. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements, except that fire hydrants, ground mounted electrical transformers, and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration, or expansion of any Buildings or improvements located in the Shopping Center) or which have been approved by the Consenting Owners shall be permitted. The installation, operation, maintenance, repair, and replacement of such easement facilities shall not unreasonably interfere with the use of the Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair, and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use, and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of the easement facilities.

(b) Notwithstanding the grant of easement for sewer lines included within Section 3.3(a) above, any connections to sewer lines, if such connections are not shown on the Approved Plans, may only be made in the event that (i) the Owner of a Parcel benefiting from the sewer line easement (a "Grantee Parcel") makes at its sole expense any and all improvements to the sewer lines and systems

(including, without limitation, any lift stations) as are necessary or required in order to increase the capacity of the sewer lines and systems to adequately serve the Grantee Parcel pursuant to plans and specifications that comply with the requirements of all Governmental Regulations and that are first approved by the Consenting Owners and the Owner of the Parcel burdened by the sewer line easement (a "Grantor Parcel"), (ii) the Owner of the Grantee Parcel procures all permits, licenses, and approvals and pays any and all tap-on or similar fees required to make any such improvements and to so utilize and connect with such sewer lines and systems, and (iii) the Owner of the Grantee Parcel pays for increased costs of maintenance and repair due to such development work. Notwithstanding the preceding sentence, so long as a Consenting Owner complies with the requirements of all Governmental Regulations, such Consenting Owner will not be required to obtain the approval of the Owner of the Grantor Parcel as set forth in subsection (b)(i) above.

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

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

3.4 **Signs.** Developer, as grantor, hereby grants to the Owner of the Home Depot Parcel, as grantee, for the benefit of the Home Depot Parcel, a non-exclusive easement under, through, and across the Common Area of the grantor's Parcel(s) and across those specific areas depicted on the Sign Plan as "**Home Depot Sign Easement**" for the installation, operation, maintenance, repair, and replacement of the 13400 South Street Monument Sign, the "**Market Center Monument Sign**" (as shown on the Sign Plan), and the 3600 West Street Monument Sign referred to in Section 4.3 of this Agreement and all Utility Lines appurtenant thereto. No signage (temporary or otherwise, including, but not limited to, an electronic marquee) with respect to Persons who are not Owners or Occupants shall be permitted on any Center Pylon Signs located in or upon the Shopping Center.

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

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

3.7 **Permanent Drive.** Unless otherwise approved in writing by the Consenting Owners, which approval may be withheld in each Consenting Owner's sole and absolute discretion, those certain accessways shown on the Site Plan as "**Permanent Drives**" on the West Outparcels, including, without limitation, the curb cuts on such accessways, shall not be altered or modified.

3.8 **Storm Drainage and Detention Easements.**

(a) Each Owner hereby grants and conveys to each other Owner owning an adjacent Parcel the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the grantor's Parcel, upon the following conditions and terms: (i) the grades and the surface water drainage/retention system for the Shopping Center shall remain in strict conformance with the Approved Plans, and (ii) no Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration is not in conformance with the Approved Plans or would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention, and distribution facilities shall be deemed a Utility Line. All drains, gutters, downspouts, berms, swells, and other drainage facilities and systems (collectively "**Systems**") shall be maintained by each Owner, with respect to the portion of each such System located upon an Owner's Parcel, in a neat, orderly, safe and sanitary condition, and in such a manner as to facilitate the orderly discharge of water by means thereof. Developer and Home Depot acknowledge and agree the Detention Pond (defined below) has been designed to serve all of the Shopping Center. Upon obtaining the prior written consent of the Owner of the Home Depot Parcel, which consent shall not be unreasonably withheld, conditioned or delayed, Developer, at its sole cost and expense, may expand, relocate or make any other changes to the Detention Pond as Developer deems appropriate, including, without limitation, providing for underground piping of detained water to a location off-site of the Shopping Center, and no other consent or approval of any other party shall be required with respect thereto. No other Owner, including, without limitation, the Owner of the Home Depot Parcel shall have the right to make any changes to the Detention Pond unless and until the plans for any such changes, including, without limitation, expansion or relocation of the Detention Pond have been submitted to the Developer or its successor for approval prior to initiation of the construction of any such expansion, and Developer's approval shall not be unreasonably withheld, delayed, or conditioned provided that the cost of all such expansion will be paid by the party making the expansion or relocation request and provided that such plans are consistent with the Approved Plans.

(b) Developer hereby grants and conveys to the Owner of the Home Depot Parcel, as an appurtenance to the Home Depot Parcel, a perpetual, non-exclusive right and easement to drain storm

water run-off from Home Depot's Parcel over, across and under those areas designated on the Plat as the "Storm Drain Easement" and the "Storm Drain Surface Easement" and the right to use and impound storm water within the storm water detention facility to be located on a portion of Developer's property adjacent to 3600 West Street, as more clearly shown on the Site Plan (the "**Detention Pond**") and a perpetual, non-exclusive right and easement in, to, over, under, and across portions of such property to construct, install, maintain, repair, and replace storm drainage lines and systems from Home Depot's Parcel onto and across that portion of such property as is necessary to use the Detention Pond (the Detention Pond and such other storm drainage lines and systems are hereinafter collectively referred to as the "**Detention System**").

(c) The cost of maintaining, insuring, repairing, and replacing the Detention Pond (the "**Detention Pond Maintenance Costs**") shall be paid entirely by the Owner of the Developer Parcel. On or before the first day of each calendar year beginning on January 1, 2006, the Owner of the Home Depot Parcel shall deliver to the Owner of the Developer Parcel \$2,400 (subject to adjustment as hereinafter provided), as the contribution of the Owner of the Home Depot Parcel toward the cost of the maintenance by the Owner of the Developer Parcel of the Access Easement and the Detention Pond (as the same may be increased from time to time, the "**Detention Pond Maintenance Fee**"). The initial Detention Pond Maintenance Fee shall be increased by five percent (5%) as of January 1, 2011 and the then current Detention Pond Maintenance Fee shall be increased by five percent (5%) as of January 1<sup>st</sup> of each successive fifth anniversary thereafter. Notwithstanding any other provisions hereof, if the Owner of the Home Depot Parcel or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants, or licensees, damages the Access Easement or the Detention Pond, the Owner of the Home Depot Parcel shall reimburse the Owner of the Developer Parcel for the costs and expenses for the repair and restoration of such damage within thirty (30) days after receipt of an invoice from the Owner of the Developer Parcel, and in the event that the Owner of the Home Depot Parcel fails to make such payment within such 30-day period, the Owner of the Home Depot Parcel shall be required to pay interest on the amount due at the lesser of (a) the maximum rate allowed by law or (b) ten percent (10%) per annum until payment is made.

3.9 **Additional Easements.** Without the prior written consent of the Owner of the Home Depot Parcel, neither Developer nor any owner of the West Outparcels shall grant any right of ingress or egress across the West Outparcels to any parcel located outside the Shopping Center.

#### 4. OPERATION OF COMMON AREA

4.1 **Parking.** The following parking restrictions apply to the West Outparcels:

(a) There shall be no charge for parking in the Common Area without the prior written consent of the Consenting Owners or unless otherwise required by law. The parking area on each Parcel shall contain sufficient ground level parking spaces (exclusive of parking spaces used for cart corrals and/or recycle centers) in order to comply with the following minimum requirements, without reliance on parking spaces located on any other Parcel:

(i) Five (5) parking spaces for each one thousand (1,000) square feet of Floor Area;

(ii) If a business use contains a drive-up or drive-thru unit (such as a remote banking teller or food ordering/dispensing facility, but specifically excluding the customer loading area located on the Home Depot Parcel), then there shall also be created space for stacking not less than seven (7) automobiles (exclusive of any drive-aisle) for each drive-up unit;

(iii) Five (5) parking spaces for each one thousand (1,000) square feet of Floor Area for each single Restaurant which has less than two thousand five hundred (2,500) square feet of Floor Area;

(iv) Seven (7) parking spaces for each one thousand (1,000) square feet of Floor Area for each Restaurant which has at least two thousand five hundred (2,500) square feet of Floor Area, but less than five thousand (5,000) square feet of Floor Area;

(v) Ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area for each Restaurant which has five thousand (5,000) square feet of Floor Area or more.

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

(c) If the minimum number of parking spaces required by Governmental Regulations is greater than the minimum requirements set forth above, then the minimum number of parking spaces as required by Governmental Regulations shall control.

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

#### 4.2 Signs.

(a) Subject to the provisions of subparagraph (b) and (c) below, no free-standing, permanent sign structures other than the Center Pylon Signs (which collectively includes the Bangerter Highway Pylon Sign, the 13400 South Street Monument Sign, the Market Center Monument Sign, and the 3600 West Street Monument Sign as referred to below and designated on the Sign Plan) and only those monument signs designated and depicted on the Sign Plan, which shall not exceeding fifteen (15) feet in height, may be erected or maintained in the Shopping Center by any Party. The Center Pylon Signs shall comply with the following requirements:

(i) **Bangerter Highway Pylon Sign.** The Bangerter Highway Pylon Sign, as designated on the Sign Plan, shall display the designation of Home Depot and, provided the amount of signage otherwise permitted by Governmental Regulations to display Home Depot's designation is not adversely affected thereby, designations for not more than two (2) other business in the Shopping Center. There shall be no square footage limitations for any such business to display its designation on the Bangerter Highway Sign. The cost of maintaining, insuring, repairing, and replacing the Bangerter

