

THIS DOCUMENT WAS
PREPARED BY AND
AFTER RECORDING
RETURN TO:
Gregg M. Dorman, Esq.
Seyfarth Shaw
55 East Monroe Street
Chicago, IL 60603



Above space for recorder's use

**PARKING FACILITY OPERATION
AND EASEMENT AGREEMENT**

THIS PARKING FACILITY OPERATION AND EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 12th day of March, 2002 by and between 2665 NORTH HALSTED LLC, an Illinois limited liability company ("2665"), L.I. DEVELOPMENT LLC, an Illinois limited liability company ("LID") and J & A HOLDINGS CORPORATION, an Illinois corporation ("JAH" which, together with LID is collectively referred to herein as the "Adjacent Owner").

Preliminary Statement

A. 2665 is the fee owner of that certain parcel of real estate legally described on **Exhibit A** attached hereto and commonly known as 2665 North Halsted Street, Chicago, Illinois (the "2665 Parcel"). For purposes of this Agreement, the real estate described on Exhibit A as Parcels 1 and 2 is sometimes collectively referred to herein as the "Original 2665 Parcel" and the real estate described on Exhibit A as Parcel 3 is sometimes referred to herein as the "Parking Lot Parcel."

B. Each entity comprising Adjacent Owner is the fee owner as to an undivided fifty percent (50%) interest in that certain parcel of real estate located adjacent to and south of the 2665 Parcel and legally described on **Exhibit B** attached hereto and commonly known as 2633 North Halsted Street, Chicago Illinois (the "Adjacent Parcel").

C. 2665 recently acquired fee title to the Parking Lot Parcel which was formerly used by Adjacent Owner and its tenant as the parking lot for the building located on the Adjacent Parcel.

D. 2665 intends to construct a building on the 2665 Parcel, a portion of which is to include certain new Parking Facilities (as hereinafter defined). 2665 and Adjacent Owner now desire to enter into this Agreement to provide Adjacent Owner with certain parking rights in such Parking Facilities on the 2665 Parcel, upon and subject to the terms and conditions hereinafter provided.

00775 1 of 2 Amended

4

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated herein by this reference), the mutual covenants and agreements hereinafter set forth, Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 2665 and Adjacent Owner hereby grant, covenant and agree as follows:

ARTICLE I TRANSACTION SUMMARY; THIRD-PARTY BENEFICIARY

Section 1.01 Transaction Summary; Third-Party Beneficiary. 2665 and Home Depot U.S.A., Inc. ("Home Depot") are parties to a certain Lease (as hereinafter defined) which initially provided for a build-to-suit lease transaction whereby 2665 agreed to build a building on the Original 2665 Parcel. Home Depot subsequently determined that it needed a larger store at this location and that it desired to acquire the Original 2665 Parcel upon the completion of the building to be built by 2665 thereon. 2665 determined that the only way a larger building could be built to accommodate Home Depot's space requirement on the Original 2665 Parcel was to expand the Original 2665 Parcel by the acquisition of the Parking Lot Parcel. In conjunction with the acquisition of the Parking Lot Parcel, 2665 agreed with the Adjacent Owner that 2665 would permit Adjacent Owner and its tenant to use the Parking Lot Parcel for ground level parking purposes until construction of the Building (as hereinafter defined) commenced, and that during construction of the Building, 2665 would make off-site parking arrangements satisfactory to Adjacent Owner's tenant. The Lease was amended to provide that Home Depot would acquire the 2665 Parcel and the Building to be built thereon upon the completion of construction thereof and the satisfaction of certain other conditions. If certain of the conditions to Home Depot's purchase transaction are not satisfied, then Home Depot's obligation to purchase the 2665 Parcel and the Building to be built thereon will revert back to an obligation to lease space in the Building, together with various rights with respect to the Parking Facilities therein, unless the unsatisfied condition would allow Home Depot to terminate the Lease. In the purchase scenario, it is contemplated that Home Depot will succeed to the rights and obligations of 2665 under this Agreement as the fee owner of the 2665 Parcel. In the lease scenario, it is contemplated that 2665 shall retain the rights and obligations hereunder as the fee owner of the 2665 Parcel. In either event, the rights granted to Adjacent Owner hereunder shall be subject to the rights of Home Depot in and to the use of the Parking Facilities. Based on the foregoing, 2665 and Adjacent Owner acknowledge and agree that Home Depot is and shall be a direct intended third party beneficiary of this Agreement until such time (if any) as Home Depot acquires the 2665 Parcel and succeeds to the right, title and interest of 2665 under this Agreement as fee owner of the 2665 Parcel, and that as such third party beneficiary, Home Depot shall have the right to (i) receive all notices or other communications given between the parties pursuant to the terms of this Agreement, and (ii) enforce all easements, covenants, conditions, restrictions, agreements and obligations provided in this Agreement as fully as if Home Depot was a signatory to this Agreement.

ARTICLE II DEFINITIONS

Section 1.01 Definitions. For purposes of this Agreement, the following terms set forth in this Section 1.01 shall have the following meanings:

- (i) "Adjacent Building" shall mean the building located on the Adjacent Parcel;

(ii) "Adjacent Building Occupancy Agreement" shall mean the lease or other occupancy agreement between Adjacent Owner and any Adjacent Tenant providing such Adjacent Tenant the right to occupy the Adjacent Building;

(iii) "Adjacent Tenant" shall mean collectively, any person, party or entity possessing the legal right to occupy the Adjacent Building;

(iv) "Benefited Party" or "Benefited Parties" shall mean individually or collectively a party or the parties intended to benefit from the grant of the Parking Easement pursuant to this Agreement which shall include Adjacent Owner, any Adjacent Tenant or either of their Permittees;

(v) "Building" shall mean the four (4) story building containing in the aggregate approximately 203,474 square feet (including the Parking Facilities), including two (2) lower levels of space containing approximately 101,836 square feet and two (2) upper levels of Parking Facilities containing approximately 217 parking spaces (including 7 handicap spaces) to be built on the 2665 Parcel or 2665;

(vi) "Completion Date" shall mean the date that the construction of the Building is complete and all Parking Facilities are installed or built, as the case may be, and are operational and open to the public;

(vii) "First Floor" shall mean the first floor of the Building;

(viii) "First Floor Plan" shall mean the plan of the First Floor attached hereto as Exhibit D-1;

(ix) "Fourth Floor" shall mean the fourth floor of the Building (which is also the second level of the Parking Facilities);

(x) "Fourth Floor Plan" shall mean the plan of the Fourth Floor attached hereto as Exhibit D-4;

(xi) "Guitar Center" shall mean Guitar Center, Inc., a Delaware corporation, the Adjacent Tenant of the Adjacent Building as of the date of this Agreement;

(xii) "Guitar Center Lease" shall mean the Adjacent Building Occupancy Agreement for the Adjacent Building as of the date of this Agreement consisting of that certain Retail Lease dated December 28, 1997, as amended;

(xiii) "HD Primary Parking Area" shall mean collectively, the areas in the Parking Facilities which can be reserved by Home Depot for the exclusive use of Home Depot and its customers, agents, employees, business invitees, tenants, successors and assigns as more particularly depicted on Exhibit C attached hereto;

(xiv) "Lease" shall mean collectively, that certain Lease by and between Home Depot and 2665 having an Effective Date of May 15, 2001, as amended by that certain (a) First

UNOFFICIAL COPY

20357475

Amendment to Lease dated as of July 9, 2001, (b) Second Amendment to Lease dated as of August 8, 2001, (c) Third Amendment to Lease and Purchase Agreement dated as of November 9, 2001, (d) Fourth Amendment to Lease and Purchase Agreement dated as of January 10, 2002, and (e) any amendments thereto entered into by Home Depot and 2665 subsequent to the date this Agreement is fully executed by the parties;

(xv) **"Parcel"** or **"Parcels"** shall mean generically and individually or collectively, as the context requires, the 2665 Parcel and the Adjacent Parcel;

(xvi) **"Parking Easement"** shall mean the easement for the use of the Parking Facilities granted pursuant to the terms of Section 3.01(a) of this Agreement for the benefit of the Adjacent Parcel and the Benefited Parties;

(xvii) **"Parking Facilities"** shall mean collectively, the entire Third Floor and the entire Fourth Floor (and the parking deck, parking spaces and facilities located thereon approximately as shown on the Third Floor Plan and Fourth Floor Plan, respectively), and the areas located on the First Floor and Second Floor used in connection with, or which serve or otherwise provide vehicular and pedestrian ingress or egress to, the Third Floor and Fourth Floor Parking Facilities approximately as shown on the First Floor Plan and Second Floor Plan, respectively, together with all improvements used or usable in connection therewith including, without limitation (a) all ramps, curb cuts, curbs, driveways and related improvements to provide vehicular access, (b) all accessways, walkways, stairways, corridors, vestibules, entrances and exits and related areas or improvements to provide pedestrian access, (c) all elevators and related systems, equipment, facilities and fixtures that serve the Parking Facilities (excluding those located within the Home Depot store located within the Building, except that the parties agree that Elevator #3 and the stairway located in the vestibule to the Home Depot store as shown on the First Floor Plan serves the Parking Facilities and shall be included as part of the Parking Facilities for purposes of this Agreement), (d) all landscaping (including any potted plants or trees) located within the areas described above, (e) all heating, ventilating and air conditioning units or systems and other utilities to the extent they serve the Parking Facilities including, without limitation, all related lines, equipment, fixtures, facilities or systems, (f) any utility rooms or storage areas on the Third Floor and Fourth Floor to the extent they serve the Parking Facilities, and (g) any related signs, directories, lights, striping, concrete parking stops, bollards, entry and payment machinery and equipment, gates, guard rails, emergency equipment and any other related or ancillary amenity, improvement, fixture, equipment, system or facility to the extent they serve or relate to the Parking Facilities described herein;

(xviii) **"Permitted Parking Hours"** shall mean the hours described in the table set forth in Section 3.01(c) hereof during which the Benefited Parties shall have the use of the Parking Facilities pursuant to the terms of the Parking Easement;

(xix) **"Permittees"** shall mean the tenants and other occupants of a Parcel for the duration of such occupancy, and to the customers, employees, agents and business invitees thereof insofar as their activities relate to the intended commercial use of such Parcel;

(xx) **"Pre-Completion Parking Agreement"** shall mean either, the separate agreement or amendment to the Guitar Center Lease, as the case may be, entered into between

Adjacent Owner and Guitar Center setting forth, among other things, the rights and obligations of the parties with respect to parking on the 2665 Parcel;

(xxi) "Pro Rata Share" shall mean a fraction, the numerator of which shall be the number of parking spaces available to Adjacent Owner pursuant to the Parking Easement (as hereinafter defined) granted herein, and the denominator shall be the total number of parking spaces in the Parking Facilities (which shall initially be 18.9%, based on 41 spaces initially available to Adjacent Owner pursuant to the Parking Easement and 217 total spaces initially contemplated for the Parking Facilities);

(xxii) "Related Assignee" shall mean a permitted assignee of Guitar Center's rights as tenant under the Guitar Center Lease consisting of: (a) any corporation into or with which Guitar Center may be merged or consolidated, (b) any corporation which shall be an affiliate, subsidiary, parent or corporate successor (as opposed to an unrelated assignee successor) of Guitar Center, or (c) any partnership or other entity, the majority interest in which shall be owned by the stockholders of Guitar Center;

(xxiii) "Second Floor" shall mean the second floor of the Building;

(xxiv) "Second Floor Plan" shall mean the plan of the Second Floor attached hereto as Exhibit D-2;

(xxv) "Third Floor" shall mean the third floor of the Building (which is also the first level of the Parking Facilities); and

(xxvi) "Third Floor Plan" shall mean and refer to the plan of the Third Floor attached hereto as Exhibit D-3.

ARTICLE III
GRANT OF EASEMENTS

Section 3.01 Parking Easement.

(a) Subject to the terms of this Agreement, 2665 (with the consent of Home Depot) hereby grants and conveys to Adjacent Owner, for the benefit of and as an appurtenance to the Adjacent Parcel, a non-exclusive, perpetual right and easement (the "Parking Easement") to use the Parking Facilities on the 2665 Parcel for purposes of vehicular ingress, egress and parking and pedestrian ingress and egress to and from the Parking Facilities, and for no other purpose.

(b) The Parking Easement shall be for the benefit of, but not restricted solely to, the Adjacent Owner, it being expressly understood and agreed that Adjacent Owner may grant the benefit of the Parking Easement to the Adjacent Tenant of the Adjacent Building for the duration of such occupancy, and to the Permittees of any Adjacent Tenant, in each case subject to the terms of this Agreement. Adjacent Owner acknowledges that the use of the Parking Facilities is in common with and subject to the rights to the use of the Parking Facilities by Home Depot, any other owner or occupant of any portion of the 2665 Parcel, and the general public. Adjacent Owner covenants and agrees that it shall not grant to any Adjacent Tenant any rights in and to the use of the Parking Facilities pursuant to this Section 3.01(b)

that are either (i) greater than the rights available to Adjacent Owner pursuant and subject to the terms of the Parking Easement, or (ii) otherwise are in conflict or are inconsistent with the terms of this Agreement.

(c) Anything in this Agreement or any other agreement between 2665 and Adjacent Owner to the contrary notwithstanding, Adjacent Owner acknowledges and agrees that it and the Benefited Parties shall not have the use or benefit of the Parking Easement granted hereunder until the Completion Date, and that at any time prior to the Completion Date, the parking rights of Adjacent Owner and any Adjacent Tenant (including Guitar Center) shall be governed by the Pre-Completion Parking Agreement; provided, however, Adjacent Owner hereby represents, warrants and covenants that (i) the Pre-Completion Parking Agreement shall in no event interfere with, delay or increase the cost of the construction of the Building, (ii) the Pre-Completion Parking Agreement shall in no event subject Home Depot to any cost, expense or liability, (iii) all parking and other rights, interests or privileges established under the Pre-Completion Parking Agreement with respect to the 2665 Parcel and the Parking Facilities therein following the Completion Date in favor of any Benefited Party (including the Adjacent Tenant) shall only be derived from and pursuant to this Agreement, it being expressly understood and agreed that following the Completion Date, Adjacent Owner and the other Benefited Parties shall have no right, interest or privilege in and to the use of any portion of the 2665 Parcel (including the Parking Facilities) except in accordance with and subject to the terms of this Agreement.

(d) Adjacent Owner acknowledges and agrees that (i) except as otherwise expressly provided in Section 3.01(i) hereof, the Benefited Parties shall not have or be entitled to any exclusive or reserved parking spaces in the Parking Facilities, (ii) except as otherwise expressly provided in Section 3.01(i) hereof, 2665 shall not have any obligation under this Agreement or otherwise to take any action to ensure or guaranty the availability of any number of parking spaces for the Benefited Parties, it being expressly understood that the Parking Facilities shall be open to the general public, (iii) 2665 shall not have any liability to the Benefited Parties if the permitted number of parking spaces are not available at any one time during the Permitted Parking Hours, (iv) 2665 shall not have any obligation to provide security for any persons, property or vehicles using the Parking Facilities, (v) 2665 shall have the right to grant other parties exclusive or reserved parking rights in the Parking Facilities at any time other than the Permitted Parking Hours (including, without limitation, the right to grant daily, weekly, monthly or annual licenses or leases for parking spaces during such off-hours), it being expressly understood that during the Permitted Parking Hours, 2665 may not grant exclusive or reserved parking rights except as otherwise expressly provided in Sections 3.01(f) and 3.01(i) hereof, and (vi) all fees, charges and other revenue collected from the Parking Facilities shall belong to the fee owner of the 2665 Parcel. Notwithstanding anything in item (v) to the contrary, Adjacent Owner acknowledges Home Depot's right to designate the HD Primary Parking Area for Home Depot's exclusive use, which right and such exclusive use shall not be subject to any time limitations including, without limitation, the Permitted Parking Hours, and if such designation occurs, Adjacent Owner agrees that the HD Primary Parking Area shall be excluded from the Parking Facilities for purposes of determining the rights granted to the Benefited Parties pursuant to the Parking Easement.

