

After recording return to:

Troutman Pepper
11682 El Camino Real, Suite 400
San Diego, CA 92130
Attention: Randal J. Lejuwaan
NCS 1110527

RESTRICTION AND EASEMENT AGREEMENT

THIS RESTRICTION AND EASEMENT AGREEMENT (this "**Agreement**") is made and entered into as of January 24, 2023 (the "**Effective Date**"), by and between **WESTLAKE PARTNERS PHASE F, LLC**, a Utah limited liability company and **WESTLAKE PARTNERS PHASE D, LLC**, a Utah limited liability company (collectively, "**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 and certain Outparcels, and Home Depot is the Owner of the Home Depot Parcel. The Parcels are located near the southeast corner of the intersection Exchange Drive and Crossroads Blvd, in the City of Saratoga Springs, County of Utah, 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 and Easement Agreement.

(b) "**Approved Plans**": The civil plans and specifications for the Shopping Center (including, without limitation, plans and specifications for grading, drainage and utilities) which require the approval of the Consenting Owners from time to time in accordance with the terms of this Agreement. The Approved Plans do not include any plans with respect to any Buildings.

(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 the Developer Parcel designated as "Building Area" on the Site Plan and any areas on the Home Depot Parcel on which a Building is located; it being

specifically acknowledged that multiple Buildings may be located on the Home Depot Parcel, including, without limitation, within areas that were formerly Common Area.

(e) **"Center Sign(s)":** The shared signs designated on the Site Plan as "Center Sign".

(f) **"Claims":** Any and all actions, suits, claims, demands, liabilities, damages, losses, liens, penalties, interest, costs and expenses (including, without limitation reasonable attorney's fees and litigation expenses, including, without limitation, experts' and consultants' fees (i) regardless of whether any lawsuit is filed, and (ii) at trial or any applicable appellate level).

(g) **"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 in accordance with and subject to the terms of this Agreement. For purposes of clarification, this definition of Common Area does not require those portions of the Building Area which are not from time to time actually covered by a Building, Garden Center or being used as Outside Sales Area to be maintained as parking area (such area may remain in its current state until constructed).

(h) **"Consenting Owners":** The Owner of the Home Depot Parcel and Developer (so long as Developer or an Affiliate of Developer is an Owner of at least one (1) of the Parcels). In the event Developer or an Affiliate of Developer does not own any portion of the Developer Parcel, the Consenting Owners shall be the Owner of the Home Depot Parcel and the Owner who owns at least fifty-one percent (51%) of the Land Area of all of the Developer Parcel. If Developer or an Affiliate of Developer is not the Owner of any portion of the Developer Parcel and no other Owner owns at least fifty-one percent (51%) of the Land Area of all of the Developer Parcel, the Owner of the Home Depot Parcel will be the only Consenting Owner unless an Outparcel Representative has been appointed as provided below, in which case the Consenting Owners will be the Owner of the Home Depot Parcel and the Outparcel Representative. In the event the Owner of the Home Depot Parcel sells its Parcel and becomes the Prime Lessee thereof, such Prime Lessee shall be deemed appointed as the entity to cast the vote or give the consent for the Home Depot Parcel on behalf of the Consenting Owner so long as it is the Prime Lessee of said Parcel. Additionally, in the event the Owner of the Home Depot Parcel sells any portion, but not all, of the Home Depot Parcel, then the Consenting Owner of the Home Depot Parcel shall be that Owner who owns the largest portion of Land Area of the Home Depot Parcel, regardless of any agreement to the contrary.

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

(j) **"Developer":** Westlake Partners Phase F, LLC, a Utah limited liability company and Westlake Partners Phase F, LLC, a Utah limited liability company, and each of their successors and assigns.

(k) **"Developer Parcel":** The Parcel legally described on **Exhibit B-2** and identified on the Site Plan as the "Developer Parcel." The Developer Parcel includes all Outparcels

(l) **"Easements":** Any or all easements fixed and established upon the Shopping Center pursuant to this Agreement.

(m) **"Floor Area"**: The total number of square feet of floor space on each floor in a Building and including any outdoor seating area used exclusively by an Owner or Occupant for its Permittees; provided, however, any basement, subterranean, balcony or mezzanine space shall only be counted if occupied or used for retail purposes. 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.

(n) **"Full Service Restaurant"**: Any operation or business that prepares and/or serves food for either on- or off-site consumption and is a full-service, waitress served, sit-down restaurant (i.e. Olive Garden, Chilies, etc.).

(o) **"Garden Center"**: An area within the Home Depot Parcel, portions of which may be under roof or canopy, fenced or walled and/or "open air".

(p) **"Governmental Authority" or "Governmental Authorities"**: Any or all federal, regional, state, county, city, township or local governmental or quasi-governmental authority, entity or body (or any department, agency, political subdivision thereof) exercising jurisdiction over the Shopping Center or any portion thereof.

(q) **"Governmental Regulations"**: Any or all applicable laws, statutes, ordinances, codes, standards, rules, regulations, orders and applicable judicial decisions, rulings or decrees, as presently existing or as may be hereafter enacted, promulgated or enforced, of any Governmental Authority including, without limitation, variances, special and/or conditional use permits, or conditions of approval or authorization of any Governmental Authority, any applicable annexation agreements, planned unit development and other similar governmental controls.

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

(s) **"Home Depot Parcel"**: The Parcel legally described on **Exhibit B-1** and identified on the Site Plan as the "Home Depot Parcel".

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

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

(v) **"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.

(w) **"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.

(x) **"Outparcel" or "Outparcels"**: Individually or collectively, all of the real property comprising the Developer Parcel excluding the following three (3) parcels owned by third parties: (i) the existing parcel along Crossroads Blvd., as shown on the Site Plan as Pad "1" (which is Lot 401 on Saratoga Springs Commercial Plat D filed for record December 8, 2020, as Map 17426, Instrument No. 195354:2020 ("**Plat D**")); (ii) the existing parcel along Crossroads Blvd., as shown on the Site Plan as Pad "2" (which is Lot 402 on Plat D) ("**Lot 402**") and (iii) the existing parcel along Lake Drive, which is Lot 602 on Saratoga Springs Commercial Plat F filed for record January 17, 2023, as Map 18619, Instrument No. 2555:2023, CITY OF SARATOGA SPRINGS, UTAH (each a "**Sold Parcel**" and collectively, the "**Sold Parcels**"), as the same may be further subdivided and platted. The term "Outparcel" shall not include any portion of the

Home Depot Parcel. If an owner of a Sold Parcel provides its written consent to this Agreement (a **"Sold Parcel Consent"**), (A) such Sold Parcel shall be subject to the terms of this Agreement (with no future option to opt out) and considered an Outparcel (as such term is used in this Agreement) and (B) the record owner(s) of such Outparcel(s) that provide the Sold Parcel Consent shall be considered Owner(s) (as such term is used in this Agreement). A Sold Parcel Consent shall only be effective if either (y) an owner of a Sold Parcel provides its written consent for such Sold Parcel to be a part of this Agreement and such written consent is attached to this Agreement when this Agreement is recorded in the official records of the County and State of Utah or (z) an owner of a Sold Parcel records a written consent for such Sold Parcel to be a part of this Agreement against such Sold Parcel and the Parcels after the initial recordation of this Agreement is recorded in the official records of the County and State of Utah and such written consent is acknowledged in writing by the Consenting Owners. If any owner of a Sold Parcels does not provide a Sold Parcel Consent, such owners and such parcels that do not provide such Sold Parcel Consent shall not be subject to the terms of this Agreement nor benefit to any of the terms or easements as set forth in this Agreement.

(y) **"Outparcel Representative"**: The Owner of any portion of the Developer Parcel selected by the majority vote of the Developer Parcel to represent the interest of the Owners of the Developer Parcel when Developer is no longer an Owner of any portion of the Developer Parcel and there is no other Owner that owns at least 51% of the Land Area of the Developer Parcel. Once an Outparcel Representative is selected, written notice of such selection shall be sent to the Consenting Owner(s). If no such written notice is provided to the Consenting Owners, there shall be deemed to be no Outparcel Representative until such written notice is provided.

(z) **"Outside Sales Area"**: An area on the Home Depot Parcel generally unprotected from the elements which may be used for sales, storage and/or special operational programs purposes.

(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 record holder of fee simple title to a Parcel subject to a Prime Lease shall be jointly and severally liable with the Prime Lessee with respect to all obligations and liabilities of the Owner of the Parcel under this Agreement (including, without limitation, any Claims or any default hereunder with regard to the construction, ownership, use, maintenance or operation of such Parcel). For purposes of this Agreement but without limiting or modifying the foregoing, Developer is the initial Owner of the Developer Parcel and Home Depot is the initial Owner of the Home Depot Parcel.

(bb) **"Parcel"** or **"Parcels"**: Individually or collectively, the Home Depot Parcel, the Developer Parcel and the Outparcels, as each is shown on the Site Plan and more particularly described in Exhibit B. In the event any Parcel is subdivided after the Effective Date, each such subdivided portion of the former larger Parcel shall be deemed to be Parcels.

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

(gg) **"Quick Serve/Fast Food Restaurant"**: Any operation or business that prepares and/or serves food for either on- or off-site consumption and does not provide a full-service/waitress served experience (i.e. McDonalds, Wendy's, etc.). **"Restrictions"**: Any or all covenants, restrictions, liens and encumbrances fixed and established upon the Shopping Center pursuant to this Agreement.

(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.

(ii) **"Restrictions"**: Any or all 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 loading, staging and/or storage, 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 on which such Service Areas are located and are not part of Common Area.

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

(ll) **"Site Plan"**: The site plan of the Shopping Center shown on **Exhibit A** attached hereto.

(mm) **"Utility Lines"**: Those facilities and systems for the transmission or other provision of utility services or for battery storage and/or other energy initiatives, including, but not limited to, water drainage, detention or retention systems or structures, water mains, sewers, lift stations, water sprinkler system lines, irrigation lines, electrical, data transmission and telecommunication lines, conduits or systems, gas mains, and other public or private utilities either (i) providing service to more than one (1) Parcel in common, or (ii) providing service to a Parcel, but located all or in part on another Parcel, and all lines, conduits, connections, appurtenances, structures, equipment and facilities related to the installation or operation of a Utility Line.