Highway Pylon Sign structure (including electrical hookup to a common meter) shall first be paid by the Owner of the Home Depot Parcel, provided, however, the Owner of the Developer Parcel, along with any of its successors or assigns, shall pay to the Owner of the Home Depot Parcel, its pro rata share of the reasonable actual invoiced expenses (collectively, the "**Bangerter Sign Maintenance Costs**") incurred by the Owner of the Home Depot Parcel in connection with maintaining and providing utility service to the Bangerter Highway Pylon Sign. The pro rata share of the Bangerter Sign Maintenance Costs for the Owner of the Home Depot Parcel and the Owner of the Developer Parcel shall each be one-half (1/2) of the Bangerter Sign Maintenance Costs. The obligation of the Owner of the Developer Parcel to pay its pro rata portion of the Bangerter Sign Maintenance Costs shall commence on the date that is the earlier to occur of: (i) usage of any portion of the Bangerter Highway Pylon Sign by the Owner of the Developer Parcel; or (ii) two years from the date of this Agreement. The Owner of the Developer Parcel shall pay to the Owner of the Home Depot Parcel the Bangerter Sign Maintenance Costs quarterly, within twenty (20) days of receipt of all applicable invoices (together with applicable back up documentation). If the Owner of the Developer Parcel fails to timely pay the Bangerter Sign Maintenance Costs, the Owner of the Developer Parcel shall be required to pay interest on the amount due at the Default Rate which shall be in addition to any other rights or remedies of the Owner of the Home Depot Parcel under this Agreement. If the Owner of the Developer Parcel sells all or any portion of its interest in any Parcel which was benefiting from a sign designation on the Developer's portion of the Bangerter Highway Pylon Sign, the new Owner of such Parcel shall automatically become liable for its pro rata share of the Bangerter Sign Maintenance Costs, which pro rata share shall be determined by dividing the Bangerter Sign Maintenance Cost payable by the Owner of the Developer Parcel by two (2) and shall assume the payment obligation, as provided pursuant to the terms of this Agreement, at which time the Owner of the Developer Parcel shall thereupon be released and discharged from any and all such obligations arising under this Paragraph 4.2(a)(i) for ongoing Bangerter Sign Maintenance Costs with respect to that portion of such costs. Upon such sale to the new Owner, the new Owner shall deliver to the Owner of the Home Depot Parcel a written statement in recordable form, containing the name and address of the new Owner and the effective date of such conveyance. 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 Paragraph 4.2(a)(i) with respect to such Bangerter Sign Maintenance Costs after the date of acquisition of title to such Parcel. Each Person displaying a designation on the Bangerter Highway Pylon Sign shall supply and maintain its own sign fascia, bulbs, ballast, wiring, and can and maintain such sign fascia, bulbs, ballast, wiring, and can in good condition and repair. The Owner of the Home Depot Parcel shall have not less than one-half (1/2) of the display area on the uppermost portion Bangerter Highway Pylon Sign, and shall have a minimum signage area of one hundred (100) square feet or such lesser size as mandated by Governmental Regulations and the Owner of the Developer Parcel shall have the remaining lower one-half (1/2) of the display area and a signage area of one hundred (100) square feet or such lesser size as mandated by Governmental Regulations as shown on the Sign Plan. The design of the Bangerter Highway Pylon Sign structure shall be subject to the approval of the Consenting Owners. Once constructed, no freestanding sign may be constructed, taken down, altered, or modified without the prior written approval of each of the Consenting Owners. Notwithstanding any other provisions hereof, if an Owner or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants or licensees, damages the Bangerter Highway Pylon Sign, that Owner shall reimburse the Owner of the Home Depot Parcel for the costs and expenses for the repair and restoration of such damage within thirty (30) days after receipt of an invoice from the Owner of Home Depot Parcel, and in the event that the Owner fails to make such payment within such 30-day period, such Owner shall be required to pay interest on the amount due at the Default Rate which shall be in addition to any other rights or remedies of the Owner of the Home Depot Parcel under this Agreement.

(ii) **13400 South Street Monument Sign.** The 13400 South Street Monument Sign, as designated on the Sign Plan, shall display the designation of Home Depot, Intel Corporation, a Delaware corporation ("**Intel**"), and provided the amount of signage otherwise permitted

by Governmental Regulations to display Home Depot's and Intel's designation is not adversely affected thereby, designations for not more than two (2) other business in the Shopping Center. Any such business, in order to display its designation on the 13400 South Street Monument Sign, must occupy not less than twenty-five thousand (25,000) square feet of Floor Area. The cost of maintaining, insuring, repairing, and replacing the 13400 South Street Monument Sign structure (including electrical hookup to a common meter) shall first be paid by the Owner of the Home Depot Parcel, provided, however, the Owner of the Developer Parcel, along with any of its successors or assigns, shall pay to the Owner of the Home Depot Parcel, its pro rata share of the reasonable actual invoiced expenses (collectively, the "**13400 South Sign Maintenance Costs**") incurred by the Owner of the Home Depot Parcel in connection with maintaining and providing utility service to the 13400 South Street Monument Sign. The pro rata share of the 13400 South Sign Maintenance Costs for the Owner of the Home Depot Parcel shall be two-thirds ( $2/3^{\text{rds}}$ ) of the 13400 South Sign Maintenance Costs, and the pro rata share of the 13400 South Sign Maintenance Costs for the Owner of the Developer Parcel shall be one-third ( $1/3^{\text{rd}}$ ) of such costs. The obligation of the Owner of the Developer Parcel to pay its pro rata portion of the 13400 South Sign Maintenance Costs shall commence on the date that is the earlier to occur of: (i) usage of any portion of the 13400 South Street Monument Sign by the Owner of the Developer Parcel; or (ii) two years from the date of this Agreement. The Owner of the Developer Parcel shall pay to the Owner of the Home Depot Parcel the 13400 South Sign Maintenance Costs quarterly, within ten (10) days of receipt of all applicable invoices (together with applicable back up documentation). If the Owner of the Developer Parcel fails to timely pay the 13400 South Sign Maintenance Costs, the Owner of the Developer Parcel shall be required to pay interest on the amount due at the Default Rate which shall be in addition to any other rights or remedies of the Owner of the Home Depot Parcel under this Agreement. If the Owner of the Developer Parcel sells all or any portion of its interest in any Parcel which was benefiting from a sign designation on the Developer's portion of the 13400 South Street Monument Sign, the new Owner of such Parcel shall automatically become liable for its pro rata share of the 13400 South Sign Maintenance Costs, which pro rata share shall be determined by dividing the 13400 South Sign Maintenance Costs payable to the Owner of the Home Depot Parcel by two (2) and shall assume the payment obligation, as provided pursuant to the terms of this Agreement, at which time the Owner of the Developer Parcel shall thereupon be released and discharged from any and all such obligations arising under this Paragraph 4.2(a)(ii) for ongoing 13400 South Sign Maintenance Costs with respect to that portion of such costs. Upon such sale to the new Owner, the new Owner shall deliver to the Owner of the Home Depot Parcel a written statement in recordable form, containing the name and address of the new Owner and the effective date of such conveyance. 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 Paragraph 4.2(a)(ii) with respect to such 13400 South Sign Maintenance Costs after the date of acquisition of title to such Parcel. Each Person displaying a designation on the 13400 South Street Monument Sign shall supply and maintain its own sign fascia, bulbs, ballast, wiring, and can and maintain such sign fascia, bulbs, ballast, wiring, and can in good condition and repair. The Owner of the Home Depot Parcel, the Owner of the Intel Parcel, and the Owner of the Developer Parcel shall have not less than one-third ( $1/3$ ) of the display area on the 13400 South Street Monument Sign, and shall have a minimum signage area of sixty-four (64) square feet or such lesser size as mandated by Governmental Regulations. The Owner of the Home Depot Parcel shall have the center designation of the 13400 South Street Monument Sign. The Owner of the Intel Parcel shall have the right designation of the 13400 South Street Monument Sign. The Owner of the Developer Parcel shall have the remaining left designation of the 13400 South Street Monument Sign and subject to the terms above, shall be entitled to split the left display area into two (2) equally sized display areas. The design of the 13400 South Street Monument Sign structure shall be subject to the approval of the Consenting Owners. Once constructed, no freestanding sign may be constructed, taken down, altered, or modified without the prior written approval of each of the Consenting Owners. Notwithstanding any other provisions hereof, if an Owner or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants, or licensees, damages the 13400 South Street Monument Sign, that Owner shall reimburse the Owner of the Home

Depot Parcel for the costs and expenses for the repair and restoration of such damage within thirty (30) days after receipt of an invoice from the Owner of Home Depot Parcel, and in the event that the Owner fails to make such payment within such 30-day period, such Owner shall be required to pay interest on the amount due at the Default Rate which shall be in addition to any other rights or remedies of the Owner of the Home Depot Parcel under this Agreement.

(iii) **3600 West Street Monument Sign.** The 3600 West Street Monument Sign, as designated on the Sign Plan, shall display the designation of Home Depot and, provided the amount of signage otherwise permitted by Governmental Regulations to display Home Depot's designation is not adversely affected thereby, designations for not more than two (2) other business in the Shopping Center. There shall be no square footage limitations for any such business to display its designation on the 3600 West Street Monument Sign. The cost of maintaining, insuring, repairing, and replacing the 3600 West Street Monument Sign structure (including electrical hookup to a common meter) shall first be paid by the Owner of the Home Depot Parcel, provided, however, the Owner of the Developer Parcel shall pay to the Owner of the Home Depot Parcel, its pro rata share of the reasonable actual invoiced expenses (collectively, the "3600 West Sign Maintenance Costs") incurred by the Owner of the Home Depot Parcel in connection with maintaining and providing utility service to the 3600 West Street Monument Sign. The pro rata share of the 3600 West Sign Maintenance Costs for the Owner of the Home Depot Parcel and the Owner of the Developer Parcel shall each be one-half (1/2) of the 3600 West Sign Maintenance Costs. The obligation of the Owner of the Developer Parcel to pay its pro rata portion of the 3600 West Sign Maintenance Costs shall commence on the date that is the earlier to occur of: (i) usage of any portion of the 3600 West Street Monument Sign by the Owner of the Developer Parcel; or (ii) two years from the date of this Agreement. The Owner of the Developer Parcel shall pay to the Owner of the Home Depot Parcel the 3600 West Sign Maintenance Costs quarterly, within ten (10) days of receipt of all applicable invoices (together with applicable back up documentation). If the Owner of the Developer Parcel fails to timely pay the 3600 West Sign Maintenance Costs, the Owner of the Developer Parcel shall be required to pay interest on the amount due at the Default Rate which shall be in addition to any other rights or remedies of the Owner of the Home Depot Parcel under this Agreement. If the Owner of the Developer Parcel sells all or any portion of its interest in any Parcel which was benefiting from a sign designation on the Developer's portion of the 3600 West Street Monument Sign, the new Owner of such Parcel shall automatically become liable for its pro rata share of the 3600 West Sign Maintenance Costs, which pro rata share shall be determined by dividing the 3600 West Sign Maintenance Costs payable to the Owner of the Home Depot Parcel by two (2) and shall assume the payment obligation, as provided pursuant to the terms of this Agreement, at which time the Owner of the Developer Parcel shall thereupon be released and discharged from any and all such obligations arising under this Paragraph 4.2(a)(iii) for ongoing 3600 West Sign Maintenance Costs with respect to that portion of such costs. Upon such sale to the new Owner, the new Owner shall deliver to the Owner of the Home Depot Parcel a written statement in recordable form, containing the name and address of the new Owner and the effective date of such conveyance. 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 Paragraph 4.2(a)(iii) with respect to such 3600 West Sign Maintenance Costs after the date it acquires title to such Parcel. Each Person displaying a designation on the 3600 West Street Monument Sign shall supply and maintain its own sign fascia, bulbs, ballast, wiring, and can and maintain such sign fascia, bulbs, ballast, wiring, and can in good condition and repair. The Owner of the Home Depot Parcel and the Owner of the Developer Parcel shall have not less than one-half (1/2) of the display area on the 3600 West Street Monument Sign, and shall have a minimum signage area of sixty-four (64) square feet or such lesser size as mandated by Governmental Regulations. The Owner of the Home Depot Parcel shall have the uppermost designation of the 3600 West Street Monument Sign. The Owner of the Developer Parcel shall have the remaining lower designation of the 3600 West Street Monument Sign and shall be entitled to split the lower display area into two (2) equally sized display areas. The design of the 3600 West Street Monument Sign



