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# RESTRICTION AND EASEMENT AGREEMENT

CDP, LLC

AND

H.D.V.I. HOLDING COMPANY, INC.

Property known or to be known as "Island Crossing"  
located on St. Croix, U.S. Virgin Islands

Dated as of January 27, 2009

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When recorded return to:

Hartman, Simons, Spielman & Wood, LLP  
6400 Powers Ferry Road, Suite 400  
Atlanta, Georgia 30339  
Attn: Robert A. Chubb, Esq.

## RESTRICTION AND EASEMENT AGREEMENT

THIS RESTRICTION AND EASEMENT AGREEMENT (this "**Agreement**") is made as of January 21, 2009, by and between **CDP, LLC**, a United States Virgin Islands limited liability company, having an address of 5001 Chandlers Wharf, Suite 201 Christiansted, St. Croix USVI 00820 ("**Developer**"), and **H.D.V.I. HOLDING COMPANY, INC.**, a Delaware corporation, having an address of 2455 Paces Ferry Road, Atlanta, Georgia 30339 ("**Home Depot**").

### 1. PRELIMINARY

1.1. **Parties:** Developer is the fee owner of the Developer Parcels, the Ruins Parcel and the Home Depot Parcel. Home Depot is the Prime Lessee (as defined below) of the Home Depot Parcel and for purposes of this Agreement shall be deemed the Owner of the Home Depot Parcel. The Parcels are located in the retail shopping center commonly known or to be known as "**Island Crossing**", lying and being in St. Croix, U.S. Virgin Islands, 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 grading, drainage and utility plans for the Shopping Center approved by the Consenting Owners. Such approved grading, drainage and utility plans are referenced on **Exhibit "D"** attached hereto and made a part hereof.

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

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

(e) "**Center Pylon Signs**": The one (1) pylon and/or monument signs designated on the Site Plan.

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

(g) "**Common Area**": All those areas on each Parcel which are not Building Area or Service Areas, together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a Building, Garden Center or being used as Outside Sales Area. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the Building to which they are attached and not a part of the Common Area. The improvement or use of any portion of the Building Area as Common Area shall not be construed as a permanent inclusion of such portion within the Common Area, and such portions may, at any time thereafter, be improved with Buildings and appurtenances as contemplated by this Agreement.

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

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

(j) "**Developer**": CDP, LLC, its successors and assigns.

(k) "**Developer Parcels**": The Outparcels and the Future Development Parcel.

(l) "**Development Rider**": That certain Development Rider between the Parties.

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

(n) "**Fire/Storm Water Tank**": That certain fire protection tank (including without limitation the tank, all related foundations, slab, piping, storm water filtration system, equipment and other associated facilities) installed by Home Depot, but paid for by Developer, pursuant to the Ground Lease between Developer and Home Depot, as such Fire/Storm Water Tank is shown on the Site Plan.

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

(p) **"Future Development Parcel"**: The Parcel legally described on Exhibit B-1 and identified on the Site Plan as the "Future Development Parcel."

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

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

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

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

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

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

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

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

(y) **"Outparcel" or "Outparcels"**: Individually or collectively, the real property legally described on Exhibit B-3 and identified on the Site Plan as Parcels 2A, 2B, 3, 4, 5, 6A and 6B.

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

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

(bb) **"Parcel" or "Parcels"**: Individually or collectively, the Home Depot Parcel, the Developer Parcels and the Ruins Parcel.

(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) **"Ruins Parcel"**: The Parcel legally described on Exhibit B-4 and identified on the Site Plan as the **"Ruins Parcel."**

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

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

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

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

(kk) **"Shopping Center"**: Collectively, all of the Parcels, except the Ruins Parcel and the Future Development Parcel.

(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, including, but not limited to, water drainage, detention or retention systems or structures, water mains, sewers, lift stations, water sprinkler system lines, electrical conduits or systems, gas mains, other public or private utilities providing service to all Owners of the Shopping Center in common.