2. BUILDING AND COMMON AREA DEVELOPMENT

2.1. **Building Location**: All Buildings on the Developer Parcel and the Outparcels shall be placed or constructed upon such Parcels only in the Building Areas. Buildings may be located (or relocated) anywhere within the Building Area on such Parcels provided the total Floor Area of all Buildings constructed within a Building Area does not exceed the maximum square footage of Floor Area permitted on such Parcel by the application of the minimum parking requirements set forth in **Section 4.1** below. All unimproved portions of a Parcel shall be kept clear, and grubbed, weed and reasonably dust and nuisance free, safe and as otherwise required by Governmental Regulations and kept reasonably 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**: Subject to the provisions of Section 1.3(d) with respect to the Home Depot Parcel, the Common Area is hereby reserved for the sole and exclusive use of all Owners and Occupants of the Shopping Center and their Permittees. 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 Wasatch Front 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 and/or installed in conformity with the Approved Plans. Prior to the construction, expansion, reconstruction, replacement or modification of any Building, sign or other Improvements within the portion of the Home Depot Zone of Control located to the south of Lake Drive, the Owner of such Parcel shall deliver to the Owner of the Home Depot Parcel for its review and approval (i) a complete set of plans and specifications, including, without limitation, a schematic site plan, building elevation drawings, and civil engineering plans and specifications showing all proposed Improvements on the Parcel including, without limitation: (A) ingress and egress, curb cuts and traffic flow and signage to and within the Parcel; (B) a utility plan showing the location of all intended Utility Lines, facilities and Improvements to the Parcel and any anticipated connection of the Utility Lines on such Parcel with another Parcel; (C) grading and drainage plans; (D) landscaping drawings; and (E) lighting and signage plans, which plans, drawings and specifications shall show, among other things, exterior architectural design and decor, elevations, aesthetic treatments and other like pertinent data, and shall outline specifications for all such facilities and Improvements to the Parcel. The Consenting Owners' approval rights contained herein include the right to approve the location of improvements on a Parcel, other than Buildings which, in all events, shall be contained within the applicable Building Area. The Improvements within the Shopping Center shall not be modified, altered or otherwise changed from the Approved Plans unless approved by the Consenting Owners as provided herein (provided, however, a modification to a Utility Line that does not impact any other Parcel shall not require additional approval but the Party modifying such Utility Line shall first provide the Consenting Owners with plans which confirm that the modification of the Utility Line does not impact any other Parcel). The Site Plan is attached to this Agreement for the limited purposes of showing the location of the Home Depot Parcel, the Developer Parcel, the Building Areas, the location of the Center Signs, the location of the Permanent Drive, the location of the Detention Pond, the Home Depot Zone of Control and the Permitted Office Building Location (collectively, the "REA Site Plan Items"). The Site Plan may be modified or changed to modify or change any of the REA Site Plan Items if agreed to in writing by the Consenting Owners. Other than the REA Site Plan Items, the Site Plan is for illustration purposes only and, subject to the terms and provisions of this Agreement, the Home Depot Parcel and the Parcels outside of the Home Depot Zone of Control may be developed differently than as shown on the Site Plan without having to amend this Agreement or the Site Plan. To clarify the foregoing, subject to the terms and provisions of this Agreement and other than the REA Site Plan Items, the parking areas and the drive-aisles on the Home Depot Parcel and the Parcels outside of the Home Depot Zone of Control may be developed differently than as shown on the Site Plan without having to amend the this Agreement or the Site Plan.

(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) Except as provided in Section 5.2(a)(ii)(C) of this Agreement, (i) no Building on any portion of the Developer Parcel depicted as "Inline Buildings" on the Site Plan shall exceed one (1) story and thirty-feet (36') in height from the Building's approved finished floor elevation, inclusive of all architectural embellishments, mechanical fixtures, signage and rooftop equipment, and screening for same, and (ii) no Building on any portion of the remainder of the Developer Parcel shall exceed one (1) story and twenty-six feet (26') in height from the Building's approved finished floor elevation, exclusive of all architectural embellishments, mechanical fixtures, signage and rooftop equipment, and screening for same, which shall not exceed twenty-eight feet (28') in height from the Building's approved finished floor elevation; *provided, however*, (A) a fitness center located within the permitted Building Area identified as "Permitted Office Building Location" on the Site Plan (in lieu of such Office Building(s) (as such term is defined below), shall be permitted to be constructed up to thirty feet (30') in height from the Building's approved finished floor elevation with an additional single pop-up architectural feature (above the entrance, and no more than twenty percent (20%) of the length of the applicable side of such Building), not to exceed four feet (4') in height and (B) if Lot 402 (as defined in Section 1.3(X)) provides a Sold Parcel Consent (as defined in Section 1.3(X)), no Building on Lot 402 shall exceed one (1) story and twenty-eight feet (28') in height from the Building's approved finished floor elevation, exclusive of all architectural embellishments, mechanical fixtures, signage and rooftop equipment, and screening for same, which shall not exceed thirty feet (30') in height from the Building's approved finished floor elevation. The height of any Building within the Developer Parcel shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance or projection locate on the roof of such Building.

(e) The Building to be constructed on the Home Depot Parcel may be built as Category II-B (non-rated), as that category is defined pursuant to the International Building Code 2004 Edition (IBC). Any Building on any other Parcel within the Shopping Center shall be constructed in such a manner to not cause the Building on the Home Depot Parcel to (i) be able to be constructed as broad as Category II-B pursuant to the IBC 2004 edition (the "II-B Designation") or (ii) change the II-B Designation for the Building on the Home Depot Parcel if the Building is constructed on the Home Depot Parcel.

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

2.4. Construction Requirements:

(a) All work performed in the construction, repair, replacement, alteration or expansion of any Improvements shall be performed as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any Building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center, including, without limitation, access to its Building. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly clean, repair and restore or cause to be promptly cleaned, repaired and restored to its prior condition all Buildings, signs and Common Area improvements damaged or destroyed in the performance of such work. From and after the initial construction of Improvements on a Parcel, no Owner or Occupant shall make material structural changes to the improved Common Area on its Parcel within the Home Depot Zone of Control or any change to the Common Area that would materially and adversely affect the Permanent Access Drive during the months of March, April, May and/or June, without first obtaining the prior written consent of the Owner of the Home Depot Parcel, which consent may be granted or withheld in such Owner's sole and absolute discretion.

(b) The Contracting Party shall not permit any mechanics', materialmen's or other professional services liens 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 (i) be located solely on the constructing Owner's Parcel, or (ii) be limited to specific areas ("**Staging Area**") of the Shopping Center outside of the Home Depot Parcel approved in writing by the affected Owner(s). Each Staging Area on any Parcel shall be located in such a way that it will not materially interfere with the use of the Common Area on any other Parcel. In no event shall any Owner establish a Staging Area within one hundred feet (100') of the Home Depot Parcel. 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. 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.

(d) Without limiting or modifying the other provisions of this **Section 2.4**, 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. In addition, the Owner of an Outparcel shall keep or cause to be kept the construction site and surrounding areas on its Outparcel clean and free of construction materials, trash and debris, and shall take commercially reasonable precautions to protect against personal injury and property damage to the other Owners and Occupants of the Shopping Center. With regard to excavation, and without limiting any other provision of this Agreement, no excavation shall be made on, and no sand, gravel, soil or other material shall be removed from, an Outparcel, except in connection with the construction or alteration of a Building or other Improvements approved in the manner set forth in this Agreement, and upon completion of any such operations, exposed openings shall be backfilled. Further, the Owner of the Outparcel shall undertake and implement or cause to be undertaken and implemented all dust control measures which may be required by Governmental Regulations in order to prevent Claims from or arising in connection with blowing dust. In the event any Building in the Shopping Center requires cleaning (such a pressure washing) as a result of blowing dust during any construction on an Outparcel, the Owner of such Outparcel shall reimburse the affected Owner(s) for such costs within thirty (30) days after receipt of an invoice therefor.

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 promptly, 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 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.

(b) No Consenting Owner shall be liable in damages or otherwise for any reason, including any mistake in judgment 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, 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, specifications and/or other materials 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, specifications and/or materials 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 and/or Outside Sales Areas (to the extent then being used as Outside Sales Area(s)).

3.2. Parking: The Owners of the Outparcels hereby grant and convey, each to the other, for the benefit of the Outparcels, and for the use of said Owners and its Permittees, a nonexclusive easement for vehicular parking upon, over and across the parking areas within the Common Area located on the Outparcels. Notwithstanding the preceding sentence, in no event shall an Owner or Occupant of the Outparcels, nor any customer, employee, guest, licensee or invitee of any Owner or Occupant of such Outparcel, have the right to park vehicles on any the Home Depot Parcel.

3.3. Utility Lines and Facilities:

(a) Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a nonexclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, removal and replacement of Utility Lines, subject to the reasonable written approval of the granting Owner as to the location of such Utility Lines. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements, except that fire hydrants, ground

mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or improvements located in the Shopping Center) or which have been approved by the Consenting Owners shall be permitted. The easement area shall be no wider than (a) the width required by the applicable private or public utility, or (b) five feet (5') on each side of the centerline if the easement is granted to a private party. The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use, and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of the easement facilities.

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

(c) At any time and from time to time an Owner shall have the right to install, repair, maintain and/or relocate on its Parcel any Utility Line installed (or to be installed) pursuant to the foregoing grant of easement which is then located (or to be located) on the Parcel of such Owner, provided that (i) in the case of a connection, installation or relocation, such connection, installation or relocation shall be performed only after sixty (60) days' notice in writing of the Owner's intention to undertake such work 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 installation, repair, maintenance and/or relocation shall not unreasonably interfere with or materially 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 installation, 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 installation, repair, maintenance and/or relocation shall not unreasonably interfere with the business operation of any of the Owners or Occupants of the Shopping Center, and (viii) if an electrical, data transmission or telecommunications line is being relocated, the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects, without first obtaining the prior written consent of the Owner of the Home Depot Parcel, which consent may be granted or withheld in such Owner's sole and absolute discretion. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(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 the Owner of Developer Parcels and the Outparcels, as grantor, hereby grants to the Owner of the Home Depot Parcel, the Developer Parcels and the Outparcels, as grantees, for the benefit of each such Parcel(s), a non-exclusive easement under, through and across the Common Area of the grantor's Parcel for the installation, operation, maintenance, repair and replacement of sign panels on the Center Signs on the grantor's Parcel referred to in **Section 4.3** of this Agreement and any 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 any Center Sign located in 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 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 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 Drive" including, without limitation, the curb cuts on such accessways, shall not be altered or modified in a manner.

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 incidental surface storm water drainage and/or runoff from the grantee's Parcel to the extent not handled by such Parcel's own storm water collection system 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 for such Parcel 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.