structure shall be subject to the approval of the Consenting Owners. Once constructed, no freestanding sign may be constructed, taken down, altered, or modified without the prior written approval of each of the Consenting Owners. Notwithstanding any other provisions hereof, if an Owner or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants or licensees, damages the 3600 West Street Monument Sign, that Owner shall reimburse the Owner of the Home Depot Parcel for the costs and expenses for the repair and restoration of such damage within thirty (30) days after receipt of an invoice from the Owner of Home Depot Parcel, and in the event that the Owner fails to make such payment within such 30-day period, such Owner shall be required to pay interest on the amount due at the Default Rate which shall be in addition to any other rights or remedies of the Owner of the Home Depot Parcel under this Agreement. In the event the Owner of the Home Depot Parcel fails to maintain any of the signs identified in this Section 4.2(a), the Owner of the Developer Parcel shall have the rights set forth in Section 10 of this Agreement.

(b) Provided the signage otherwise permitted by Governmental Regulations to the Owner of the Home Depot Parcel and on the Center Pylon Sign(s) is not adversely affected thereby, each Outparcel may have, subject to Governmental Regulations, one free-standing, permanent sign structure on said Outparcel, at the location designated on the Sign Plan. The initial design of the sign structure (including, without limitation, height and size) shall conform to the sign drawings and criteria in the Sign Plan. Any change to the initial design of any sign structure shall be subject to the prior written approval of the Consenting Owners. The cost of constructing, installing, maintaining, insuring, operating, repairing, and replacing such sign structure and sign fascia shall be paid by the applicable Owner of the Outparcel upon whose Parcel such monument sign is located. If more than one Occupant of the Shopping Center is designated on a sign structure located on an Outparcel, the Owner of the Outparcel shall be responsible for the cost of constructing, installing, maintaining, insuring, operating, repairing, and replacing the sign structure (including electrical hookup to a common meter), and such Owner of the Outparcel shall be reimbursed by the Owners of all other Parcels displaying designations on the sign structure located on such Outparcel in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations displayed thereon.

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

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

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

**4.3 Protection of Common Area.** Each Owner and Occupant shall have the right to take such steps as it deems necessary to prevent those Persons not authorized by this Agreement to use the Common Area from using the Common Area for ingress, egress, parking, or any other purpose. Subject to Governmental Regulations, such steps shall include, without limitation, the construction of fences, walls, or barricades along the boundary lines of any portion of the Shopping Center except along the common boundary line of any Parcel with any other Parcel; provided, however, that any impairment of vehicular access to or from the Shopping Center, or any part thereof, shall require the Consenting Owners' prior written approval, which may be withheld in such Consenting Owners' sole and absolute discretion; provided, further, that no such consent shall be required to install and maintain construction fencing during the initial construction of improvements in the Shopping Center.

4.4 **Changes to Common Area.** The following restrictions apply only to the West Outparcels:

(a) Except as expressly permitted by this Agreement, no other improvements shall be placed in the Common Area without the prior written approval of the Consenting Owners except (i) Service Areas 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, tents, or other structures or equipment used for sales in the parking area on the Home Depot Parcel.

(b) The sizes and arrangements of Common Area improvements may not be materially changed without the Consenting Owners' prior written approval. A Consenting Owner may withhold its consent to any material change to the entrances or exits to or from the Shopping Center in its sole and absolute discretion. Except as otherwise provided herein and in paragraph (c) below, a Consenting Owner shall not unreasonably withhold, condition, or delay its consent to changes in the Common Area improvements provided that the parking complies in all respects with Section 4.1. Nothing in this Section 4.4 shall be interpreted to require the Consenting Owners' approval to (i) the construction, alteration, or relocation of any Service Areas to the extent that they are located, and do not impede access, to the rear or sides of Buildings, or (ii) the location or relocation of items which are permitted to be placed in the Common Area without consent pursuant to paragraph (a)(iii) above.

(c) Within any of the West Outparcels, an Owner may not, without the Owner of the Home Depot Parcel's prior written consent, which may be granted or withheld in the Owner of the Home Depot Parcel's sole and absolute discretion, (i) alter the location, height, or size of any Building or Improvement, including such Common Area improvements such as accessways in to or out of the Shopping Center, (ii) change the number, location, or layout of parking spaces (it being acknowledged by the Parties that such parking must comply in all respects with Section 4.1), or (iii) construct additional structures or Buildings on the Common Area.

## 5. RESTRICTIONS ON USE

### 5.1 Home Improvement Store Restrictions.

(a) No portion of the Shopping Center other than the Home Depot Parcel shall be used for a Home Improvement Center. The term "**Home Improvement Center**" shall mean any retail store primarily devoted to the retail sale, display or lease of all or several of the Prohibited Home Improvement Items (defined below) and related items as an integrated retail concept. The term "**Prohibited Home Improvement Items**" shall mean the following items or materials: 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), windows, hard and soft flooring (including tile, wood flooring, rugs and carpeting), siding, ceiling fans, gardening and garden nursery supplies, artificial and natural plants, outdoor cooking equipment and 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. The restrictions in this paragraph 5.1(a) shall continue so long as a Home Improvement Center is operated on the Home Depot Parcel. If Home Improvement Center is not

operated on the Home Depot Parcel for a period of no less than sixty (60) months, excluding periods of closure due to force majeure, restoration, reconstruction, expansion, alteration or remodeling of the Building on the Home Depot Parcel that Home Depot is diligently prosecuting to completion, and such failure to operate a Home Improvement Center continues for one hundred eighty (180) days (the "Reopening Period") after receipt by Home Depot of a written notice to reopen (the "Notice to Reopen") delivered to Home Depot any time between the beginning of the initial twelfth (12th) month of closure and the end of the initial thirty-sixth (36th) month of closure (the "Reopening Notice Period"), the restriction in this paragraph 5.1(a) shall terminate.

(b) No portion of the West Outparcels shall be used for any business which sells, displays, leases, rents, or distributes, singly or in any combination, Prohibited Home Improvement Items; provided, however, that the foregoing restriction shall not apply to the incidental sale of such items in a full service grocery store.

## 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; gun range; the sale of guns as a primary use; a warehouse; an animal kennel (provided, however, the foregoing exception shall not preclude any veterinary or boarding services provided in connection of a pet shop provided such veterinary or boarding services are only incidental to the operation of the pet shop. Further, the boarding of pets as a separate customer service shall be prohibited; all kennels, runs, and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop).

(b) No portion of the Shopping Center shall be used for any of the following purposes: a flea market or a business selling so-called "second hand" goods (the term "second hand" shall mean stores which sell goods primarily as a service to the public rather than to a retail customer for a profit); cemetery; mortuary; any establishment engaged in the business of selling, exhibiting, or delivering pornographic or obscene materials; a so-called "head shop"; off-track betting parlor; junk yard; recycling facility or stockyard; a mini-storage or self-storage facility; a laundromat or dry-cleaning facility (but this shall not be deemed to prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer); a bar, tavern, or cocktail lounge; a discotheque, dance hall, comedy club, night club, or adult entertainment facility; billiard or pool hall; massage parlor, game parlor or video arcade (which shall be defined as any store containing more than three (3) electronic games); a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees and not to customers (but shall specifically not prohibit a school which is incidental to a primary retail purpose); or an educational facility such as a Sylvan Learning Center, office usage other than incidental in connection with non-prohibited uses; industrial, residential, or manufacturing uses, school or house of worship.

(c) No portion of the West Outparcels shall be used for a theater, auditorium, sports or other entertainment viewing facility (whether live, film, audio/visual or video); bowling alley; skating rink; fitness center, workout facility, gym, health spa or studio, or exercise facility; Restaurants which derive more than 35% of their gross sales from alcohol sales; car wash facility or gasoline station; business office usage (defined as any office that does not provide services directly to a consumer) other than incidental in connection with non-prohibited uses; retail office usage (defined as any office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerage, and title companies, travel and insurance agencies, and medical, dental, and legal clinics); motor vehicle or boat dealership, repair shop (including lubrication and/or service center) that stores vehicles outdoors overnight, body and fender shop, or motor vehicle or boat storage facility

(neither the foregoing restriction nor anything else in this Agreement to the contrary shall preclude the Owner of the Home Depot Parcel's sale or rental of delivery vehicles and trailers to its customers as part of its home improvement business).

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

(e) 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(e).

(f) 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.

(g) No portion of the Common Area shall be used for the sale, storage, or display of merchandise or food; provided, however, that (i) the display of delivery vehicles for sale and/or rental to its customers as part of the Owner of the Home Depot Parcel's home improvement business or as part of the business conducted by any of the Occupants on any of the East Outparcels shall be permitted, (ii) the seasonal sale of merchandise by the Owner or Occupant of the Home Depot Parcel shall be permitted from the parking lot located on the Home Depot Parcel, and (iii) any sale of merchandise by an Owner or Occupant of the Developer Parcel shall only be permitted in the Outside Sales Areas located on such Parcels.

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

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

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

(k) No sit down Restaurants shall be allowed to operate on Lot 3.