## 2. BUILDING AND COMMON AREA DEVELOPMENT

2.1. **Building Location**: All Buildings shall be placed or constructed upon the Parcels only in the Building Areas. Buildings may be located (or relocated) anywhere within the Building Area provided the total Floor Area of all Buildings constructed within a Building Area does not exceed the lesser of (i) the square footage assigned to such Building Area as shown on the Site Plan (or as otherwise designated herein), or (ii) the maximum square footage of Floor Area permitted on such Parcel by the application of the minimum parking requirements set forth in Section 4.1 below. All unimproved portions of a Parcel

shall be covered by decomposed granite, gravel, sod, hydroseed or as otherwise permitted by Governmental Regulations and kept weed free and clean at the subject Owner's sole cost and expense until such time as Buildings are constructed thereon.

2.2. Common Area: The Common Area is hereby reserved for the sole and exclusive use of all Owners and Occupants of the Shopping Center 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 U.S. Virgin Islands, unless otherwise specifically prohibited in this Agreement. The Common Area shall be maintained as provided for in Article 6. The Owners acknowledge and agree that incidental temporary encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Buildings, signs and/or the Common Area, all of which are permitted under this Agreement so long as all activities requiring the use of such equipment are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Shopping Center.

2.3. Type and Design of Building:

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

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

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

maintain and repair such attachment and shall repair any affected portion of the Other Owner's Building due to the attachment to the Other Owner's Building.

(d) No Building on the Outparcels (including any landscaping located thereon) shall exceed one (1) story and twenty-seven (27) feet in height, inclusive of all architectural embellishments, mechanical fixtures, signage and television equipment, and screening for same. No mezzanine or basement shall be used for the sale or display of merchandise or for the offer or provision of retail services to the public. Notwithstanding the foregoing, nothing herein shall prevent the construction and operation of a three (3) story office building on Lot 2B.

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

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

#### 2.4. Construction Requirements:

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

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

of or in any way connected with the performance of such work, including an Owner's or Occupant's own negligence, unless such cause of action is solely the result of the negligent or willful misconduct of the indemnified Owner or Occupant.

(c) Staging for the initial construction of Buildings not covered by the Development Rider, 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 designated on the Site Plan or otherwise approved in writing by the Consenting Owners. Each Staging Area on any Parcel shall be located in such a way that it will not interfere with the use of the Common Area on any other Parcel. In no event shall any Owner other than the Owner of the Home Depot Parcel establish a Staging Area on 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. At the request of any Consenting Owner, any Staging Area for an Outparcel shall be enclosed by a safety fence. Upon completion of such work, the constructing Party shall, at its expense, restore any damaged Common Area to a condition equal to or better than that existing prior to commencement of such work.

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

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

2.7. Approval Procedures:

(a) Before any action requiring the Consenting Owners' approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a decision as to the proposal, together with a review fee equal to Five Hundred and No/100 Dollars (\$500.00) to cover each respective Consenting Owner's costs incurred in reviewing an Owner's proposal, provided, however, the Consenting Owners agree that as between themselves, no review fee shall be required. Each Consenting Owner shall have the right to approve or disapprove the proposal in

accordance with the manner and time procedures set forth in Section 14.6 below, and if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval.

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

### 3. EASEMENTS

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

3.2. Parking: Each Parcel shall self-park in accordance with the applicable regulations. There shall be no cross-parking across Parcels except with the prior written consent of all Consenting Owners, which consent may be granted or withheld in the sole and absolute discretion of each Consenting Owner.

#### 3.3. Utility Lines and Facilities:

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

Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of the easement facilities.

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

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

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

3.4. Signs: Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a non-exclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 of this Agreement and all Utility Lines appurtenant thereto. No signage (temporary or otherwise, including, but not limited to, an electronic marquee) with respect to Persons who are not Owners or Occupants shall be permitted on any Center Pylon Signs located in or upon the Shopping Center.