(b) Developer, as the Owner of the Developer Parcel and the Outparcels 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 and impound storm water within the storm water detention facility to be located on the portion of the Shopping Center as shown on the Site Plan as the "Detention Pond" (the "**Detention Pond**") and a perpetual, non-exclusive right and easement in, to, over, under and across the Developer Parcel and the Outparcels to construct, install, maintain, repair and replace storm drainage lines and systems from HD's Parcel onto and across that portion of the Outparcels as is necessary to connect to an otherwise use the Detention Pond (the Detention Pond and such other

storm drainage lines and systems are hereinafter collectively referred to as the "Detention System"). Notwithstanding any provision of this **Section 3.8(b)** to the contrary, and subject to the reimbursement provisions of Section 6.4 below, the Owner of the Developer Parcel shall retain sole responsibility for the operation, inspection, repair and maintenance of the Detention System, and for its operation in compliance with Governmental Regulations, and the Owner of the Home Depot Parcel shall not, by virtue of any easement or right conveyed by this **Section 3.8(b)**, be deemed to be either the owner or the operator of such Detention System.

(c) Developer, as the Owner of the Parcel in which the Detention Pond is located hereby grants to the other Owner of the Outparcels and portions of the Developer Parcel (collectively, the "Development Parcels") as an appurtenance to the Development Parcels a perpetual, non-exclusive right and easement to drain storm water run-off from the Development Parcels, within the Detention System, including the right to impound such storm water within the Detention Pond. The parties hereto acknowledge and agree that in no event shall any such expanded rights be granted or conveyed to the Owners of the Development Parcels unless the Owner of the Development Parcels undertake in an agreement acceptable to the Owner of the Home Depot Parcel that: (i) such drainage from the Development Parcel shall not cause any material damage to nor result in storm water run-off onto the Home Depot Parcel; (ii) the Owner of the Development Parcel shall make at such Owner's sole expense any and all improvements to the Detention System as are necessary or required in order to increase the capacity of the Detention System to adequately serve such benefited areas pursuant to plans and specifications that comply with the requirements of all Governmental Authorities and that are first approved by the Owner of the Home Depot Parcel; (iii) the Owner of the Development Parcel shall procure and operate in strict compliance with all permits, licenses and approvals as are required to make any such improvements to the Development Parcel and/or to the Detention System, and to so utilize the Detention System; (iv) the Owner of the Development Parcel shall cooperate with the Owner of the Home Depot Parcel as necessary for the Owner of the Home Depot Parcel to obtain any permit, license or approval required of it as a result of the development of the Development Parcel; (v) the Owner of the Development Parcel shall be responsible for any increased costs of maintenance and repair due to such development work (including the removal of any siltation associated therewith) and any costs of its respective modifications to the Detention System; (vi) the Owner of the Development Parcel shall indemnify the Owner of the Home Depot Parcel for any fine or penalty paid by the Owner of the Home Depot Parcel resulting from the failure by the Owner of the Development Parcel or any of its contractors, to operate in strict compliance with any permit, license or approval required under **Section 3.8(c)(iii)** above; and (vii) any work related to improving the Detention System in accordance with the foregoing requirements shall be performed in a manner that will minimize to the extent reasonably practicable any damage to or interference with the use and enjoyment of the Home Depot Parcel or of any business conducted thereon. The Owners of the each of the Development Parcels (is such Parcels are connected to the Detention System) shall promptly pay their prorata share of the cost of maintaining, repairing and operating the Detention System as set forth in Section 6.4.

4. OPERATION OF COMMON AREA

4.1. Parking:

(a) There shall be no charge for parking in the Common Area without the prior written consent of the Consenting Owners or unless otherwise required by law. In no event shall any parking structure or parking decks be constructed within the Shopping Center. The parking area on each Parcel shall contain sufficient 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 another Parcel (except by mutual agreement between Owners of adjacent/contiguous Outparcels and in light of the intensity of the parking needs of such Outparcels' occupants and the permitted uses thereon):

(i) three (3) parking spaces for each one thousand (1,000) square feet of Floor Area on the Home Depot Parcel;

(ii) five (5) parking spaces for each one thousand (1,000) square feet of Floor Area on the Developer Parcel and the Outparcels (to the extent subsections (iii), (iv), (v), (vi), or (vii) below do not apply);

(iii) if a business use located on "Pad A", "Pad B", or "Pad C", as shown on the Site Plan, contains a drive-up or drive-thru unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than ten (10) automobiles (exclusive of any drive-aisle) for each drive-up unit; provided however, no drive-up or drive-thru unit on any portion of the Outparcels shall permit vehicle stacking on any portion of the Permanent Access Drive;

(iv) ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area on the Outparcels shown on the Site Plan as Pad "A" and Pad "B" and the "Inline Buildings", as shown on the Site Plan for all Quick Serve/Fast Food Restaurant uses; and nine and eight-tenths (9.8) parking spaces for each one thousand (1,000) square feet of Floor Area on the Outparcel shown on the Site Plan as "Pad C" for all Quick Serve/Fast Food Restaurant uses located thereon;

(v) twelve and one-half (12.5) parking spaces for each one thousand (1,000) square feet of Floor Area for each Full Service Restaurant use on the Outparcels shown on the Site Plan as Pad "A", Pad "B", and Pad "C" "Inline Buildings", as shown on the Site Plan;

(vi) five (5) parking spaces for each one thousand (1,000) square feet of Floor Area for any Office Building; and

(vii) for the "Inline Buildings" as shown on the Site Plan, any retail uses (other than any restaurant uses) shall be parked at four (4) parking spaces for each one thousand (1,000) square feet of Floor Area.

(b) If an Owner or Occupant of the Developer Parcel or an Outparcel 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 subsection (iv) above. For purposes of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than ten percent (10%) 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 subsection (iv) 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. If a maximum number of parking spaces (given the proposed use(s) for an Outparcel) is required by Governmental Regulations, then notwithstanding anything contained herein to the contrary, the maximum 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 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. Employee Parking: Employees of any Owner or Occupant on the Outparcels may not parking on any portion of the Home Depot Parcel. Employees of the Home Depot Parcel may not park on any portion of the Outparcels.

4.3. Signs:

(a) No free-standing, permanent sign structures other than the Center Sign(s) may be erected or maintained in the Shopping Center by any Party. The Center Sign(s) shall display the designation of Home Depot (and/or such other Occupants of the Home Depot Parcel that Home Depot may permit from time to time) in the panel locations as set forth on Exhibit C attached hereto and incorporated herein. Each Person displaying a designation on a Center Sign shall supply and maintain its own sign fascia and can at its cost. The design of the Center Sign structures shall be subject to city approval and any sign not located on the Home Depot Parcel shall comply with the signage design criteria set forth on Exhibit C. A depiction of the design of the proposed monument sign structure, to be located on the Home Depot Parcel, is attached hereto as **Exhibit C-1**. The Owner of the Home Depot Parcel shall have the top designation on each Center Sign(s). Once constructed, no Center Sign may be constructed, taken down, altered or modified without the prior written approval of each of the Consenting Owners which consent shall not be reasonably withheld.

(b) 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 audible lights or appurtenances (reasonable reader boards on Buildings or monument signs, as are found in similarly situated first class shopping centers in the Wasatch Front market, shall be permitted, subject to city approval).

(c) Notwithstanding anything to the contrary contained herein, in addition to its easement and right to place and maintain sign panels on the Center Sign(s), the Owner of the Home Depot Parcel shall have the right to construct one (1) or more freestanding monument signs on the Home Depot Parcel for the use of the Owners and Occupants of the Home Depot Parcel provided that such freestanding monument sign(s) shall comply with the requirements of the applicable Governmental Authorities.

(d) No temporary advertising signs or banners may be placed on light standards or other Common Area improvements within the Shopping Center except for reasonable coming soon or grand opening banners or A-frame signs which shall be of a first class design and character, and may be utilized for periods of no more than 45-days.

(e) Each Owner placing a sign panel on a Center Sign shall be responsible for the prompt payment to Developer (or its designee) of such Owner's prorata share of the applicable maintenance and repair costs incurred in connection with the ownership, operation and maintenance of such Center Signs, which prorata share shall be (i) based on relative size of the respective sign panels compared to all panels on such Center Sign, and (ii) paid within thirty (30) days of receipt of a reasonably detailed invoice therefor.

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

4.5. Changes to Common Area:

(a) Except as expressly permitted by this Agreement, no other improvements shall be placed in the Common Area within the Home Depot Zone of Control or within the Permanent Access Drive without the prior written approval of the Consenting Owners except (i) Service Areas in accordance with the requirements of paragraph (b) below, (ii) charging stations for electric or hybrid vehicles provided their location has been reasonably approved in writing by the Consenting Owners, (iii) temporary booths, stands, displays, tents or other structures, vehicles or equipment used for sales in the parking area on the Home Depot Parcel.

(b) The sizes and arrangements of Common Area improvements within the Home Depot Zone of Control (but not including the Home Depot Parcel) may not be materially changed without the Owner of the Home Depot Parcel's prior written approval, which approval may be withheld in the Owner of the Home Depot Parcel's sole and absolute discretion. No change changes to the Permanent Drives shall be made without the approval of each Consenting Owner which may be given or withheld in its sole and absolute discretion. Nothing in this **Section 4.5** 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 the area marked on the Site Plan as "**Home Depot Zone of Control**", 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 (provided however that Buildings may be constructed or reconstructed within the applicable Building Areas), 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: No portion of the Shopping Center other than the Home Depot Parcel shall be used for a home improvement center or hardware store or for any business which sells, displays, leases, rents or distributes the following items or materials, individually or in any combination: lumber, hardware, tools, roofing materials, plumbing supplies, pool supplies, electrical supplies, paint, wallpaper and other wallcoverings, window treatments (including, without limitation, draperies, curtains and blinds), kitchens or bathrooms or components thereof (including, without limitation, tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware), doors, windows, hard and soft flooring (including, without limitation, tile, wood flooring, rugs and carpeting), siding, ceiling fans, lawn and gardening and garden nursery supplies, natural plants, equipment (including, without limitation, lawnmowers) and products, outdoor cooking equipment and accessories, patio furniture and patio accessories, Christmas trees (both live and artificial), holiday décor and accessories, home automation systems and smart home devices, indoor and outdoor lighting systems and light fixtures, cabinets, kitchen and other household appliances, cleaning supplies, closet organizing systems, interior design services, automotive parts, products and accessories, or other products generally sold in a retail home improvement center, except for the Incidental Sale Of Such Items (as defined below). An "**Incidental Sale Of Such Items**" as to any tenant or occupant is one in which there is no more than the lesser of (i) seven percent (7%) of the total Floor Area of such business (calculated by measuring the Floor Area of the premises in question that is occupied by the shelving or display area, plus one-half of adjacent aisle space); or (ii) 1,700 square feet of sales and/or display area, relating to such items individually or in the aggregate. Notwithstanding the foregoing, the following retailers may operate within the Shopping Center in the manner they operate and merchandise as of the effective date of the REA: Home Goods, Down East, Michaels, JoAnn's, Hobby Lobby, Nordstrom, Nordstrom Rack, TJ Maxx, Ross and Burlington Coat Factory.

