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DECLARATION OF PLAT RESTRICTIONS AND EASEMENTS
FOR CROSSROADS PLAZA
IN THE CITY OF TOLEDO, LUCAS COUNTY, OHIO

THIS DECLARATION OF PLAT RESTRICTIONS AND EASEMENTS (hereinafter the "Declaration") is made at Toledo, Lucas County, Ohio, this 19th day of July, 1997, by AREA GROWTH INVESTORS, LTD., an Ohio limited liability company (hereinafter "Developer") and HOME DEPOT U.S.A., INC., a Delaware corporation (hereinafter "Home Depot").

WHEREAS, Developer is the owner of land located in the City of Toledo, Lucas County, Ohio, and platted as Crossroads Plaza, which plat was recorded on November 13, 1997, in Volume 137, Page 44, Book of Plats of the Lucas County Recorder (hereinafter the "Development"); and includes Lots 1 and 2 (hereinafter separately referred to as "Lot 1" and "Lot 2", respectively); and

WHEREAS, Developer has leased Lot 1 of the Development under a ground lease to Home Depot, having its main office at 2455 Peachtree Road, Atlanta, Georgia 30339-9998 (hereinafter "Home Depot"); and

WHEREAS, Developer recognizes that for the most favorable development of the Development and enhancement of the value of the property, it is necessary to establish and impose certain restrictions, rights, reservations, easements, limitations, agreements, terms, conditions and covenants in the Development for the benefit of and restricting Home Depot, its successors and assigns, and future tenants, owners, and occupants of both Lots 1 and 2 of the Development (hereinafter sometimes referred to as the "Lots"), to facilitate the orderly and proper operation and maintenance of the Development and certain common areas and facilities erected and to be erected thereon, as indicated on the site plan attached hereto as Exhibit A and made a part hereof (the "Site Plan"); and

WHEREAS, on the date of this Declaration, Developer is the fee owner of the entire Development, Home Depot has a leasehold interest in Lot 1 of the Development, and there are no other leasehold interests affecting the Development; and

WHEREAS, Home Depot, for itself and its successors and assigns, agrees to be bound by, and to comply with, this Declaration, and all future owners and lessees of Lot 1 and Lot 2 are intended, by virtue of their ownership or leasehold interest, to become bound by and required to comply with this Declaration; and

WHEREAS, Home Depot, its successors and assigns, and any future owner or tenant of Lot 1 shall be, for purposes of this Declaration, the "Lot 1 Occupant" (sometimes referred to herein as "Lot 1 Occupant"), and any tenant of Lot 2 or of any building constructed on Lot 2 shall be known herein as the "Lot 2 Occupant" (sometimes referred to herein as "Lot 2 Occupant") and the Lot 1 Occupant and the Lot 2 Occupant shall jointly be referred to herein as "Lot Occupants"; however, for any periods when no such tenant exists, the fee title owner of Lot 2 shall be, for purposes of this Declaration, the "Lot 2 Occupant," and for the period prior to a tenant first taking possession of Lot 2, the fee title owner of Lot 2 shall be the party responsible to the Lot 1 Occupant if it seeks to enforce the terms of this Declaration against the tenant of Lot 2; and

WHEREAS, for purposes of this Declaration, the term "Common Areas" shall mean all areas within the exterior boundaries of the Development, exclusive of (i) any Exclusive Area; and for purposes of this Declaration, the term "Outside Exclusive Area" shall mean an area which is used exclusively by an occupant of a Building for sales and/or storage purposes; and for purposes of this Declaration, the term "Building"
shall mean the limited areas of the Development outlined on the Site Plan within which buildings (which for the purpose of this Declaration shall include any appurtenant landscaping, canopies, sidewalks and related curbing, supports, loading docks, truck ramps and other outward extensions, as well as trash compactors, utility transformers and Outside Exclusive Areas) may be constructed, placed or located; and

WHEREAS, Developer intends herein to establish easements for pedestrian and vehicular ingress and egress over the common curb cuts, roadways, driveways, aisles, walkways and sidewalks for access and for delivery and to grant certain rights to install and maintain utility lines and site facilities within the Common Areas, and Developer also intends herein to provide for certain obligations and restrictions with respect to the operation and maintenance of Lots 1 and 2 and the Common Areas and facilities constructed and to be constructed in the Development; and

WHEREAS, all easements, obligations and restrictions provided for herein shall run with the land and to the benefit of, and bind, the Lot 1 Occupant and the Lot 2 Occupant and the terms "Developer" and "Home Depot" shall be deemed to refer initially to the Lot 2 Occupant and Lot 1 Occupant, respectively, and thereafter to the respective heirs, successors, grantees, and assigns of such parties and any lessee of Lot 1 or Lot 2 or a part thereof.

NOW, THEREFORE, in consideration of the enhancement in the value of the Development by reason of the adoption of the restrictions and other provisions hereinafter set forth by Developer, for itself and its successors and assigns, hereby declares, covenants and stipulates that all Lots now existing or hereafter divided and/or split from the Development shall hereafter be conveyed and leased subject to the following restrictions.

ARTICLE I - ESTABLISHMENT OF EASEMENTS

Section 1.01 - Access Easements.

(a) The Developer hereby declares, for the benefit of all Lots in the Development, a non-exclusive easement and right to the use of the Common Areas including all common curb cuts, roadways, driveways, aisles, walkways and sidewalks located in the Development and as indicated on the Site Plan, for purposes of ingress, egress, passage and delivery by vehicles and pedestrians.

(b) The Developer hereby declares, for the benefit of all Lots in the Development, a non-exclusive easement and right to the use of the parking areas from time to time maintained in the Development and located on all Lots, for purposes of vehicular parking.

(c) The easements declared in this Section 1.01 and in Section 1.02 shall be for the benefit of, but not restricted solely to, the Lot 1 Occupant and the Lot 2 Occupant and each such Occupant may grant the benefit of such easements to the tenants and other occupants of the Development for the duration of such occupancy, and to the customers, employees, agents and business invitees thereof; but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public, nor shall it affect any property outside of the Development. The following activities are specifically not permitted by any customer, employee, agent, business invitee or member of the public within the Development: (i) exhibiting any placard, sign or notice; (ii) distributing any circular, handbill, placard or poster; (iii) soliciting membership, contributions; (iv) picketing, picketing, or demonstrating; and (v) failing to follow regulations agreed upon among the Developer, the Lot 1 Occupant and the Lot 2 Occupant, relating to the use of the Development.
Section 1.02. Utility Easements.

The Developer hereby declares, for the benefit of the Development, a non-exclusive easement in, to, over, under and across the Common Areas of the Development for the purpose of installation, operation, maintenance, repair, replacement, removal, and relocation of underground storm sewer lines, drains, sanitary sewer pipes, water and gas mains, electric power lines, telephone and communication lines, and other underground utility lines ("Utility Lines") to serve the facilities (including, but not limited to, the pylon sign structures described in Section 1.04, below) located within the Development. The installation and/or relocation of any Utility Lines shall be subject, as to location and width, to the approval of the Lot Occupant, which approval shall not be unreasonably withheld or delayed.

Section 1.03. Temporary Construction Easement.