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

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

3.7. Fire/Storm Water Tank: Notwithstanding that, per the Approved Plans, the Fire/Storm Water Tank may provide water to certain fire hydrants in the Shopping Center, the Parties acknowledge and agree that Developer, Home Depot and the Owner of the Home Depot Parcel shall have absolutely NO liability to any Owners (or any Occupants) in the Shopping Center with respect to the Fire/Storm Water Tank (including, without limitation, lack of water in said Fire/Storm Water Tank). Further, the Parties acknowledge and agree that ownership of the Fire/Storm Water Tank will be conveyed to the Virgin Islands Water and Power Authority ("WPA"); provided, however, that any such conveyance to WPA shall be subject to (i) the rights of the Owner and/or Occupant of the Home Depot Parcel to use the Fire/Storm Water Tank for its intended purpose and to maintain the Fire/Storm Water Tank in a good and working order; (ii) the prohibition of WPA (or any other 3rd party) from draining water from the Fire/Storm Water Tank in an amount which adversely impacts the fire protection system of any Building on the Home Depot Parcel; and (iii) the prohibition of WPA in granting any 3<sup>rd</sup> party rights to use the Fire/Storm Water Tank.

3.8. Storm Drainage and Detention Easements: Each Owner hereby grants and conveys to each other Owner owning an adjacent Parcel the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the grantor's Parcel and into that certain drainage way labeled and shown on the Site Plan as the "**Drainage Way**" upon the following conditions and terms: (i) the grades and the surface water drainage/retention system for the Shopping Center shall remain in strict conformance with the Approved Plans, and (ii) no Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration is not in conformance with the Approved Plans or would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities shall be deemed a Utility Line. Except as otherwise provided herein, 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.

#### 4. OPERATION OF COMMON AREA

##### 4.1. Parking:

(a) The parking area on each Parcel shall contain sufficient ground level parking spaces (exclusive of parking spaces used for cart corrals and/or recycle centers) in order to comply with the following minimum requirements, without reliance on parking spaces located on any other Parcel:

(i) two (2) parking spaces for each one thousand (1,000) square feet of Floor Area;

(ii) if a business use contains a drive-up or drive-thru unit (such as a remote banking teller or food ordering/dispensing facility, but specifically excluding the customer loading area located on the Home Depot Parcel), then there shall also be created space for stacking not less than ten (10) automobiles (exclusive of any drive-aisle) for each drive-up unit;

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

(iv) ten (10) parking spaces for each 1,000 square feet of Floor Area for the office building located on Lot 2B;

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

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

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

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

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

4.2. Intentionally Omitted:

4.3. Signs:

(a) Subject to the provisions of subparagraph (b) below, no free-standing, permanent sign structures other than the Center Pylon Sign may be erected or maintained in the Shopping Center by any Party. The Center Pylon Sign shall display the designation of Home Depot and, provided the amount of signage otherwise permitted by Governmental Regulations to display Home Depot's designation is not adversely affected thereby, designations for not more than nine (9) other businesses in the Shopping Center. Any such business, in order to display its designation on a Center Pylon Sign, must occupy not less than 2,000 square feet of Floor Area. The cost of initially constructing and installing the Center Pylon Signs shall be paid by the Developer pursuant to the Development Rider; provided, however, that the parties acknowledge that notwithstanding the Development Rider, Home Depot shall provide Developer with its panel and Developer shall cause the said Home Depot's panel to be installed on the Pylon, all at Developer's sole cost and expense. The cost of maintaining, insuring, repairing and replacing the Center Pylon Signs structure (including electrical hookup to a common meter) shall first be paid by the Owner of the Home Depot Parcel, which Owner shall then be reimbursed for such costs by the Owners of all Parcels entitled to display designations thereon in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon. Each Person displaying a designation on a Center Pylon Sign shall supply and maintain its own sign fascia and can. The Owner of the Home Depot Parcel shall have not less than sixty percent (60%) of the uppermost portion of the signage area on each Center Pylon Sign. The Owner of the Home Depot Parcel shall have the top designation on each Center Pylon Sign. The Owners of the Outparcels shall be permitted to share the bottom designation on each Center Pylon Sign. The initial design of the Center Pylon Signs structures shall be as set forth on Exhibit C attached hereto and incorporated herein by this reference (or otherwise subject to the approval of the Consenting Owners). Once constructed, no freestanding sign may be constructed, taken down, altered or modified without the prior written approval of each of the Consenting Owners.