5.2. Shopping Center Restrictions:

(a)

(i) No portion of the Shopping Center other than the Home Depot Parcel shall be used for any non-retail uses, which are typically not found in first class shopping center within the region, or for any of the following purposes: 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); skating rink, bowling alley, billiard parlor, game room, video or amusement arcade or other place of amusement or recreation; any restaurant deriving more than thirty-five percent (35%) of its annual gross sales from the sale of alcohol; bar or tavern (a bar or tavern being defined for purposes of this Agreement as an establishment offering the sale of alcoholic beverages for consumption on the premises where such sales are not incidental to the sale of food for on-premises consumption in a restaurant otherwise permitted hereunder); night club or discotheque, dance hall, comedy club, night club or adult entertainment facility; theater (including a movie theater), auditorium, sports or other entertainment viewing facility (whether live, film, audio/visual or video; barbeque or gas grill retail store; industrial, manufacturing or warehouse use; truck stop; adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials; massage parlor (provided, however a day spa typically found in first class shopping centers containing no more than 4,100 square feet of Floor Area, such as a Massage Envy, Hand and Stone, and other similar operators of good moral character may be permitted); drug treatment or rehabilitation center; so-called "head shop" or any business or facility selling, supplying, dispensing (which shall be deemed to include vending machines or other self-service facilities) or distributing marijuana or products or by-products derived therefrom, whether by prescription, medical recommendation or otherwise; automobile (or other motor vehicle or boat) dealership, storage facility or repair shop (including lubrication and/or service center) (provided, however, a lubrication and car maintenance business (such as a Jiffy Lube) may be permitted so long as (i) such business does not sell automotive parts, products or accessories for off premises installation, (ii) all work is performed inside the building in an enclosed bay, and (iii) no vehicles are stored outside); body and fender shop; mini-storage or self-storage facility; laundromat facility or dry cleaning facility (but this shall not be deemed to prohibit an on-site dry cleaning facility service provided solely for pick-up and delivery by the ultimate consumer); gaming, wagering or betting parlor or facility or equipment of any kind; junk yard; recycling facility or stockyard; tattoo parlor or body piercing establishment; funeral parlor, cemetery, mortuary or any business selling caskets and other funerary products; beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees and not to customers (provided, however, learning centers and tutoring facilities which specialize in instructing children and young adults in various form or music, STEM classes, test prep, and physical activity, on a rotating schedule where students come for less than 2 hours and then leave to be replaced by another group of students examples of such establishments such as but not limited to Mathnasium, Huntington Learning Center, Code Ninja, Snapology, Sylvan Learning, Kid Strong, Yamaha Music, shall be permitted provided that no such single learning center exceeds more than 5,100 square feet of Floor Area and there are no more than three (3) such operators in the portion of the Shopping Center other than the Home Depot Parcel at any given time, and any such learning center use is at least 300 feet away from the Building on the Home Depot Parcel; office usage other than incidental in connection with a non-prohibited use (provided, however, the foregoing shall not prohibit retail office uses typically found in first class shopping centers, such as H&R Block or a residential brokerage company, but no individual use in the portion of the Shopping Center other than the Home Depot Parcel (other than the Office Buildings and the Home Depot Parcel), may exceed 5,000 square feet of Floor Area nor shall the Floor Area of such uses exceed 10% of the Floor Area of the Shopping Center (not including the Home Depot Parcel), which 10% cap will be a fixed square footage number (based on the maximum Shopping Center Floor Area approved at full build out (but not including the Floor Area on the Home Depot Parcel)); residential or hotel uses; place of religious worship; pawn shop or any business offering cash for gold, silver and other valuables; payday loan or check cashing provider; surplus store; gun range; the sale of guns as a primary use; animal kennel (provided, however, the forgoing exception shall not preclude any veterinary or boarding services provided in connection with the operation of a pet shop provided such veterinary or boarding services are only incidental to the operation of the pet shop); fitness center, workout facility, gym, health spa or studio (provided, however, a gym or fitness center containing less than 5,000 square feet of Floor Area, such as a Curves, F45, Hotworx, or Orange Theory, may be permitted); any state, local or federal governmental facility, including, without limitation, department of motor vehicles and military recruiting facilities; any store selling electronic cigarettes or similar devices as its

primary business; or any business or space, including, without limitation, any facilities such as lockers, outposts, pods, dedicated floor or parking spaces or similar drop off/pick up locations or facilities, whose primary purpose is to display goods and merchandise that may be purchased via catalogue or an internet website or other electronic means and/or to fulfill, store, deliver, transfer, convey or otherwise distribute or receive goods and merchandise that have been purchased via catalogue or an internet website or other electronic means other than for tenants operating within the Shopping Center. The prohibited uses in this Section 5.2(a) shall not apply if Home Depot or any of its affiliate or subsidiary of Home Depot is not the fee owner or the Prime Lessee of the Home Depot Parcel.

(ii) Notwithstanding the restrictions set forth in Section 5.2(a)(i) of this Agreement to the contrary, the following uses which are found in retail shopping centers of a similar class in the market area will be allowed on the Developer Parcels and the Outparcels provided they are located outside the Home Depot Zone of Control, and the uses conform with the conditions established below:

(A) no more than two (2) Restaurants which derive up to fifty percent (50%) of annual gross sales from the sale of alcohol (which may include sports bars typically found in first class shopping center within Wasatch Front market area);

(B) automobile repair and maintenance shops (including lubrication and/or tire service centers such as a Jiffy Lube or Discount Tire) provided, however, all such lubrication or repair work is performed inside the Building in an enclosed bay and no vehicles are stored outside the Building overnight;

(C) no more than two (2) office buildings (each, an "Office Building" and collectively, the "Office Buildings"); provided, however, each of such Office Building shall be (1) no less than 300 ft from the Building on the Home Depot Parcel; (2) in a permitted Building Area identified as "Permitted Office Building Location" on the Site Plan; (3) with the entrance to such Office Buildings as set forth on the Site Plan or as otherwise approved in writing by Home Depot (which approval may be withheld in Home Depot's sole and absolute discretion); (4) no more than two stories and no taller than 36 feet (including parapets and other building embellishments); (5) contain a floor plate on each floor not greater than 10,000 square feet and (6) contain more than 20,000 square feet (for a total of 40,000 square feet in the aggregate for the two (2) Office Buildings).

(D) fitness center, workout facility, gym, health spa or studio, youth-based fitness or physical education concepts such as Aqua Tots, Big Blue Swim, Gold Fish, Kids that Rip, or similar uses (collectively, "Gym Uses"), provided (A) such uses are not located within one hundred twenty feet (120') of the Building located on the Home Depot Parcel and in locations (including the approved layout, entrance location and configuration) as shown on the Site Plan or as otherwise approved in writing by Home Depot (which approval may be withheld in Home Depot's sole and absolute discretion) and (B) the Floor Area of all Gym Uses on the Developer Parcel and the Outparcels does not exceed an aggregate Floor Area of 65,000 square feet; and

(E) stand-alone pet grooming, pet training, or veterinarian services, as found in other first class retail shopping centers of a similar class in the Wasatch Front market area, provided that no overnight boarding shall be permitted, except in the case of emergency and only for periods of 24-hours or less.

(b) Without the prior written consent of the Consenting Owners, the following shall not be allowed to operate within (i) the Home Depot Zone of Control, (ii) two hundred feet (200') of the property line of the Home Depot Parcel or (iii) any portion of the Permanent Drive, 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, any

Consenting Owner may, at its sole expense, take whatever action as shall be reasonably necessary to prevent said unauthorized use.

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

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

(e) No portion of the Permanent Access Drive or any portion of the Common Area within three hundred feet (300') of the Building located on the Home Depot Parcel shall be used for the sale, storage or display of merchandise or food; provided, however, the following shall be permitted within the Common Area of the Home Depot Parcel: (i) the display of delivery vehicles, trailers, small tractors and other equipment for sale and/or rental to its customers as part of the Owner of the Home Depot Parcel's home improvement business shall be permitted, (ii) the display, sale and storage of merchandise, and (iii) the sale of food outdoors and/or indoors (including, without limitation, from food trucks), accompanied by tables and seating for eating purposes. In addition, the following shall be permitted within the Common Area of the Outparcels provided that such use is not located on a Permanent Access Drive and farther than three hundred feet (300') of the Building located on the Home Depot Parcel: the sale of food outdoors and/or indoors (including, without limitation, from food trucks), accompanied by tables and seating for eating purposes.

(f) 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.

(g) 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.

(h) Notwithstanding anything to the contrary contained in the Agreement, each Owner shall have the right to install, relocate, modify, remove and/or replace facilities and systems used for the transmission of electricity to and for the Building and Improvements located on its Parcel, including, without limitation, electrical conduits and systems, in order for such Owner to utilize solar energy, new technology, alternative energy, renewable energy and/or other energy efficient sources and alternatives designed to lower energy costs, improve energy efficiency and/or reduce energy consumption ("**Alternative Energy Facilities**"). Provided the Owner does not obstruct any type of vehicular access ways in the Shopping Center and otherwise maintains required parking ratios, the Alternative Energy Facilities may be placed within the Common Area, Service Areas or parking spaces on the applicable Parcel and shall not require the further written approval of any other Owner.