## 6. MAINTENANCE STANDARDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6.4 Permanent Drives Maintenance.** Notwithstanding those portions of the "Permanent Drives" as shown on the Site Plan that may be on Parcels other than the Home Depot Parcel, the Permanent Drives shall be kept and maintained in their entirety by Home Depot in accordance with the provisions of this Agreement, including, without limitation, this Article 6. On or before January 1 of each calendar year, each of the Owners of a "PD Served Parcel" (defined below) shall pay to Home Depot One Hundred and 00/100 Dollars (\$100.00) for each ten thousand (10,000) square feet within each Owner's PD Served Parcel, but no less than Two Hundred Fifty and 00/100 Dollars (\$250.00) per PD Served Parcel (subject to adjustment as hereinafter provided), as each such Owner's contribution toward the cost of Home Depot's maintenance of the Permanent Drives for the preceding calendar year or portion thereof (as the same may be increased from time to time, the "Permanent Drives Maintenance Fee"). The initial Permanent Drives Maintenance Fee shall be increased by five percent (5%) as of January 1, 2010, and five percent (5%) as of each successive fifth (5<sup>th</sup>) anniversary thereafter. Notwithstanding any other provisions hereof, if any Owner of a PD Served Parcel, or any of its successors or assigns, fails to pay the Permanent Drives Maintenance Fee by the above specified period of time, the Owner of the Developer Parcel shall be responsible to pay such Owner's portion of the Permanent Drives Maintenance Fee to Home Depot. Notwithstanding any other provisions hereof, if any Owner within the Shopping Center, or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants, or licensees, damages any portion of the Permanent Drives, such Owner shall reimburse Home Depot for the costs and expenses for the repair and restoration of such damage within thirty (30) days after receipt of an invoice from Home Depot, and in the event such Owner fails to make such payment within such 30-day period, such Owner shall be required to pay interest on the amount due at the lesser of (a) the maximum rate allowed by law or (b) fifteen percent (15%) per annum until payment is made. The term "PD Served Parcel" shall mean those West Outparcels as shown on the Site Plan. The Permanent Drives Maintenance Fee shall be the sole contribution required by any PD Served Parcel Owner for maintenance of the Permanent Drives and all other costs and expenses incurred with respect to such maintenance shall be paid by Home Depot or the Owner of the Home Depot Parcel.

## 7. LIGHTING

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. unless the Consenting Owners agree upon a different time. Each Owner further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this Agreement, each Owner grants an irrevocable license to each other Owner for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcels. Unless otherwise approved in writing by the Owner of the Home Depot Parcel, all exterior lighting fixtures and facilities on any portion of the Shopping Center shall (i) be of the type installed on the Home Depot Parcel, and (ii) not exceed an average lighting output of three (3) foot candles.

## 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.

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

## 9. SUCCESSORS AND ASSIGNS; LIMITATION ON RELEASE

This Agreement and the Easements and Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, Occupants, successors, and assigns, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, and such Owner, then at such time as the selling Owner executes and delivers to the Consenting Owners a written statement in which the name and address of the new Owner, the effective date of the conveyance, the Parcel conveyed, and, if applicable, the name of a new Party who has taken the position of a Consenting Owner as provided pursuant to the terms of this Agreement, 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. 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.

## 10. DEFAULT

10.1 **Default.** In the event any Owner or Occupant fails to perform any other provision of this Agreement, which failure continues for a period of ten (10) days' after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner or Prime Lessee

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

**10.2 Self-Help.** If an Owner or Occupant of any Parcel or Outparcel fails to perform any provision of this Agreement, then, upon the expiration of the cure period provided in Section 10.1, and upon an additional ten (10) days prior written notice (except that no additional notice shall be required in an emergency), any Consenting Owner shall have the right, but not the obligation, to enter upon the defaulting Owner's or Occupant's Parcel to cure such default for the account of and at the expense of the Owner or Occupant of such Parcel. If a Consenting Owner exercises its self-help right, then, within ten (10) 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 ten percent (10%) of such costs. Furthermore, the Consenting Owner shall have the right, if such invoice is not paid within said ten (10) day period, to record a lien on the Parcel of the defaulting Owner and/or Occupant for the amount of the unpaid costs incurred by the Consenting Owner pursuant to this Section 10.2 and the administrative fee, together with accrued interest at the Default Rate.

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

## **11. LIEN FOR EXPENSES OR TAXES**

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

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

The lien shall attach from the date a claim of a lien is recorded and may be enforced in any manner allowed by law, including, but not limited to, by suit in the nature of an action to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State in which the



Shopping Center is located. The Owner or Party who recorded the claim of lien shall release the claim of lien once the costs and expenses secured by the lien have been paid in full.

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

## 12. **LIABILITY INSURANCE; INDEMNIFICATION**

### 12.1 **Liability Insurance.**

(a) Each Owner shall maintain or cause to be maintained commercial general liability insurance with broad form coverage insuring against claims on account of bodily injury or death, personal and advertising injury, property damage or destruction, and contractual liability (i.e., exclusions for liability assumed under contract must be deleted) that may arise from, or be related to (i) the conduct of the Owner and/or Occupants, or (ii) the condition, use or occupancy of each Owner's Parcel (the "**Owner's Liability Insurance**"). The Owner of any Parcel upon which Fuel Facilities are constructed and/or installed shall also maintain or cause to be maintained Pollution Liability Insurance with respect to the Fuel Facilities ("**Pollution Liability Insurance**"). The Owner's Liability Insurance and the Pollution Liability Insurance are sometimes collectively referred to herein as "**Liability Insurance.**"

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

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

(c) Any insurance required to be maintained by the Owner of any Parcel, including, without limitation, the Owner of the Home Depot Parcel, may be maintained in whole or in part either under a plan of self-insurance, or from a carrier which specializes in providing coverage to or for such Owner, including, without limitation, the Owner of the Home Depot Parcel or such Owner's affiliates, or firms in the same or related businesses if such Owner's net worth exceeds One Hundred Million and No/100 Dollars (\$100,000,000) as shown in its most recent audited financial statement, or if such Owner's financial statements are reported on a consolidated basis with a parent corporation, then as certified by an officer of such Owner.

## 12.2 Insurance Coverage During Construction.

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

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

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

(b) Employer's liability insurance in the amount of One Million and No/100 Dollars (\$1,000,000.00) each accident for bodily injury, One Million and No/100 Dollars (\$1,000,000.00) policy limit for bodily injury by disease, and One Million and No/100 Dollars (\$1,000,000.00) each employee for bodily injury by disease.

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

(a) Required coverages:

- (1) Premises and Operations;
- (2) Products and Completed Operations;
- (3) Contractual Liability insuring the indemnity obligations assumed by contractor under the contract documents;

- Operations);
- (4) Broad Form Property Damage (including Completed Operations);
  - (5) Explosion, Collapse and Underground Hazards;
  - (6) Personal Injury Liability; and
  - (7) Builders Risk

(b) Minimum limits of liability:

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

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

(3) Two Million and No/100 Dollars (\$2,000,000.00) general aggregate applied separately to the Shopping Center.

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

(iv) **Umbrella/Excess Liability Insurance:** The general contractor shall also carry umbrella/excess liability insurance in the amount of Three Million and No/100 Dollars (\$3,000,000.00). If there is no per project aggregate under the Commercial General Liability policy, the limit shall be Five Million and No/100 Dollars (\$5,000,000.00).

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

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

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

### **13. PROPERTY DAMAGE AND EMINENT DOMAIN**

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

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

**13.3 Property Insurance.** To assure performance of their respective obligations under Sections 13.1 and 13.2 above, the Owners of the respective Parcels shall cause to be carried causes of loss - special form property insurance at least as broad as ISO Special Form Causes of Loss, CP 1030 0695, in an amount not less than eighty percent (80%) of the full insurable replacement cost (excluding footings, foundations or excavations) of all Buildings and improvements (including Common Area improvements) on their respective Parcels, except if the Owner of said Parcel, or party responsible for any required restorations, is permitted to "self insure" pursuant to Section 12.1(c). The insurance referenced in this Section 13.3 may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner; so long as the amount and coverage of insurance required to be carried hereunder is not diminished, (iii) a plan of self-insurance satisfying the criteria set forth in Section 12.1(c) above, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with Article 13, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any

deductible exceed one percent (1%) of an Owner's net worth unless such Owner complies with the requirements regarding self-insurance pursuant to Section 12.1(c) above. The Owner's property insurance shall be carried by an insurance company or companies qualified to do business in the state in which the Shopping Center is located with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system).

**13.4 Waiver of Subrogation.** The Owners and Occupants each hereby waive any rights one may have against the other on account of any loss or damage occurring to an individual Owner or Occupant, or its respective property, either real or personal, arising from any risk generally covered by ISO Special Form Causes of Loss, CP 1030 0695 and from any risk covered by property insurance then in effect. In addition, the Owners and Occupants, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any insurance company may have against the Owners and Occupants. It is the intent of the parties that with respect to any loss from a named peril required to be covered under a policy of property insurance, the parties shall look solely to their respective insurance 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.

**13.5 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. 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 Area of the Owner's Parcel as nearly as possible to the condition existing prior to the Taking to insure the continued ingress/egress to, from and between all areas of the Shopping Center to the extent reasonably feasible, without contribution from any other Owner.

#### 14. GENERAL PROVISIONS

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

**14.2 No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed. An Owner shall have the right to close, if necessary, all or any portion of the Common Area on its Parcel from time to time as may be necessary, in the opinion of such Owner, to prevent a dedication thereof or the accrual of any rights of the public therein.

**14.3 Duration.** Except as otherwise provided herein, the term of this Agreement shall be for 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 this Agreement shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination, and, provided further, that the access easements and the rights and duties related thereto as provided in Section 3.1, the sign easements and the rights and duties related thereto as provided in Sections 3.4 and 4.2, and the utility easements and the rights and duties related thereto as provided in Section 3.3 shall continue in effect in perpetuity as to those access easements, signs and utility lines actually in use at the time of the termination of this Agreement until such time as such access easements, signs and utility lines are abandoned or ceased to be used to serve a Building in the Shopping Center.

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

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

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

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

**14.8 Estoppel Certificates.** Any Owner may, at any time and from time to time, in connection with the sale or lease of the Owner's Parcel, or in connection with the financing or refinancing of the Owner's Parcel by bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Owners requesting such Owners to execute certificates certifying that to the best knowledge of the other Owners, (i) neither the requesting Owner nor any other Owner is in default in the performance of its obligations under this Agreement, or, if a default is alleged, specifically describing the nature and amount thereof, and (ii) confirming that this Agreement has not been amended (or, if so, identifying the amendments), and is in full force and effect. Each Owner shall execute and return such a certificate within thirty (30) days after receipt of a request 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 the certificate for the period covered by the certificate), nor shall such issuance be construed to waive any rights of the issuer to challenge acts committed by other Owners for which approval by the Consenting Owners was required but not sought or obtained.