(e) Adjacent Owner acknowledges and agrees that for so long as the Guitar Center or any Related Assignee occupies the Adjacent Building for the operation of its store, the Parking Easement shall be subject to the following terms, conditions and restrictions:

PARKING EASEMENT TERMS FOR GUITAR CENTER AND RELATED ASSIGNEE

<u>Permitted Parking Hours</u>	<u>Permitted Days of Week</u>	<u>Permitted No. of Spaces ±</u>	<u>Fee Charged</u>
Anytime the Guitar Center is open, plus ½ hour after closing	Every Day Guitar Center is open	41*	3 hour free park time, then market rate for Parking Facilities
±	-	this number is set forth on a "not to exceed" basis at any one time	
*	-	Non-Exclusive Spaces (subject to the terms of Section 3.01(i) hereof)	

2665 and Adjacent Owner agree that eight (8) of the forty-one (41) Permitted No. of Spaces may be used by the Guitar Center (and a Related Assignee) for employee parking at no cost during the Permitted Parking Hours provided that (i) such spaces are only used by such employees when they are present and working at the Guitar Center, and (ii) such employee parking use shall not adversely affect the revenue projected to be generated by the Parking Facilities as reasonably determined by Home Depot with the assistance of a professional parking company such as Standard Parking. With respect to the Guitar Center's use of the Parking Facilities (including the use by a Related Assignee), 2665 acknowledges that Adjacent Owner has requested the right to have a validation system in effect for the Guitar Center (and a Related Assignee) and its customers so that all parking charges incurred by them shall accrue on a monthly or other agreed interval basis to be paid by Adjacent Owner within five (5) days after receipt of a bill therefor. 2665 agrees to work with the operator of the Parking Facilities to accomplish a validation procedure and such billing practice provided that it is administratively feasible.

Adjacent Owner further acknowledges and agrees that at any time subsequent to the Guitar Center's occupancy of the Adjacent Building (including the occupancy of any Related Assignee), the Parking Easement shall be subject to the following terms, conditions and restrictions as to any such subsequent Adjacent Tenant (whether pursuant to a new Adjacent Building Occupancy Agreement or by way of sublease or assignment to a person or entity other than to a Related Assignee pursuant to the Guitar Center Lease), or as to the Adjacent Owner if Adjacent Owner occupies the Adjacent Building, as the case may be:

PARKING EASEMENT TERMS FOR OCCUPANT OF ADJACENT BUILDING SUBSEQUENT TO GUITAR CENTER AND RELATED ASSIGNEE

<u>Permitted Parking Hours</u>	<u>Permitted Days of Week</u>	<u>Permitted No. of Spaces ±</u>	<u>Fee Charged</u>
Anytime the business in the Adjacent Building is open, plus ½ hour after closing	Every Day the business in the Adjacent Building is open	41*	1 hour free park time, then market rate for Parking Facilities
±	-	this number is set forth on a "not to exceed" basis at any one time	
*	-	Non-Exclusive Spaces (subject to the terms of Section 3.01(i) hereof)	

With respect to any "free parking" provided as part of the Parking Easement under this Agreement, Adjacent Owner acknowledges and agrees that the waiver of the parking charges for such designated free period shall be conditioned upon each vehicle leaving the Parking Facilities before such free period ends, it being expressly understood and agreed that if such vehicle fails to leave the Parking Facilities before such free period ends, then such vehicle shall be charged at the then applicable market rate for the Parking Facilities, which charge shall be retroactive to the start time of each such park (without regard to the free period so exceeded). In addition, Adjacent Owner acknowledges that if the Benefited Parties exceed the Permitted No. of Spaces Available pursuant to the foregoing tables at any one time, then each such excess vehicle shall be charged at the market rate then in effect for the Parking Facilities.

(f) Adjacent Owner acknowledges that Home Depot shall be entitled to at least one hundred thirty (130) parking spaces on a non-exclusive basis ("**HD's Minimum Parking Requirement**") of which no more than sixteen (16) spaces can be included in the double spaced area designated on Exhibit D-4 as the "**Valet Area**". For purposes of this Agreement, the parking spaces located within the Parking Facilities but outside of the Valet Area are sometimes generically referred to herein as "**Non-Exclusive Spaces**" and the parking spaces located within the Valet Area are sometimes generically referred to as the "**Valet Spaces**". If for any reason Home Depot determines that HD's Minimum Parking Requirement is not being satisfied on a continuous basis, then HD may, at its sole option, elect to designate for the exclusive use of Home Depot (and its Permittees) the HD Primary Parking Area consisting of two (2) blocks of no less than sixty-five (65) contiguous parking spaces on each of the Third Floor and Fourth Floor in the locations shown on Exhibit C attached hereto. If such exclusive designation is made by Home Depot at any time, Home Depot may, at its expense, clearly identify the parking spaces within the HD Primary Parking Area as exclusively for the use of Home Depot as provided hereunder. In addition, HD or the Parking Facilities operator shall frequently monitor the Parking Facilities to ensure HD's exclusive use of the HD Primary Parking Area, and may make arrangements with a private towing company to enable HD or the Parking Facilities operator to authorize such towing in the event of known violations of the HD Primary Parking Area. If for any reason HD is unable after good faith efforts to continuously secure the exclusive use of the HD Primary Parking Area, then upon written notice from HD, HD shall have the right to takeover one entire floor of the Parking Facilities for HD's exclusive parking use in lieu of the HD Primary Parking Area as shown on Exhibit C, with a continuing right to an additional number of Non-Exclusive Spaces on the other floor of the Parking Facilities toward the end that HD shall in all events be entitled to the number of spaces required to satisfy HD's Minimum Parking Requirement. In such event, the Parking Easement granted hereunder shall be deemed modified to exclude from the Parking Facilities and the use by the Benefited Parties of the parking spaces so included in the HD Primary Parking Area without further notice or action required; provided, however, Adjacent Owner agrees to execute an amendment to this Agreement upon its receipt of a written request therefor from Home Depot to memorialize the modification of the Parking Easement hereunder.

(g) As part of HD's Minimum Parking Requirement and/or the HD Primary Parking Area, if applicable, Adjacent Owner agrees that two (2) parking spaces in the location shown on Exhibit D-4 shall be clearly identified and reserved for the exclusive use of Home Depot's store manager and assistant store manager on a daily basis, at no charge, it being expressly understood that said 2 spaces shall be deemed included as part of the 130 spaces that constitute HD's Minimum Parking Requirement or the HD Primary Parking Area, as the case may be.

(h) Adjacent Owner acknowledges and agrees that the fee owner of the 2665 Parcel shall have the right to determine, in its sole discretion (i) whether to appoint a third party operator or whether it

will operate the Parking Facilities itself, (ii) if a third party operator is to be appointed, which operator to appoint, the terms and conditions applicable to such appointment (subject to the terms of Section 3.01(i) hereof relating to such operator's obligation to work with Adjacent Owner to resolve parking availability issues) and the right to terminate such appointment, (iii) the market rate for the Parking Facilities, and (iv) following the date Home Depot succeeds to the interest of 2665 hereunder, what, if any, charge to assess its employees, agents, customers and other invitees for the use of the Parking Facilities; provided, however, 2665 agrees that the Parking Facilities shall be operated consistent with a standard of operation equivalent to that provided by comparable parking garage facilities in the Chicago metropolitan area which are operated by garage operators such as Standard Parking.. Notwithstanding the foregoing, as between 2665 and Home Depot, the terms of the Lease between 2665 and Home Depot shall govern and control over any inconsistent or contrary provision in this Section 3.01(h).

(i) Notwithstanding the terms of items (i) and (ii) of Section 3.01(b) above, 2665 acknowledges that Adjacent Owner has a reasonable interest in ensuring that it has a sufficient number of parking spaces available for the operation of any Adjacent Tenant's business at such times or periods during the day as may be required for the normal operation of such business. Toward that end, 2665 and Adjacent Owner hereby agree as follows:

(A) If Adjacent Owner determines that, on a regular basis (as opposed to an isolated instance or an infrequent basis), the maximum Permitted No. of Spaces available to Adjacent Owner as set forth in the table in Section 3.01(e) hereof are not in fact available for use by Adjacent Owner or any other Benefited Parties and/or at such times or periods during the day as set forth in such table, then Adjacent Owner shall so notify 2665 thereof in writing in order to place 2665 on notice of the parking shortage being experienced, which notice shall set forth in reasonable detail the nature, extent and frequency of such shortage.

(B) Following its receipt of such parking shortage notice from Adjacent Owner, 2665 may thereafter (but shall in no event be obligated to) cause the operator of the Parking Facilities to monitor and regulate the use of the Parking Facilities to assure an adequate availability of spaces for Adjacent Owner and other Benefited Parties (not to exceed the maximum number available to Adjacent Owner at any one time as set forth in the table above) at such times or periods during the day as set forth in the table above as may be reasonably required for the operation of any Adjacent Tenant's business. While 2665 shall have no affirmative obligation to take any action at all pursuant to this Agreement to ensure Adjacent Owner's use of the Parking Facilities pursuant to the Parking Easement or the availability of parking spaces therein (except as expressly otherwise provided in this paragraph), 2665 agrees that (A) Adjacent Owner may, either separately or in conjunction with any action which 2665 elects to take, work directly with the operator of the Parking Facilities to take such reasonable action (at or very near the time when such spaces shall be required, but not for extended periods) to assure Adjacent Owner of the availability of a sufficient number of spaces for the business needs of Adjacent Owner and any other Benefited Parties (not to exceed the maximum number available to Adjacent Owner at any one time as set forth in the table above) at such times or periods during the day as set forth in the table above as may be reasonably required for the operation of the business from the Adjacent Building, and (B) 2665 shall cooperate with Adjacent Owner in such endeavor by not taking any action that would unreasonably interfere with or delay the coordinated efforts of Adjacent Owner and/or the operator of the Parking Facilities, which cooperation shall in no event limit, alter or modify Home Depot's rights pursuant to Section 3.01(f) and (g) hereof. Notwithstanding

anything to the contrary in this Section 3.01(i)(B), if (i) 2665 appoints a third party operator to manage and operate the Parking Facilities, then 2665 agrees that the terms of such appointment shall expressly obligate the applicable operator to work with Adjacent Owner to resolve parking shortage problems pursuant to the terms of this Section 3.01(i), and 2665 shall enforce the terms of such appointment to ensure compliance therewith by the operator, and (ii) following the acquisition of the 2665 Parcel by Home Depot, a Home Depot employee is appointed to operate the Parking Facilities (as opposed to a third party operator), Home Depot shall require compliance by such employee operator with the terms of this Section 3.01(i) to assure the Adjacent Owner that the operator shall be required to work with Adjacent Owner to resolve parking shortage problems.

(C) Notwithstanding the foregoing, except as otherwise expressly provided in Section 3.01(i)(D) hereinbelow, Adjacent Owner acknowledges and agrees that nothing in this Section 3.01(i) shall mean or be deemed to mean that (i) any parking spaces in the Parking Facilities shall be reserved or guaranteed for the exclusive use of Adjacent Owner or any other Benefited Parties or otherwise grant Adjacent Owner the general right of self-help to block off parking spaces for large intervals of time prior to its actual need for such spaces (it being expressly understood that the foregoing coordination rights granted to Adjacent Owner under the foregoing circumstances are being provided herein as a reasonable (but not guaranteed) assurance that Adjacent Owner and other Benefited Parties will be able to fully use and enjoy the Parking Easement granted pursuant this Agreement in a manner that will not interfere with the normal operation of the business operating in the Adjacent Building, or (ii) Adjacent Owner may exercise any of the rights granted pursuant to this paragraph with respect to any of parking spaces located within the HD Primary Parking Area or within the parking spaces described in Section 3.01(e) above, which shall be expressly prohibited.

(D) If Home Depot elects to designate the HD Primary Parking Area for Home Depot's exclusive use, and Adjacent Owner thereafter experiences the parking problem described in Section 3.01(i)(A) above, then Adjacent Owner shall comply with the terms of this Section 3.01(i) to try to resolve its parking shortage problem. If and only if all of the Exclusive Events (as hereinafter defined) have occurred, then the following procedure shall apply to provide a phased approach to providing Adjacent Owner with exclusive parking spaces in the Parking Facilities:

(a) Adjacent Owner shall deliver written notice to 2665 that all of the Exclusive Events have occurred.

(b) Within two (2) business days following receipt of the notice described in item (a) above, 2665 and the operator of the Parking Facilities shall designate fifteen (15) parking spaces in the Parking Facilities (exclusive of the HD Primary Parking Area) which, subject to the terms of this Section 3.01(i)(D), shall be reserved for the exclusive use of Adjacent Owner and other Benefited Parties. The exclusive spaces so designated may, at Adjacent Owner's option and expense, be marked for the exclusive use of Adjacent Owner or any Adjacent Tenant, as the case may require, by appropriate signage reasonably approved by 2665 in advance and otherwise which shall comply with all applicable laws, codes, ordinances, permits and approvals.

(c) If, following a thirty (30) day period after the exclusive designation described in item (b) above, Adjacent Owner is still experiencing the parking shortage problem described in Section 3.01(i)(A) hereof, then Adjacent Owner shall again deliver written notice thereof to 2665, and within two (2) business days following receipt of such notice, 2665 and the operator of the Parking Facilities shall designate an additional ten (10) parking spaces in the Parking Facilities (exclusive of the HD Primary Parking Area) which, subject to the terms of this Section 3.01(i)(D), shall be reserved for the exclusive use of Adjacent Owner and other Benefited Parties. Such additional exclusive spaces so designated may be marked by appropriate signage as provided in and subject to the terms of Section 3.01(i)(D)(b) above.

(d) The foregoing process shall be repeated (up to three (3) additional times) as necessary following thirty (30) day intervals to enable the parties to determine whether the phased exclusive rights granted herein resolves the parking shortage problem toward the end that if such parking problem exists thirty (30) days after the additional exclusive designation in item (c) above, then an additional five (5) spaces shall be designated in the foregoing manner (with five (5) spaces and six (6) spaces, respectively, thereafter added at said 30-day intervals) until, if applicable, all of the 41 parking spaces allocated to Adjacent Owner hereunder are so designated for the exclusive use of Adjacent Owner and other Benefited Parties.

(e) If, after a reasonable period of time following any exclusive designation of parking spaces pursuant to this Section 3.01(i)(D), 2665 and/or the operator of the Parking Facilities monitor and observe that the exclusive spaces so designated are not regularly fully utilized by Adjacent Owner or other Benefited Parties, then 2665 shall so notify Adjacent Owner thereof in writing and thereafter, at 2665's option, 2665 shall have the right to re-designate those spaces not regularly fully utilized as Non-Exclusive Spaces in the Parking Facilities, which redesignation shall be accomplished in phased thirty (30) day intervals in the reverse order from the exclusive designations described in items (b), (c) and (d) above (i.e., 6, 5, 5, 10 and 15 spaces).