In connection with any construction work to be performed within the Development, Developer hereby declares temporary easements for incidental encroachments upon the driveway portion of Lot 1 along its eastern boundary, which may occur as a result of construction so long as such encroachments are kept within the reasonable requirements of construction work expeditiously pursued and so long as customary insurance is maintained protecting the other parties from the risks involved. In addition, to the extent the Developer, the Lot 1 Occupant and the Lot 2 Occupant grant to Developer and its tenants, and their respective contractors, materialmen, and laborers, a temporary easement for access and passage over and across the driveway portion of Lot 1 along its eastern boundary as shall be reasonably necessary for construction of the site improvements shown on the Site Plan. No obstruction to the free flow of traffic shall be permitted pursuant to the temporary easements of this Section 1.03.

Section 1.04. Signs.

Developer declares that the Lot 1 Occupant shall have an easement to construct, use and maintain pylon sign structures (including panel signs on such structures) on the Development in the areas indicated on the Site Plan, which shall be the only pylon signs in the Development, except that the Lot 2 Occupant shall be permitted to place on Lot 2 a free-standing pole sign advertising the business on Lot 2, if permitted by governmental authorities. Such pylon structures shall be designed substantially as set forth in the sign exhibits annexed hereto as Exhibit B-1 (pylon near Airport Highway) and B-2 (pylon near Holland-Sylvania Road) with no more than sixty percent (60%) of the panel signage area on the pylon near Airport Highway and no more than eighty-one percent (81%) of the panel signage area on the pylon near Holland-Sylvania Road to be utilized by the Lot 1 Occupant and the remaining panel signage on such pylons to be utilized by the Lot 2 Occupant. No more than three (3) panel signs may be located or placed upon either pylon. Such panel signs shall be maintained in good repair at the sole expense of the Lot 1 Occupant and/or the Lot 2 Occupant, whichever is making use of the signs (hereinafter the "Sign Users") and each of the Sign Users shall have an easement for installation and use of panel signs, to the extent the sign structure is not on its Lot. The Lot 1 Occupant shall be responsible for lighting and maintaining the pylon sign structure (excluding the panel signs of Sign Users other than itself). If the Lot 1 Occupant defaults in the performance of its obligations under this Section 1.04, the Developer may be required to perform such functions, which can include repair or replacement at Developer's discretion. Before performing pursuant to the preceding sentence, the Developer shall comply with the notice and timing provisions of Section 6.01, below, and it shall be considered a Non-Defaulting Occupant for purposes of such compliance and the self-help permitted therein. The Sign Users shall reimburse the Lot 1 Occupant for their proportionate share of the costs of
constructing, lighting, maintaining and repairing the pylons (but excluding panel boxes and any other Sign User's panel sign) based on the ratio of all panel signs on the pylon, excluding the Lot 1 Occupant's panel sign, over the total area of all panel signs on the pylon. To the extent the Developer has expenses related to the lighting, maintenance, repair or replacement of the pylon sign structure, the Sign Users shall reimburse it, for their proportionate share based on the ratio of the area of their panel sign on the pylon over the total area of all panel signs on the pylon, notwithstanding the preceding sentence. The Lot 1 Occupant shall, on or before the ninetieth (90th) day following the end of each calendar year, deliver to the Sign Users a statement signed by the Lot 1 Occupant certifying the true amount of the pylon-related expenses, together with an itemization of such expenses. Such amount shall be ratably charged per diem basis during the calendar years when a Sign User becomes or ceases to be a Lot Occupant. No tenant in the Development occupying less than 10,000 square feet of floor area shall be identified on pylon signs. The Lot 1 Occupant may make changes to and/or replace such pylon structures and/or the panel signs, so long as all necessary governmental approvals are obtained therefor, and all other Sign Users' panel signs are promptly replaced without diminution in value, appearance or size. In addition, neither exterior identification signs attached to buildings nor free-standing signs shall be of the type set forth below—

(i) flashing; moving or audible signs, other than time and/or temperature signs and temporary signs announcing a grand opening;

(ii) signs employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers;

(iii) paper or cardboard signs, temporary signs (exclusive of contractors' or lenders' signs and grand opening signs), stickers or decals; provided, however, the foregoing shall not prohibit the placement at the entrance of each Building small stickers or decals, indicating hours of business, credit card acceptance, emergency telephone numbers, and similar bits of information; or

(iv) signs painted on the surface of any Building.

Nothing in this Section shall be construed as a warranty by the Developer of the availability of any sign or sign structures by the appropriate governmental authorities, or of the approval of any such sign or sign structures by said governmental authorities.

Section 1.05. Restrictions.

During the term of this Declaration prior to its termination, the easements granted by this Article I shall be subject to the covenants and restrictions set forth in Article III.

ARTICLE II - CONSTRUCTION, MAINTENANCE AND OPERATION

Section 2.01. Construction, Maintenance and Repair.

(a) The Lot 2 Occupant (at such time as a Building is constructed on Lot 2 and it is opened for business) and the Lot 1 Occupant shall maintain, repair and replace all Buildings and related improvements located on their respective Lots, subject to Section 5.01, below. The Lot 2 Occupant (prior to the time that a Building is constructed on Lot 2 and it is opened for business, and prior to the time improvements to the Common Areas on Lot 2 are made) shall keep all of Lot 2 in a clean, sightly and safe condition. The Lot 2 Occupant (once improvements to the Common Areas on Lot 2 are made) and the Lot 1 Occupant shall maintain,
repair and replace all Common Areas located on their respective Lots, so as to keep such areas at all times in reasonably good condition in a manner consistent with the quality and character of similarly situated shopping centers in the Toledo, Ohio metropolitan area, and in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, as well as the provisions of this Declaration. Notwithstanding the foregoing, however, the cost or replacement attributable to and/or necessitated by damage caused by the wrong acts or omissions or negligence of a Lot Occupant (the "Liable Occupant") and/or its employees, agents, contractors or invitees on the LOT of the other Lot Occupant (the "Non-Liable Occupant") shall be made by the Non-Liable Occupant at the cost and expense of the Liable Occupant. The costs and expenses incurred by the Non-Liable Occupant in making such repairs or replacements shall be due and payable within ten (10) days after invoice.

(b) The Lot 2 Occupant (once improvements to the Common Areas on Lot 2 are made) and the Lot 1 Occupant shall be responsible for keeping the Common Areas on their own Lots clean and free from refuse and rubbish, and agree to store all trash and other waste in adequate containers so that they are not readily visible from the main parking areas, and to arrange for regular removal of such trash or garbage. Any landscaped areas or any portions of the Common Areas shall be tended to by the Lot Occupant on which the Common Areas are located.

(c) The Lot 2 Occupant (once improvements to the Common Areas on Lot 2 are made) and the Lot 1 Occupant shall repave, resell, re-stripe and replace markings on, and sweep and remove snow and ice from, the surface of the parking areas and driveways on their respective Lots from time to time as and when necessary to provide for the orderly parking of automobiles, and shall place and maintain adequate exit and entrance and other traffic control devices to direct traffic in and out of said parking areas. Any striping and other markings shall be consistent with the Site Plan and the lighting, paving and striping materials shall be consistent with that used in the Development.

(d) The Lot 2 Occupant (once utility lines are located on Lot 2) and the Lot 1 Occupant shall service, maintain, repair and replace the Utility Lines located on their respective Lots; in such manner as to ensure that any such Utility Line exclusively servicing any Lot crosses another Lot, such Utility Line shall be so maintained by the parties served by the Utility Line at its own expense, following at least five (5) business days' prior written notice (except in the event of an emergency, when only notice reasonable under the circumstances shall be required) to the Lot Occupant where the Utility Line is located. Maintenance performed on Utility Lines serving more than one Lot shall be performed by the Lot Occupant of the Lot crossed by the Utility Line, but the cost thereof shall be shared on an equitable basis, based upon the relative square footage of the Building Floor Area (as hereinafter defined) of the Buildings constructed on the respective affected Lots.

