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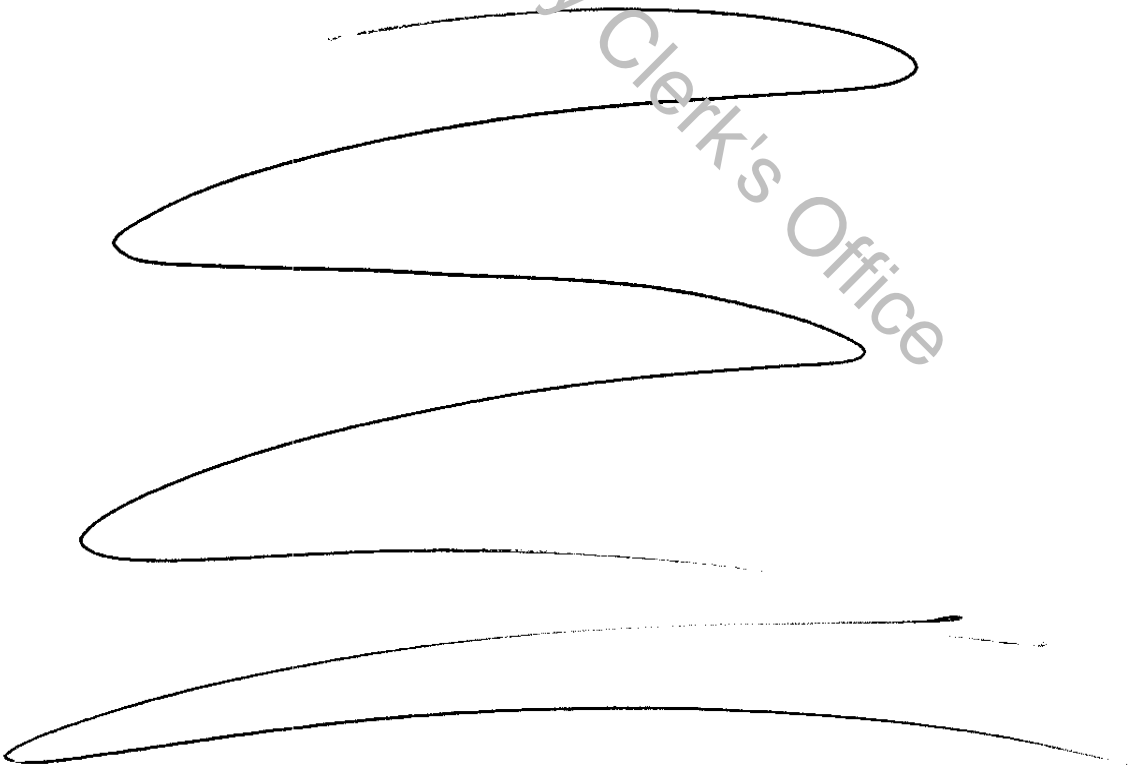
Doc#: 0333032144  
Eugene "Gene" Moore Fee: \$56.00  
Cook County Recorder of Deeds  
Date: 11/26/2003 12:43 PM Pg: 1 of 17

Property of Cook County Clerk's Office

**FIRST AMENDMENT TO LEASE**

**BOX 333**

17



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## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "First Amendment") is made and entered into as of the 24<sup>th</sup> day of July, 2003, by and between ROUSE-RANDHURST SHOPPING CENTER, LLC, a Maryland limited liability company, and successor-in-interest to ROUSE-RANDHURST SHOPPING CENTER, INC., a Maryland corporation ("Landlord"), and HOME DEPOT U.S.A., INC., a Delaware corporation ("Tenant").

### Preliminary Statements:

A. Landlord and Tenant have previously entered into that certain Lease (the "Lease") dated as of August 25, 1994 for the lease by Tenant of certain premises located in the Randhurst Shopping Center in Mount Prospect, Illinois, which premises are more particularly described in the Lease (the "Premises"). Terms used herein with initial capital letters that are defined in the Lease shall have the same meanings herein as are ascribed to such terms in the Lease unless otherwise defined herein or unless the context dictates otherwise.