(f) The foregoing process of the designation of exclusive spaces on a phased basis and re-designation as Non-Exclusive Spaces may occur from time to time in accordance with the terms of this Section 3.01(i)(D) as the applicable circumstances may then dictate.

For purposes of this Section 3.01(i)(D), the term "Exclusive Events" shall mean collectively (a) Adjacent Owner has provided 2665 with the parking shortage notice described in Section 3.01(g)(i) hereof, (b) 2665 has not taken any action to resolve any such parking shortage problem or after taking any such action, such problem is not resolved, (c) Adjacent Owner has diligently and in good faith worked with the operator of the Parking Facilities to resolve the parking shortage problem for a period of at least ten (10) business days, and (d) Home Depot has previously elected to designate the HD Primary Parking Area for Home Depot's exclusive use.

Section 3.02 Sign Easement.

(a) Subject to the terms of this Agreement, 2665 hereby grants and conveys to Adjacent Owner, its successors and assigns, for the benefit of and as an appurtenance to the Adjacent Parcel, an exclusive, perpetual right and easement (the "Sign Easement") for purposes of installing, maintaining, repairing and replacing (i) one (1) sign on the south wall of the Building for purposes of identifying the Building as the source of parking for the business operated from the Adjacent Building at the location shown as the "Sign Easement Area" on the south Building elevation attached hereto as Exhibit E, (ii) one (1) directional sign on each of the Third Floor and Fourth Floor directing Benefited Parties to the elevator and/or stairway at the south end of the Building to provide pedestrian access to and from the Adjacent Parcel and the Parking Facilities, and for no other purpose.

(b) Prior to and as a condition to exercising any rights under any the foregoing Sign Easement, Adjacent Owner shall prepare and deliver to 2665 (and Home Depot prior to its acquisition of the 2665 Parcel) a detailed sign drawing for review and approval by 2665 and Home Depot. Such drawing shall show the method of installation, attachment or connection of such signs to the Building and the proposed design, configuration, size, colors and dimensions thereof. Home Depot and 2665 shall approve or reject the sign drawing in writing within thirty (30) days after receipt of the sign drawing. Any rejection notice delivered shall contain a reasonably detailed description of the nature and extent of the objections to such sign drawing. Adjacent Owner shall revise and resubmit the sign drawing to 2665 and Home Depot for approval hereunder and such parties shall have ten (10) business days after receipt thereof to approve or reject such drawing. The foregoing process shall be repeated until such sign drawing has been approved in writing by 2665 and Home Depot. Once approved, 2665, Home Depot and Adjacent Owner shall initial and date the final sign drawing approved hereunder. No changes from or to any final approved sign drawing shall be incorporated or made without the prior written approval of 2665 (and Home Depot prior to its acquisition of the 2665 Parcel), which written approval shall be set forth in an agreement between the parties, failing which such proposed or alleged changes shall not be deemed effective for purposes of this Agreement. If 2665 and Home Depot do not respond to any submittal of the sign drawing within the periods specified in this paragraph, the sign drawing as submitted will be deemed to be approved hereunder.

(c) Any and all work required in connection with the installation, attachment or connection of any permitted signs in connection with the exercise of the Sign Easement shall be performed by or on behalf of Adjacent Owner, at its sole expense, in accordance and compliance with Exhibit E, the sign drawing approved by 2665 and Home Depot pursuant to Section 3.02(b) hereof, all applicable laws, codes, ordinances, regulations, permits and approvals of any governmental authority having jurisdiction thereof. Adjacent Owner shall keep the 2665 Parcel free of liens arising out of any work performed in connection with the exercise of the rights granted Adjacent Owner pursuant to the Sign Easement, and shall perform such work so as not to interfere with, delay or increase the cost of any construction activities on the 2665 Parcel, any business operating on the 2665 Parcel, or the operation of the Parking Facilities.

Section 3.03 Encroachments; Loading Easement.

(a) Adjacent Owner acknowledges that 2665 has provided Adjacent Owner with a copy of First American Title Insurance Company Title Commitment No. CC201396 (with an Effective Date of September 7, 2001 (Revised November 30, 2001) which discloses certain encroachments from the

Adjacent Parcel onto the 2665 Parcel at Schedule B Exception No. 17(B) and (D) relating to a door entrance on the north side of the Adjacent Building and four (4) metal and fabric awnings (collectively, the "Encroachment"). Adjacent owner further acknowledges that the Encroachment will interfere with the construction and operation of the Building. Adjacent Owner hereby agrees that, Adjacent Owner shall, at Adjacent Owner's expense, (i) relocate the applicable encroaching door entrance further to the east on the Adjacent Building to the approximate location shown on the First Floor Plan prior to the Completion Date, and (ii) remove all of the metal and fabric awnings in their entirety prior to the commencement of construction of the Building. Adjacent Owner hereby waives all claims that its now or hereafter may have related to its ability to continue to use the encroaching door entrance and/ maintain the encroaching awnings and agrees, that in the case of the awnings, 2665 shall have the right to remove the awnings if Adjacent Owner fails to timely do so hereunder to avoid any delay in the construction of the Building. If 2665 exercises such right of self-help hereunder, Adjacent Owner shall pay 2665 all costs and expenses incurred by 2665 in connection therewith within ten (10) days after 2665 bills Adjacent Owner therefor. Adjacent Owner further agrees to furnish to the title company referred to above such other agreements, undertakings or assurances as may be necessary or required to induce such title company to issue any applicable title insurance policies free of any exception related to the Encroachment.

(b) Subject to the terms of this Agreement, 2665 hereby grants and conveys to Adjacent Owner, its successors and assigns, for the benefit of and as an appurtenance to the Adjacent Parcel, a non-exclusive right and easement (the "Loading Easement") over the portion of the 2665 Parcel shown on the First Floor Plan as the "Loading Easement Area" and legally described on Exhibit F attached hereto for purposes of temporary vehicular parking to permit the loading and unloading of products, materials or other pickups or deliveries to the receiving area of the Adjacent Building (which shall consist of the relocated door described in Section 3.03(a) hereof), and for no other purpose. The Loading Easement shall remain in effect for so long as the existing Adjacent Building as of the date of this Agreement remains in existence and shall terminate without further action or notice required upon the construction of a new building on the Adjacent Parcel at any time after the date of this Agreement.

Section 3.04 No Additional Burden. Except as expressly provided in Section 3.01 hereof, no party hereto shall grant the use of any easement that is set forth in this Agreement for the benefit of property other than the 2665 Parcel and Adjacent Parcel, or otherwise so as to burden the easements granted herein; provided, however, the parties acknowledge that the Parking Facilities shall be open to the general public.

Section 3.05 Additional Documentation. Each of the parties hereto agree that it will execute such documents in recordable form as may be reasonably necessary to effectuate the provisions of this Agreement.

Section 3.06 Reservations.

(a) 2665 reserves the right at any time and from time to time to exclude and restrain any party who is not a Benefited Party hereunder from using any portion of the Parking Facilities or other easement areas described in this Article III, or any Benefited Party that uses any portion of the 2665 Parcel in violation of the terms of this Agreement including, without limitation, the terms of Article V hereof.

(b) Subject to the terms of this Agreement, 2665 reserves the right to make any other use of the portions of the Parking Facilities owned by 2665 which are subject to the easements granted hereunder as 2665 requires; provided, however, that the exercise of such reserved right shall not unreasonably interfere with the use of the easements granted hereunder by any Benefited Party.

Section 3.07 Restrictions. The Parking Easement granted in this Article III shall be subject to the covenants and restrictions set forth in this Agreement.

ARTICLE IV
MAINTENANCE, OPERATION AND REPAIR

Section 4.01 2665 Maintenance Obligations. 2665 shall operate, manage, maintain and repair (including, without limitation, all necessary replacements) or cause to be operated, managed, maintained and repaired the Parking Facilities so as to maintain same in good order, condition and repair in compliance with all applicable laws, codes, ordinances, regulations and requirements of any governmental authority having jurisdiction over the Parking Facilities. Without in any way expanding the terms of the Parking Easement, 2665 shall keep the Parking Facilities open to the public seven (7) days a week for twenty four (24) hours each day and lighted at all times from dusk until one hour after dawn on all days. In no event shall 2665 be deemed to interfere with the Parking Easement hereunder by reason of the performance of any maintenance, construction or other activity required to be performed by 2665 hereunder in connection with the performance of its obligations pursuant to this Section 4.01; provided, however, (i) in no event shall 2665 prevent any Benefited Party from obtaining access to the Parking Facilities (except as otherwise required by law, court order or during any period of restoration following a casualty or condemnation), and (ii) 2665 agrees to use reasonable efforts to minimize interference with the Parking Easement granted hereunder in connection with the performance of any maintenance, construction or other activity to be performed by 2665 hereunder in connection with the performance of its obligations pursuant to this Section 4.01 or otherwise.

Section 4.02 Maintenance Costs and Taxes Defined.

(a) For purposes of this Agreement, the term "Parking Facilities Maintenance Costs" shall mean all costs, charges, fees and expenses of any kind or nature whatsoever paid or incurred by 2665 on an annual basis in connection with the performance of 2665's obligations with respect to the Parking Facilities pursuant to Section 4.01 hereof for managing, operating, maintaining, repairing and replacing the Parking Facilities (and all areas, utilities, systems or other components thereof) including, without limitation, snow, ice and trash removal; cleaning and sweeping; planting and landscaping, if any; striping, patching, water-proofing and paving; service contracts for elevators and other systems serving or included within the Parking Facilities; lighting, utility, fuel and water consumption charges; window cleaning; painting; insurance premiums; management fees; supplies; wages, salaries and benefits of all persons engaged in the operation, management, maintenance and repair of the Parking Facilities; personal property taxes; legal and accounting expenses or any other cost, fee, charge or expense which would be considered an expense of managing, operating, maintaining, repairing or replacing the Parking Facilities. Parking Facilities Maintenance Costs shall not include (i) depreciation charges of any kind (exclusive of depreciation on equipment used in connection with the operation of the Parking Facilities); (ii) interest or principal payments on any mortgage or other indebtedness of 2665; (iii) ground rent or any cost or expense in connection therewith; (iv) penalties, fines, late charges, interest or finance charges of any kind related to 2665's financing or refinancing of the 2665 Parcel or any portion thereof; (v) 2665's original

investment or cost in conjunction with the original construction of the Parking Facilities; (vi) any repairs, restoration or other work occasioned by fire, windstorm, or other casualty to the extent covered by insurance proceeds; (vii) compensation and fringe benefits, including social security taxes or unemployment insurance premiums, paid to any employee of 2665 who is not engaged in the management, operation maintenance, repair or replacement of the Parking Facilities; (viii) 2665's general overhead and any accounting fees or expenses related to the maintenance, operation or preservation of 2665's legal entity; (ix) legal fees or expenses incurred by 2665 other than with respect to the normal day to day operations of the Parking Facilities; (x) any advertising or marketing fees or costs related to the Parking Facilities; (xi) costs for signage or other labeling of exclusive parking spaces within the HD Primary Parking Area; (xii) capital expenditures which are made solely to further or achieve a business purpose for 2665 (or its successors and assigns) or which are required as a result of the negligent actions of 2665 in connection with the operation and maintenance of the Parking Facilities (as opposed to those capital expenditures which are necessary or required for legitimate operational purposes to ensure the safe and reasonable use of the Parking Facilities as reasonably determined by 2665 which shall be included as part of Parking Facilities Maintenance Costs hereunder).

(b) For purposes of this Agreement, the term "Taxes" shall mean all real estate taxes, general or special assessments, sewer and water rents, rates and charges, transit and transit district taxes, and any other federal, state or local governmental charge, whether general, special, ordinary or extraordinary which may now or hereafter be levied, assessed or imposed against the 2665 Parcel (including all improvements thereon) and which are allocable to the Parking Facilities. Taxes shall not include (i) assessments and taxes based on the assessed valuation of any land or improvements outside of the 2665 Parcel, (ii) any interest, penalty or late charges payable by 2665 with respect to any such Taxes as a result of 2665's failure to timely pay any installment of Taxes, (iii) any correction of or supplement to any tax or assessment for any period prior to the Completion Date, (iv) any income, inheritance, succession, capital levy, excess profits or franchise taxes or penalties which may be imposed upon 2665, and (v) assessments or taxes based on rents, gross receipts or revenues of 2665 from the Parking Facilities, unless the same shall be imposed in lieu of ad valorem real estate taxes or other ad valorem taxes and which would not take into account any other income or receipts of 2665). Taxes shall also be deemed to include the reasonable costs (including, without limitation, fees of attorneys, consultants or appraisers) of any negotiation, contest or appeal pursued by or on behalf of 2665, but only to the extent of any savings actually received pursuant to such negotiation, contest or appeal.

Section 4.03 Payment of Parking Facilities Maintenance Costs and Taxes.

(a) 2665 shall pay all costs in connection with the operation, management, maintenance, repair, and replacement of the Parking Facilities. From and after the Completion Date Adjacent Owner shall pay to 2665 its Pro Rata Share of annual Parking Facilities Maintenance Costs on an estimated monthly basis as hereinafter provided. Prior to the beginning of each calendar year, 2665 shall provide to Adjacent Owner an estimate of the Parking Facilities Maintenance Costs for such year, including reasonable detail of the components thereof. If 2665 becomes aware of any facts, matters or circumstances during a calendar year that, in 2665's reasonable judgment, would require an adjustment to the estimated Parking Facilities Maintenance Costs payments hereunder, 2665 may notify Adjacent Owner of such adjusted estimate and with the estimated payment next coming due at least thirty (30) days after Adjacent Owner's receipt of such adjustment notice, Adjacent Owner shall commence paying such adjusted estimate amount; provided, however, in no event shall any such adjusted estimate increase from the then applicable estimate by more than five percent (5%) without reasonable supporting information.

From and after the Completion Date, on a monthly basis Adjacent Owner shall pay 2665 an amount equal to one-twelfth (1/12) of its Pro Rata Share of such estimated annual Parking Facilities Maintenance Costs, in advance, by the first day of each calendar month, prorated for any partial month if the Completion Date occurs on a day other than the first (1st) day of a month. Within one hundred twenty (120) days after the end of each calendar year, 2665 shall submit to Adjacent Owner a final, annual reconciliation statement ("**Parking Adjustment Bill**") for the actual amount of Parking Facilities Maintenance Costs required to be paid by Adjacent Owner for the preceding calendar year, which statement shall include reasonable supporting documentation reflecting the breakdown and computation thereof. If Adjacent Owner's Pro Rata Share of the actual Parking Facilities Maintenance Costs with respect to such period exceeds the aggregate estimated amount(s) previously paid by Adjacent Owner hereunder with respect thereto, Adjacent Owner shall pay to 2665 the deficiency within thirty (30) days following receipt of the Parking Adjustment Bill. However, if the aggregate amount(s) previously paid by Adjacent Owner with respect thereto exceeds Adjacent Owner's Pro Rata Share of the actual Parking Facilities Maintenance Costs for such period, such overpayment shall be credited against Adjacent Owner's payments of Parking Facilities Maintenance Costs next coming due hereunder.