Subject to Section 1.02, a Lot Occupant may replace a Utility Line on another Lot, in the same general location as the initial installation, following thirty (30) business days' prior written notice to the Lot Occupant of the Lot on which the Utility Line is located, provided that such work does not unreasonably interfere with the use of the Lot Occupant's Lot on which the Utility Line is located, shall not interfere with or diminish the utility services to the Lot Occupant of the Lot on which the Utility Line is located, and shall be performed without cost or expense to the Lot Occupant of the Lot on which the Utility Line is located.
The party performing the installation, relocation, maintenance or repair of a Utility Line shall, at its cost and expense, repair any damage to any improvements on the other Lot Occupant’s Lot as soon as reasonably possible. Each Lot Occupant shall indemnify and hold the Lot Occupant of the Lot on which the Utility Line is located, installed, or relocated, harmless from any claim, damage or loss which may result from activities undertaken by such indemnifying Lot Occupant in making such maintenance or repairs, or in installing, or relocating a Utility Line.

(e) The Lot 1 Occupant and the Lot 2 Occupant shall cause the Common Areas and all buildings and improvements located on their Lots to comply with all requirements of law and governmental regulations applicable thereto, provided, however, that a Lot Occupant may contest any such law or regulation so long as such contest would not create any material danger of a loss of title or impairment in any way of the use of, all or any portion of the Common Areas for their intended purposes.

(f) The Lot 1 Occupant and the Lot 2 Occupant, if it chooses to improve its Lot, shall cause the Common Area on their Lots to be initially improved substantially as shown on the Site Plan. No Lot Occupant shall alter the grade elevations on any portion of the Lots from those established by such Plan, if such alteration would increase the flow of surface water onto another Lot, affect ingress or egress, or otherwise adversely affect another Lot. Prior to commencing any construction activities within the Development, each Lot Occupant shall obtain or require its contractor to obtain and thereafter maintain, so long as construction activity is occurring, at least minimum insurance coverage as set forth below.

(i) Workers’ compensation — statutory limits

(ii) Employers’ liability — $500,000

(iii) Commercial general and commercial auto liability in the amount of One Million Dollars ($1,000,000.00) per occurrence, Two Million Dollars ($2,000,000.00) aggregate, including:

(A) Products/Completed Operations Coverage on an occurrence basis;

(B) "XCU" Hazard Endorsements, if applicable; and

(C) Contractual Liability Endorsement or coverage.

(iv) Umbrella liability in the amount of Five Million Dollars ($5,000,000.00); and

(v) Contractor’s Protective Liability Insurance covering the contractor, Lot Occupant(s) and owner(s) in the same amounts as set forth in (iii) above.

If the construction activity involves the use of another Lot, then the Lot Occupant of such Lot shall be an additional named insured and such insurance shall provide that the same shall not be canceled without at least thirty (30) days prior written notice to the additional named insureds. If such insurance is canceled or expires, then the constructing Lot Occupant shall immediately stop all work on or use of another Lot until either the required insurance is reinstated or replacement insurance obtained. Notwithstanding the foregoing, any Lot Occupant which, with its affiliates, maintains a net worth of at least One Hundred Million Dollars ($100,000,000.00) may satisfy the requirements placed upon a Lot Occupant under this subsection (f) through self insurance. As used in the preceding sentence, "affiliates" shall mean any person or business entity which the Lot Occupant controls, by which the Lot Occupant is controlled, or which is under common control with the Lot Occupant.
Section 2.02. Operation and Lighting.

(a) The Lot 2 Occupant (once initial improvements are made) and the Lot 1 Occupant shall keep the curb cuts, roadways and parking areas of their respective Lots open to the customers of the Development seven days a week at all times, and lighted after dusk until 11:00 p.m. on Monday through Saturday and from dusk until 7:00 p.m. on Sunday ("Normal Lighting Hours"), provided, however, that any exterior building security lights and internal access roadway lights shall be kept on from dusk until dawn. Lights on the entrance ways to and exit ways from the Development shall be on a separate house meter, installed, maintained and read by the Lot 1 Occupant, and all charges for such lighting shall be allocated and billed by the Lot 1 Occupant among the Lot Occupants in accordance with their relative square footage of Building Floor Area in the Development. The Lot 1 Occupant shall be responsible for all charges for such lighting until such time as a building on Lot 2 is constructed and it is opened for business. The lighting on the parking surface of Lot 2 shall be maintained at two (2) foot candles at the western property line of Lot 2, and shall taper to no less than one (1) foot candle at the eastern property line of Lot 2, for an average of no less than one and one-half (1-1/2) foot candles maintained on the parking surface of Lot 2, for lighting required by the City of Toledo, the plan commission or any other governmental authority with jurisdiction over the Development, such requirements shall supersede the provisions herein. Any Lot Occupant or occupant of a Lot may require the lights on any other Lots to be kept lighted after Normal Lighting Hours if such Lot Occupant or occupant reimburses the requested Lot Occupant for the additional electrical costs incurred. The cost shall be shared on a prorate square footage basis of Building Floor Area in the Development with any other occupant which remains open during such additional hours. The meters and lighting control switches for the exterior parking and roadway lighting for each Lot shall be located in an exterior, accessible location on each Lot and the Lot 1 Occupant shall be provided with keys to such controls.

(b) At the expense of the party or parties contracting for or engaging in construction, except as provided in Subsection (a) above, the Development’s lighting facilities and fixtures shall be designed and installed with separate meters to measure the electricity consumed on the respective Lots.

(c) Notwithstanding anything contained in this Declaration to the contrary, no Lot Occupant shall be required to operate or open a business on its Lot, or to remain open for business at any time during the term of this Declaration.

Section 2.03. Delegation of Management.

The Lot Occupants may enter into an agreement, with the consent of the Lot Occupants of all Lots affected thereby, appointing one of the Lot Occupants or a third party to perform all or portions of the maintenance and repair of the Common Areas and related facilities of the Development. In such event each Lot Occupant shall be responsible to pay its Share (as hereinafter defined) of the costs incurred by the designated party in performing such services, which costs shall include the ordinary operation and maintenance as well as capital expenditures to the extent so authorized, provided, however, that any expenditure in which another Lot Occupant must share for a repair or replacement of the designated party costing Five Thousand Dollars ($5,000.00) or more, shall require the prior approval of each such Lot Occupant. As used herein the term "Share" shall mean a fraction, the numerator of which shall be the number of square feet of floor area (exclusive of mezzanines used for storage and related office uses) in all buildings located on such Lot Occupant’s Lot as measured from the exterior base of any exterior wall and to the centerline of any party wall ("Building Floor
Section 2.04. Taxes and Assessments.

Each Lot Occupant shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Lot, the Buildings, and improvements located thereon and any personal property owned or leased by such Lot Occupant in the Development, provided that if the taxes or assessments or any part thereof may be paid in installments, the Lot Occupant may pay such installment as and when the same becomes due and payable. Nothing contained in this Section shall prevent any Lot Occupant from contesting, at its cost and expense, any such taxes and assessments with respect to its Lot in any manner such Lot Occupant elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded (allowing for appeal to the highest appellate court or administrative agency), the contesting Lot Occupant shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

ARTICLE III - COVENANTS AND RESTRICTIONS

Section 3.01. Restrictions on Common Areas and Construction.