(b) The Owner of each parcel shall have the right to construct, at its sole cost and expense, no more than one (1) monument sign on its Parcel, no larger than five feet by five feet (5' x 5') (each, a "**Monument Sign**") in accordance with the terms and provisions herein. Each Owner shall be obligated to maintain and repair the Monument Sign pursuant to the terms and provisions set forth herein.

(c) Except as set forth in subsection (a) above, or otherwise approved by the Consenting Owners, all signs in the Shopping Center shall conform with the following standards:

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

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

4.4. 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 without the prior written approval of the Consenting Owners except (i) Service Areas in accordance with the requirements of paragraph (b) below, (ii) public pay telephones provided their location has been approved in writing by the Consenting Owners, (iii) temporary booths, stands, displays, tents or other structures or equipment used for sales in the parking area on the Home Depot Parcel.

(b) The sizes and arrangements of Common Area improvements may not be materially changed without the Consenting Owners' prior written approval. A Consenting Owner may withhold its consent to any material change to the entrances or exits to or from the Shopping Center in its sole and absolute discretion. Except as otherwise provided herein and in paragraph (c) below, a Consenting Owner shall not unreasonably withhold, condition or delay its consent to changes in the Common Area improvements provided that the parking complies in all respects with Section 4.1. Nothing in this Section 4.5 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.

## 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 for any business which sells, displays, leases, rents or distributes the following items or materials, singly or in any combination: lumber, hardware, tools, plumbing supplies, pool supplies, electrical supplies, paint, wallpaper and other wallcoverings, window treatments (including draperies, curtains and blinds), kitchen or bathrooms or components thereof (including tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware), windows, hard and soft flooring (including tile, wood flooring, rugs and carpeting), siding, ceiling fans, gardening and garden nursery supplies, artificial and natural plants, outdoor cooking equipment and accessories, patio furniture and patio accessories, Christmas trees, indoor and outdoor lighting systems and light fixtures, cabinets and unfinished and finished furniture, kitchen and household appliances, closet organizing systems, pictures or picture framing, interior design services, or other products generally sold in a retail home improvement center, except for the incidental sale of such items. An "**incidental sale of such items**" is one in which there is no more than the lesser of (i) ten percent (10%) of the total Floor Area of such business, or (ii) 1,500 square feet of sales and/or display area, relating to such items individually or in the aggregate.