(b) 2665 shall pay (subject to reimbursement as hereinafter provided) all Taxes imposed against the 2665 Parcel, subject to 2665's right to contest any such imposition (i) in good faith and with reasonable diligence, (ii) in accordance with all applicable laws, and (iii) in any event so as to prevent the forfeiture or loss of use of any portion of the Parking Facilities. As soon as reasonably practicable following the Completion Date, the fee owner of the 2665 Parcel shall take or cause to be taken all action necessary to accomplish a tax division with the Office of the Cook County Assessor to cause a tax division of and the assignment of separate tax identification numbers to the Parking Facilities and the remainder of the Building, toward the end that each shall be assessed and taxed separately from the other. If the Parking Facilities are not separately assessed from the remainder of the Building, then Adjacent Owner shall pay its Pro Rata Share of all Taxes allocable to the Parking Facilities in any calendar year, which allocable share shall be a fraction of the Taxes assessed and payable with respect to the 2665 Parcel (including all improvements thereon), the numerator of which shall be the number of square feet of floor area within the Parking Facilities and the denominator of which shall be the total number of square feet of floor area within the Building. If the Parking Facilities are separately assessed, then Adjacent Owner shall pay 2665 its Pro Rata Share of all Taxes imposed with respect to the Parking Facilities. For any period after the Completion Date, Adjacent Owner shall pay 2665 its Pro Rata Share of Taxes (determined in accordance with the terms of this Section 4.03(b)) within fifteen (15) days after Adjacent Owner receives 2665's bill therefor, which bill shall be accompanied by evidence of payment of such taxes and a calculation of the Adjacent Owner's Pro Rata Share thereof.

Section 4.04 Budget; Audit. Not later than December 31 of each calendar year, 2665 shall prepare and deliver to Adjacent Owner a budget itemizing anticipated Parking Facilities Maintenance Costs for the next calendar year. Adjacent Owner shall have the right, at reasonable times and at Adjacent Owner's expense, to review 2665's records relating to all matters pertaining to this Article IV at 2665's place of business where such records are customarily maintained in the Chicago metropolitan area.

ARTICLE V **COVENANTS AND RESTRICTIONS**

Section 5.01 Covenants and Restrictions. In addition to all covenants, conditions and restrictions provided elsewhere in this Agreement, Adjacent Owner hereby covenants and agrees to (i)

comply with the following provisions, and (ii) obligate (and enforce as applicable against) all Benefited Parties and their respective employees, agents, clients, customers, invitees and guests to comply with the following provisions:

(a) Adjacent Owner shall comply with all laws, ordinances, orders, and regulations related to the use of the Parking Facilities and shall not interfere with any business operation on the 2665 Parcel in connection with any exercise of its rights under any of the easements granted pursuant to this Agreement.

(b) Except as otherwise expressly provided in Section 3.01(i)(D) and 3.02 hereof, Adjacent Owner shall have no right to install any improvement, structure, sign, utility, security or communication device, lights or other equipment, facilities or systems of any kind or nature whatsoever in, on, under or over any portion of the 2665 Parcel including, without limitation, the Building and the Parking Facilities.

(c) Adjacent Owner shall not litter or obstruct in any manner sidewalks, entrances, exits, passages, courts, corridors, vestibules, halls, stairways, elevators, utility or storage rooms or loading and unloading areas in or about the Building, and no obstruction to the free flow of traffic and use of the Parking Facilities shall be permitted by Adjacent Owner (or by 2665, except as otherwise expressly provided in Section 4.01 hereof).

(d) Adjacent Owner agrees that the fee owner, tenants and operator of the Parking Facilities shall have no obligation or liability with respect to any theft, robbery and pilferage of property owned by any Benefited Parties located on the 2665 Parcel, it being expressly understood that all personal property belonging to Adjacent Owner or any Benefited Party shall be there at the sole risk of such party.

(e) Adjacent Owner will not in any manner deface or injure the Building or any part thereof (including, without limitation, the structural integrity of the Building or any part thereof, any common Building or utility lines, systems or facilities, or any portion of the Parking Facilities. If any damage to the Building results from any act or neglect of Adjacent Owner or any other Benefited Party or their respective employees, agents, contractors, tenants, occupants, licensees or invitees, subject to the terms of Section 7.04 hereof, then as between 2665 and Adjacent Owner, Adjacent Owner shall be liable therefor and 2665, at its option and upon prior written notice to Adjacent Owner, may repair such damage and Adjacent Owner, upon demand by 2665, shall reimburse 2665 for a reasonable, actual costs of such repairs and damages in excess of amounts, if any, paid to 2665 under insurance covering such damage. Any such costs paid by Adjacent Owner pursuant to the preceding sentence shall not be included as part of Parking Facilities Maintenance Costs hereunder.

(f) Adjacent Owner shall not conduct any promotion, entertainment, amusement or other activities on any portion of the 2665 Parcel.

(g) Adjacent Owner shall not conduct any unlawful practice to be carried on or committed in the Building or make any use of the 2665 Parcel to be used in any manner or for any purpose that invalidates or increases the rate of insurance. Adjacent Owner agrees to pay the entire portion of any increase in premiums for fire and extended coverage insurance that may be charged 2665 resulting from the use of the 2665 Parcel, whether or not 2665 has consented to such use, and that such payment by Adjacent Owner shall not in any way limit 2665's rights or remedies for a violation of any of the terms of this Agreement.

(h) Adjacent Owner shall not bring pets or animals (excluding any animal trained to assist the visually impaired) within the Building.

(i) Adjacent Owner shall not conduct any use of the 2665 Parcel permitted hereunder (1) so as to create strong, unusual or offensive odors, fumes, dust or vapors, (2) in any manner which is a public or private nuisance, (3) so as to emit noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, or (4) otherwise so as to create fire, explosive or other hazards. Nothing in this Section 5.01(i) shall prevent the use of the Parking Facilities by vehicles or prohibit typical exhaust noise and fumes emanating from vehicles using the Parking Facilities.

(j) 2665 shall have the right to adopt (and thereafter amend and supplement) reasonable rules and regulations with respect to the safe and orderly operation of the Parking Facilities from time to time and Adjacent Owner agrees to comply with such rules and regulations as may be adopted by 2665 with respect thereto.

ARTICLE VI
INDEMNIFICATION AND WAIVER OF CERTAIN CLAIMS

Section 6.01 Indemnification. To the extent not covered or intended to be covered by any insurance required to be maintained by the indemnified party pursuant to this Agreement (whether or not actually maintained) or otherwise actually maintained, and subject to the provisions of Section 7.03 hereof, Adjacent Owner hereby defends (with counsel reasonably satisfactory to 2665), indemnifies and holds 2665, its successors and assigns and their respective officers, directors, members, employees, agents, tenants, occupants, contractors, licensees and invitees (collectively referred to herein, in the singular, as the "**Indemnified Parties**") harmless (except for loss or damage resulting from the negligent or more culpable conduct of any of the Indemnified Parties) from and against any damages, liabilities, actions, claims, liens, fines, penalties, costs and expenses (including reasonable attorneys' and consultants' fees and other litigation expenses) in connection with the loss of life, personal injury and/or damage to property suffered or incurred by the Indemnified Parties and arising from or out (i) the use of the Parking Facilities pursuant to the Parking Easement or the exercise of any other easement or right granted Adjacent Owner hereunder, (ii) any other act or omission of Adjacent Owner or any of the Benefited Parties including, without limitation, a breach of this Agreement.

Section 6.02 Waiver of Certain Claims. To the extent not prohibited expressly by law, Adjacent Owner releases 2665 and its officers, directors, members, employees, agents, tenants, occupants, contractors, licensees and invitees from and waives all claims for any damage or injury to property sustained by Adjacent Owner or any Benefited Party, or by any other person, resulting directly or indirectly from fire or other casualty, any other cause or any existing or future condition, defect, matter or thing in or about the 2665 Parcel or the Building or any part thereof, or from any equipment or appurtenance therein, or from any accident in or about the Parking Facilities, or from any act or neglect of any tenant or other occupant of the Building or any part thereof or of any other person, including 2665 and its respective agents, employees and contractors. This Section shall apply especially, but not exclusively, to damage caused by water, snow, frost, steam, excessive heat or cold, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, broken glass, sprinkling or air conditioning devices or equipment, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the acts specifically enumerated above, or from any other thing or circumstance, whether of a like nature or of a wholly different nature.

ARTICLE VII INSURANCE

Section 7.01

(a) At all times following the Completion Date and as a condition to its use of the Parking Easement hereunder, Adjacent Owner shall maintain commercial general liability insurance, including, without limitation, contractual liability coverage for the indemnification described in Section 5.01 hereof, covering the Parking Facilities, against claims for bodily injury, personal injury and damage to property, naming 2665 and Home Depot as additional insureds thereunder, with minimum limits of \$2,000,000 combined single limit and with a deductible not to exceed the greater of (i) \$25,000.00 or (ii) one percent of Adjacent Owner's net worth; and

(b) At all times following the Completion Date, 2665 shall maintain commercial general liability insurance, covering the Parking Facilities, against claims for bodily injury, personal injury and damage to property, naming Adjacent Owner (and, prior to the acquisition of the 2665 Parcel by Home Depot, naming Home Depot) as additional insureds thereunder with minimum limits of \$2,000,000 combined single limit and with a deductible not to exceed the greater of (i) \$25,000.00 or (ii) one percent of Adjacent Owner's net worth

Section 7.02 General Insurance Provisions; Self-Insurance. All insurance required hereunder or carried by Adjacent Owner and 2665 shall be carried by a reputable insurance company or companies qualified to do business in the State of Illinois with a financial rating equivalent of VIII or better and a policyholder's rating equivalent of A- or better in the latest edition of Best's Rating Guide on Property and Casualty Insurance Companies (or a comparable rating in any comparable and generally recognized national or international ratings guide) and such insurance shall provide that each insured and any additional insureds shall be given a minimum of ten (10) days' written notice prior to the cancellation, termination or alteration of the terms or limits of such coverage. Notwithstanding the foregoing, any party responsible to maintain any insurance required under this Agreement may "self insure" in whole or in part as to any such insurance if such party has a net worth in excess of One Hundred Million Dollars (\$100,000,000) as shown on its most recent audited financial statement (or if such party's financial statements are consolidated with affiliated entities, then as certified by an officer thereof). Such insurance may also be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations so long as the amount and coverage required hereunder is not diminished. Each party shall, upon written request, furnish the other with a certificate of insurance evidencing the existence of the insurance required to be carried pursuant to this Article (or evidence of a self-insurance capacity as herein provided, as the case may be), and evidencing the designation of the appropriate parties as additional insureds.

Section 7.03 Waiver of Subrogation; Release. 2665 and Adjacent Owner shall cause each insurance policy required by this Agreement to be written to provide that the insurer waives all rights of recovery by way of subrogation against the other party hereto in connection with any loss or damage covered by the policy. Each party hereto hereby waives any rights of recovery against any other party, its officers, directors, member, employees, agents and tenants for any damage or consequential loss covered by insurance to the extent of the proceeds payable under such policies (or that would have been payable, but for the fact that such party self insures), whether or not such damage or loss shall have been caused by any acts or omissions of any other party or its officers, directors, members, employees, agents or tenants.

ARTICLE VIII CASUALTY AND EMINENT DOMAIN

Section 8.01 Casualty.

(a) If the Parking Facilities or any portion thereof are damaged or destroyed by fire or other casualty, then unless 2665 elects, in its sole discretion, not to rebuild, repair or restore the Parking Facilities as provided in Section 7.01(b) hereof, as soon as reasonably practicable following the date 2665 receives all applicable permits required therefor, 2665 shall diligently proceed to rebuild, repair or restore the Parking Facilities to their condition prior to such destruction to the extent of all insurance proceeds received.

(b) If 2665 elects not to immediately rebuild, repair or restore the Parking Facilities pursuant to Section 8.01(a) hereof, then provided that 2665 is able to obtain any necessary permits and approvals therefor, 2665 shall promptly take all action required to provide Adjacent Owner with temporary substitute parking facilities on the 2665 Parcel to provide at least forty-one (41) surface level parking spaces until such time thereafter as 2665 elects to rebuild on the 2665 Parcel, and Adjacent Owner's use thereof shall be subject to all of the terms of this Agreement. At such time as 2665 elects to rebuild on the 2665 Parcel, Adjacent Owner shall, at its expense, be solely responsible for making alternate parking arrangements for any Adjacent Tenant during the construction period. 2665 shall make Parking Facilities available in such rebuilt building toward the end that Adjacent Owner shall enjoy substantially the same parking rights in the rebuilt Parking Facilities as Adjacent Owner enjoyed in the original Parking Facilities to be built as part of the Building and enjoyed by Adjacent Owner prior to such damage or destruction, but in no event less than forty-one (41) parking spaces in any such rebuilt Parking Facilities. 2665 shall require no consent or approval from Adjacent Owner with respect to any such rebuilding; provided, however, 2665 agrees to provide as much reasonable advance notice thereof to Adjacent Owner to enable Adjacent Owner to make appropriate alternative parking arrangements for any Adjacent Tenant during the construction period following any such casualty.

Section 8.02 Eminent Domain. In the event the whole or any material part of the Parking Facilities, or any portion of the Building providing support to the Parking Facilities shall be taken by right of eminent domain or any similar authority of law (a "Taking"), then this Agreement shall terminate and the entire award for the value of such Taking shall belong to fee owner of the 2665 Parcel or any part thereof, and no other party shall have a right to claim any portion of such award by virtue of any interest created by this Agreement. Adjacent Owner may, however, file a collateral claim with the condemning authority over and above the value of the land being so taken to the extent of any damage suffered by Adjacent Owner resulting from the severance of their parking rights if such claim shall not operate to reduce the award allocable to the 2665 Parcel (or the applicable portion thereof or right or interest therein) subject to the Taking. In the event of a partial Taking, then to the extent physically and economically feasible, 2665 shall restore the Parking Facilities as nearly as possible to the condition existing prior to the partial Taking to the extent of the award therefor. In the case of a partial Taking which results in less total parking spaces in the Parking Facilities, then the 41 parking spaces available to Adjacent Owner pursuant to the Parking Easement shall be equitably reduced in proportion to the reduction in the total number of parking spaces in the Parking Facilities after such Taking.

ARTICLE IX REMEDIES

Section 9.01 Remedies.

(a) Neither party hereunder shall be in "Default" under this Agreement unless such party fails to cure any alleged breach hereof within ten (10) days after receipt of a written notice of default from the non-defaulting party specifying the alleged default in reasonable detail; provided, however, with respect to defaults which are not susceptible of being cured in ten (10) days, then provided that the defaulting party commences to cure such default within said 10-day period and thereafter diligently prosecutes such cure to completion, such party shall not be deemed in Default hereunder.

(b) In the event of a Default under this Agreement, the non-defaulting party shall be entitled to obtain an order specifically enforcing the performance of such obligation by the defaulting party or an injunction prohibiting such Default by the defaulting party. The foregoing equitable remedies are hereby acknowledged by the parties to be appropriate remedies due to the inadequacy of legal remedies and the irreparable harm which would be caused by any such Default.

(c) No delay or omission of any non-defaulting party in the exercise of any right accruing upon any Default by a defaulting party 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 non-defaulting party of a Default in any of the terms and conditions of this Agreement shall not be construed to be a waiver of any subsequent Default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement: (i) no remedy provided herein shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement; and (ii) all remedies at law or in equity shall be available; provided, however, in no event shall any claim for monetary damages entitle any party to any damages other than its direct and actual damages resulting from such Default, it being expressly understood and agreed that no party may seek or be entitled to receive consequential, incidental, remote, speculative or punitive damages.