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

6. MAINTENANCE STANDARDS

6.1. Maintenance Obligations: Each Owner shall, except as otherwise provided in this Agreement, maintain the Common Area on its Parcel at all times in good and clean condition and repair and at a maintenance standard at least equal to the maintenance standards of comparable first class shopping centers in the Wasatch Front market area, 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 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) Maintaining, repairing and replacing the Detention Pond and the Detention System (which shall be performed by the Owner of the Developer Parcel and Home Depot shall have no obligation maintain and/or repair the Detention Pond, subject to the prorata reimbursement provisions hereof);

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

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

(l) Supervising traffic at entrances and exits to the Shopping Center and within the Shopping Center if necessary as conditions reasonably require and as reasonably determined by mutual agreement of the Consenting Owners in good faith in order to maintain an orderly and proper traffic flow;

(m) Maintaining, repairing and replacing the Center Signs on the Owner's Parcel, subject to the prorata reimbursement provisions hereof; and

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

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

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

6.4 Contribution for Maintenance of the Detention Pond and Detention System. The Owner of the Home Depot Parcel and the Owners of any other Parcels served by the Detention Pond shall each pay to Developer such Owner's reasonably estimated prorata share of the cost of Developer's maintenance of the Detention Pond and the Detention System (the "**Maintenance Fee**") as provided in this Section 6.4. Such Owner's Maintenance Fee shall be based on the Land Area of each applicable Owner's Parcel served by the Detention Pond and the Detention System as compared with the Land Area of such other Parcels served by the Detention Pond and the Detention System. Within 90 days following the end of each calendar year, Developer shall send each applicable Owner a reasonably detailed statement of the actual amount of the maintenance costs of the Detention Pond and the Detention System along with Developer's calculation of each Owner's actual prorata share of such costs. Each Owner shall pay such Owner's share of the Maintenance Fee within thirty (30) days after the delivery of any billing for such Maintenance Fee. Notwithstanding the if any invoice for the Maintenance Fee for the Home Depot Parcel is not provided to the Owner of the Home Depot Parcel within 270 days after the end of any applicable calendar year, the Maintenance Fee with respect to the Home Depot Parcel with respect to such calendar year shall be waived and the Owner or Occupant of the Home Depot Parcel shall not be required to pay the Maintenance Fee with respect to the Home Depot Parcel for such calendar year.

7. LIGHTING

After completion of the Common Area lighting system on its Parcel, each Owner shall 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 as required by the applicable Governmental Authorities, and (ii) not exceed an average lighting output of three (3) foot candles or such less amount required by applicable Governmental Authority.

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.

8.3 SUCCESSORS AND ASSIGNS; LIMITATION ON RELEASE

This Agreement and the Easements and Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, Occupants, successors and assigns, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, then 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.

9. DEFAULT

9.1. **Default:** In the event any Owner or Occupant fails to perform any other provision of this Agreement, which failure (as to monetary defaults) continues for a period of ten (10) days, and (as to non-monetary defaults) continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner or Prime Lessee may thereafter institute legal action against the defaulting Owner or Occupant for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner or Occupant shall not be deemed to be in default if such failure to perform is non-monetary and cannot be rectified within said thirty (30) day period and such Owner or Occupant promptly commences to cure such default and is diligently proceeding to rectify the particulars of such failure and rectifies same within a period not to exceed ninety (90) 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).

9.2. **Self-Help:** If an Owner or Occupant of any Parcel 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) stating in bold typeface that the noticing Owner intends to exercise self-help rights hereunder if the defaulting owner fails to commence the cure or provide written evidence that the cure is underway within said 10-day period, the failure of which any Consenting Owner shall have the right, but not the obligation, provided, further, that the defaulting Owner has not then commenced the cure, 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 fifteen percent (15%) 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.

9.3. **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.

10. LIEN FOR EXPENSES OR TAXES

10.1. **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 promptly release the claim of lien once the costs and expenses secured by the lien have been paid in full.

10.2. **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.

11. LIABILITY INSURANCE; INDEMNIFICATION

11.1. Liability Insurance:

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

(b) The Owner's Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State in which the Shopping Center is located with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better

(or a comparable standard under an international rating system), and have limits in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) 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 or its equivalent 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 (to the extent commercially available); (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 (which shall include, with respect to a Parcel being leased by a Prime Lessee under a Prime Lease, the record holder of fee simple title to a Parcel); and (v) endorsed to cover said Owner's agreement to indemnify as set out in this Agreement. Upon written request, 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 are current (if paid in installments) or have been paid in full; and (iii) the appropriate parties are designated as additional insureds. 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 operation 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 limit of not less than Three Million Dollars (\$3,000,000.00) per occurrence. To the extent available under current insurance market conditions and at commercially reasonable rates, 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) A Consenting Owner shall have the right to self-insure part or all or any of the insurance required to be maintained by a Consenting Owner pursuant to this Agreement (including, without limitation, the insurance required pursuant to **Section 13.3**) so long as such Consenting Owner, singly or together with its parent corporation, maintains (i) a net worth of at least One Hundred Million Dollars (\$100,000,000), as shown in its most recent audited financial statement, or if such Consenting Owner's financial statements are reported on a consolidated basis with a parent corporation, then as set forth in the annual report of its parent corporation or certified by an officer of such Consenting Owner, or (ii) a market capitalization of at least One Billion Dollars (\$1,000,000,000.00).

11.2. 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 Dollars (\$1,000,000.00) each accident for bodily injury, One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease, and One Million 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;
- (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 Dollars (\$2,000,000.00) per occurrence.
- (2) Three Million Dollars (\$3,000,000.00) aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work),
- (3) Three Million Dollars (\$3,000,000.00) 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 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.

(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 (to the extent commercially available) 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 its equivalent. 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**.

11.3. Indemnification by Owners: Subject to the provisions of **Section 13.4** below regarding waiver of subrogation with respect to damage to property, each Owner shall defend, indemnify, protect and

hold the other Owners and Occupants harmless for, from and against any and all Claims in connection with the loss of life, personal injury and/or damage to property (i) arising from or out of any occurrence in or upon the indemnifying Owner's Parcel, including an Owner's or Occupant's own negligence; (ii) occasioned wholly by any negligent or willful act or omission of the indemnifying Owner, its Occupants or their respective agents, contractors, servants or employees; or (iii) in connection with the failure to comply with the provisions of this Agreement. If a Consenting Owner shall, without fault, be made a party to any litigation commenced by or against the Owner or Occupants of another Parcel, or if a Consenting Owner shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, the indemnifying Owner shall defend such Consenting Owner using attorneys reasonably satisfactory to such Consenting Owner and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. A Consenting Owner shall have the right to engage its own attorneys in connection with any of the provisions of this **Section 12.3** or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such Consenting Owner, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Shopping Center is located.

12. PROPERTY DAMAGE AND EMINENT DOMAIN

12.1. **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 commence and diligently prosecute to completion either (i) the repair, restoration, or rebuilding of the Building so damaged or destroyed to no less than 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) and otherwise in compliance with Section 2.1 concerning unimproved Parcels.

12.2. **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 12.4** 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.

12.3. **Property Insurance:** To assure performance of their respective obligations under **Sections 13.1 and 13.2** below, the Owners of the respective Parcels shall cause to be carried "special form" property insurance or its equivalent in an amount equal to 100% of the 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 12.3** 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).

12.4. 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 or its equivalent 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.

12.5. 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.

13. GENERAL PROVISIONS

13.1. 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.

13.2. 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.

13.3. 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 4.3**, and the utility easements and the rights and duties related thereto as provided in **Section 3.3** shall continue in effect in perpetuity as to those access easements, signs and utility lines actually in use at the time of the termination

of this Agreement until such time as such access easements, signs and utility lines are abandoned or ceased to be used to serve a Building in the Shopping Center.

13.4. 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.

13.5. Modification and Termination: Notwithstanding the provisions of **Section 13.6** 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.

13.6. Method of Approval: Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction (collectively, an "approval") is specifically required of an Owner pursuant to the express terms of this Agreement (or any Exhibit hereto), it shall not be unreasonably withheld, conditioned or delayed. Unless provision is made for a specific time period, approval or disapproval shall be given within forty-five (45) days after receipt of written request for approval, provided, however, for purposes of this **Section 13.6**, as between the Consenting Owners, all references to "forty-five (45) days" shall be deemed to be "thirty (30) days". If an Owner neither approves nor disapproves within the required time period, then the Owner requesting approval shall have the right to send a second written request for approval. If such second request states on its face in all capital letters that failure to respond thereto within fifteen (15) days shall be deemed approval, then the failure to respond within such fifteen (15) day period shall constitute the approval of the Owner from whom approval was requested. Except with respect to approvals which are deemed approved pursuant to the preceding sentence, all approvals (including conditional approvals) and disapprovals shall not be effective unless given or made in writing. If an Owner disapproves, the reasons therefor shall be stated in reasonable detail in writing. An Owner's approval of any act or request by another Owner shall not be deemed to waive or render unnecessary approval of any similar or subsequent acts or requests. 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.

13.7. 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. If fee simple title to a Parcel or a part thereof is held by more than one Person as tenants in common or as joint tenants, the Person or Persons holding at least fifty one percent (51%) of the ownership interest in the Parcel or part thereof shall, in writing, designate one of their number to represent all owners of the Parcel or part thereof and such designated Person shall be deemed to be the Owner for such Parcel or part thereof authorized to give consents and/or approvals pursuant to this Agreement for such Parcel.

13.8. 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 therefor. 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.

13.9. 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.

13.10. Notices:

(a) All notices given pursuant to this Agreement shall be in writing and shall be given 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, 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:	Westlake Partners Phase F, LLC 5455 W. 11000 N., Suite No. 202 Highland, Utah 84003 Attn: Daniel Schmidt Email: ds@wpi.us.com
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Home Depot:	Home Depot U.S.A., Inc. 2455 Paces Ferry Road, C-19 Atlanta, Georgia 30339-4024 Attention: Property Management Store No.: Saratoga Springs, UT
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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, or (iii) 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.

13.11. 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.

13.12. 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, all parties to such action or proceeding shall bear their own attorneys' fees and costs.

13.13. 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.

13.14. 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. Except as herein specifically provided, no privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner or Occupant of any portion of the Shopping Center, nor shall any customer, employee, guest, licensee or invitee of such Owner or Occupant be deemed to be a third party beneficiary of any of the provisions contained herein.

13.15. 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.

13.16. 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.

13.17. 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.

13.18. 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.

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

13.20. 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, members, managers, 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.

13.21. 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.

13.22. 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 or not be appropriate under the circumstances. Such variances shall include, without limitation, modifying the Building Areas. 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.

13.23. Time of Essence: Time is of the essence with respect to the performance of each obligation of this Agreement.

13.24. Hazardous Materials:

(a) Each Owner of a Parcel agrees to (i) comply with all Governmental Regulations related to the use, storage, treatment, transportation, removal or disposal of Hazardous Materials (as said term is hereinafter defined); (ii) give notice to the other Owner immediately upon Owner's acquiring knowledge of the Hazardous Materials Contamination (as said term is hereinafter defined) with a full description thereof; and (iii) promptly, at such Owner's sole cost and expense, to comply with the requirements of any governmental laws, rules or regulations requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide the Owner with satisfactory evidence of such compliance.

(b) Each Owner shall defend, indemnify and hold harmless the other Owner from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, interest, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial costs) the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the other Owner by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any covenant of an Owner contained in or referred to in this **Section 14.24** or which may be asserted as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Owner's Parcel of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Owner's Parcel, whether or not occasioned wholly or in part by any condition, accident or event caused by an act or omission of the Owner or any Occupants of its Parcel.