So long as the Home Depot Parcel is being operated as a home improvement center and for a period of eighteen (18) months after the Home Depot Parcel ceases operating as a home improvement center, no portion of the Shopping Center (other than the Home Depot Parcel) shall be used for any business which sells, displays, leases, rents or distributes the following items or materials, individually or in any combination: lumber, hardware, tools, plumbing supplies, pool supplies, electrical supplies, paint, wallpaper and other wall coverings, window treatments (including draperies, curtains and blinds), kitchen or bathrooms or components thereof (including tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware), windows, hard and soft flooring (including tile, wood flooring, rugs and carpeting), siding, ceiling fans, gardening and garden nursery supplies, artificial and natural plants, outdoor cooking equipment and accessories, patio furniture and patio accessories, Christmas trees, indoor and outdoor lighting systems and light fixtures, cabinets and unfinished and finished furniture, kitchen and household appliances, closet organizing systems, interior design services, or other products generally sold in a retail home improvement center, except for the incidental sale of such items. An "incidental sale of such items" is one in which there is no more than the lesser of (i) five percent (5%) of the total floor area of such business; or (ii) one thousand (1,000) square feet of sales and/or display area, relating to such items individually or in the aggregate. Such home improvement center shall not be deemed to have ceased operating if: (i) the home improvement center is closed due to damage by fire or other casualty, taking by eminent domain or force majeure for a period of time not more than one hundred and eighty (180) days; (ii) the home improvement center is closed for a period of time not more than one hundred eighty (180) days for alterations, renovation or repair or purposes of restocking inventory, remerchandising of the store or taking of inventory; or (iii) the home improvement center is closed for a period of time of not more than one hundred eighty (180) days for renovation and other preparations by an assignee or subtenant. In addition, during the Term hereof, no portion of the Shopping Center (other than the Home Depot Parcel) nor any other property now owned or hereafter owned or leased by Developer or any affiliate (as defined below) of Developer located within three (3) miles of the Home Depot Parcel (the "**Adjacent Controlled Property**") shall be used for a home improvement center. Notwithstanding the foregoing, nothing herein shall in any way shall be construed to prohibit the operation of a national retail department store such as a Wal-Mart or Target. As used herein, the term "**Affiliate**" shall mean any person or entity in control of, controlled by or under common control with, Developer. For purposes of this provision, a person or entity shall be deemed to be in control of another if such person or entity owns or has beneficial ownership of fifty percent (50%) or more of the ownership interests of the entity in question or such person or entity owns less than fifty percent (50%) of such ownership interests, but actually controls the management of such entity.

## 5.2. Shopping Center Restrictions:

(a) Except as otherwise provided herein, no portion of the Shopping Center other than the Home Depot Parcel shall be used for any non-retail use or for any of the following purposes: a surplus store; gun range; the sale of guns as a primary use; car wash facility or gasoline station; a warehouse; an animal kennel; theater, auditorium, ; bowling alley; skating rink; fitness center, workout facility, gym, health spa or studio, or exercise facility; Restaurants which derive more than 35% of their gross sales from alcohol sales; business office usage (defined as any office that does not provide services directly to a consumer) other than incidental in connection with non-prohibited uses; provided, however, nothing contained herein shall in any way prohibit the use of Lot 2B as a medical office building.

(b) No portion of the Shopping Center shall be used for any of the following purposes: a flea market or a business selling so-called "second hand" goods (the term "**second hand**" shall mean stores which sell goods primarily as a service to the public rather than to a retail customer for a profit); cemetery; mortuary; any establishment engaged in the business of selling, exhibiting or

delivering pornographic or obscene materials; a so-called "**head shop**"; off-track betting parlor; junk yard; recycling facility or stockyard; motor vehicle or boat dealership, automotive repair shop that stores vehicles outdoors overnight (the foregoing restriction shall not preclude a business whose primary activity is changing oil in motor vehicles, such as a Jiffy Lube); motor vehicle or boat storage facility (neither the foregoing restriction nor anything else in this Agreement to the contrary shall preclude the Owner of the Home Depot Parcel's sale or rental of delivery vehicles and trailers to its customers as part of its home improvement business); a mini-storage or self-storage facility; a laundromat or dry-cleaning facility (but this shall not be deemed to prohibit nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer); a bar, tavern or cocktail lounge; a discotheque, dance hall, comedy club, night club or adult entertainment facility; billiard or pool hall; massage parlor, game parlor or video arcade (which shall be defined as any store containing more than three (3) electronic games); a beauty school, barber college, reading room; industrial, residential or manufacturing uses, school or house of worship.