(d) If any legal action is commenced to enforce the terms of this Agreement, the prevailing party in such action shall, in addition to the relief granted, be entitled to the payment of reasonable and actual attorneys' fees incurred by the prevailing party in connection therewith and the court having jurisdiction in such action is hereby authorized and directed to award such attorneys' fees to the prevailing party.

(e) If any party hereto is in Default of any monetary obligation hereunder, then such unpaid amount shall bear interest from the due date for such payments until all such unpaid amounts are paid in full at a rate (the "Default Rate") equal to the lesser of: (i) three percent (3%) in excess of the "Prime Rate" published in the Wall Street Journal, or if such publication or rate is not available on a permanent basis, then three percent (3%) in excess of the prime lending rate charged by Citibank, N.A. for commercial loans to its most preferred commercial customers; or (ii) the highest rate permitted by applicable law.

(f) Any default notice delivered hereunder shall concurrently be delivered to any first mortgagee of the Defaulting Party to the extent the notice address for such first mortgagee has previously been furnished to the Non-Defaulting Party hereunder pursuant to the notice provisions contained herein,

(iii) if any Adjacent Tenant claims that the terms of this Agreement are not binding upon such Adjacent Tenant in accordance with the terms hereof, or if any Adjacent Tenant attempts to enforce this Agreement against 2665 or pursue a claim which is inconsistent with the terms of this Section 9.04 (including, without limitation, any claim alleging that it has greater or other rights in and to the 2665 Parcel and/or the Parking Facilities beyond those provided under this Agreement), then, in either such event, Adjacent Owner shall indemnify, defend (with counsel reasonably acceptable to 2665) and hold 2665 harmless from all claims, demands, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation expenses) which 2665 may suffer or incur resulting from any such claims or attempts to enforce by any Adjacent Tenant. If Adjacent Owner is not successful in resolving or defeating any such claims or attempts at enforcement, and any such claims are finally adjudicated by a court of competent jurisdiction adverse to 2665, then all rights, interests and privileges available to such Adjacent Tenant by and through Adjacent Owner shall thereupon cease and terminate, and 2665 shall be entitled to file a declaration of termination to memorialize such termination of record.

ARTICLE IX EFFECT OF INSTRUMENT

Section 10.01 Binding Effect. The Parking Easement and all of the terms, covenants, conditions, agreements, obligations and restrictions herein set forth shall run to the benefit of, and bind, as the case may be, the parties hereto and their respective Parcels. Any transferee of any interest in a Parcel shall automatically be deemed, by acceptance of the title thereto or the interest therein, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in its Parcel and to have agreed to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement, and the transferor shall, upon the completion of such transfer and delivery of notice to the other Parcel owner, be relieved of all further liability under this Agreement except liability with respect to matters that may have arisen during its period of ownership of such Parcel or interest therein that remain unsatisfied.

Section 10.02 Estoppel Certificates. Each party or its successor (the "Responding Party") shall at any time upon fifteen (15) days prior written notice from any other party or its successor (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), and (ii) acknowledging that there are not, to the Responding Party's knowledge, any uncured defaults on the part of the Requesting Party, or specifying such defaults if any are claimed; and (iii) responding to such other information pertaining to this Agreement as the Requesting Party may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser or mortgagee of the Requesting Party's Parcel or of the business of the Requesting Party. Failure to deliver such statement within such time may be declared by the Requesting Party to be a default of this Agreement or, at the option of the Requesting Party, be deemed to conclusively establish that this Agreement is in full force and effect, unmodified except as provided in Requesting Party's initial notice and that Requesting Party is in full compliance with all of the terms of this Agreement.

in which event, such first mortgagee shall have the right to cure the applicable default for the account of the Defaulting Party on or before the expiration of the applicable cure period hereunder.

(g) Anything to the contrary in this Agreement notwithstanding, if Adjacent Owner Defaults under this Agreement with respect to any monetary obligation three (3) times or more in any twelve (12) consecutive month period, 2665 may, at its option, elect to terminate this Agreement upon one hundred eighty (180) days prior written notice. If (i) Adjacent Owner Defaults under this Agreement with respect to any monetary obligation within said 180-day period, then this Agreement shall terminate at the expiration of said 180-day period without further notice or action required; provided, however, Adjacent Owner shall upon demand execute a release of this Agreement in recordable form to memorialize the termination of this Agreement, or (ii) Adjacent Owner does not Default under this Agreement with respect to any monetary obligation within said 180-day period, then 2665's termination notice shall be deemed rescinded and this Agreement shall continue in full force and effect as if no termination notice had ever been delivered.

Section 9.02 Force Majeure. If any party to this Agreement or any party subject to the terms hereof 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, war or other reason beyond such party's 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 or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

Section 9.03 Nonterminable Agreement. Except as expressly provided in Sections 9.01(g) and 9.04 hereof, no breach of the provisions of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Non-Defaulting Party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement 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 Parcels and any improvements thereon.

9.04 Adjacent Tenant. Adjacent Owner acknowledges and agrees that, anything in this Agreement to the contrary notwithstanding, any rights, interests or privileges purported to be granted, created or made in favor of any Adjacent Tenant shall be subject to the following terms, conditions and provisions:

(i) any such rights, interest or privileges shall be provided by and through Adjacent Owner subject to all of the terms of this Agreement as fully as if Adjacent Tenant had executed this Agreement agreeing to bound by and subject to the terms hereof;

(ii) while the terms of this Agreement shall be enforceable against all Adjacent Tenants, Adjacent Tenants shall not be deemed a direct, intended third party beneficiary of this Agreement and shall not have the right to independently enforce any of the terms, covenants, easements, or provisions hereof, whether in its own name or on behalf of Adjacent Owner, it being expressly understood that only Adjacent Owner shall have such rights; and

UNOFFICIAL COPY

20357475

20357475

ARTICLE XI NOTICES

Section 11.01 Notices. Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be delivered by nationally recognized overnight courier with evidence of receipt to the parties at the addresses shown below or at such other address as the respective parties may from time to time designate by like notice. Delivery shall be deemed effective on the date of delivery as shown on the delivery ticket of the applicable courier evidencing receipt thereof. In addition, any notice, report, or demand required, permitted, desired or otherwise made pursuant to this Agreement shall be concurrently delivered to Home Depot at the addresses set forth below. The initial addresses of the parties and Home Depot shall be:

- (a) If to 2665: 2665 North Halsted LLC
 c/o JDL Development Corporation
 900 N. North Branch
 Chicago, Illinois 60622
 Attention: Jim Letchinger
 Fax: (312) 642-9696

with a copy to:

Tiper, Marbury, Rudnick & Wolfe
207 N. LaSalle Street
Chicago, Illinois 60601
Attention: Shepard Gould, Esq.
Fax: (312) 236-7516

- (b) If to Adjacent Owner, notices shall be sent to LID and JA as follows:

To LID at: L.I. Development, LLC
 c/o JDL Development Corporation
 900 N. North Branch
 Chicago, Illinois 60622
 Attention: Jim Letchinger
 Fax: (312) 642-9696

To JAH at: J & A Holdings Corporation
 c/o JDL Development Corporation
 900 N. North Branch
 Chicago, Illinois 60622
 Attention: Jim Letchinger
 Fax: (312) 642-9696

with a copy to:

UNOFFICIAL COPY

Piper, Marbury, Rudnick & Wolfe
203 N. LaSalle Street
Chicago, Illinois 60601
Attention: Shepard Gould, Esq.
Fax: (312) 236-7516

20357475

- (c) If to Home Depot: Home Depot U.S.A., Inc.
2455 Paces Ferry Road N.W.
Building C, 20th Floor
Atlanta, Georgia 30339
Attention: Vice President - Real Estate Law Group
Fax No. (770) 384-3042

with copies to:

Home Depot U.S.A., Inc.
1400 West Dundee Road
Arlington Heights, Illinois 60004
Attention: James T. McPhail, Real Estate Manager
Fax No. (847) 506-7830

inc.

Seyfarth Shaw
55 E. Monroe Street, Suite 4200
Chicago, Illinois 60603
Attention: Greg M. Dorman, Esq.
Fax: (312) 769-8869

Fax numbers provided herein are for the convenience of the parties only and shall in no way be deemed to in any manner modify the terms of this Section 11.01.

ARTICLE XII MISCELLANEOUS

Section 12.01 Miscellaneous.

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

(b) This Agreement shall be construed in accordance with the laws of the State of Illinois.

UNOFFICIAL COPY

20357475

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

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

(e) Except as otherwise expressly provided in Section 9.03 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective tenants, grantees, successors and assigns.

(f) This Agreement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the parties to the Agreement or their successors or assigns; this Agreement shall not be otherwise amended, modified or terminated during the term hereof. Anything in Section 12.01(f) to the contrary notwithstanding, prior to the time, if any, Home Depot acquires the 2665 Parcel pursuant to the Lease, 2665 and Adjacent Owner acknowledge and agree that they shall in no event modify this Agreement without first having obtained Home Depot's prior written consent thereto.

(g) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

(h) The parties acknowledge that the floor plans attached to this Agreement on Exhibits D-1 through D-4 both inclusive are not based on the final plans approved by the City of Chicago for the construction of the Building. Upon the approval of such plans by the City of Chicago and within thirty (30) days after 2665's written request therefor, Adjacent Owner agrees to execute an amendment to this Agreement attaching the final floor plans approved by the City of Chicago in substitution of the floor plans attached to this Agreement.

[TEXT OF THIS AGREEMENT ENDS HERE; SIGNATURE PAGES TO FOLLOW]

UNOFFICIAL COPY

20357475

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

2665: 2665 NORTH HALSTED LLC,
an Illinois limited liability company

By: Halsted Holdings, LLC, an Illinois
limited liability company, its manager

By: JDL Development Interests, LLC,
an Illinois limited liability company,
its sole member

By: 
James D. Letchinger, its Manager

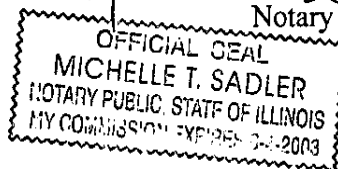
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Michelle Sadler, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James D. Letchinger, the manager of JDL Development Interests LLC, an Illinois limited liability company and sole member of Halsted Holdings, LLC, an Illinois limited liability company and manager of 2665 NORTH HALSTED LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, on behalf of said limited liability company as his/her free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and seal this 12th day of March, 2002.

Michelle Sadler
Notary Public

My Commission Expires: 6-4-2003



2665 SIGNATURE PAGE

UNOFFICIAL COPY

20357475

LID:

L.I. DEVELOPMENT, LLC,
an Illinois limited liability company

By:

Printed Name: FRODLATSKO

Title: Manager

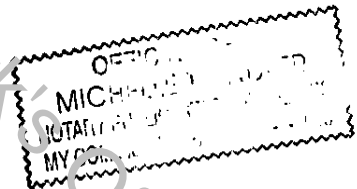
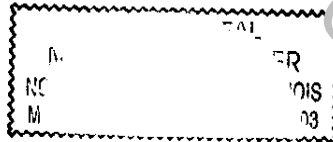
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Michelle T. Nadler, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY that Fred Latsko, being the
Manager of L.I. DEVELOPMENT, LLC, an Illinois limited liability company,
personally known to me to be the same person whose name is subscribed to the foregoing instrument,
appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said
instrument, on behalf of said limited liability company as his/her free and voluntary act, and as the free
and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and seal this 12th day of March, 2002.

Michelle Nadler
Notary Public

My Commission Expires: 04-03



LID SIGNATURE PAGE

UNOFFICIAL COPY

EXHIBIT A

20357475

Legal Description of 2665 Parcel

PARCEL 1:

THE SOUTH 20 FEET OF LOT 2, ALL OF LOTS 3 TO 11 IN BLOCK 2 IN THE SUBDIVISION OF OUTLOT 'E' IN WRIGHTWOOD IN THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

PARCEL 2

LOTS 12 AND 13 AND THAT PART OF LOT 14 LYING NORTH OF A LINE 37.0 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF LOT 15 IN BLOCK 2 IN THE SUBDIVISION OF OUTLOT 'E' IN WRIGHTWOOD IN THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN.

PARCEL 3

LOT 14, EXCEPT THAT PART LYING NORTH OF A LINE 37.0 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF LOT 15, ALL OF LOTS 15 AND 16, TOGETHER WITH THAT PART OF LOT 17 LYING NORTH OF A LINE 1.85 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF LOT 17 IN BLOCK 2 IN THE SUBDIVISION OF OUTLOT 'E' IN WRIGHTWOOD IN THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN.

Property Address: 2665 N. Halsted, Chicago, IL

Permanent Index Nos: 14-28-302-002-000
14-28-302-003-000
14-28-302-004-000
14-28-302-056-000
14-28-302-057-000 (in part)
14-28-302-007-000
14-28-302-008-000 (in part)

UNOFFICIAL COPY

EXHIBIT B

20357475

Legal Description of Adjacent Parcel

LOT 17, EXCEPT THAT PART LYING NORTH OF A LINE 1.85 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF LOT 17, TOGETHER WITH LOTS 18 THROUGH 21, INCLUSIVE, IN BLOCK 2 IN THE SUBDIVISION OF OUTLOT 'E' IN WRIGHTWOOD IN THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

Depiction of HD Primary Parking Area

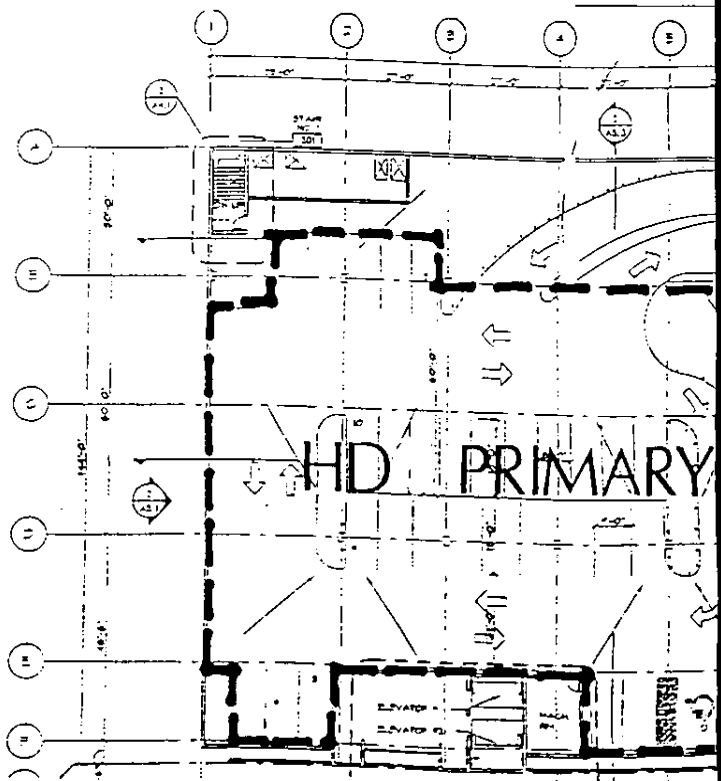
[Following One (1) Page]