The Common Areas of the Development shall be subject to the following restrictions which shall be binding on each Lot Occupant and each of its tenants, occupants, employees, agents or invitees:

(a) Once the Common Area improvements on a Lot are made, no obstruction to the free flow of traffic and use of the parking areas and delivery facilities shall be permitted, except to the extent, if any, indicated on the Site Plan (including, but not limited to the Future Building Area and associated improvements indicated in the Site Plan and improvements associated therewith). Other than as permitted hereunder, no Lot Occupant or party shall make changes to the Improved Common Areas on its Lot as shown on the Site Plan without the approval of the Lot Occupants and the Developer, which approval shall not be unreasonably withheld or delayed. In the event a Lot Occupant or Developer does not notify the Lot Occupant or party seeking approval of its approval or disapproval of such changes within fifteen (15) days of a request or therefor, then such Lot Occupant or Developer shall be deemed to have approved such changes. Notwithstanding the foregoing each Lot Occupant hereby reserves the right, from time to time without obtaining the consent or approval of any other Lot Occupant or the Developer, to make at its own expense any insignificant change, modification or alteration in its portion of the Common Areas, provided that:

(i) The accessibility of such Common Areas for pedestrian and vehicular traffic (as is relates to the remainder of the Development), is not unreasonably restricted or hindered;

(ii) There shall be maintained at all times within such Common Areas all parking stalls and rows and vehicular traffic lanes generally as shown on the Site Plan except as provided in subsection 3.01(b) below;

(iii) No governmental rule, ordinance or regulation shall be violated as a result of such action, and such action shall not result in any other party, Lot Occupant or the Developer being in violation of any governmental rule, ordinance or regulation;
(iv) No change shall be made in the access points and driveways between the Common Areas and the public streets; provided however, that additional access points may be created (if permitted by governmental authorities with jurisdiction over the same) with the approval of the Lot Owners and the owners of the Lots, such approval not to be unreasonably withheld; and

(v) At least thirty (30) days prior to making any such change, modification or alteration, the Lot Occupant desiring to do such work shall deliver to each other Lot Occupant and the owners of the Lots copies of the plans therefor.

(b) No Building or other structure of any kind (except pylons, shopping cart corrals, lighting standards, convenience facilities (such as mailboxes, public telephones, benches and public transportation shelters), handicapped parking signs, landscaping, berms, and planters; and limited curbing and other forms of traffic controls which a Lot Occupant may place on its Lot to the extent permitted in subsection (a) and in areas where the same are not prohibited as depicted on the Site Plan) shall be permitted in portions of the Development except in the Building envelopes shown on the Site Plan (but taking into account and permitting the appurtenant items related to "Building" above). No building or structure in the Building envelopes shall exceed the maximum building floor area shown on the Site Plan nor exceed the maximum height (including parapet walls or any other projections of any kind) indicated below:

<table>
<thead>
<tr>
<th>Lot</th>
<th>Height</th>
</tr>
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<tbody>
<tr>
<td>Lot 1</td>
<td>Forty-five (45) feet</td>
</tr>
<tr>
<td>Lot 2</td>
<td>Forty-five (45) feet</td>
</tr>
</tbody>
</table>

The height of any Building shall be measured perpendicularly from the finish grade of the Building area.

(c) No Lot Occupant shall grant any easement for the benefit of any property not within the Development; provided, however, that nothing in this Declaration shall prohibit the granting or dedicating of utility easements, right-of-way easements, driveway easements, and easements for installation and/or maintenance of traffic control devices by the Developer (or a Lot Occupant on its Lot) to governmental or quasi-governmental authorities or to public utilities; provided, however, that the granting of utility easements, right-of-way easements, and easements for installation and/or maintenance of traffic control devices may not be granted or dedicated by Developer without the prior written consent of the Lot Occupant(s) of the Lot(s) on which the easement area is located, which consent shall not be unreasonably withheld or delayed.

(d) Any construction shall be conducted in a manner which will limit to the maximum extent practicable any interference with the operation of the balance of the Development and any temporary staging and/or storage area shall not unreasonably interfere with access rights hereunder.

(e) No Building or other structure shall be permitted within the Development if such Building or other structure would reduce the parking ratio within the Development; or any individual Lot below the number of parking spaces required under applicable governmental rules, regulations and ordinances, or required by the City of Toledo, the local plan commission or other governmental authorities with jurisdiction over the parking ratios in the Development (hereinafter "government authorities"). The Lot 1 Occupant and the Lot 2 Occupant shall maintain, on their respective Lots, parking spaces in the quantity required under such rules, regulations and ordinances and by the government authorities.
Section 3.02. Use Restrictions.

The Development shall be subject to the following use restrictions which shall be binding on each Lot Occupant and each of its tenants, occupance, agents or invitees:

(a) No portion of the Development shall be used for a business of use which produces obnoxious odors; produces fumes, dust, dirt, fly ash, or vapors in excessive quantities; is illegal or unlawful; is a public or private nuisance; emits noises or sounds which are objectionable due to intermittence, beat, frequency, sickliness, loudness; or creates unusual fire, explosive or other hazards (including the storage, display or sale of explosives or fireworks);

(b) No portion of Lot 2 shall be used for any non-rental use other than retail service, use customary to first-class shopping centers, such as banks and travel agencies. Moreover, no portion of the Development may be leased, used or occupied as a book store or establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; except that this provision shall not prohibit (i) video tape rental stores which rent primarily non-"X-rated" entertainment video tapes which may also rent "X-rated" or similar videotapes, and the place and procedure for selection thereof (which shall not exceed in the aggregate fifty (50) square feet of building floor area), excludes viewing or selection by minors, or engages in no promotional, advertising or other depiction or description in respect of any "X-rated" or non-rated or similar videotape displayed or utilized within or outside the store, or (ii) retail stores and entertainment merchandise stores such as drug stores which sell primarily general audience books which are not perceived to be, or hold themselves out as "adult book" stores, but which incidentally sell books, magazines and other periodicals which may contain pornographic materials so long as such sale is not from any special or segregated section in the store; a so-called "head shop"; video or other type of game room or arcade; casino, game hall or other gambling operation or facility; off-track betting parlor; bingo parlor; amusement center; carnival; amusement park or circus; pawn shop; business selling so-called "second-hand goods" (excluding, however, retailers such as "Play It Again Sports" and "Tuesday Morning"); junk yard; flea market; recycling facility or stockyard; motor vehicle or boat dealership, vehicle repair shop (including lubrication and/or service center), body and fender shop, gas station, car wash facility; automobile, truck, or other motor vehicle service center including, but not limited to, a garage and service bays for the performance of mechanical work for motor vehicles; sale of automobile, truck or other motor vehicle accessories, parts and related products; motor vehicle or boat storage facility; theater, auditorium, bar, sports or other entertainment viewing facility (whether live, film, audio/visual or video; provided, however, such uses (other than theater) may be permitted so long as such auditorium, bar, sports or other entertainment viewing facility has on its premises the number of parking stalls required for its use under the City of Toledo's zoning ordinances and provided further, however, that the Lot 1 Occupant shall have the right to locate a fast food or other restaurant within the building on Lot 1 as a convenience to its customers); discotheque, dance hall, or night club; bowling alley; skating rink; health spa or exercise facility; children's playground, play area or recreation center; banquet hall or other place of public assembly; office usage other than incidental in connection with non-prohibited uses and except for retail service usage (such as a real estate office or a travel agency); dry cleaning or laundry plant (except as to an establishment which receives and dispenses items for laundering and/or dry cleaning but retains (or processes of which such items are elsewhere); industrial, assembling, distilling, or manufacturing uses (other than such manufacturing use as is conducted in conjunction with Home Depot's home improvement center business).
living quarters, sleeping apartment or lodging rooms; mortuary, funeral home or crematorium; training or educational facility; or house of worship. 'Training or educational facility' shall mean a beauty school, barber college, reading room, place of instruction or any other activity catering primarily to students or trainees as opposed to customers. Finally, no portion of the Development shall be leased to, and/or used or occupied by a governmental body or a subdivision or agency of a governmental body. The foregoing notwithstanding, the operation on Lot 2 by Pep Boys shall mean a Permitted Successor (as herein defined) of a business for the sale of automotive, truck or other motor vehicle accessories, parts or related products and/or the operation of an automobile, truck or motor vehicle service center, including, but not limited to, garage and service bays for the performance of mechanical work for motor vehicles shall be permitted hereunder. A Permitted Successor of Pep Boys shall only be a similar national (having at least thirty (30) stores operating in the United States) or regional (having at least five (5) stores operating in Ohio and Michigan) automotive parts and/or service center business. Additionally, nothing contained in this Declaration shall prohibit the sale of automotive, truck or other motor vehicle accessories, parts or related products on Lot 1 as an incidental use of the business(es) operated on Lot 1 so long as the lease to Home Depot remains in effect.