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

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

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

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

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

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

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

## 6. MAINTENANCE STANDARDS

6.1. Maintenance Obligations: Except as provided in Section 6.4 herein, each Owner shall, except as hereinafter provided, maintain the Common Area on its Parcel at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

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

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

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

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

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

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

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

(h) Maintaining, repairing and replacing, when necessary, all Common Area storm drains, sewers, lift stations and other Utility Lines not dedicated to the public or conveyed to any public

or private utility which are necessary for the operation of the Buildings and improvements located in the Shopping Center;

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

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

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

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

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

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

6.4 Drainage Way: Notwithstanding anything herein to the contrary, Developer or any subsequent fee owner (as opposed to Prime Lessee) of the Home Depot Parcel shall be responsible for maintenance of the Drainage Way. On or before January 1 of each calendar year, each Owner shall deliver to Developer (or its successor, as the case may be), the following in reimbursement of such Owner's share of the costs incurred by Developer to maintain the Drainage Way (the "**Drainage Way Annual Fee**"):

Outparcel 2A	\$150.00
Outparcel 2B	\$150.00
Outparcel 3	\$150.00
Outparcel 4	\$150.00
Outparcel 5	\$150.00
Outparcel 6A	\$150.00
Outparcel 6B	\$150.00
Future Development Parcel	\$150.00
Ruins Parcel	\$0.00
Home Depot Parcel	\$1,500.00

Thereafter, on the fifth (5<sup>th</sup>) anniversary of this Agreement and every five (5) years thereafter, the Drainage Way Annual Fee shall each be increased to 110% of the Drainage Way Annual Fee paid during the previous five (5) year period. Notwithstanding any other provisions hereof, if any Owner, or any of its successors or assigns or their respective agents, representatives, invitees, guests, tenants or licensees,

damages the Drainage Way, such Owner shall reimburse Developer for the costs and expenses for the repair and restoration of such damage within thirty (30) days after receipt of an invoice from Developer (or its successor, as the case may be), and in the event such Owner fails to make such payment within such 30-day period, such Owner shall be required to pay interest on the amount due at the lesser of (a) the maximum rate allowed by law or (b) fifteen percent (15%) per annum until payment is made. The Owner of the Home Depot Parcel shall not in any case be liable for damages associated with the Drainage Way, including but not limited to flooding or erosion, whether or not related to its maintenance responsibilities.

## 7. LIGHTING

After completion of the Common Area lighting system on its Parcel, each Owner hereby covenants and agrees to keep its Parcel fully illuminated each day from dusk to at least 11:00 p.m. unless the Consenting Owners agree upon a different time. Each Owner further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this Agreement, each Owner grants an irrevocable license to each other Owner for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcels. Unless otherwise approved in writing by the Owner of the Home Depot Parcel, all exterior lighting fixtures and facilities on any portion of the Shopping Center shall (i) be of the type installed on the Home Depot Parcel, and (ii) not exceed an average lighting output of three (3) foot candles.

## 8. PAYMENT OF TAXES

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

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

## 9. SUCCESSORS AND ASSIGNS; LIMITATION ON RELEASE

This Agreement and the Easements and Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, Occupants, successors and assigns, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, and such Owner, then at such time as the selling Owner executes and delivers to the Consenting Owners a written statement in which the name and address of the new Owner, the effective date of the conveyance, the Parcel conveyed, and, if applicable, the name of a new Party who has taken the position of a Consenting Owner as provided pursuant to the terms of this Agreement, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Agreement with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

Failure to deliver any such written statement shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify or otherwise affect the liability of the new Owner pursuant to the provisions of this Agreement, but such failure shall constitute a default by conveying Owner resulting in continued liability hereunder.

## 10. DEFAULT

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

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

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

## 11. LIEN FOR EXPENSES OR TAXES

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

- (a) An itemized statement of all amounts due and payable pursuant hereto;

(b) A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien;

(c) The name of the Owner or Occupant of the property which is the subject of the lien; and

(d) The name and address of the Owner or Party recording the claim of lien.