(c) The term "Hazardous Materials" shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated or classified under any applicable federal, state or local laws and the regulations promulgated thereunder as (i) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.

section 9601(14); the Federal Water Pollution Control Act, 33 U.S.C., section 1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C., sections 6902(5), 6921, as now or hereafter amended; (iii) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C., section 1317(a)(1), as now or hereafter amended; (iv) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C., section 7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C., section 5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws, or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under any other applicable federal, state or local laws, ordinances or regulations, as now existing or as may be passed or promulgated in the future. Hazardous Materials shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to, cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes, but it not limited to, asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum based derivatives and urea formaldehyde.

(d) The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Parcel's facilities, soil, ground water, air or other elements on or of the Parcel by Hazardous Materials in violation of applicable environmental laws or the contamination of the buildings, facilities, soil, ground water, air or other elements on or of any other real property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Parcel.

13.25. Counterparts: This Agreement may be executed in one or more counterparts, each of which may be executed by one or more of the parties hereto, with the same force and effect as though all the parties executing such counterparts had executed but one instrument, provided that all parties hereto have executed a counterpart hereof. Signature and/or acknowledgment pages may be detached from such counterpart and attached to this Agreement to physically form one legally effective document for recording purposes.

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DEVELOPER:

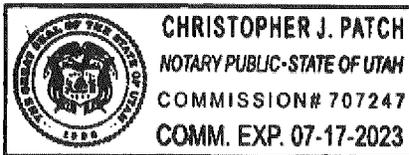
WESTLAKE PARTNERS PHASE D, LLC,
a Utah limited liability company

By: *[Signature]*
Name: RICHARD MENDENHALL
Title: MANAGER

STATE OF UTAH

COUNTY OF UTAH

THE FOREGOING INSTRUMENT was acknowledged before me this 18TH day of JANUARY, 2023, by RICHARD MENDENHALL, an authorized signatory of WESTLAKE PARTNERS, a UTAH LIMITED LIABILITY COMPANY PHASE F, LLC



[Signature]
NOTARY PUBLIC [Signature Above]
State of UTAH
Print Name: CHRISTOPHER J. PATCH

My Commission Expires: 7/17/23

EXECUTED as of the Effective Date.

DEVELOPER:

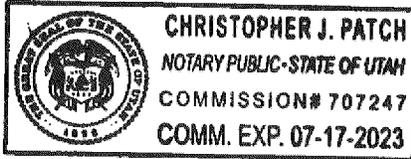
WESTLAKE PARTNERS PHASE F, LLC,
a Utah limited liability company

By: *Richard Mendenhall*
Name: RICHARD MENDENHALL
Title: MANAGER

STATE OF UTAH

COUNTY OF UTAH

THE FOREGOING INSTRUMENT was acknowledged before me this 18TH day of JANUARY, 20223 by RICHARD MENDENHALL, an authorized signatory of WESTLAKE PARTNERS, a UTAH LIMITED LIABILITY company PHASE F, LLC



Christopher J. Patch
NOTARY PUBLIC [Signature Above]
State of UTAH
Print Name: CHRISTOPHER J. PATCH
My Commission Expires: 7/17/23

HOME DEPOT:

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

By: Suzanne Russo
Name: Suzanne Russo
Title: Assistant General Counsel

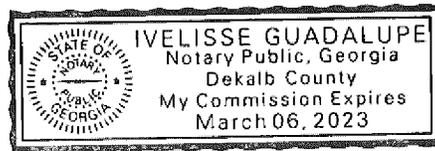
STATE OF GEORGIA

COUNTY OF COBB

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Suzanne Russo whose name as Asst. Gen. Counsel of HOME DEPOT U.S.A., INC., a Delaware corporation, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 11th day of January, 2023.

Ivelisse Guadalupe
NOTARY PUBLIC
My Commission Expires: 03/06/2023



LOT 602 SOLD PARCEL CONSENT

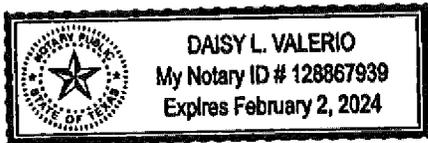
Salt Rock Holdings, a Utah LLC, as the fee owner of the parcel depicted as ⁶⁰² ~~Pad 2~~ on the Site Plan attached as Exhibit A to this Agreement (the "~~Pad 2 Property~~"), hereby consents and agrees for the Pad 1 Property to be subject to the terms of this Agreement to which this consent is attached.
₆₀₂

Salt Rock Holdings LLC
a Utah LLC

By: _____
Name: Christopher Aslam
Title: President

STATE OF Texas
COUNTY OF Dallas

THE FOREGOING INSTRUMENT was acknowledged before me this 12th day of January, 2023, by Christopher Aslam, an authorized signatory of Salt Rock Holdings LLC, a Utah LLC.



Daisy Valerio
NOTARY PUBLIC [Signature Above]
State of Texas
Print Name: Daisy Valerio
My Commission Expires: February 2, 2024

PAD 2 SOLD PARCEL CONSENT

University First Federal

Credit Union, a Utah Corporation, as the fee owner of the parcel depicted as Pad "2" on the Site Plan attached as Exhibit A to this Agreement (the "Pad 2 Property"), hereby consents and agrees for the Pad "2" Property to be subject to the terms of this Agreement to which this consent is attached.

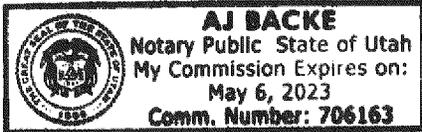
University First Federal Credit Union
a Utah Corporation

By: Jack Butters
Name: JACK BUTTERS
Title: President / CEO

STATE OF Utah

COUNTY OF Salt Lake

THE FOREGOING INSTRUMENT was acknowledged before me this 19 day of January, 2023, by Jack Butters, an authorized signatory of University First Federal Credit Union a Utah Corporation



AJ Backe
NOTARY PUBLIC [Signature Above]
State of Utah
Print Name: AJ Backe
My Commission Expires: May 6, 2023

LENDER ACKNOWLEDGEMENT AND CONSENT

THIS LENDER ACKNOWLEDGEMENT AND CONSENT (this "**Consent**") is entered into by and between CENTRAL BANK, a Utah Corporation, ("**Central Bank**"), whose address is 75 North University Avenue, Provo, Utah 84601, and WESTLAKE PARTNERS PHASE D, LLC, a Utah limited liability company ("**Phase D**"), whose address is 5455 West 11000 North, Suite 202, Highland, Utah 84003.

RECITALS:

A. On or about October 21, 2020, Phase D obtained a loan from Central Bank. As part of the loan transaction, Phase D made, executed and delivered to Central Bank a Promissory Note (the "**Central Bank Note**"), whereby Phase D agreed to pay Central Bank the original principal sum of \$9,413,476.81, together with interest and fees thereon, including late fees, at the rates and the times provided in the Central Bank Note.

B. Concurrently with the execution of the Central Bank Note, for good and valuable consideration and to secure fulfillment of Phase D's obligations to Central Bank (including, but not limited to, the obligations represented by the Central Bank Note), Phase D, as trustor, made, executed, delivered and acknowledged that certain Deed of Trust (the "**Central Bank Trust Deed**") to Central Bank, as trustee and beneficiary.

C. The Central Bank Trust Deed was filed for record in the Utah County, Utah Recorded on November 6, 2020, as Entry No. 176113:2020, at Pages 1 through 12, official records of Utah County, Utah.

D. The Central Bank Trust Deed encumbers the subject real property (the "**Phase D Property**") is situated in Utah County, Utah and is more particularly described in Exhibit "**A**" attached hereto.

E. Phase D desires to enter into that certain Restriction and Easement Agreement (the "**REA**"). The parties to the REA are Phase D and its affiliate, Westlake Partners Phase F, LLC ("**Phase F**"), as "Developer," and Home Depot U.S.A., Inc., as "Home Depot." It is anticipated that the REA will be filed for record in the office of the Utah County, Utah Recorder.

F. Phase D desires to obtain Central Bank's acknowledgment and consent to the REA.

G. Subject to the conditions, covenants and obligations set forth in this Consent, Central Bank is willing to acknowledge and consent to the REA, but only upon the terms and provisions of this Consent.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual conditions, covenants and obligations stated or incorporated herein by reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Phase D's Acknowledgments.** Phase D hereby acknowledges, ratifies, confirms and affirms the following:

- a. That the Central Bank Note, the Central Bank Trust Deed, and any and all related instruments, documents and other writings between Central Bank and Phase D, together with any and all modifications, extensions, renewals, refinancings, consolidations and substitutions of the Central Bank Note, the Central Bank Trust Deed and any other loan documents, and/or together with any and all subsequent promissory notes, deeds of trust, guaranties, and/or any and all of the related instruments, documents and other writings (collectively, the "**Loan Documents**") have not been satisfied or released and are genuine and valid obligations that are enforceable against Phase D and all other parties thereto in accordance with the terms and provisions thereof.
- b. That Phase D has no defense, offset or counterclaim with respect to Central Bank, the Central Bank Note, the Central Bank Trust Deed and/or the Loan Documents.
- c. That, subject to the terms and provisions of this Consent, Central Bank is entitled to exercise any and all of its rights and remedies in accordance with the terms and provisions of the Central Bank Note, the Central Bank Trust Deed and the Loan Documents.

2. **Central Bank's Acknowledgements and Consents.** Based upon the terms and provisions of this Consent, Central Bank provides the following consents:

- a. Central Bank hereby acknowledges that Phase D's execution of the REA and its intended recordation in the Official Records of Utah County, State of Utah, do not represent an "Event of Default" under the Central Bank Note, the Central Bank Trust Deed and/or the Loan Documents.
- b. Central Bank hereby consents to the REA by and between Phase D, Phase F and Home Depot.

3. **Effectiveness of this Consent.** This Consent is null and void upon any one of the following events: (i) The REA is not entered into by Phase D, Phase F or Home Depot; (ii) The REA is not recorded in the Official Records of Utah County, State of Utah; (iii) the version of the REA, which Central Bank has reviewed and approved, is revised, amended or otherwise modified prior to or after the date of this Consent; or (iv) the REA is terminated.

4. **Status and Survival of the Loan Documents.** Except as expressly modified in this Consent, the terms, conditions and provisions of the Central Bank Note, the Central Bank Trust Deed and the Loan Documents shall remain absolutely unmodified and unchanged, and shall remain in full force and effect.