(c) No oil development operations, oil refining, quarrying, smelting or mining operations of any kind shall be permitted upon or in any portion of the Development. No oil wells, tanks, tunnels, or mineral excavation operations are permitted upon the surface or within five hundred (500) feet below the surface of any portion of the Development. The preceding sentence is not intended to prohibit otherwise permitted underground storage tanks by a Lot Occupant for its own use, and shall not be construed as a prohibition of existing pipelines. 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 Development.

(d) No portion of the Development outside of Lot 1 may be leased, used or occupied as a business of a home improvement center, or by anyone occupying 25,000 square feet or more of gross leasable area whose principal business is the sale of paint, wallpaper, carpeting, floor coverings, cabinets, lighting fixtures, plumbing fixtures, and other Christmas trees or other than the Lot 1 Occupant shall be permitted to conduct the sale of Christmas trees within the Development.

(e) There shall be no promotion, entertainment, amusement or other activities in the Common Areas, including the sidewalks immediately adjacent to the premises occupied by merchants, which would interfere with the use of the Common Areas and related facilities for their intended purposes. The following shall not be allowed to operate in the Development or the Common Areas: traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fire works, sales by transient merchants utilizing vehicles or booths and other promotions of any nature. Notwithstanding the foregoing, the Lot 1 Occupant may utilize those portions of the Common Area located on Lot 1 for purposes of Christmas tree sales and other seasonal sales so long as the free flow of traffic is not thereby interrupted in any driveway areas. Furthermore, notwithstanding the involvement of Common Areas, the Lot 1 Occupant may (i) use the sidewalk contiguous to the Building constructed on Lot 1 for any lawful retail purpose, including for providing refreshments (including roving food cart vendor service) to employees and customers, and for promotional events, merchandising and display of inventory; (ii) conduct seasonal sales on Lot 1, subject to governmental approvals, so long as the free flow of traffic is not thereby interrupted in any driveway areas; and (iii) install and operate pay telephones on the exterior wall.
of the Building located on Lot 1 or on the sidewalk in front of such Building. Similarly, notwithstanding the involvement of Common Areas, the Lot 2 Occupant is permitted to utilize Lot 2 for outdoor displays seasonal promotions and grand opening. All Common Area activities by all Lot Occupants however shall comply with applicable governmental rules regulations and ordinances of the City of Toledo the plan commission or any governmental authority with jurisdiction over the Development including but not limited to compliance with parking ratios to the extent any governmental authority's claims such ratios are violated by Common Area activities.

ARTICLE IV - LIABILITY AND INDEMNIFICATION

Section 4.01. Liability Indemnification.

Each Lot Occupant ("Indemnitor") covenants and agrees to indemnify defend and hold harmless the other Lot Occupants ("Indemnitees") from and against all claims costs expenses and liabilities (including reasonable attorneys fees and costs of suit) incurred in connection with all claims including any action or proceeding brought thereon arising from or as a result of the injury to or death of any person or damage to the property of any person which shall occur on the Lot owned and/or occupied by each Indemnitor except for claims caused by the negligence or willful act or omission of such Indemnitees its licensees, successors, agents, servants or employees or the agents, servants or employees of any licensee or concessionaire thereof.

Section 4.02. Liability Insurance.

Each Lot Occupant shall maintain or cause to be maintained commercial general liability insurance insuring against losses on account of loss of life bodily injury or property damage that may arise from or be occasioned by the condition use or occupancy of, the Common Areas in the Development by the Lot Occupant and its tenants agents contractors employees licensees customers and invitees of such Lot Occupant or the occupants of the Lots except as herein provided. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State of Ohio and having limits for loss of life or bodily injury in the amounts of not less than One Million Dollars ($1,000,000.00) for each person Two Million Dollars ($2,000,000.00) for each occurrence and $500,000.00 for property damage for each occurrence. Each Lot Occupant shall maintain or cause to be maintained contractual liability insurance naming the other Lot Occupant(s) as an additional insured specifically endorsed to cover said Lot Occupant's agreement to indemnify as set forth in Section 4.01 and shall include the following provisions--

(i) That the policy may not be canceled or materially reduced in amount or coverage without at least thirty (30) days prior written notice by the insurer to each insured and any additional insureds;

(ii) Shall name the Developer and its mortgage lenders (of which they are given notice in writing) as additional insureds or loss payees as applicable;

(iii) Shall provide for severability of interests;

(iv) That an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other additional insureds of the insured respectively and

(v) Shall be "occurrence" basis not "claims made" basis.
Notwithstanding the foregoing, (w) the Developer, as the Lot 2 Occupant when there is no tenant of Lot 2 or of any building constructed on Lot 2, shall not be required to maintain the insurance as provided for herein, but prior to the date when the initial Lot 2 Occupant takes possession of Lot 2, the developer shall maintain liability insurance covering Lot 2 in lieu of that which is required above of the Lot 2 Occupant, (x) insurance may be carried under a policy or policies covering other liabilities and locations, provided, however, that such policy or policies shall apply to the property required to be insured herein in an amount not less than the amount of insurance required to be carried with respect thereto, (y) any Lot 2 Occupant or party responsible to maintain such insurance may "self-insure," or provide deductible from said coverage related to the Lot 2 Occupant's Lot, to the extent of one percent (1%) of the net worth of said Lot Occupant or party in its last annual or fiscal year as certified by an independent certified public accountant and computed in accordance with generally accepted accounting principals consistently applied, and (z) any Lot 2 Occupant which, with its affiliates, maintains a net worth of at least One Hundred Million Dollars ($100,000,000.00), may satisfy all of the requirements placed upon the Lot 2 Occupant under this Section 4.02 through self-insurance. As used in the preceding sentence, "affiliates" shall mean any person or business entity which the Lot 2 Occupant controls, by which the Lot 2 Occupant is controlled, or which is under common control with the Lot 2 Occupant. Such insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling and/or affiliated corporations. Each Lot 2 Occupant shall, upon written request from any other Lot 2 Occupant, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section or evidence of a self-insurance capacity as hereinabove provided, as the case may be. Notwithstanding anything to the contrary contained herein, Developer, for itself as Landlord, and under the Lot 2 Occupant as of the date of this Declaration, hereby acknowledges and agrees that the maintenance of the insurance (or self-insurance, if permitted) under Section 9.1 of the lease to Home Depot shall satisfy Home Depot's obligations as the Lot 2 Occupant under this Section 4.02.