20357475

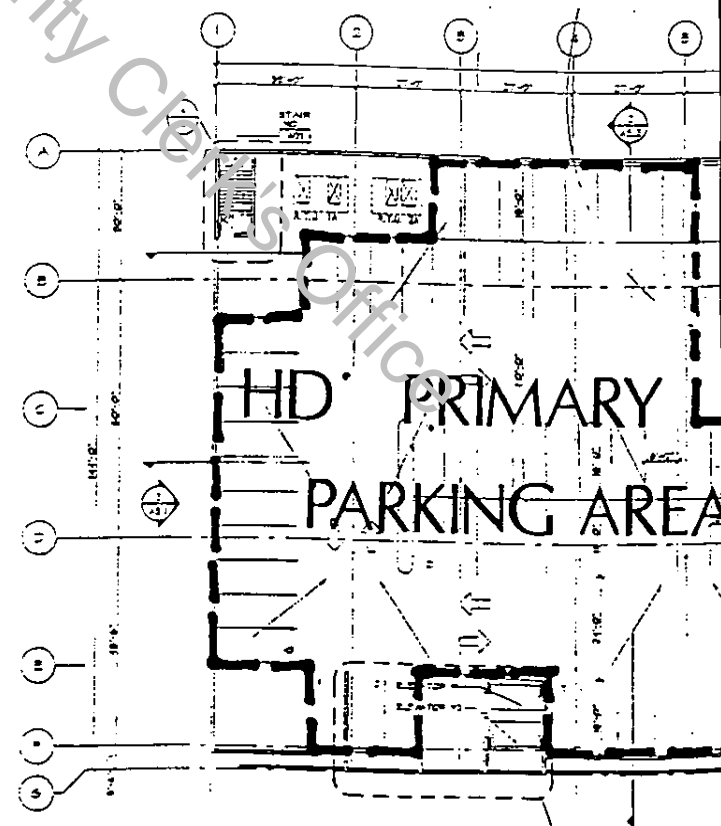
Property of Cook County Clerk's Office

UNOFFICIAL COPY

DEPICTED



1 THIRD FLOOR PLAN

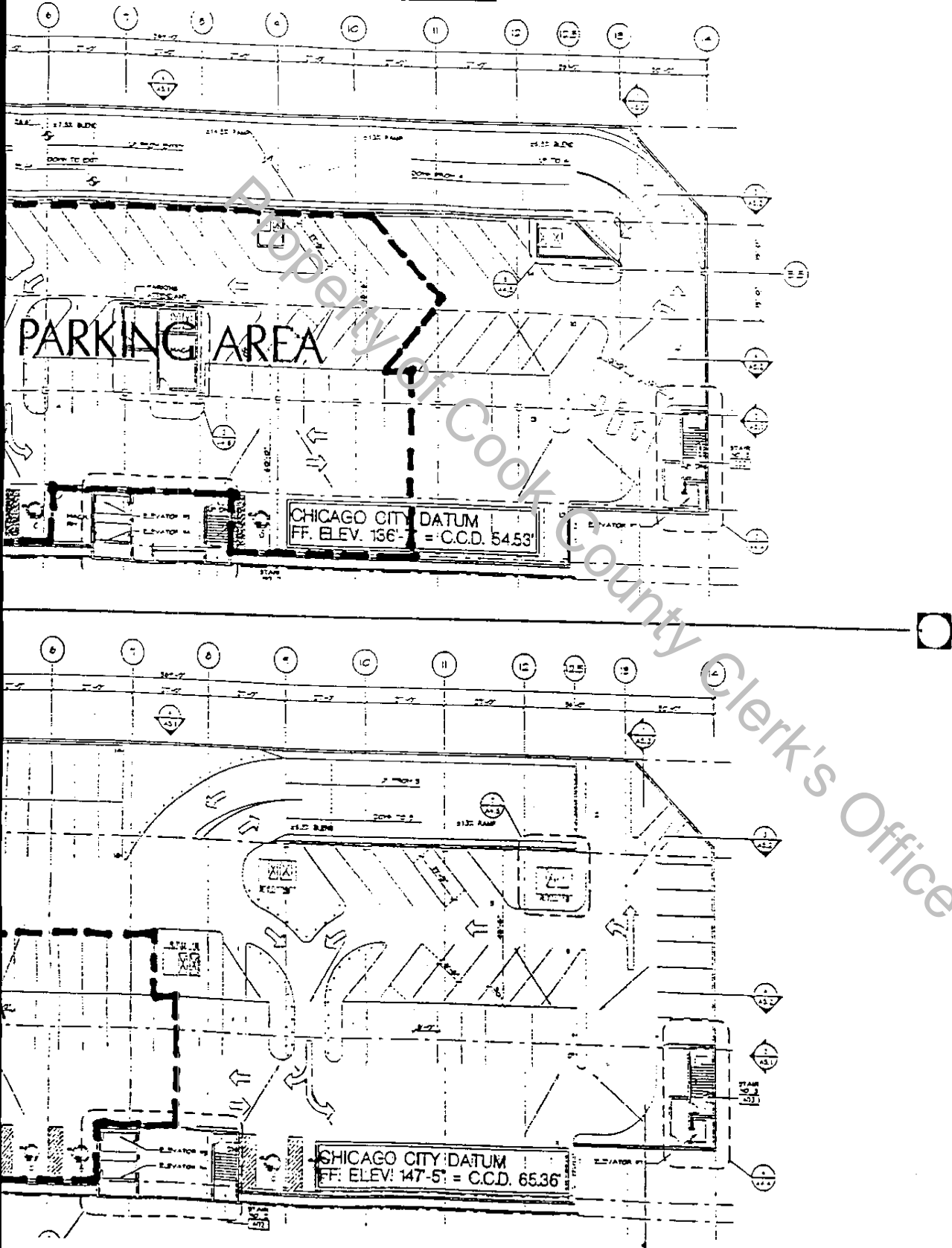


1 FOURTH FLOOR PLAN

20357475

EXHIBIT C

SECTION OF HD PRIMARY PARKING AREA



NORTH HALSTED STREET

UNOFFICIAL COPY

EXHIBIT D-1

First Floor Plan

[Following One (1) Page]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

20357475

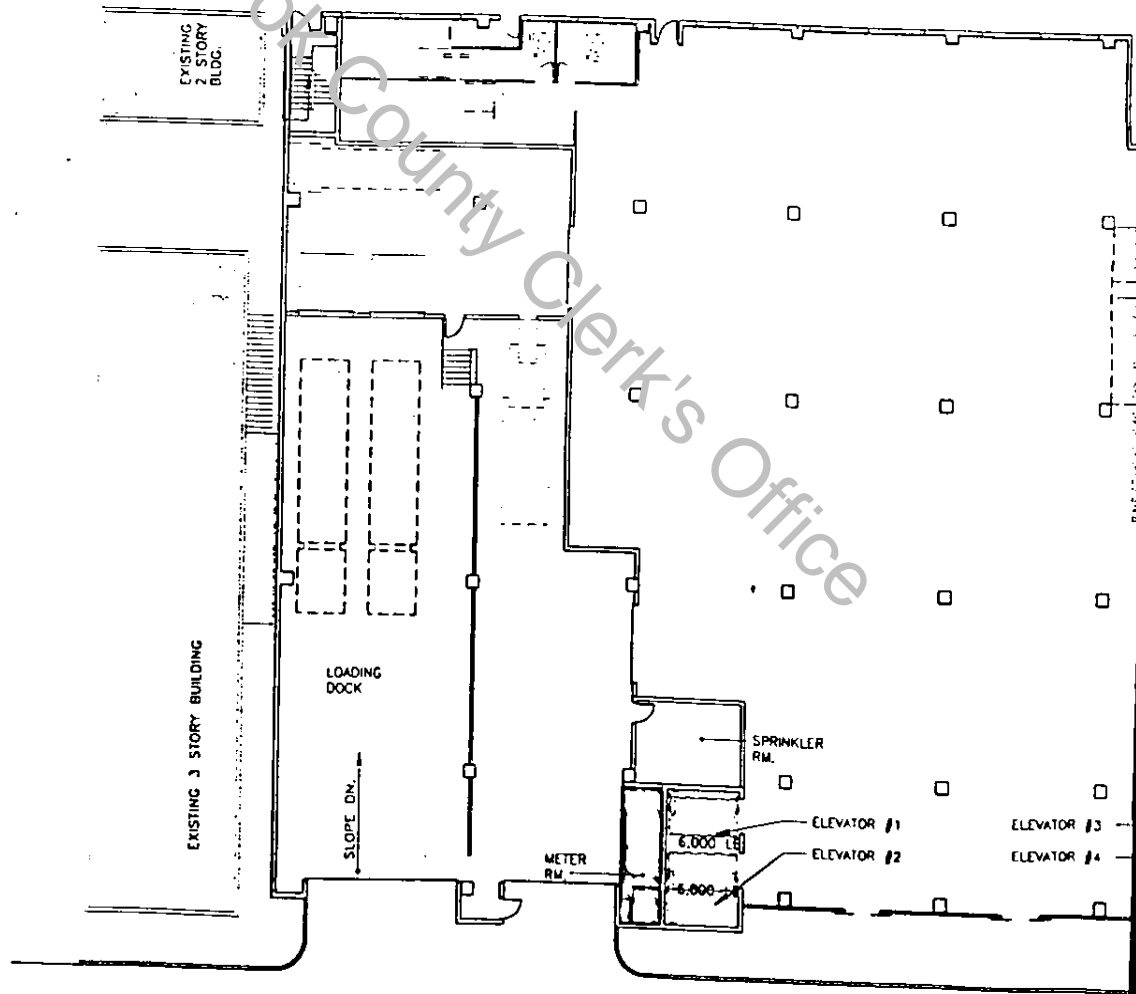


DENOTES PARKING FACILITIES
(ELEVATOR #3 & STAIRWAY IN VESTIBULE
ARE INCLUDED WITHIN THE PARKING FACILITIES)



DENOTES LOADING EAST

Property of Cook County Clerk's Office



1 FIRST FLOOR PLAN

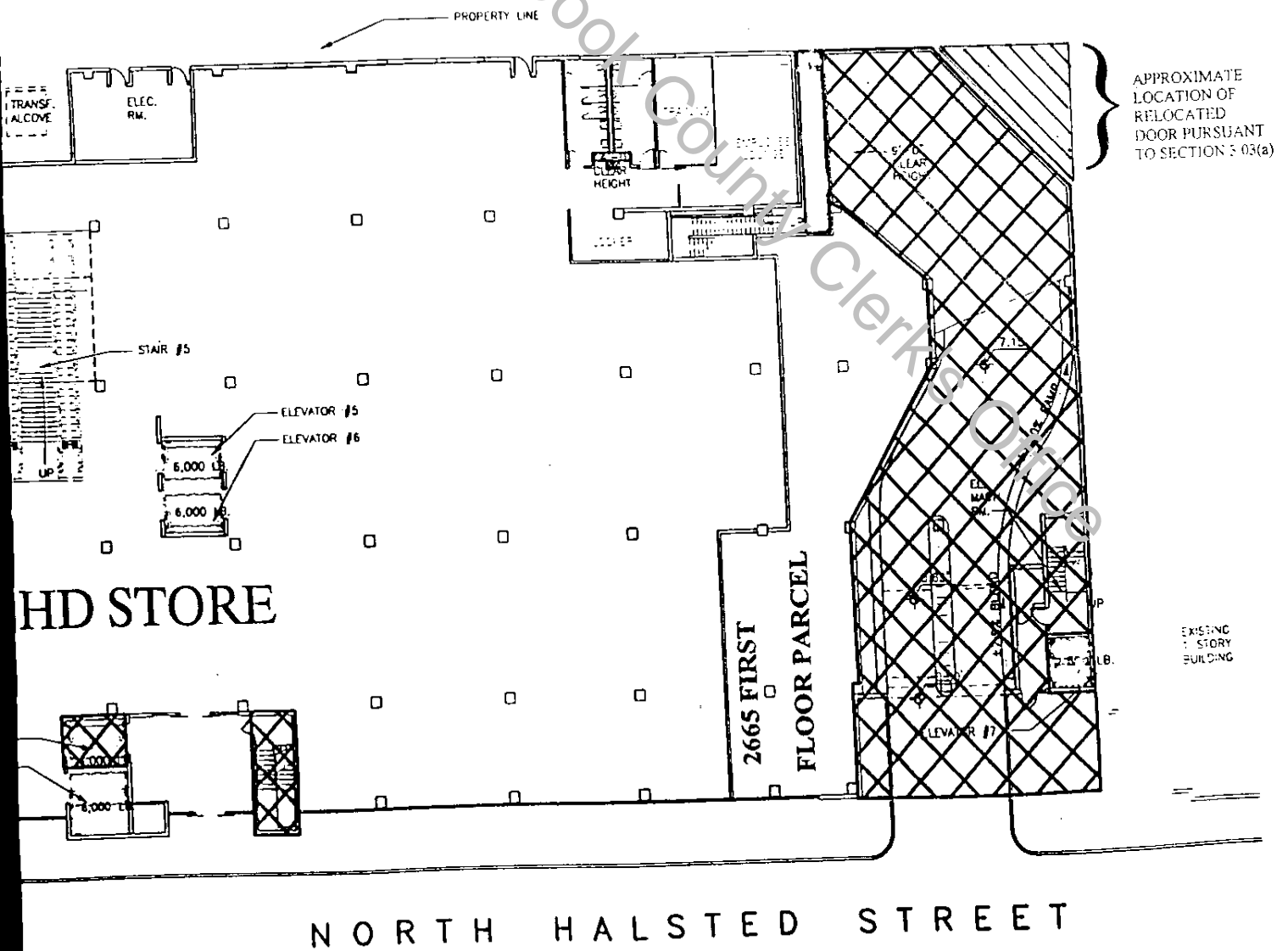
UNOFFICIAL COPY

EXHIBIT D-1

FIRST FLOOR PLAN

ES
MENT AREA

Property of Cook County Clerks Office



UNOFFICIAL COPY

EXHIBIT D-2

Second Floor Plan

[Following One (1) Page]

20357475

Property of Cook County Clerk's Office

UNOFFICIAL COPY

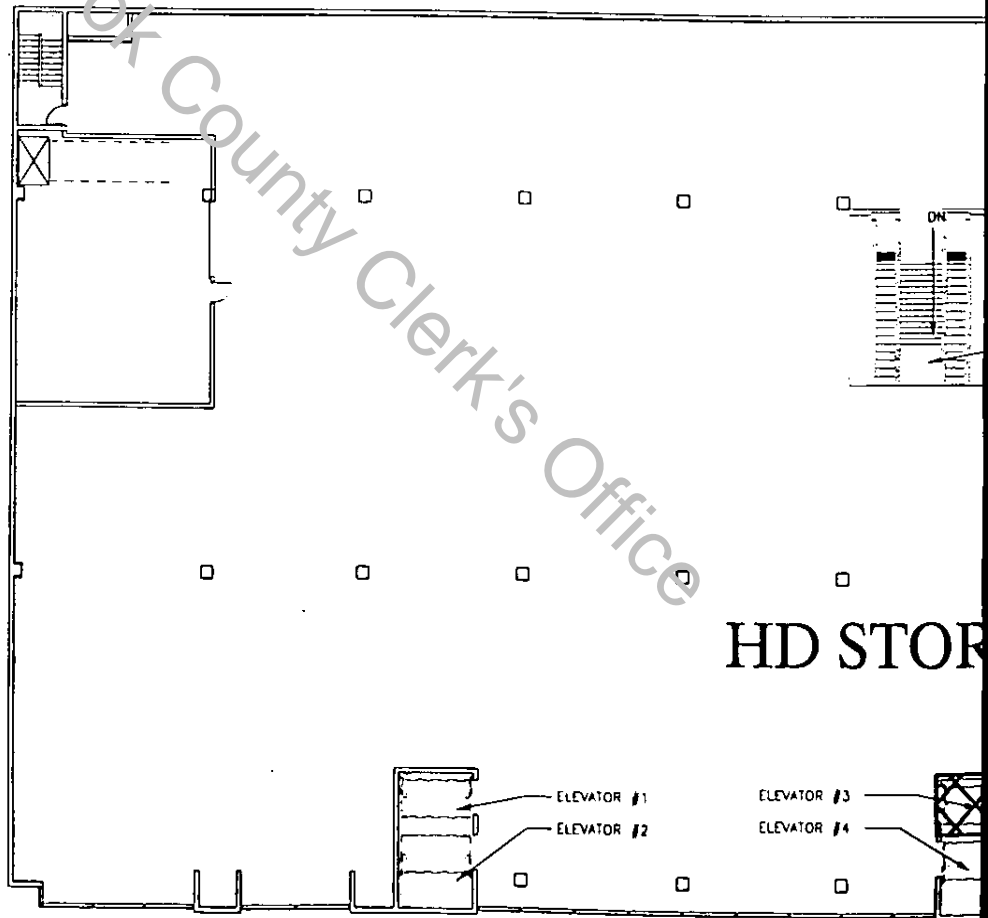
20357475

20357



DENOTES PARKING FACILITIES
(ELEVATOR #3 & STAIRWAY IN VESTIBULE
ARE INCLUDED WITHIN THE PARKING FACILITIES)