5. **No Waiver:** Notwithstanding the terms and provisions contained in this Consent and the parties acceptances hereof, Phase D hereby acknowledges that Central Bank does not waive any claim or remedy it may have under the Central Bank Note, the Central Bank Trust Deed, the Loan Documents and/or any and all subsequent promissory notes, deeds of trust, guaranties, and/or any and all of the related instruments, documents and other writings.

6. **Miscellaneous Provisions.** The following provisions are also an integral part of this Consent:

- a. **Successors Bound.** This Consent shall bind and benefit the parties' respective heirs, successors, assigns, agents, servants, employees and attorneys.
- b. **Notice.** All notices or other communications required or permitted to be given pursuant to this Consent shall be in writing and shall be considered properly given or made only when mailed by United States certified or registered mail, postage prepaid, return receipt requested, directed to the respective party's address set forth hereinabove. Notice shall be considered effective when deposited in the United States mail.
- c. **Captions.** The captions used in this Consent are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms of this Consent or its intent.
- d. **Counterparts.** This Consent may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original. A facsimile transmittal bearing a photocopied signature shall be deemed an original.

- e. **Severability.** The provisions of this Consent are severable, and should any provision be void, voidable, unenforceable or invalid, such provision shall not affect the remaining provisions of this Consent.
- f. **Waiver of Breach.** Any waiver by any party of any breach of any kind by the other, whether direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Consent.
- g. **Cumulative Remedies.** The rights and remedies of the parties shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.
- h. **Integration and Amendment.** This Consent represents the parties' full and final agreement respecting its subject matter. All prior and contemporaneous negotiations, representations and agreements are superseded hereby, and there are no agreements or understandings at variance with this Consent. This Consent may not be modified except by an instrument in writing signed by the parties hereto.
- i. **Time of Essence.** Time is the essence of this Consent and every provision hereof.
- j. **Interpretation.** This Consent shall be interpreted, construed and enforced according to the substantive laws of the State of Utah. The parties hereby irrevocably submit to the jurisdiction and venue of any State or Federal court sitting in Utah County, Utah, over any action or proceeding arising out of or relating to this Consent, and the parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such State or Federal court in the State of Utah.
- k. **Attorneys' Fees/Breach.** In the event any action, suit or proceeding is commenced by a party against another party under this Consent, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs related to the discovery process and court costs, in such amounts as the court may adjudge reasonable, including, but not limited to, those fees and costs incident to any action or participation in (or in connection with) a case or a proceeding involving a party

under the applicable chapter of the Federal Bankruptcy Code (11 U.S.C. § 101, *et seq.*), or any successor statute thereto.

- l. **Recitals Incorporated.** The recitals set forth in the preamble of this Consent are incorporated herein by reference and made contractual in nature.
- m. **Authorization.** Each individual executing this Consent does thereby represent and warrant to any other individual so signing (and to each other entity for which another individual is signing) that the individual has been duly authorized to deliver this Consent in the capacity and for the individual and/or entity, as applicable, that is set forth where he signs.
- n. **Counsel Review.** The parties hereby agree and acknowledge the following: (i) the desirability of seeking independent legal counsel in connection with this Consent; (ii) that they have had a reasonable opportunity to find, seek and discuss the legal effect of this Consent with independent counsel of their choice; and, (iii) that this Consent has been reviewed by that party's legal counsel or has had the opportunity to have this Consent reviewed by that party's legal counsel or has voluntarily elected to waive such consultation with independent legal counsel.

[This space is intentionally left blank]

DATED this 23rd day of January 2023.

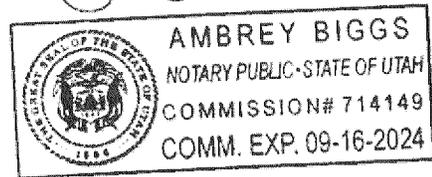
CENTRAL BANK:

By: [Signature]
Edward Sanches
Senior Vice President

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On the 23rd day of January 2023, Edward Sanches, Senior Vice President for CENTRAL BANK, being first duly sworn, deposes and says: that he has read on behalf of CENTRAL BANK, the foregoing Lender Acknowledgement and Consent and is familiar with its contents; that the facts contained in the foregoing Lender Acknowledgement and Consent are true to the best of his knowledge, information and belief; that CENTRAL BANK agrees to be bound by the terms and provisions of the foregoing Lender Acknowledgement and Consent; and, that CENTRAL BANK authorized him to sign the foregoing Lender Acknowledgement and Consent on its behalf.

[Signature]
Notary Public



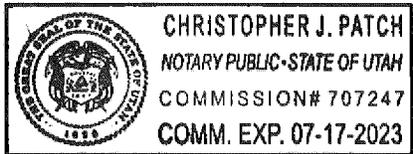
DATED this 23 day of January 2023.

WESTLAKE PARTNERS PHASE D, LLC:

By: *Richard Mendonhall*
Name: RICHARD MENDONHALL
Title: MANAGER.

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

On the 23 day of January 2023, RICHARD MENDONHALL,
MANAGER. for WESTLAKE PARTNERS PHASE D, LLC, being first duly sworn,
deposes and says: that he has read on behalf of WESTLAKE PARTNERS PHASE D, LLC, the
foregoing Lender Acknowledgement and Consent and is familiar with its contents; that
the facts contained in the foregoing Lender Acknowledgement and Consent are true to
the best of his knowledge, information and belief; that WESTLAKE PARTNERS PHASE D, LLC
agrees to be bound by the terms and provisions of the foregoing Lender
Acknowledgement and Consent; and, that WESTLAKE PARTNERS PHASE D, LLC authorized
him to sign the foregoing Lender Acknowledgement and Consent on its behalf.



Christopher J. Patch
Notary Public

[55153.96]

Exhibit "A"
(Legal Description)

Parcel 1:

A portion of the Northwest Quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located North 0°22'47" East 990.34 feet along the Quarter section line and East 1185.51 feet from the West 1/4 corner of Section 14, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 259.55 feet; thence South 89°23'31" East 682.23 feet; thence South 85°28'01" East 380.84 feet; thence South 89°28'12" East 38.77 feet; thence South 0°09'38" West 247.31 feet; thence South 42°14'56" West 28.88 feet; thence North 47°45'04" West 15.06 feet; thence along the arc of a 123.00 foot radius curve to the left 90.11 feet through a central angle of 41°58'23" (Chord: North 68°44'15" West 88.10 feet); thence North 89°43'27" West 987.26 feet to the point of beginning.

Parcel No: 58-032-0198

Parcel 2: - (Part of Central Bank Collateral but is not affected by the REA as it is not part of Phase D or F)

Lot 2, Plat "B", Saratoga Springs Commercial Subdivision, an amendment to Saratoga Springs Commercial Plat "A", Lots 1 & 2, Saratoga Springs, Utah County according to the official plat thereof on file and of record in the office of the Utah County Recorder.

Parcel No.: 66-556-0002

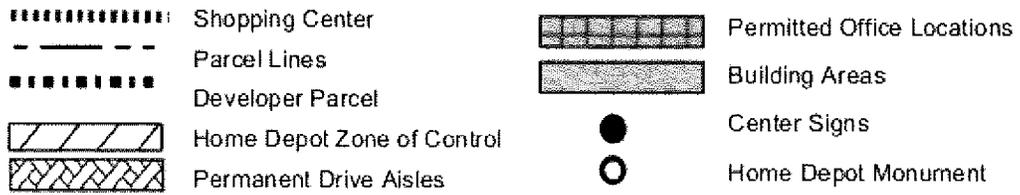
[55153.96]

List of Exhibits

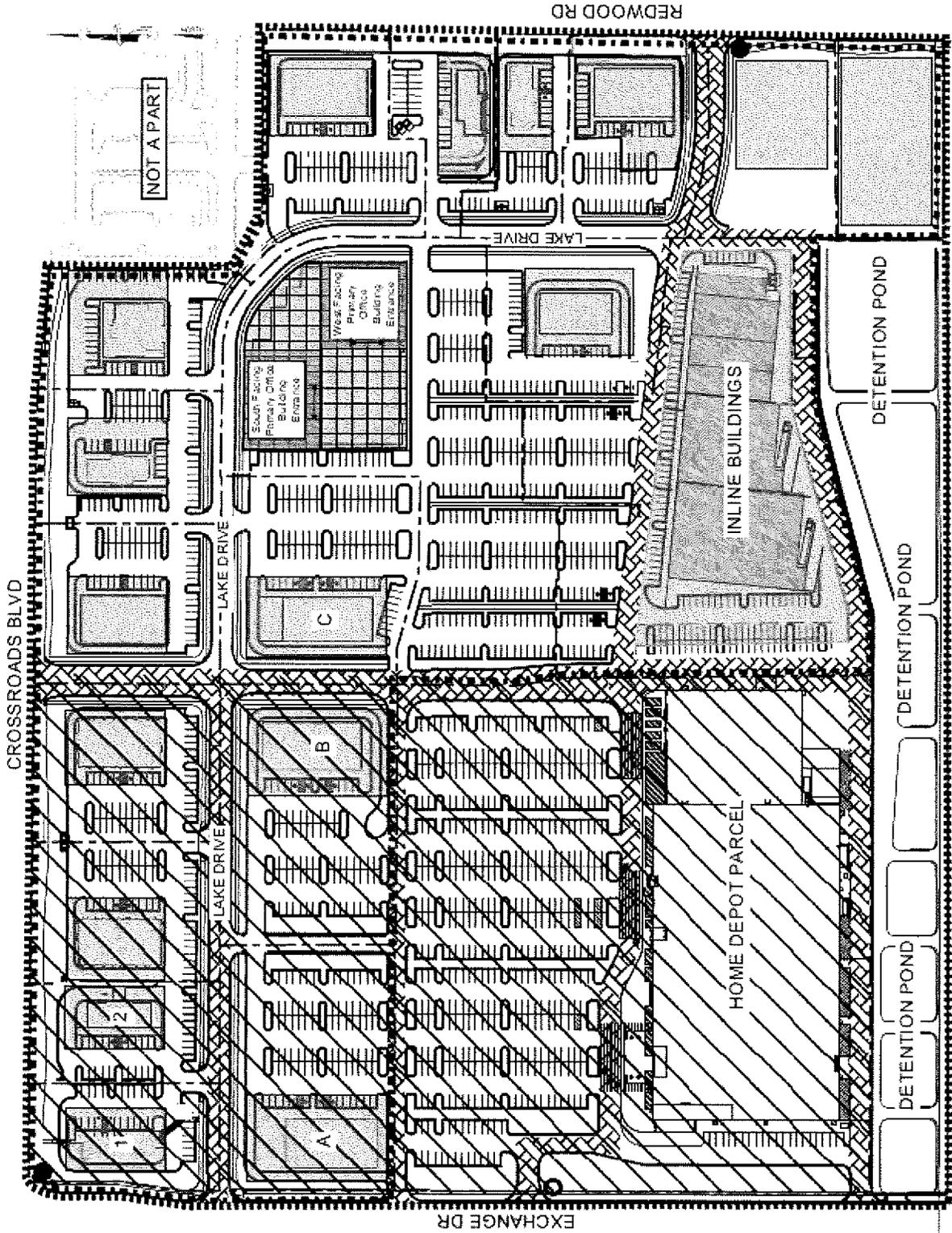
- A = Site Plan
- B-1 = Legal Description of the Home Depot Parcel
- B-2 = Legal Description of the Developer Parcel
- C = Sign Exhibit
- C-1 = Monument Sign on Home Depot Parcel