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

**14.10 Notices.**

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

Developer: Riverton Land Holdings, L.L.C.  
1720 Wazee, Suite 1A  
Denver, Colorado 80202  
Attention: Jeff Oberg

Home Depot: Home Depot U.S.A., Inc.  
3800 West Chapman Avenue  
Orange, California 92868  
Attention: Senior Corporate Counsel – Real Estate

With a copy to: Home Depot U.S.A., Inc.  
2455 Paces Ferry Road, C-20  
Atlanta, Georgia 30339-4024  
Attention: Property Management

And to: Parsons Behle & Latimer  
One Utah Center  
Post Office Box 45898  
Salt Lake City, Utah 84145-0898  
Attention: Shawn C. Ferrin

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

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

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

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

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

**14.14 Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar



relationship between the Parties. Each Party shall be considered a separate party and no Party shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

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

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

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

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

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

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

**14.21 Lienholder Protection.** This Agreement and the Easements and 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 Easements and 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.

**14.22 Variances.** Where appropriate, the Consenting Owners may, in their sole and absolute discretion, grant written variances to the provisions this Agreement (in lieu of an amendment), signed by

all of the Consenting Owners, where strict adherence to the requirements of this Agreement or any architectural standards established by the Consenting Owners would, in the judgment of the Consenting Owners, cause undue hardship. The granting of a waiver or variance to one Owner shall not automatically entitle another Owner to the same waiver or variance, it being understood that each request for a waiver or variance shall be treated on its own individual merits.

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

14.24 **Subdivision.** In the event that the Owner of the Developer Parcel desires to subdivide the Developer Parcel, one or more times, or in the event that any owner of property within the Intel Riverton Campus Subdivision (“**Intel Plat**”) recorded with the Salt Lake County, Utah Recorder’s Office as Entry No. 7546172, in Book 99-12P, beginning at Page 347, desires to petition Riverton City to vacate, alter or amend the Intel Plat, one or more times, the Owner of the Developer Parcel shall consent to any such subdivision or petition, to not object to any such subdivision or petition and to sign any such amended subdivision plat. During the period commencing on the date of this Agreement and ending on November 24, 2009 (the “**Notice Period**”), in the event that Owner of the Developer Property desires to sell or lease all or any portion of the Developer Parcel, the Owner of the Developer Parcel shall cause its buyer or tenant of such property to agree to comply with the foregoing provisions as to the property located within the Intel Plat for the remainder of the Notice Period.

[Intentionally Blank - Signature Blocks Follow]

EXECUTED as of the day and year first above written.

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

RIVERTON LAND HOLDINGS, L.L.C.,  
a Colorado limited liability company

By: *AK*  
Name: Ann K. Jernoff  
Its: Director - Legal

By: \_\_\_\_\_  
Name: Jeff Oberg  
Its: Manager

*SF*  
*JK*

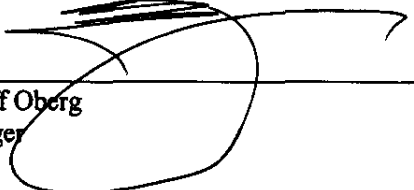
EXECUTED as of the day and year first above written.

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

**RIVERTON LAND HOLDINGS, L.L.C.,**  
a Colorado limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

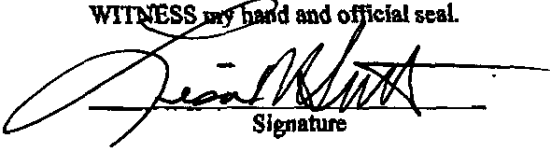
By: \_\_\_\_\_  
Name: Jeff Oberg  
Its: Manager



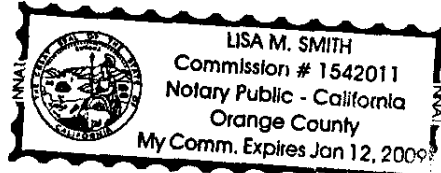
STATE OF California )  
 ) ss.  
COUNTY OF Orange )

On 11-30, 2005, before me, a notary public in and for said state, personally appeared Ann K. Terhoff, 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)



STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

On November \_\_, 2005, before me, a notary public in and for said state, personally appeared Jeff Oberg, as Manager of Riverton Land Holdings, L.L.C., a Colorado limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(This area for official notarial seal)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, before me, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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.

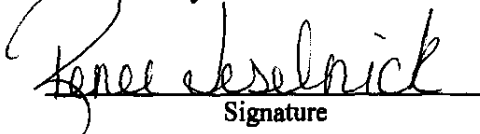
\_\_\_\_\_  
Signature

(This area for official notarial seal)

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

On November 29, 2005, before me, a notary public in and for said state, personally appeared Jeff Oberg, as Manager of Riverton Land Holdings, L.L.C., a Colorado limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Signature

(This area for official notarial seal)

RENEE JESELNICK  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires June 19, 2007

**EXHIBIT "A"**  
**TO**  
**RESTRICTION AGREEMENT**  
**AND GRANT OF EASEMENTS**

---

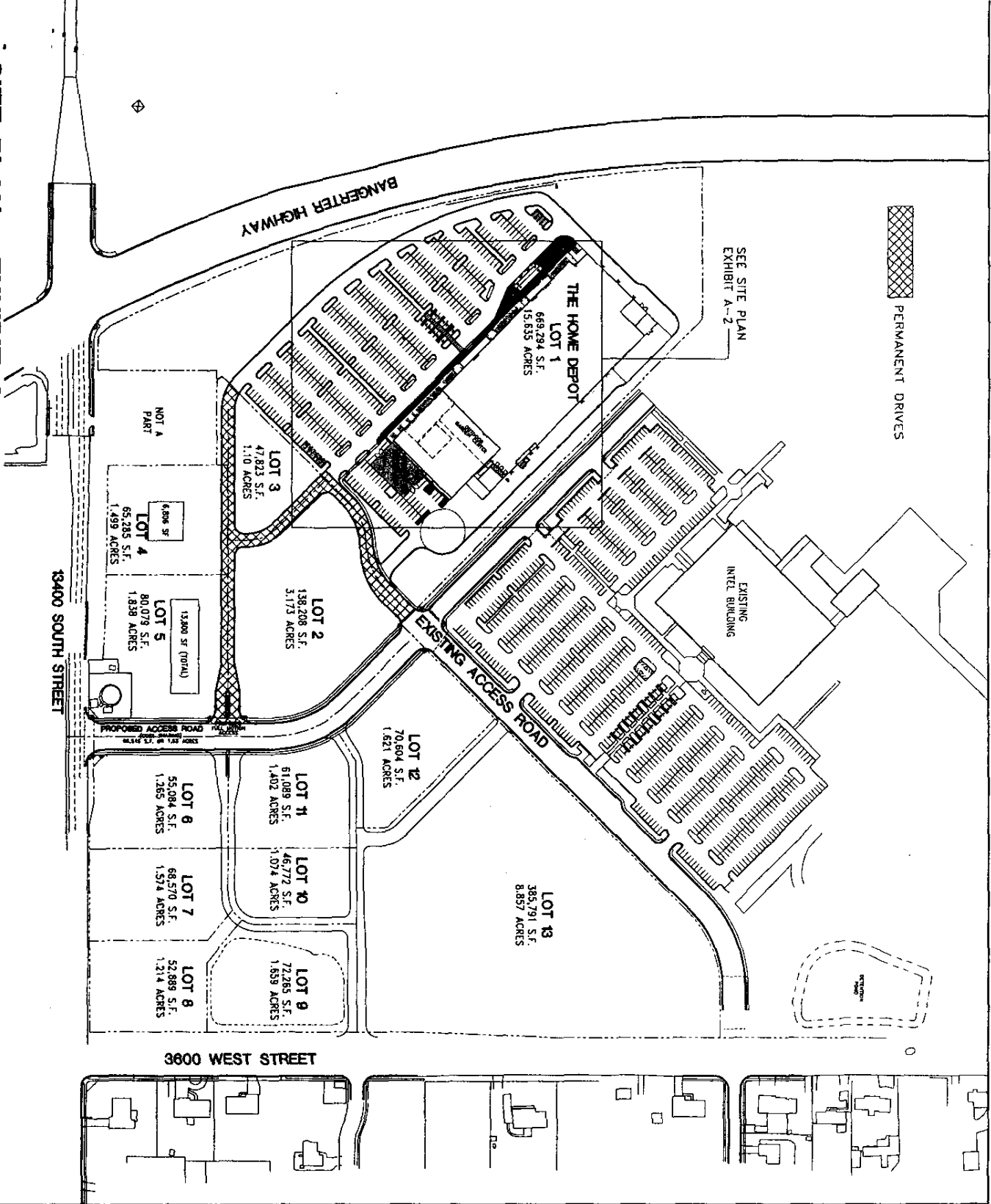
(SITE PLAN)

[SEE ATTACHED]



**SITE PLAN - EXHIBIT A**

SCALE: 1" = 80'



**COPYRIGHT NOTICE**  
 Copyright © 2005 by The Home Depot, Inc. All rights reserved. This drawing is the property of The Home Depot, Inc. and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of The Home Depot, Inc.