Property of Cook County Clerk's Office



1 SECOND FLOOR PLAN

UNOFFICIAL COPY

20357475

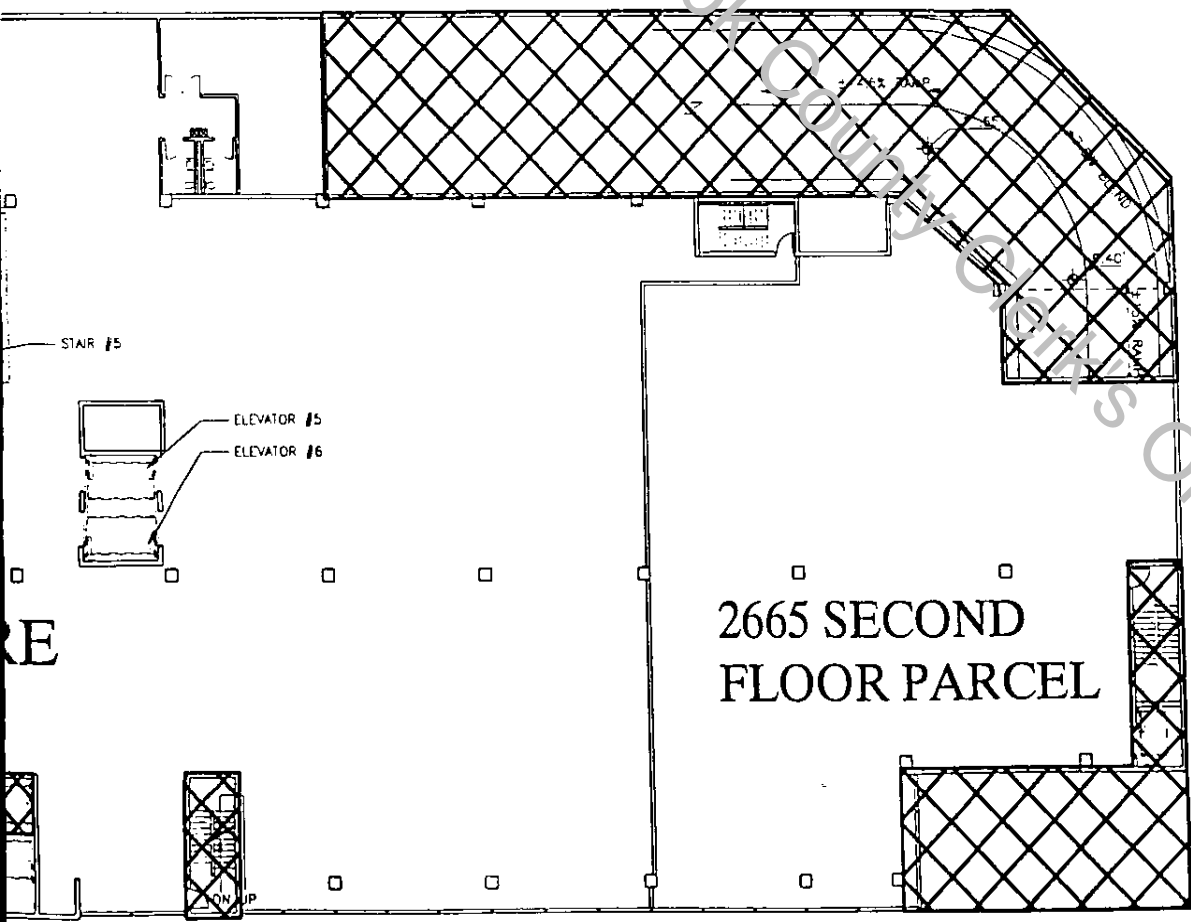
175

EXHIBIT D-2

SECOND FLOOR PLAN

TIES

Property of Cook County Clerk's Office



RE

2665 SECOND FLOOR PARCEL

EXISTING STORY BUILDING

NORTH HALSTED STREET



UNOFFICIAL COPY

EXHIBIT D-3

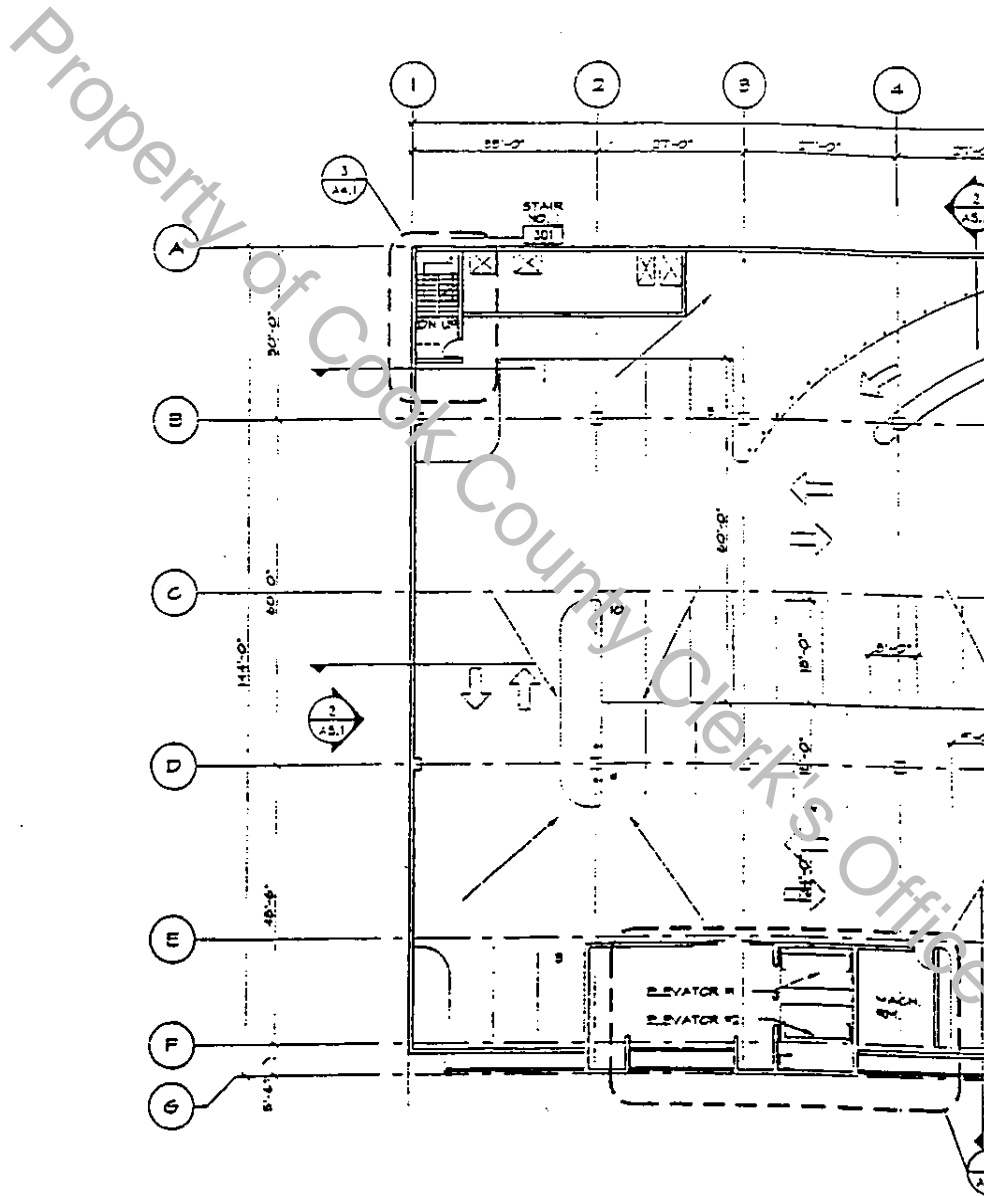
Third Floor Plan

20357475

[Following One (1) Page]