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

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

## 12. LIABILITY INSURANCE; INDEMNIFICATION

### 12.1. Liability Insurance:

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

(b) The Owner's Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State in which the Shopping Center is located with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system), and have limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence and Five Million and No/100 Dollars (\$5,000,000.00) in the aggregate. The insurance required pursuant to this Section 12.1 shall be at least as broad as the most commonly available ISO Commercial General Liability policy form CG 00 01 0798 and shall include the following provisions: (i) the policy may not be canceled or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days' prior written notice by the insurer to each insured and additional insured; (ii) severability of interests; (iii) an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds; (iv) name all other Owners as additional insureds; and (v) endorsed to cover said Owner's agreement to indemnify as set out in this Agreement. Each Owner agrees to furnish to any other Owner requesting same evidence that: (i) such insurance is in full force and effect; (ii) the premiums have been paid in full; and (iii) the appropriate parties are designated as additional insureds on ISO Form CG 2026 1185. The Owners agree that such evidence being readily available on the Internet shall be a satisfactory method of delivering such evidence. If not part of such policy, the Owner's Liability Insurance shall have at least the following

endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or caused by employees; (iii) providing for blanket contractual liability coverage (including all of an Owner's indemnity obligations contained in this Agreement), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; (iv) providing for coverage of employer's automobile non-ownership liability; and (v) if the use of a Parcel includes the sale of alcoholic beverages, including coverage for employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) per occurrence. The Owner's Liability Insurance shall be written on an "occurrence" basis form and not on a "claims made" form. The insurance referenced in this Section 12.1 may be provided under (i) an individual policy specifically covering such Owner's Parcel, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner; so long as the amount and coverage of insurance required to be carried hereunder is not diminished, (iii) a plan of self-insurance satisfying the criteria set forth in Section 12.1(c) below, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with this Article 12, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed one percent (1%) of an Owner's net worth unless such Owner complies with the requirements regarding self-insurance pursuant to Section 12.1(c) below.

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

#### 12.2. Insurance Coverage During Construction:

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

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

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

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

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

(a) Required coverages:

(1) Premises and Operations;

- (2) Products and Completed Operations;
  - (3) Contractual Liability insuring the indemnity obligations assumed by contractor under the contract documents;
  - (4) Broad Form Property Damage (including Completed Operations);
  - (5) Explosion, Collapse and Underground Hazards;
  - (6) Personal Injury Liability; and
  - (7) Builders Risk
- (b) Minimum limits of liability:
- (1) Two Million and No/100 Dollars (\$2,000,000.00) per occurrence.
  - (2) Five Million and No/100 Dollars (\$5,000,000.00) aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work),
  - (3) Five Million and No/100 Dollars (\$5,000,000.00) general aggregate applied separately to the Shopping Center.

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

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

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

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

and hold the other Owners and Occupants harmless for, from and against any and all Claims in connection with the loss of life, personal injury and/or damage to property (i) arising from or out of any occurrence in or upon the indemnifying Owner's Parcel, including an Owner's or Occupant's own negligence; (ii) occasioned wholly by any negligent or willful act or omission of the indemnifying Owner, its Occupants or their respective its 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.

### 13. PROPERTY DAMAGE AND EMINENT DOMAIN

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

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

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

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

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

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

#### 14. GENERAL PROVISIONS

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

14.2. No Public Dedication: Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed. An Owner shall have the

right to close, if necessary, all or any portion of the Common Area on its Parcel from time to time as may be necessary, in the opinion of such Owner, to prevent a dedication thereof or the accrual of any rights of the public therein.

14.3. Duration: Except as otherwise provided herein, the term of this Agreement shall be for sixty-five (65) years (the "**Primary Period**") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Agreement shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "**Extension Period**") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, the Consenting Owners deliver to the other Owners in the Shopping Center written notice of termination, in which event, this Agreement shall automatically expire at the end of the Primary Period or Extension Period then in effect. Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination, and, provided further, that the access easements and the rights and duties related thereto as provided in Section 3.1, the sign easements and the rights and duties related thereto as provided in Sections 3.4 and 4.3, 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.