Section 4.03. Liens.

In the event any mechanic's lien is filed against the Lot of one Lot 2 Occupant as a result of services performed or materials furnished for the use of another Lot 2 Occupant, the Lot 2 Occupant permitting or causing such lien to be so filed agrees to cause such lien to be discharged prior to entry of final judgment (after all appeals) for the foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the other Lot 2 Occupant and its Lot 2 Against Liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and costs of suit) on account of such claim of lien. Upon request of the Lot 2 Occupant whose Lot is subject to such lien, the Lot 2 Occupant permitting or causing such lien to be filed agrees to promptly cause such lien to be released and discharged of record, either by posting the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a Lot 2 Occupant permitting or causing such lien from contesting the validity thereof in any manner such Lot 2 Occupant chooses, so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), the Lot 2 Occupant shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.
ARTICLE V - CASUALTY AND EMINENT DOMAIN

Section 5.01. Casualty.

(a) If any of the Buildings located on any Lot is damaged or destroyed by fire or other cause, the Lot Occupant of such Building shall promptly and diligently cause either (i) the repair, restoration, or rebuilding of the Building so damaged or destroyed, or (ii) the razing of any damaged Building, the filling of any excavation, and performance of any other work necessary to the development of the Lot in a clean, slight and safe condition. Such Lot Occupant shall have the option to choose which of the foregoing alternatives to perform; but such Lot Occupant shall be obligated to perform one of such alternatives. Such Lot Occupant shall give notice to each other Lot Occupant within one hundred twenty (120) days from the date of such casualty of which alternative it elects.

(b) In the event any Common Area Improvements are damaged or destroyed, the Lot Occupant of the Lot to which such damage has occurred shall promptly and diligently cause the repair, restoration, or rebuilding of the Common Area Improvements to the extent necessary to restore the area to its previously improved condition and restore such areas to the extent necessary to maintain the Common Areas of the Development and to adhere to any required parking ratios required by law and as set forth herein.

Section 5.02. Casualty Insurance.

In order to assure performance of their respective obligations under Section 5.01, the Lot Occupants of the respective Lots shall cause to be carried fire and extended coverage insurance on all Buildings and improvements (including Common Area improvements) on their respective Lots in the amount of the replacement cost of such improvements, and in amounts at least sufficient to avoid the effect of any co-insurance provisions of such policies, except if the Lot Occupant of said Lot, or party responsible for any required restorations, is permitted to avoid the maintenance of insurance or to "self-insure" pursuant to Section 4.02. Any such insurance shall otherwise conform to the provisions with respect to insurance contained in Section 4.02. All such insurance shall include provisions denying to the insurer subrogation rights against the other Lot Occupants or parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each Lot Occupant and the Developer hereby waive recovery against the other Lot Occupants and the Developer, their directors, officers, employees, agents, mortgage lenders, and tenants and occupants for any damage or consequential loss covered by said policies, against which such Lot Occupant is protected by insurance, to the extent of the proceeds payable under such policies, whether or not such damage or loss shall have been caused by acts or omissions of the other Lot Occupants or the Developer, or their directors, officers, employees, agents, mortgage lenders, tenants or occupants.

Section 5.03. Eminent Domain.

In the event the whole or any part of the Development shall be taken by right of eminent domain or any similar authority of law or owned (in lieu of a "taking"), the award for the value of the land so taken and the award for the value of the improvements so taken shall belong to the fee title owner of the property so taken, the Lot Occupant of the property so taken or to their mortgagees or tenants, as their interests may appear as described in such Lot Occupant's lease with such fee title owner, and no other owner or Lot Occupant shall have a right to claim any part of any such award by virtue of any interest created by the Declaration. Any owner or Lot Occupant of a Lot 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 property being so taken to the extent of any damage suffered by such owner or Lot Occupant resulting from the severance of the land or improvements so taken if such claim shall not operate to reduce the award allocable to the Lot from which the property is taken. In the event of a partial taking, the Lot Occupant of the portion of the Development so taken shall restore the improvements located on the Common Areas of the Lot Occupant's Lot to as nearly as possible to an architectural whole in substantially the same condition existing prior to the taking without contribution from any other Lot Occupant and any portion of any condemnation award necessary therefor shall be held in trust and applied for such purpose. If a Lot Occupant is a Lot Occupant by virtue of a tenancy with the owner of a Lot, and the Lot Occupant terminates its lease upon a Taking, consistent with a right to terminate under said lease, that Lot Occupant shall have no obligation to restore improvements under this Section 5.03 after such termination. If there is a termination of a lease pursuant to the preceding sentence, and if the Taking which allowed for the termination is of any part of the driveway area along the eastern boundary of Lot 1, the owner of the Lot affected by the termination shall be obligated to restore that driveway area, and any improvements adjoining that driveway area, consistent with this Section 5.03.

ARTICLE VI -- REMEDIES

Section 6.01. Self Help; Disputes.

If any Lot Occupant shall default in the performance of an obligation of such Lot Occupant (such Lot Occupant being herein called a "Defaulting Occupant"), any other Lot Occupant (the "Non-Defaulting Occupant"), in addition to all other remedies it may have at law or in equity, after thirty (30) days prior written notice to the Defaulting Occupant and any first mortgagee or SL Lessor (as herein defined) (provided that such first mortgagee or SL Lessor has given written notice to all Lot Occupants of its right to be notified and the address for notification) (or in the event of an emergency after such notice as is practical under the circumstances), shall have the right of "self help" to perform such obligation on behalf of the Defaulting Occupant. In such event, the Defaulting Occupant shall promptly reimburse the Non-Defaulting Occupant the cost thereof, together with interest thereon from the date of outlay at a rate equal to the lesser of (i) two percent (2%) in excess of the prime lending or base or reference rate charged by Citibank, N.A. for commercial loans of its most preferred commercial customers, or (ii) the highest rate permitted by applicable law. An "SL Lessor" shall mean any party who has purchased a Lot and leased it back to the preceding owner, or its subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations hereunder in what is commonly referred to as "Sale Lease Back" transaction.

Section 6.02. Injunctive and Other Remedies.

In the event of a breach by any Lot Occupant of any obligation of this Declaration, any of the Lot Occupants shall be entitled to obtain an order specifically enforcing the performance of such obligation or an injunction prohibiting any such breach (the Lot Occupants hereby acknowledge the inadequacy of legal remedies and the irreparable harm which would be caused by any such breach), and/or to relief by other available legal and equitable remedies from the consequences of such breach.

Section 6.03. Non-Waiver.

No delay or omission of any Lot Occupant in the exercise of any right accruing upon any default of any other Lot Occupant shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of
such default. A waiver by any Lot Occupant of a breach of, or a
default in, any of the terms and conditions of this Declaration by
any other Lot Occupant shall not be construed to be a waiver of any
subsequent breach of, or default in, the same, or any other provision
of this Declaration. Except as otherwise specifically provided in
this Declaration, (a) no remedy provided in this Declaration shall
be exclusive but each shall be cumulative with all other remedies
provided in this Declaration, and (b) all remedies at law or in
equity shall be available.