EXHIBIT A

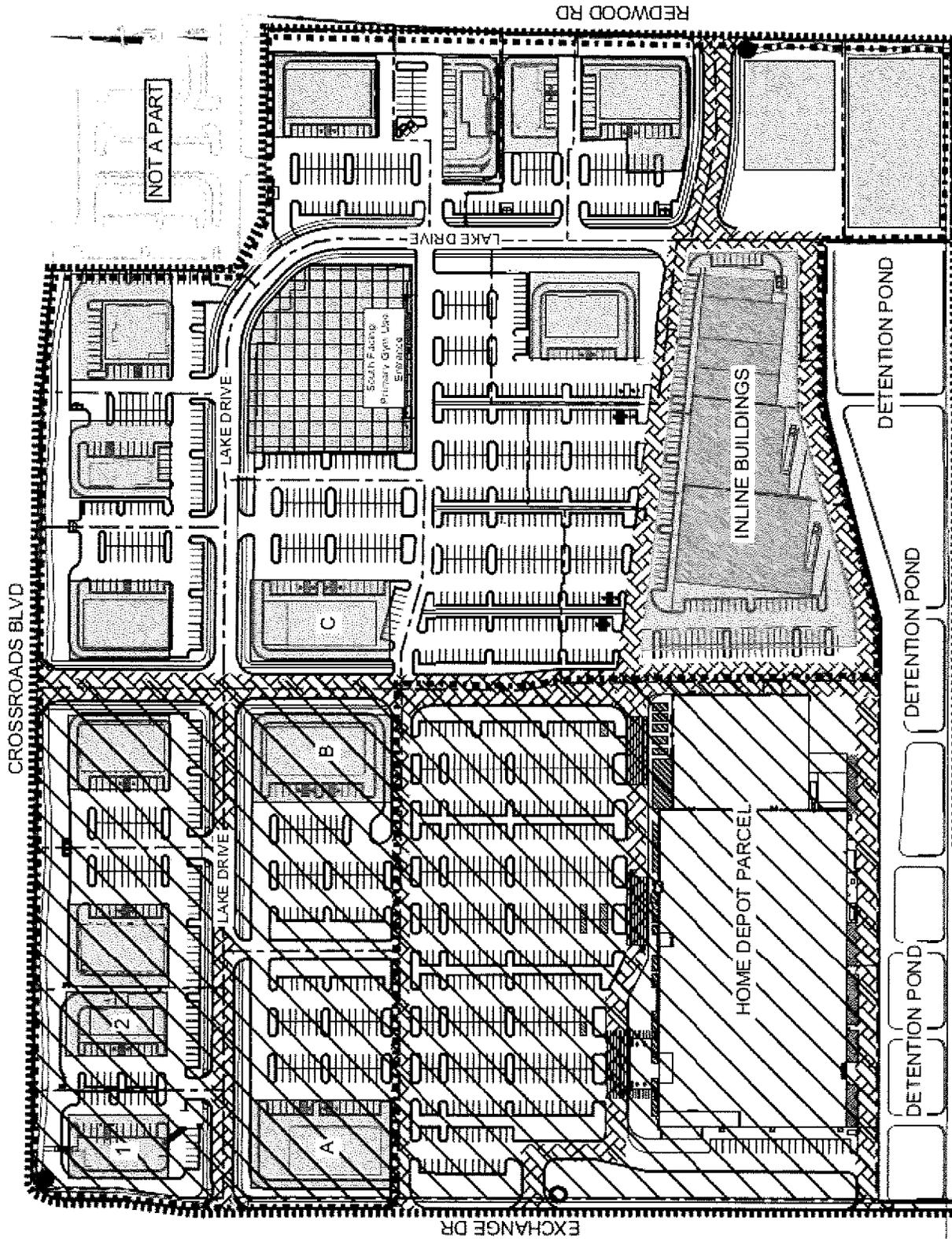
SITE PLAN



[EXHIBIT A CONTINUES ON FOLLOWING PAGE]



[EXHIBIT A CONTINUES ON FOLLOWING PAGE]



[**The only difference between the Site Plan on this page versus the Site Plan on the previous page is to show the south facing entrance of the gym]

EXHIBIT B-1

LEGAL DESCRIPTION OF HOME DEPOT PARCEL

The Land referred to herein below is situated in the City of Saratoga Springs, County of Utah, State of Utah, and is described as follows:

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, LOCATED IN SARATOGA SPRINGS, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: LOT 608 ON SARATOGA SPRINGS COMMERCIAL PLAT F FILED FOR RECORD JANUARY 17, 2023, AS MAP 18619, INSTRUMENT NO. 2555:2023, CITY OF SARATOGA SPRINGS, UTAH

EXHIBIT B-2

LEGAL DESCRIPTION OF DEVELOPER PARCEL

The Land referred to herein below is situated in the City of Saratoga Springs, County of Utah, State of Utah, and is described as follows:

PARCELS OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, LOCATED IN SARATOGA SPRINGS, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: LOTS 601, 602, 603, 604, 605, 606, 607, 609, 610, 611, 612 AND 613 AND PARCEL A ON SARATOGA SPRINGS COMMERCIAL PLAT F FILED FOR RECORD JANUARY 17, 2023, AS MAP 18619, INSTRUMENT NO. 2555:2023, CITY OF SARATOGA SPRINGS, UTAH AND LOTS 401, 402, 403, 404, 405, AND 406, ON SARATOGA SPRINGS COMMERCIAL PLAT D FILED FOR RECORD DECEMBER 8, 2020, AS MAP 17426, INSTRUMENT NO. 195354:2020, CITY OF SARATOGA SPRINGS

EXHIBIT C
SIGN EXHIBIT

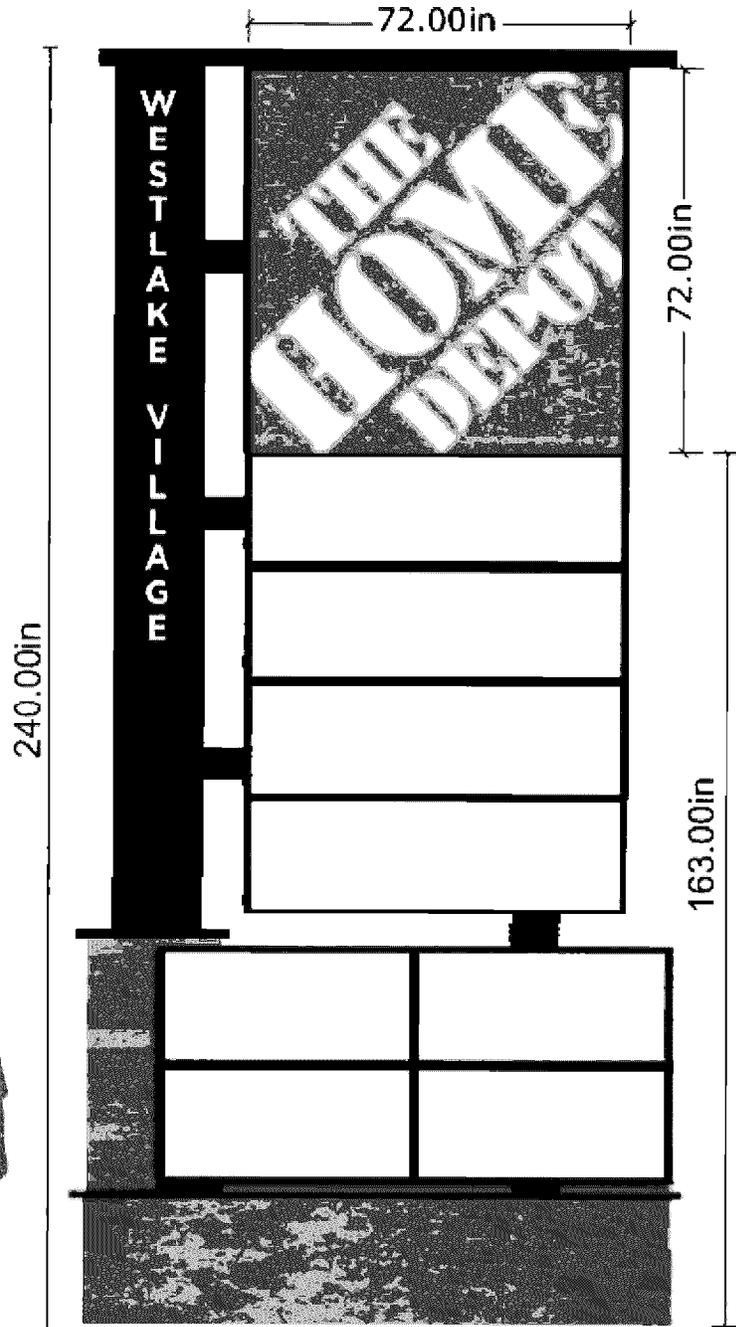
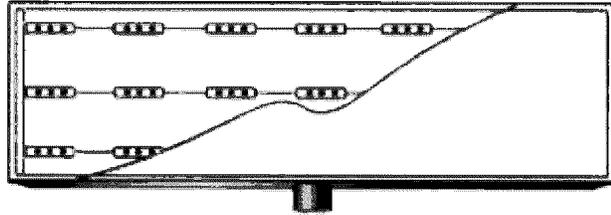


EXHIBIT C-1

Monument Sign on Home Depot Parcel

SPECIFICATIONS FOR FABRICATION AND INSTALLATION:

- Internally illuminated cabinet built to UL specifications
- Height off ground: 7' 0"
- Sign Cabinet Dimensions: 4' 9" x 9' 6"
- Retainer size: 2"
- Face type: Polycarbonate with vinyl graphics applied
- Mounting method: Single pole monument
- Illuminated with LED's



[EXHIBIT C-1 CONTINUES ON FOLLOWING PAGE]