**Calover, Romano & Associates**  
 3300 Old Pennington Road  
 Glenview, Illinois, 60011  
 Tel: (847) 770-8836  
 Fax: (847) 770-8836  
 www.caloverromano.com

**LOCATION MAP**

**PROJECT INFORMATION**

**SITE AREA**

HOME DEPOT PARCEL	689,294 S.F. OR 15.835 ACRES
LOT 1	12,200 S.F. OR 0.279 ACRES
LOT 2	138,208 S.F. OR 3.173 ACRES
LOT 3	47,823 S.F. OR 1.10 ACRES
LOT 4	65,285 S.F. OR 1.499 ACRES
LOT 5	80,079 S.F. OR 1.838 ACRES
LOT 6	55,084 S.F. OR 1.265 ACRES
LOT 7	68,570 S.F. OR 1.574 ACRES
LOT 8	52,889 S.F. OR 1.214 ACRES
LOT 9	72,265 S.F. OR 1.659 ACRES
LOT 10	46,772 S.F. OR 1.074 ACRES
LOT 11	61,089 S.F. OR 1.402 ACRES
LOT 12	70,604 S.F. OR 1.621 ACRES
LOT 13	385,791 S.F. OR 8.857 ACRES
<b>TOTAL SITE</b>	<b>1,982,618 S.F. OR 45.281 ACRES</b>

**BUILDING AREA**

HOME DEPOT	102,213 S.F.
OUTDOOR GARDEN CENTER	27,248 S.F.
<b>TOTAL BUILDING AREA</b>	<b>130,201 S.F.</b>
<b>SEASONAL SALES AREA</b>	<b>7,419 S.F.</b>

**PARKING COURT SUMMARY**

HOME DEPOT (1/280 S.F.)	411 SPACES
OUTDOOR CENTER	0 SPACES
<b>TOTAL HOME DEPOT PARKING REQUIRED</b>	<b>411 SPACES</b>
PARCEL A	N/A
PARCEL B	N/A
PARCEL C	N/A
<b>OVERALL PARKING REQUIRED</b>	<b>N/A</b>

**PARKING PROVIDED**

HOME DEPOT CUSTOMER	412 SPACES
HOME DEPOT OUTDOOR	50 SPACES
<b>THE HOME DEPOT TOTAL PARKING</b>	<b>462 SPACES</b>
RAIO PROVIDED	356/100 S.F.
HOME DEPOT FRONT FIELD	412 SPACES
PARCEL A	N/A
PARCEL B	N/A
PARCEL C	N/A
<b>OVERALL RAIO PROVIDED</b>	<b>N/A</b>

**GENERAL INFORMATION**

EXISTING	C-8
PROPOSED	C-8
N/A. PARCELS	C-8

**THE HOME DEPOT**

Home Depot  
 Department Store Support Center  
 13400 South Street  
 Bldg. 1000  
 Salt Lake City, UT 84119  
 Tel: (801) 572-1400  
 Fax: (801) 572-1400

**THE HOME DEPOT**  
 SITE MANAGER: JAMES BRITZER  
 SITE DEV. COORD.: JEFF KOONER  
 SHEETED BY: GSK  
 80 SCALE DATE: 1/01/05  
 GSA PROJECT NO.: 14011

**ISSUED: JUNE 9, 2005**

**SS-00665.2003-N**

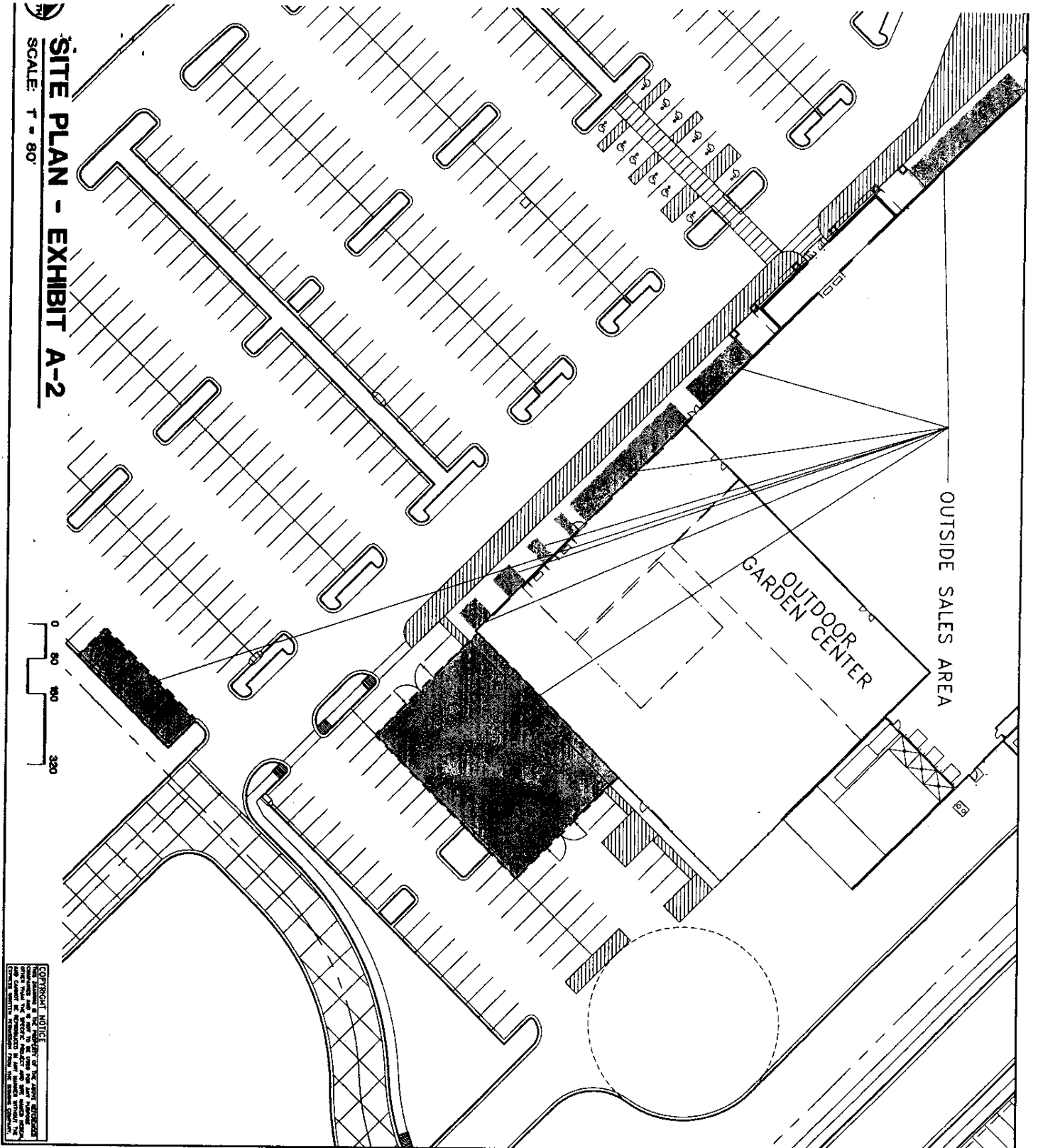
**RIVERTON-III, UTAH**

REC: 13400 SOUTH & BANGERTER HWY.



**SITE PLAN - EXHIBIT A-2**

SCALE: T = 80'



**COPYRIGHT NOTICE**  
 THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF THE ABOVE ENTITLED PARTY. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ABOVE ENTITLED PARTY.

**Galovay, Romano & Associates**  
 5250 Old Market Square #111  
 Ft. Lauderdale, FL 33309  
 Tel: (305) 772-8844  
 Fax: (305) 772-8844  
 www.galovayromano.com

**LOCATION MAP**

**PROJECT INFORMATION**

**SITE AREA**

HOME DEPOT PARCEL:	683,764 S.F. OR 15.586 ACRES
LOT 2:	138,208 S.F. OR 3.173 ACRES
LOT 3:	47,023 S.F. OR 1.088 ACRES
LOT 4:	65,285 S.F. OR 1.498 ACRES
LOT 5:	55,004 S.F. OR 1.268 ACRES
LOT 6:	55,004 S.F. OR 1.268 ACRES
LOT 7:	68,570 S.F. OR 1.574 ACRES
LOT 8:	32,889 S.F. OR 1.214 ACRES
LOT 9:	72,215 S.F. OR 1.659 ACRES
LOT 10:	47,023 S.F. OR 1.088 ACRES
LOT 11:	61,088 S.F. OR 1.403 ACRES
LOT 12:	70,804 S.F. OR 1.621 ACRES
LOT 13:	283,791 S.F. OR 6.497 ACRES
TOTAL SITE:	1,842,118 S.F. OR 42.137 ACRES
N/A. SITE COVERAGE RATIO:	.184

**BLINDING AREA**

THE HOME DEPOT:	102,213 S.F.
OUTDOOR GARDEN CENTER:	27,488 S.F.
TOTAL BLINDING AREA:	129,701 S.F.
AVAILABLE SALES AREA:	1,712,417 S.F.

**PARKING COURT SUMMARY**

HOME DEPOT:	411 SPACES
GARDEN CTR.:	0 SPACES
TOTAL HOME DEPOT PARKING REQUIRED:	411 SPACES
OVERALL PARKING PROVIDED:	N/A
OVERALL PARKING REQUIRED:	N/A

**PARKING PROVIDED:**

HOME DEPOT CUSTOMER:	412 SPACES
THE HOME DEPOT:	30 SPACES
RATIO PROVIDED TO TOTAL MARKS:	442 SPACES
HOME DEPOT FRONT FIELD:	3,347/1000 S.F.
HOME DEPOT REAR FIELD:	412 SPACES

**GENERAL CLASSIFICATION**

Parcel A:	N/A
Parcel B:	N/A
Parcel C:	N/A
Overall Land Provided:	N/A
Overall Land Required:	N/A
Reported:	C-4
N.B. Parcel:	C-4

**THE HOME DEPOT**

**The Home Depot Center**  
 370 Corporate Center North  
 Atlanta, Georgia 30328  
 Tel: (404) 571-3480  
 Fax: (404) 571-3480

**THE MANAGERS:** JAMES SWITZER  
**SITE DEV. COORD.:** JEFF KROGER, CA  
**PREPARED BY - CIVIL:** BO SCALE, SITE  
**DATE:** JUNE 9, 2006  
**ISSUED:** JUNE 9, 2006  
**SS-00665.2003-N**  
**RIVERTON-III,**  
**UTAH**  
 REC. 15400 SOUTH A BARNETT HWY.

**EXHIBIT "B"**  
**TO**  
**RESTRICTION AGREEMENT**  
**AND GRANT OF EASEMENTS**

---

(LEGAL DESCRIPTION OF SHOPPING CENTER)

The real property referenced in the foregoing instrument is located in Salt Lake County, Utah and is more particularly described as:

Lots 1 through 13, The Home Depot, A Commercial Subdivision, according to the official plat thereof, recorded November 10, 2005 as Document No. 9551334 in Book 2005 of plats at page 357, in the office of the Salt Lake County Recorder, State of Utah.

Part of  
27-32-300-022  
27-32-300-021

**EXHIBIT "B-1"**  
**TO**  
**RESTRICTION AGREEMENT**  
**AND GRANT OF EASEMENTS**

---

(LEGAL DESCRIPTION OF DEVELOPER PARCEL)

The real property referenced in the foregoing instrument is located in Salt Lake County, Utah and is more particularly described as:

Lots 2 through 13, The Home Depot, A Commercial Subdivision, according to the official plat thereof, recorded November 10, 2005 as Document No. 9551334 in Book 2005 of plats at page 357, in the office of the Salt Lake County Recorder, State of Utah.