Section 6.04. Non-Terminable Declaration.

No breach of the provisions of this Declaration shall entitle any
Lot Occupant or party to cancel, rescind or otherwise terminate
this Declaration, but such limitation shall not affect, in any
manner, any other rights or remedies which any party may have
hereunder by reason of any breach of the provisions of this
Declaration. No breach of the provisions of this Declaration shall
defeat or render invalid the lien of any mortgage or deed of trust
made in good faith for value covering any part of the Development,
and/or any improvements thereon.

Section 6.05. Force Majeure.

In the event any Lot Occupant or any other party shall be delayed
or hindered, in or prevented from the performance of any act
required to be performed by such party by reason of Acts of God,
strikes, lockouts, unavailability of materials, failure of power,
prohibitive governmental laws or regulations, riots, insurrections,
the act or failure to act of the other party, adverse weather
conditions preventing the performance of work as certified to by an
architect, or other reason beyond such party’s reasonable control,
then the time for performance of such act shall be extended for a
period equivalent to the period of such delay. Lack of adequate
funds, financial inability to perform shall not be deemed to be
a cause beyond the reasonable control of such party.

ARTICLE VII - TERM

This Declaration and the easements, rights, obligations and
liabilities created hereby shall be perpetual to the extent
permitted by law, unless sooner terminated by unanimous agreement
of all the parties to this Declaration or their successors or
assigns, all Lot Occupants, all Lot Owners (if different from Lot
Occupants), and the first priority mortgagees of all Lot Owners
and Lot Occupants. Lot Occupants which obtained their status as such
through their leasehold interests, or any interests less than fee
simple ownership, shall lose all rights under this Declaration,
including the right to be included in a vote on termination of this
Declaration, upon the termination or expiration of their leasehold
interest, or other interest in any property in the Development, but they
shall remain obligated for liabilities and responsibilities which
accrued while their interests were effective.

ARTICLE VIII - EFFECT OF INSTRUMENT

Section 8.01. Priority.

Any party acquiring title by foreclosure of any mortgage on the fee
simple estate or deed of trust in the nature of a mortgage on the
fee simple estate (hereinafter "Mortgage"), or acquiring title by
deed in lieu of foreclosure, or judicial or trustee’s sale, shall
be entitled to all rights and benefits under this Declaration, and
shall not be subject to all of the terms and provisions of this
Declaration. The Lot Occupants agree that if enforcement of
remedies available to holders of a Mortgage (hereinafter
"Mortgagees") do not involve acquisition of title by a Mortgagee or a third party through foreclosure, deed in lieu of foreclosure, or judicial or trustee's sale, the Lot Occupants will recognize Mortgage (or any receiver appointed upon their initiative) as Developer hereunder. If Developer gives the Lot Occupants notice to do so, any time after the date of this Declaration, the Developer represents and warrants that the Open End Mortgage from Developer to Capital Bank, N.A., dated June 24, 1996, filed for record June 25, 1996, at 11:20 a.m., and recorded in Volume 96-1602, Page CO3 of Lucas County Records (the "Capital Mortgage") is the only Mortgage, lien, on the Development.

Section 8.02. Binding Effect.

Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, in this Declaration, as the case may be, is made for the benefit of the owners of real estate in the Development and the Lot Occupants, and shall run with the land and constitute an equitable servitude on the portion of the development owned (if applicable) or leased by such party appointee to and for the benefit of the other Lots comprising the Development. Any transfer of title of any part of the Development, or tenant or occupant of any portion of a Lot or any building on any Lot, shall automatically be deemed, by acceptance of title to any portion of the Development or by its tenancy, to have assumed all obligations and to have agreed with the then owner, owners or Lot Occupants of all portions of the Development to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration; and transferees of title, or other interest in the Development upon the completion of such transfer and upon the giving of written notice of such transfer to the then owners and Lot Occupants, if any, shall be relieved of all further liability under this Declaration except liability with respect to matters that may have arisen during its period of ownership or occupancy of the portion of the Development so conveyed that remain unsatisfied. The written notice of transfer shall include at least the name and address of the transfees and a copy of the legal description of the portion of the Development transferred. This Declaration is not intended for the benefit of any adjoining, neighboring or nearby property owners or tenants outside of the Development, who shall have no authority to enforce, rely upon, or enjoy the benefits of this Declaration, notwithstanding its recording.

Section 8.03. Non-Dedication.

Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Development to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Declaration, expressed or implied, shall confer upon any persons other than the parties hereto, the Lot Occupants (present and future), and their successors and assigns, any rights or remedies under or by reason of this Declaration. Each Lot Occupant further reserves the right to close off its portion of the Common Areas located on its Lot for such reasonable period of time as may be legally necessary, in the opinion of such party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Areas as herein provided, such Lot Occupant shall give written notice to each other Lot Occupant of its intention to do so, and shall attempt to coordinate such closing with each other Lot Occupant so that no unreasonable interference in the passage of pedestrians or vehicles shall occur.

Section 8.04. Responsibility.

Notwithstanding anything to the contrary contained in this Declaration, each party to it, and each Lot Occupant, shall be
liable and responsible for the obligations, covenants, agreements, and responsibilities created by this Declaration and for any judgment rendered hereon only to the extent of its respective interest in its Lot and the improvements thereon.

ARTICLE IX - NOTICES

Any notice, report or demand required, permitted or desired to be given under this Declaration shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is mailed by registered or certified mail, return receipt requested, to the parties at the addresses shown below, or at such other addresses as the respective parties may from time to time designate by like notice, on the third business day following the date of such mailing—

If to Developer:  
Attn:  Mark Zyndorf  
Area Growth Investors, Ltd.  
c/o Zyndorf/Sercek, Inc.  
Four SeaGate, Suite 608  
Toledo, Ohio 43604

with copy to:  
Attn:  Paul A. Radon  
Barkan & Robon  
405 Spitzer Building  
Toledo, Ohio 43604

If to Home Depot:  
Attn:  Legal Department  
Home Depot U.S.A., Inc.  
2455 Paces Ferry Road Northwest  
Atlanta, Georgia 30339

with copy to:  
Attn:  Edward Dawda  
Dawda, Mann, Mulcahy & Sadler, P.L.C.  
1533 North Woodward Avenue  
Suite 200  
Bloomfield Hills, Michigan 48304

Notices, reports and demands also must be given in writing to each record title owner of a Lot, so long as notice of such owner's interest in the Development and such owner's address has been provided to the Lot 1 Occupant and the Lot 2 Occupant. Developer also shall have the right to add as required addresses for notices, reports or demands by like notice, (a) Lot Occupants other than itself including, but not limited to, any of its tenants which become a Lot 2 Occupant and (b) any of its first priority mortgagees or lenders. After such notice of additional addresses, all other Lot Occupants must include such addresses in any notices, reports or demands given under this Declaration.