Property of Cook County Clerk's Office

20357475



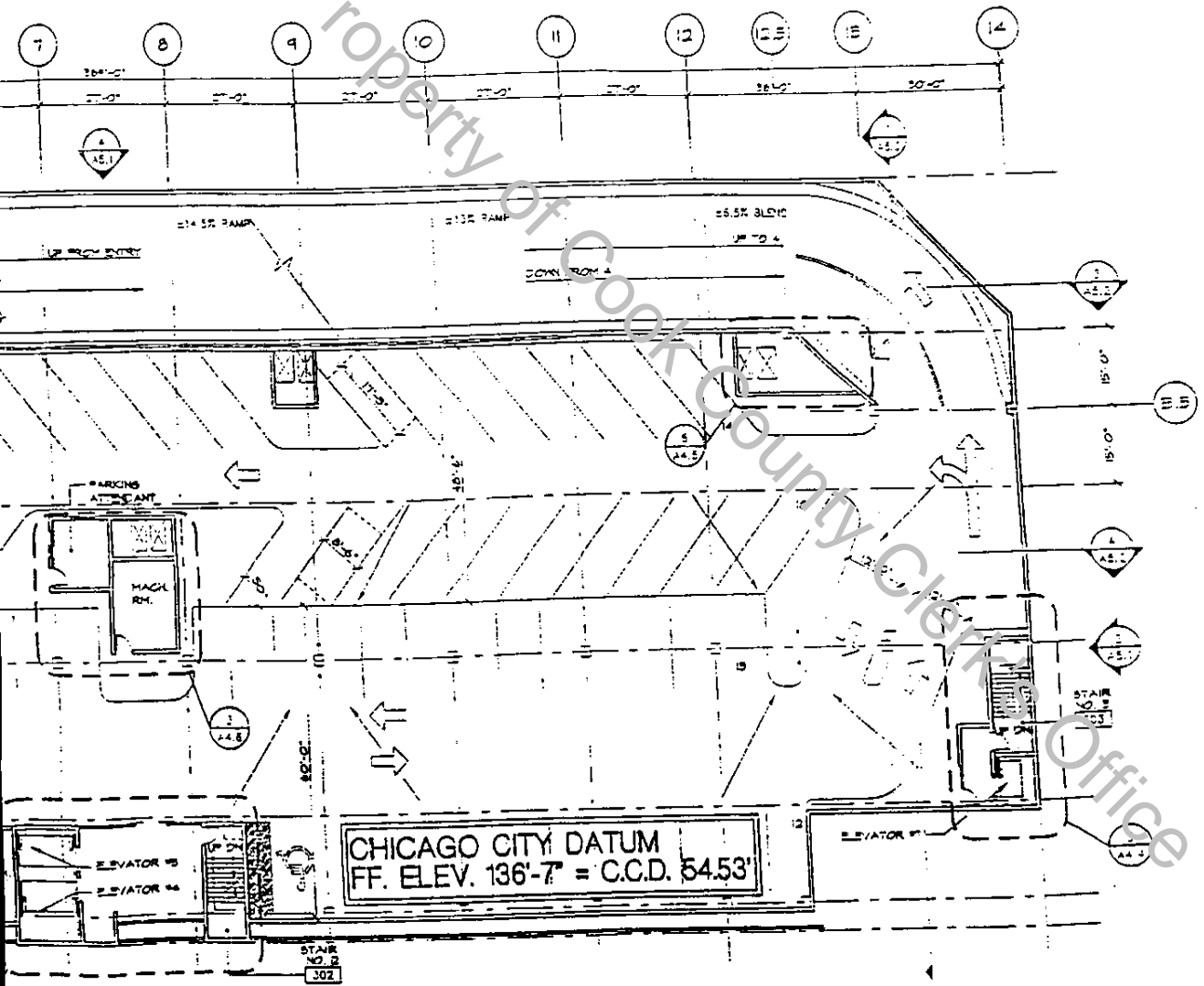
1 THIRD FLOOR PLAN

UNOFFICIAL COPY

20357475

EXHIBIT D-3

THIRD FLOOR PLAN



NORTH HALSTED STREET



UNOFFICIAL COPY

EXHIBIT D-4

Fourth Floor Plan

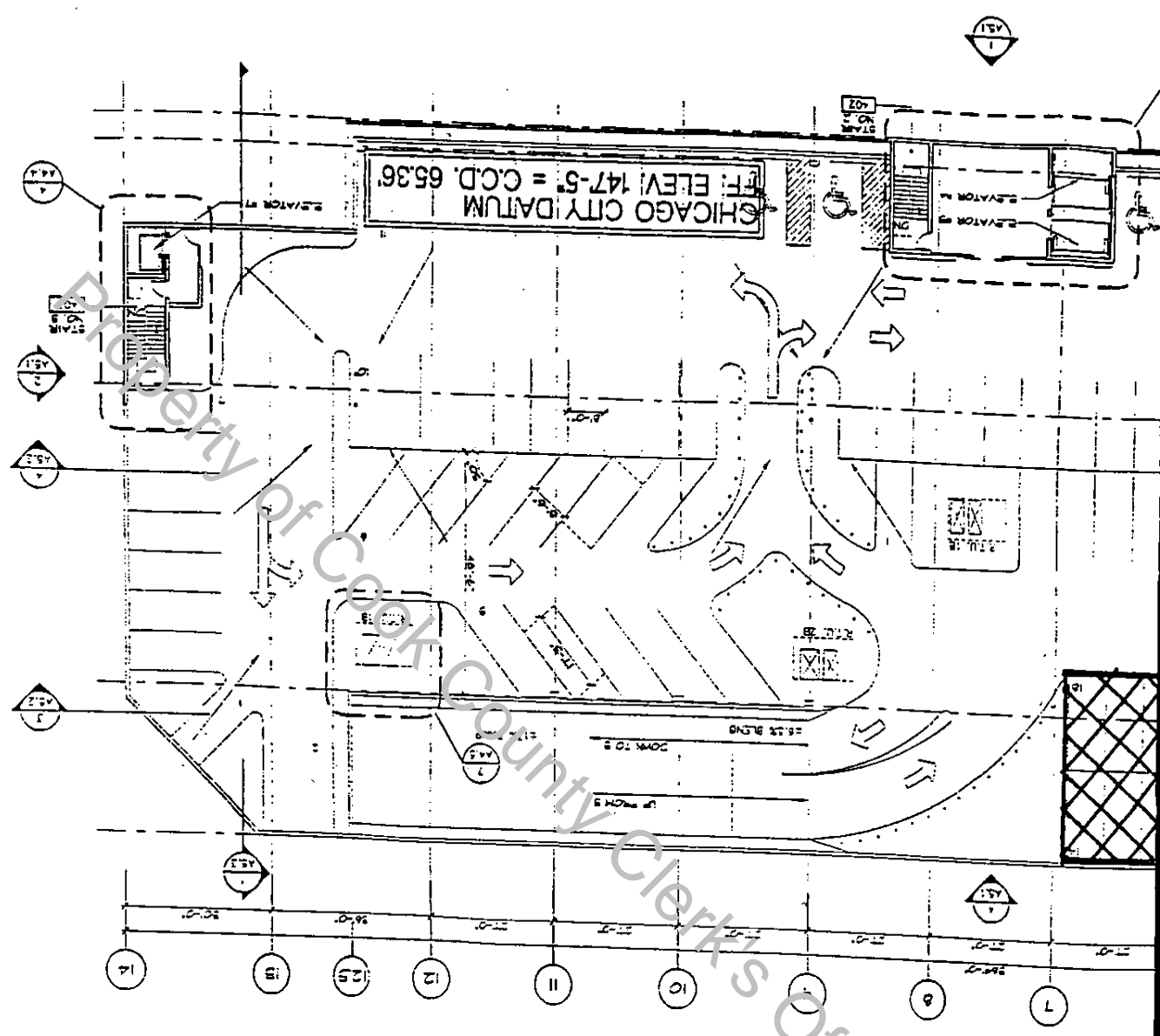
20357475

[Following One (1) Page]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

NORTH HALSTED STREET



SPACES RESERVED FOR THE EXCLUSIVE
MANAGER AND ASSISTANT STORE

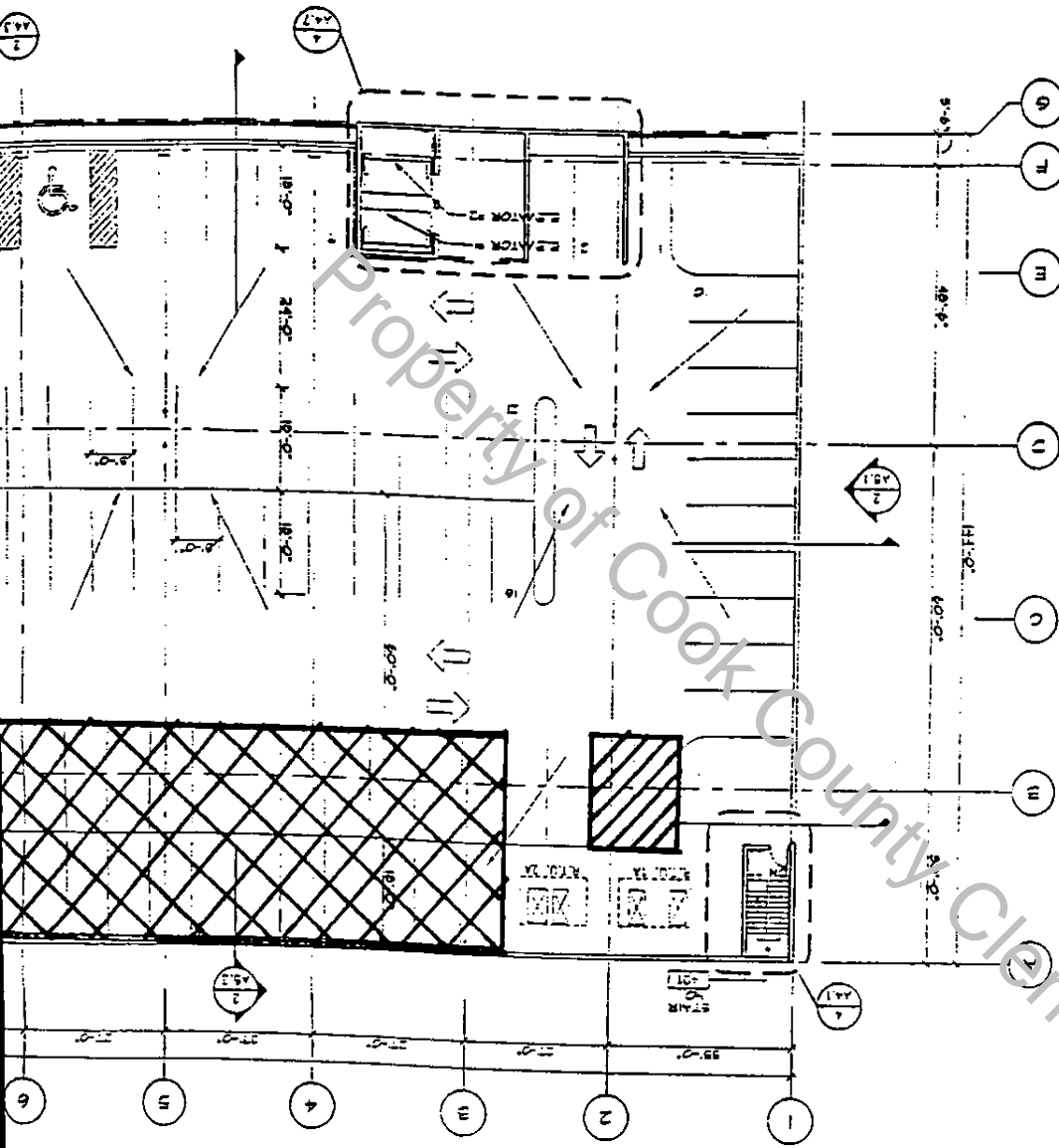
FOURTH FLOOR PLAN

EXHIBIT D-4

20357475

UNOFFICIAL COPY

↓ FOURTH FLOOR PLAN



DENOTES VALET AREA
DENOTES PARKING SPACES
USE OF HOME DEPOTS
MANAGER



20357475

UNOFFICIAL COPY

EXHIBIT E

Depiction of Sign Easement Area

[Following One (1) Page]

Property of Cook County Clerk's Office

20357475

UNOFFICIAL COPY

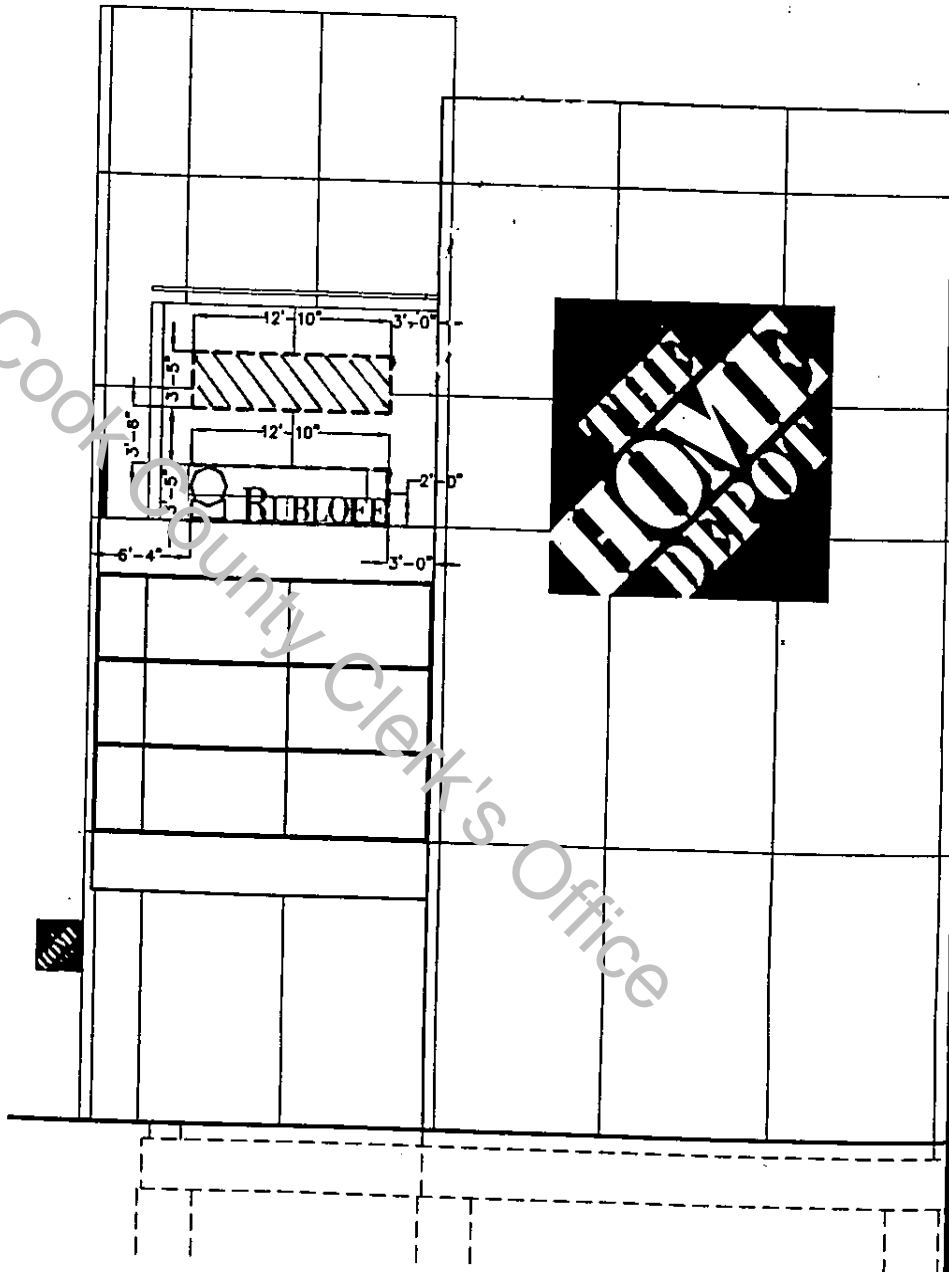
20357475



EXHIBIT E

Depiction of Sign Easement Area

Property of Cook County Clerk's Office



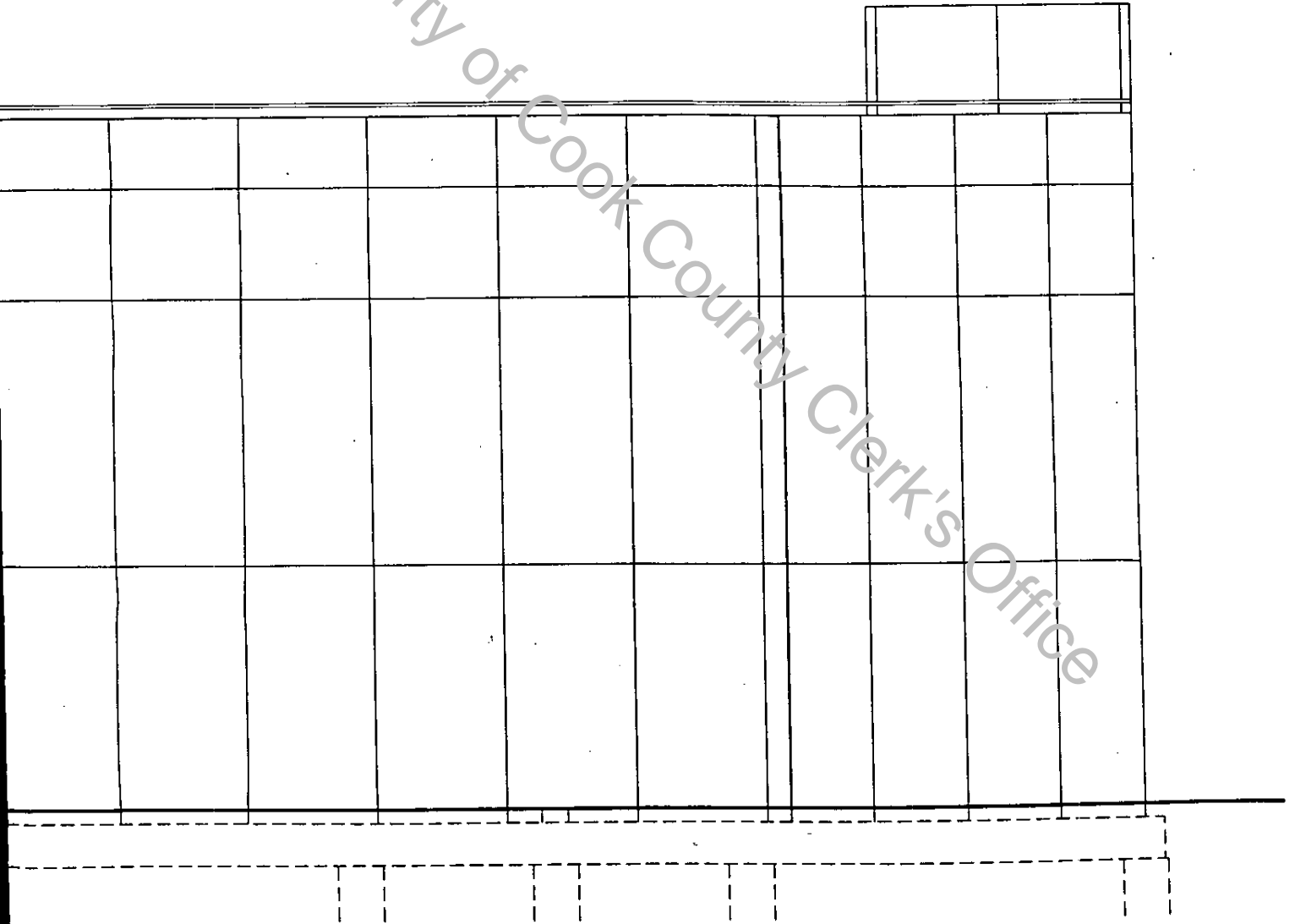
2 SOUTH ELEVATION

UNOFFICIAL COPY

20357475

ENOTES SIGN EASEMENT AREA

Property of Cook County Clerk's Office



ON

02/21/02

UNOFFICIAL COPY

20357475

EXHIBIT F

Legal Description of Loading Easement

THAT PART OF LOTS 15, 16 AND 17 IN BLOCK 2 IN THE SUBDIVISION OF OUTLOT E OF WRIGHTWOOD SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED AS DOCUMENT NUMBER 254582, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 IN SAID BLOCK 2; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID BLOCK 2, A DISTANCE OF 101.85 FEET TO A LINE 1.85 FEET SOUTH OF, AND PARALLEL WITH, THE NORTH LINE OF LOT 17 IN SAID BLOCK 2; THENCE NORTH 89 DEGREES 56 MINUTES 11 SECONDS EAST ALONG SAID PARALLEL LINE, 145.60 FEET TO THE EAST LINE OF SAID LOT 17 FOR THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 00 MINUTES 12 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 17 AND THE EAST LINE OF LOTS 16 AND 15 IN SAID BLOCK 2, A DISTANCE OF 27.11 FEET; THENCE SOUTH 45 DEGREES 00 MINUTES 39 SECONDS WEST, 38.39 FEET TO A LINE 1.85 FEET SOUTH OF, AND PARALLEL WITH, THE NORTH LINE OF SAID LOT 17; THENCE NORTH 89 DEGREES 56 MINUTES 11 SECONDS EAST ALONG SAID PARALLEL LINE, 27.15 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

20357475