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

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

14.6. Method of Approval: Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction (collectively, an "**approval**") is specifically required of an Owner pursuant to the express terms of this Agreement (or any Exhibit hereto), it shall not be unreasonably withheld, conditioned or delayed. Unless provision is made for a specific time period, approval or disapproval shall be given within forty-five (45) days after receipt of written request for approval, provided, however, for purposes of this Section 14.6, as between the Consenting Owners, all references to "forty-five (45) days" shall be deemed to be "thirty (30) days". If an Owner neither approves nor disapproves within the required time period, then the Owner requesting approval shall have the right to send a second written request for approval. If such second request states on its face in all capital letters that failure to respond thereto within fifteen (15) days shall be deemed approval, then the failure to respond within such fifteen

(15) day period shall constitute the approval of the Owner from whom approval was requested. Except with respect to approvals which are deemed approved pursuant to the preceding sentence, all approvals (including conditional approvals) and disapprovals shall not be effective unless given or made in writing. If an Owner disapproves, the reasons therefor shall be stated in reasonable detail in writing. An Owner's approval of any act or request by another Owner shall not be deemed to waive or render unnecessary approval of any similar or subsequent acts or requests. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may consider any proposed amendment to this Agreement in its sole and absolute discretion without regard to reasonableness or timeliness.

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

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

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

14.10. Notices:

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by facsimile, by personal delivery, by United States mail or United States express mail postage or delivery charge prepaid, return receipt requested, or by an established express delivery service (such as Federal Express or United Parcel Service), sent to the person and address or facsimile number designated below or, in the absence of such designation, to the person and address shown on the then current real

property tax rolls of the county in which the Shopping Center is located. The Parties expressly agree that notices given by attorneys on behalf of their client(s) in the manner provided in this subsection are effective and recognized notice pursuant to this Agreement. All notices to Developer and the Owner of the Home Depot Parcel shall be sent to the person and address set forth below:

To Developer: CDP, LLC  
5001 Chandlers Wharf, Suite 201  
Christiansted, St. Croix USV 00820  
Facsimile: (340) 719-0911

With a copy to: White Goss Bowers March Schulte & Weisenfels  
4510 Belleview, Suite 300  
Kansas City, Missouri 64111  
Attention: Sandra S. Watts, Esq.  
Facsimile: 816-753-9201

To Home Depot: H.D.V.I. Holding Company, Inc.  
c/o Home Depot U.S.A., Inc.  
2455 Paces Ferry Road  
Building C-20  
Atlanta, Georgia 30339-4024  
Attention: Vice President Real Estate Law Group  
Facsimile: (770) 384-3042

With a copy to: H.D.V.I. Holding Company, Inc.  
c/o Home Depot U.S.A., Inc.  
2455 Paces Ferry Road,  
Building C, 20th Floor  
Atlanta, Georgia 30339-4024  
Attention: Thomas K. Anderson, Sr. Corporate Counsel – Real Estate  
Facsimile: (770) 384-3042

With a copy to: Hartman, Simons, Spielman & Wood, LLP  
6400 Powers Ferry Road, NW, Suite 400  
Atlanta, Georgia 30339  
Attention: Robert Chubb, Esq.  
Facsimile: (770) 303-1131

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

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

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

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

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

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

*[Signatures Begin on Next Page]*

H.D.V.I. HOLDING COMPANY, INC.,  
a Delaware corporation

Carolyn Clayton  
Witness

By: Thomas K. Anderson RAC  
Name: **Thomas K. Anderson**  
Title: **Sr. Attorney**

Marie J. Vield  
Witness

STATE OF GEORGIA  
COUNTY OF COBB

On the 27 day of January, 2009, before me personally came Thomas K. Anderson known to me to be the person whose name is subscribed to the foregoing instrument and known by me to be the Sr. Attorney of H.D.V.I. HOLDING COMPANY, INC., the Delaware corporation described in and which executed the foregoing instrument, and acknowledged to me that he/she executed said instrument for the purposes and consideration therein expressed and as the act of said corporation; that he/she knows the seal of said corporation; that the seal affixed was by order of the board of directors of said corporation, and that he/she signed his/her name thereto by like order.

Connie D. Rockwell  
Notary Public

My Commission Expires: \_\_\_\_\_