ARTICLE X - PRIMARY RESPONSIBILITY FOR COMPLIANCE

Notwithstanding anything else contained in this Declaration to the contrary, each Lot Occupant, for itself and its successors and assigns, agrees that for any period during which there is a tenant of the other Lot, provided it has received written notice of such tenancy including that tenant's address, it shall look to that tenant as responsible for compliance with the terms of this Declaration as they apply to the other Lot and its tenant/Lot Occupant, to the extent it believes there is non-compliance. If a Lot Occupant other than Developer defaults hereunder, the Developer may, but shall not be required to perform on its behalf. In the event Developer elects to perform on behalf of such defaulting Lot Occupant, Developer (to the same extent as a Non-Defaulting Occupant) shall comply with the notice and timing provisions of Section 6.01, above, and Developer shall be
considered a Non-Defaulting Occupant for purposes of such compliance and the self-help permitted therein.

ARTICLE XI.—MISCELLANEOUS

Section 11.01. Miscellaneous.

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

(b) This Declaration shall be construed in accordance with the laws of the State of Ohio.

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

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

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

(f) This Declaration may be amended, modified, or terminated at any time by an agreement in writing, executed and acknowledged by all the parties to this Declaration or their successors or assigns, all Lot Occupants, all Lot owners (if different from Lot Occupants), and the first priority mortgagees of all Lot owners and Lot Occupants; this Declaration shall not be otherwise amended, modified or terminated during the term hereof.

(g) Any Lot Occupant or owner may, at any time and from time to time, in connection with the sale or transfer of its Lot, or in connection with the financing or refinancing of the Lot by mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Lot Occupants or owner requesting such Lot Occupants or owner to certify in writing that to the best of the knowledge of the certifying Lot Occupant or owner, (i) this Declaration is in full force and effect and a binding obligation of the Lot Occupants and owners, (ii) this Declaration has not been amended or modified, either orally or in writing, or, if so amended or modified, identifying the amendments or modifications, and (iii) the requesting Lot Occupant or owner is not known to be in default in the performance of its obligations under this Declaration, or, if known to be in default, describing therein the nature and amount of any and all defaults. Each Lot Occupant or owner receiving such request shall execute and return such certificate within fifteen (15) days following the receipt hereof. Failure by a Lot Occupant or owner to execute and return such certificate within the specified period shall be deemed an admission on such Lot Occupant’s or owner’s part that the Lot Occupant or owner requesting the certificate is current and not in default in the performance of such Lot Occupant’s or owner’s obligations under this Declaration.

(h) Time is of the essence under this Declaration.

(i) Notwithstanding that Lots, or portions thereof, are, or may in the future be, owned by the same party, this Declaration shall
remain in full force and effect, and there shall be no merger of the estates or extinguishment of this Declaration or the easements contained therein, as a result of such common ownership.

(j) Except as expressly provided in this Declaration, nothing herein should be construed to relieve Home Depot, or any other tenant of the Developer, of its obligations under its lease with Developer, and Home Depot acknowledges that certain of its lease rights are necessarily restricted by this Declaration, including, but not limited to, such things as its rights under its lease to use, assignee, and construction of additional improvements, and Home Depot agrees to such restrictions to the extent they are identified in this Declaration. The foregoing is not to be construed notwithstanding, Developer, for itself or Landlord, under the lease to Home Depot and (as between Developer and Home Depot) as the Lot 2 Occupant as of the date of this Declaration, hereby acknowledges and agrees that the following provisions of the lease to Home Depot shall govern and control over any inconsistent terms or provisions of this Declaration (as between the Developer and the Lot 1 Occupant): Article V, Article XI, Article XIX, Section 13.2, Section 13.3 and Section 17.17.

(k) The rights, privileges and powers granted by this Declaration to, and/or reserved by, the Developer shall be freely assignable.

IN WITNESS WHEREOF, the parties hereto have caused this Declaration to be executed as of the day and year first above written.

In the Presence of: HOME DEPOT U.S.A., INC., a Delaware corporation

_________________________________________
Signed: Vivian D. Sauteh
Print Name: Vivian D. Sauteh
Title: Senior Corporate Counsel Real Estate

_________________________________________
Print Name: Frank Russell
Title: Senior Corporate Counsel Real Estate

STATE OF GEORGIA  
COUNTY OF COBB

Before me, a Notary Public in and for said county and state, personally appeared the above named [Handwritten: KATHRYN E. LEE, the Senior Counsel of HOME DEPOT U.S.A., INC., a Delaware corporation, who acknowledged before me that she did sign the foregoing instrument as a free act and deed and the free act and deed of said corporation, for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Atlanta, Georgia, this 28th day of July, 1997.

_________________________________________
Notary Public

[Handwritten: KATHRYN E. LEE, Senior Corporate Counsel Real Estate]  
Notary Public, Cobb County, Georgia  
My Commission Expires February 21, 2001

97 2202808
Signed and acknowledged
in the presence of:

AREA GROWTH INVESTORS LTD., an Ohio limited liability company
By: Zyndorf/Sercuk Investment Company, Ltd., an Ohio limited liability company, Member

Sign: Janet Collins
Print Name: Janet Collins

By: Cheryl Hard
Mark Zyndorf, Trustee, Member
Print Name: Cheryl Hard

And: Vista Development, Inc., an Ohio corporation, Member

Sign: Janet Collins
Print Name: Janet Collins

By: David A. Boston, President
Print Name: David A. Boston

STATE OF OHIO . } SS:
COUNTY OF LUCAS }

Before me, a Notary Public in and for said county and state, personally appeared the above named MARK ZYNDORF, TRUSTEE, a Member of Zyndorf/Sercuk Investment Company, Ltd., an Ohio limited liability company, one of the Members of AREA GROWTH INVESTORS, LTD., an Ohio limited liability company, who acknowledged before me that he did sign the foregoing instrument as his free act and deed and the free act and deed of said limited liability company, for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Toledo, Ohio, this 15th day of July, 1997.

Janet K. Collins
Notary Public

STATE OF OHIO . } SS:
COUNTY OF LUCAS }

Before me, a Notary Public in and for said county and state, personally appeared the above named DAVID A. BOSTON, President of Vista Development, Inc., an Ohio corporation, one of the Members of AREA GROWTH INVESTORS, LTD., an Ohio limited liability company, who acknowledged before me that he did sign the foregoing instrument as his free act and deed and the free act and deed of said limited liability company, for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Toledo, Ohio, this 15th day of July, 1997.

Janet K. Collins
Notary Public
The foregoing Declaration of Plat Restrictions and Easements for Crossroads Plaza in the City of Toledo, Lucas County, Ohio (the "Declaration"), is hereby consented to and approved by Capital Bank, N.A., mortgagee of the Developer's fee simple interest in the Development as of the date thereof and Capital Bank, N.A., hereby subordinates the lien of, and all of its other right, title and interest in, to and under the Capital Mortgage (as this term is defined in the Declaration) to the terms, conditions, covenants and easements contained in the Declaration.

In the Presence of:

CAPITAL BANK, N.A.,
a national banking association

Sign                                   Print Name: Kelli J. Hoffman
By                                      Print Name: Bruce K. Lee

Kathi L. Lyke
Print Name: Kathi L. Lyke
Title: Executive Vice President

STATE OF OHIO   } SS:
COUNTY OF LUCAS } SS:

Before me, a Notary Public in and for said county and state, personally appeared the above named Bruce K. Lee, the Executive Vice President of CAPITAL BANK, N.A., a national banking association, who acknowledged before me that he did sign the foregoing instrument as his free act and deed of said national banking association, for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Toledo, Ohio, this 17th day of July, 1997.

Kathi L. Lyke
Notary Public

THIS INSTRUMENT PREPARED BY:

Paul A. Radon, Esq.
Barkan & Robon
405 Spitzer Building
Toledo, Ohio 43604