Part of  
27-32-300-022  
27-32-300-021

**EXHIBIT "B-2"**  
**TO**  
**RESTRICTION AGREEMENT**  
**AND GRANT OF EASEMENTS**

---

(LEGAL DESCRIPTION OF HOME DEPOT PARCEL)

The real property referenced in the foregoing instrument is located in Salt Lake County, Utah and is more particularly described as:

Lot 1, The Home Depot, A Commercial Subdivision, according to the official plat thereof, recorded November 10, 2005 as Document No. 9551334 in Book 2005 of plats at page 357, in the office of the Salt Lake County Recorder, State of Utah.

Part of  
27-32-300-022  
27-32-300-021

**EXHIBIT "B-3"**  
**TO**  
**RESTRICTION AGREEMENT**  
**AND GRANT OF EASEMENTS**

---

(LEGAL DESCRIPTION OF WEST OUTPARCELS AND EAST OUTPARCELS)

**West Outparcels**

Lots 2 through 5, The Home Depot, A Commercial Subdivision, according to the official plat thereof, recorded November 10, 2005 as Document No. 9551334 in Book 2005 of plats at page 357, in the office of the Salt Lake County Recorder, State of Utah.

**East Outparcels**

Lots 6 through 13, The Home Depot, A Commercial Subdivision, according to the official plat thereof, recorded November 10, 2005 as Document No. 9551334 in Book 2005 of plats at page 357, in the office of the Salt Lake County Recorder, State of Utah.

Part of  
27-32-300-072  
27-32-300-071

**EXHIBIT "C"**  
**TO**  
**RESTRICTION AGREEMENT**  
**AND GRANT OF EASEMENTS**

---

(SIGN EXHIBITS)

[SEE ATTACHED]

Sign	Dimensions	Area
A	10'-0" x 10'-0"	100 SQ. FT. (BA)
B	8'-0" x 8'-0"	64 SQ. FT. (BA)
C	7'-0" x 7'-0"	49 SQ. FT. (BA)
D	4'-0" x 8'-0"	32 SQ. FT. (BA)
E	8'-0" x 8'-0"	64 SQ. FT. (BA)
F	8'-0" x 8'-0"	64 SQ. FT. (BA)
G	8'-0" x 8'-0"	64 SQ. FT. (BA)
H	8'-0" x 8'-0"	64 SQ. FT. (BA)
I	8'-0" x 8'-0"	64 SQ. FT. (BA)
J	8'-0" x 8'-0"	64 SQ. FT. (BA)
K	8'-0" x 8'-0"	64 SQ. FT. (BA)
L	8'-0" x 8'-0"	64 SQ. FT. (BA)
M	8'-0" x 8'-0"	64 SQ. FT. (BA)
N	8'-0" x 8'-0"	64 SQ. FT. (BA)
O	8'-0" x 8'-0"	64 SQ. FT. (BA)
P	8'-0" x 8'-0"	64 SQ. FT. (BA)
Q	8'-0" x 8'-0"	64 SQ. FT. (BA)
R	8'-0" x 8'-0"	64 SQ. FT. (BA)
S	8'-0" x 8'-0"	64 SQ. FT. (BA)
T	8'-0" x 8'-0"	64 SQ. FT. (BA)
U	8'-0" x 8'-0"	64 SQ. FT. (BA)
V	8'-0" x 8'-0"	64 SQ. FT. (BA)
W	8'-0" x 8'-0"	64 SQ. FT. (BA)
X	8'-0" x 8'-0"	64 SQ. FT. (BA)
Y	8'-0" x 8'-0"	64 SQ. FT. (BA)
Z	8'-0" x 8'-0"	64 SQ. FT. (BA)

**NARRATIVE**

1. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

2. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

3. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

4. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

5. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

6. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

7. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

8. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

9. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

10. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

11. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

12. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

13. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

14. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

15. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

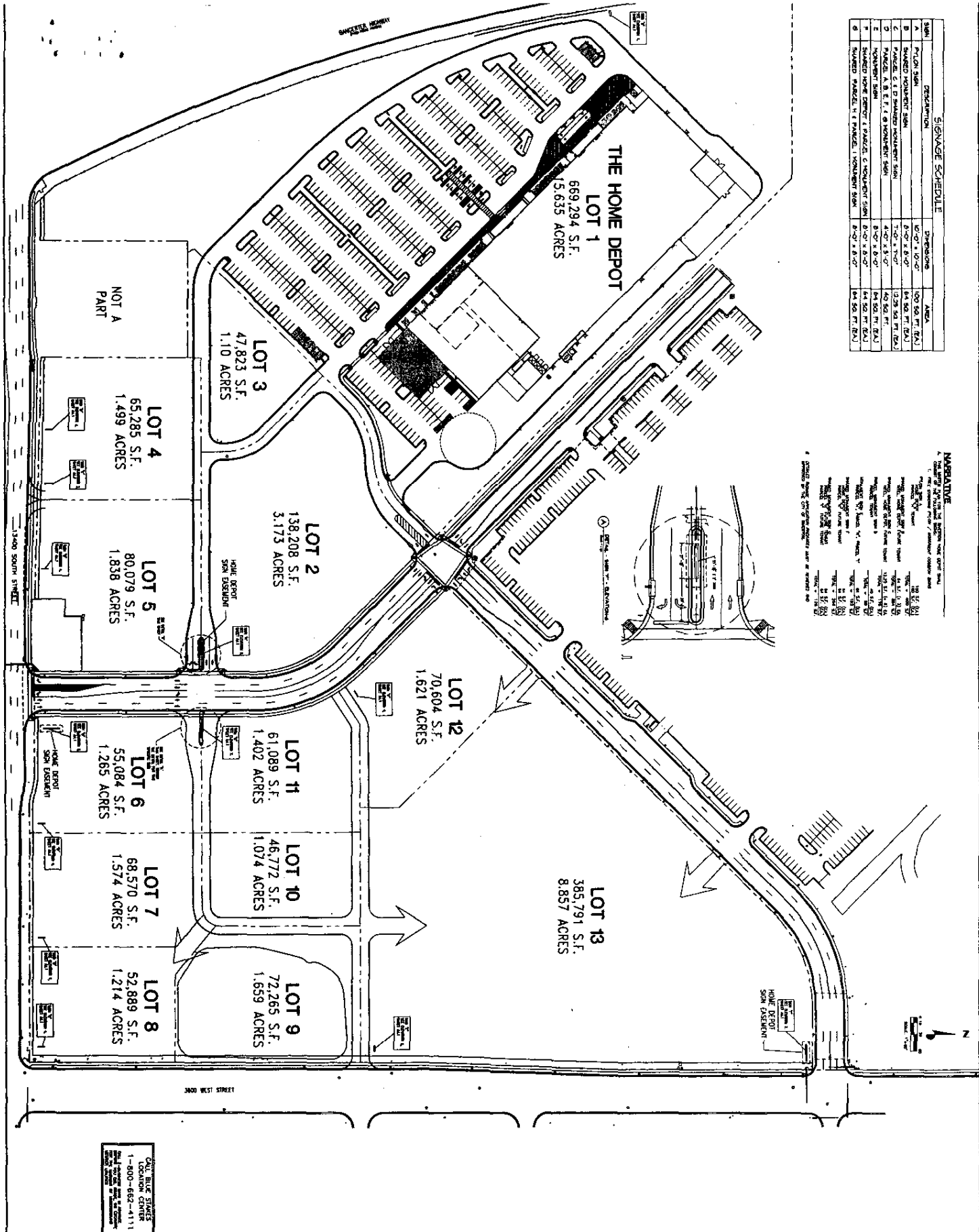
16. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

17. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

18. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

19. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.

20. THE SIGNAGE PLAN FOR THE HOME DEPOT STORE IS AS SHOWN ON THE ATTACHED MAP.



CALL BLUE STAVES  
 1-800-682-4111  
 1-800-682-4111

1 of 2  
 EXHIBIT C  
 SIGN PLAN

**MASTER SIGNAGE PLAN**  
**THE HOME DEPOT**  
 13400 SOUTH STREET AND BANGERTER HIGHWAY  
 RIVERTON CITY, SALT LAKE COUNTY, UTAH

THE HOME DEPOT  
 West Coast Support Center  
 222 Corporate Drive North  
 Riverton, UT 84065  
 Tel: (801) 374-3000  
 Fax: (801) 374-3000

Callaway, Romano & Associates  
 Design Engineering Planning  
 6550 91st Parkway  
 Draper, UT 84020  
 Tel: (801) 720-8884  
 Fax: (801) 720-8836

Callaway, Romano & Associates  
 Design Engineering Planning  
 6550 91st Parkway  
 Draper, UT 84020  
 Tel: (801) 720-8884  
 Fax: (801) 720-8836

**NARRATIVE**

1. SIGN "A" (PYLON SIGN) ELEVATION (BANGERTER HWY PYLON SIGN)

2. SIGN "B" (SHARED MONUMENT SIGN) ELEVATION (13400 S. STREET MONUMENT SIGN)

3. SIGN "C" (SHARED MONUMENT SIGN) ELEVATION

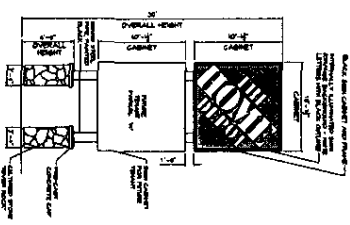
4. SIGN "D" (PARCEL MONUMENT SIGN) ELEVATION

5. SIGN "E" (MONUMENT SIGN) ELEVATION

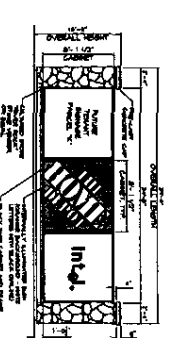
6. SIGN "F" (SHARED MONUMENT SIGN) ELEVATION (3600 W. STREET MONUMENT SIGN)

7. SIGN "G" (SHARED MONUMENT SIGN) ELEVATION

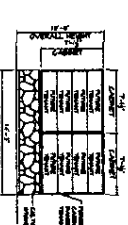
8. SIGN "H" (GROUND SIGN) ELEVATION (MARKET CENTER MONUMENT SIGN)



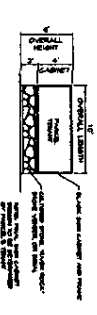
1 SIGN "A" (PYLON SIGN) ELEVATION  
SCALE: 3/8" = 1'-0"



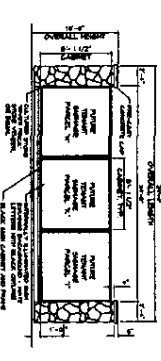
2 SIGN "B" (SHARED MONUMENT SIGN) ELEVATION  
SCALE: 3/8" = 1'-0"  
(13400 S. STREET MONUMENT SIGN)



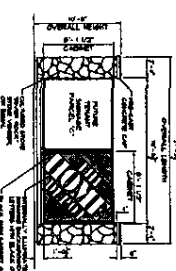
3 SIGN "C" (SHARED MONUMENT SIGN) ELEVATION  
SCALE: 3/8" = 1'-0"



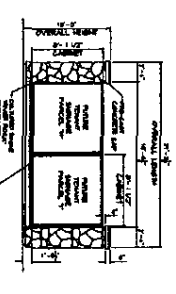
4 SIGN "D" (PARCEL MONUMENT SIGN) ELEVATION  
SCALE: 3/8" = 1'-0"



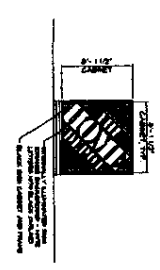
5 SIGN "E" (MONUMENT SIGN) ELEVATION  
SCALE: 3/8" = 1'-0"



6 SIGN "F" (SHARED MONUMENT SIGN) ELEVATION  
SCALE: 3/8" = 1'-0"  
(3600 W. STREET MONUMENT SIGN)



7 SIGN "G" (SHARED MONUMENT SIGN) ELEVATION  
SCALE: 3/8" = 1'-0"



8 SIGN "H" (GROUND SIGN) ELEVATION  
SCALE: 3/8" = 1'-0"  
(MARKET CENTER MONUMENT SIGN)

	<p>MASTER SIGNAGE PLAN</p> <p><b>THE HOME DEPOT</b></p> <p>13400 SOUTH STREET AND BANGERTER HIGHWAY RIVERTON CITY, SALT LAKE COUNTY, UTAH</p>	<p>DATE: 08/14/12</p> <p>BY: [Signature]</p> <p>APP: [Signature]</p>	<p><b>THE HOME DEPOT</b></p> <p>13400 South Street Riverton, UT 84065 Tel: (801) 734-3400</p>	<p>Blank space</p>	<p><b>Cutaway, Romera &amp; Associates</b></p> <p>Design Engineering Planning</p> <p>1300 W. 21st Avenue Cottonwood Woods, Colorado 80111 Tel: (303) 772-8800 Fax: (303) 772-8854</p>
--	---	--	---	--------------------	---



**EXHIBIT "D"**  
**TO**  
**RESTRICTION AGREEMENT**  
**AND GRANT OF EASEMENTS**

---

(APPROVED GRADING, DRAINAGE, AND UTILITY PLANS)

[SEE ATTACHED]

## SHEET INDEX

DESCRIPTION	SHEET
COVER SHEET AND NOTES	CO.0
ALTA/ACSM LAND TITLE SURVEY	1of2
ALTA/ACSM LAND TITLE SURVEY	2of2
ALTA/ACSM LAND TITLE SURVEY (EAST)	1of2
ALTA/ACSM LAND TITLE SURVEY (EAST)	2of2
DEMOLITION PLAN	CD1.1
SITE PLAN	CS1.1
HORIZONTAL CONTROL PLAN	CS1.2
SITE DETAILS AND GENERAL CONSTRUCTION NOTES	CS5.1
SITE DETAILS AND GENERAL CONSTRUCTION NOTES	CS5.2
SITE GRADING PLAN	CG1.1
STORMWATER POLLUTION PREVENTION PLANS: EROSION CONTROL NOTES AND DETAILS	CE0.0
STORMWATER POLLUTION PREVENTION PLANS: EROSION CONTROL PLAN	CE1.1
STORMWATER POLLUTION PREVENTION PLANS: DRAINAGE PLAN	CE1.2
△ STORMWATER POLLUTION PREVENTION PLANS: DRAINAGE FACILITIES	CE1.3
SITE UTILITY PLAN	CU1.1
OFF-SITE UTILITY PLAN	CU1.2
PHOTOMETRIC LIGHTING PLAN	CU1.3
△ DRAINAGE FACILITIES PLAN	CDF1.1
STORM SEWER PLAN AND PROFILE	CST1.1
STORM SEWER PLAN AND PROFILE	CST1.2
STORM SEWER PLAN AND PROFILE	CST1.3
STORM SEWER PLAN AND PROFILE	CST1.4
△ STORM SEWER PLAN AND PROFILE	CST1.5
STORM SEWER DETAILS AND NOTES	CST5.1
WATER LINE PLAN AND PROFILE	CW1.1
WATER LINE PLAN AND PROFILE	CW1.2
WATER LINE PLAN AND PROFILE	CW1.3
WATER LINE PLAN AND PROFILE	CW1.4
IRRIGATION PLAN AND PROFILE	CW1.5
△ IRRIGATION PLAN AND PROFILE	CW1.6
WATER LINE DETAILS AND NOTES	CW5.1
SANITARY SEWER PLAN AND PROFILE	CSS1.1
SANITARY SEWER DETAILS AND NOTES	CSS5.1
STRIPING AND PAVEMENT PLAN	CP1.1
PRELIMINARY RETAINING WALL - PLAN & DETAILS	CRT1.1
MAIN ACCESS ROADWAY PLAN, PROFILE AND STRIPING PLAN	R1.1
LANDSCAPE PLANTING PLAN	L1.1
LANDSCAPE PLANTING PLAN	L1.2
LANDSCAPE IRRIGATION PLAN	L1.3
LANDSCAPE IRRIGATION PLAN	L1.4
△ LANDSCAPE IRRIGATION PLAN	L1.5
LANDSCAPE AND IRRIGATION DETAILS	L5.1
△ LANDSCAPE AND IRRIGATION DETAILS	L5.2

### EXHIBIT D

SCALE: NOT TO SCALE



**THE HOME DEPOT**  
 West Coast Support Center  
 370 Corporate Drive North  
 Tukwila, WA 98188  
 Tel: (206) 574-3578  
 Fax: (206) 574-3489

DATE	DESCRIPTION	ISSUE FOR BID
10/18/04		
	CHANGE BULLETIN 25	△
	REVISED PER ADDENDA C	△
	11/05/04	

DATE:	OCTOBER 11, 2004
PROJECT No:	HD281
DRAWN BY:	DJH
CHECKED BY:	BSM
GRA:	Hd281_CO.0-Covr

CONSTRUCTION PLAN

EPOT

GERTER HIGHWAY  
COUNTY, UTAH

## TABLE OF CONTENTS

	Page
1. PRELIMINARY .....	1
1.1 Parties.....	1
1.2 Purpose.....	1
1.3 Definitions.....	1
2. BUILDING AND COMMON AREA DEVELOPMENT.....	5
2.1 Building Location .....	5
2.2 Common Area.....	5
2.3 Type and Design of Building.....	5
2.4 Construction Requirements.....	6
2.5 Temporary License .....	7
2.6 Indemnity .....	8
2.7 Approval Procedures.....	8
3. EASEMENTS .....	8
3.1 Ingress and Egress.....	8
3.2 Parking.....	9
3.3 Utility Lines and Facilities.....	9
3.4 Signs.....	10
3.5 Dedication to Public Entities.....	10
3.6 No Merger.....	10
3.7 <i>Permanent Drive</i> .....	10
3.8 Storm Drainage and Detention Easements.....	11
3.9 Additional Easements .....	12
4. OPERATION OF COMMON AREA.....	12
4.1 Parking.....	12
4.2 Signs.....	13
4.3 Protection of Common Area .....	17
4.4 Changes to Common Area .....	17
5. RESTRICTIONS ON USE .....	18
5.1 Home Improvement Store Restrictions.....	18
5.2 Shopping Center Restrictions.....	18
6. MAINTENANCE STANDARDS .....	20
6.1 Maintenance Obligations .....	20
6.2 Duty to Maintain.....	21

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
6.3	Indemnity Against Liens.....	21
6.4	Permanent Drives Maintenance .....	22
7.	LIGHTING.....	22
8.	PAYMENT OF TAXES .....	22
8.1	Taxes and Assessments.....	22
8.2	Failure to Pay Taxes and Assessments.....	22
9.	SUCCESSORS AND ASSIGNS; LIMITATION ON RELEASE .....	23
10.	DEFAULT .....	23
10.1	Default.....	23
10.2	Self-Help .....	23
10.3	Remedies Cumulative .....	24
11.	LIEN FOR EXPENSES OR TAXES.....	24
11.1	Effectiveness of Lien .....	24
11.2	Priority of Lien.....	24
12.	LIABILITY INSURANCE; INDEMNIFICATION .....	24
12.1	Liability Insurance .....	24
12.2	Insurance Coverage During Construction.....	26
12.3	Indemnification by Owners.....	27
13.	PROPERTY DAMAGE AND EMINENT DOMAIN.....	27
13.1	Damage to Buildings.....	27
13.2	Casualty Damage to Common Area.....	28
13.3	Property Insurance .....	28
13.4	Waiver of Subrogation .....	28
13.5	Eminent Domain .....	28
14.	GENERAL PROVISIONS .....	29
14.1	Covenants Run With the Land .....	29
14.2	No Public Dedication .....	29
14.3	Duration .....	29
14.4	Injunctive Relief.....	29
14.5	Modification and Termination .....	30
14.6	Method of Approval.....	30
14.7	Multiple Owners .....	30
14.8	Estoppel Certificates .....	30

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
14.9 Breach Shall Not Permit Termination.....	31
14.10 Notices .....	31
14.11 Waiver.....	32
14.12 Attorneys' Fees .....	32
14.13 Severability .....	32
14.14 Not a Partnership.....	32
14.15 Captions and Headings.....	32
14.16 Interpretation.....	32
14.17 Entire Agreement.....	32
14.18 Joint and Several Obligations .....	32
14.19 Recordation .....	33
14.20 Limitation on Liability .....	33
14.21 Lienholder Protection.....	33
14.22 Variances.....	33
14.23 Time of Essence.....	33
14.24 Subdivision .....	33