B. In connection with the contemplated addition of Costco Wholesale Corporation, a Washington corporation ("Costco"), as a tenant in the Shopping Center, Landlord and Tenant now desire to enter into this First Amendment to amend the Lease to, among other things (i) modify the "No Take" area depicted on the Site Plan and attached to the Lease as Exhibit A, (ii) prohibit the location of certain building entrances on any building or buildings located or to be located within the portion of the Shopping Center shown as the "Costco Building Area" on the drawing attached hereto as Exhibit I, and (iii) modify, amend and supplement certain other terms, covenants, conditions, agreements and provisions set forth in the Lease, all as hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to modify, amend and supplement the Lease, as follows:

1. No Take Area. Landlord and Tenant hereby acknowledge and agree that the depiction of the "Modified No Take Area" attached hereto as Exhibit II hereby supersedes and replaces the depiction of the "No Take" area depicted on the Site Plan and that all references to the "No Take" area in the Lease or the "No Take" on the Site Plan (or words of similar import in the Lease) shall in all instances refer to, and be deemed to mean, the "Modified No Take Area" depicted on Exhibit II attached hereto.

2. Costco Building Area Entrances. Landlord covenants and agrees that it shall not construct or allow any building or buildings located or to be located within the Costco Building Area to have any entrances within the area depicted as the "Non-

prepared by + mail to  
Bruce Rosenschid, PA  
10500 Little Patuxent Parkway  
Suite 650  
Columbia, OR 21044

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**Permissible Penetration Area**" on the drawing attached hereto as Exhibit I except for any emergency or fire exits required by applicable governmental authorities. Landlord hereby represents and warrants to Tenant that it shall cause the building entrance restriction set forth in this Section 2 to be binding on any tenants or occupants of the Costco Building Area including, without limitation, Costco and its successors, assigns and subtenants.

3. **Notices.** In accordance with the terms of Section 19.4 of the Lease, Landlord and Tenant acknowledge and agree that any notice, consent, report or demand required, permitted or desired to be given under the Lease, as amended herein, shall be addressed to the respective parties, as the case may be, as follows:

If to Tenant: Home Depot U.S.A., Inc.  
2455 Paces Ferry Road  
Atlanta, Georgia 30339-4024  
Attention: Vice President - Real Estate Law

with copies to: Home Depot U.S.A., Inc.  
1400 West Dundee Road  
Arlington Heights, Illinois 60004  
Attention: Brett D. Soloway, Esq.  
Corporate Counsel - Real Estate Law

and

Seyfarth Shaw  
55 East Monroe, Suite 4200  
Chicago, Illinois 60603  
Attention: Gregg M. Dorman, Esq.

If to Landlord: Rouse-Randhurst Shopping Center, LLC  
c/o Urban Retail Properties Co.  
900 North Michigan Avenue  
Chicago, Illinois 60611  
Attention: Corporate Counsel

with a copy to: Randhurst Shopping Center Management Office  
c/o Urban Retail Properties Co.  
999 Elmhurst Road  
Mount Prospect, Illinois 60056

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4. **Amendment; Conflicts.** Except as amended in this First Amendment, all of the terms, covenants, conditions, agreements and provisions set forth in the Lease shall remain unchanged and shall be and they hereby are reaffirmed, ratified, confirmed and approved in their entirety and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions of this First Amendment and the provisions of the Lease, the provisions of this First Amendment shall in all instances govern and control.

5. **Counterparts.** This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. In addition, the parties hereto agree that this First Amendment may be delivered either by a party or its counsel by fax machine to the other party or its counsel and that signatures so transmitted constitute original signatures and are binding on the party so signing. Upon request, the parties shall further deliver between themselves actual originally signed copies or counterparts, but such further delivery, or failure thereof, shall not affect the validity or timing of this First Amendment.

**TEXT OF FIRST AMENDMENT ENDS HERE; SIGNATURE PAGE TO FOLLOW**

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IN WITNESS WHEREOF, the parties have executed this First Amendment to Lease effective as of the date first above written.

**Landlord:** ROUSE-RANDHURST SHOPPING CENTER, LLC,  
a Maryland limited liability company

By: Kathleen E. Barry  
Print Name: Kathleen E. Barry  
Title: Vice President

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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IN WITNESS WHEREOF, the parties have executed this First Amendment to Lease effective as of the date first above written.

**Landlord:** ROUSE-RANDHURST SHOPPING CENTER, LLC,  
a Maryland limited liability company

By: \_\_\_\_\_  
Print Name: Kathleen E. Barry  
Title: Vice President

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

By: \_\_\_\_\_ *[Signature]*  
Print Name: Jeff Israel  
Title: Senior Corporate Counsel - Real Estate

OCT 03 2003

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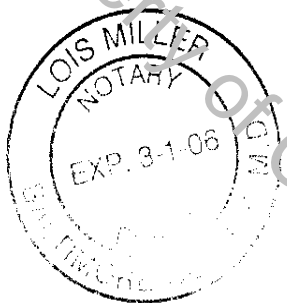
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STATE OF MARYLAND, COUNTY OF HOWARD

I do hereby certify that on this 19th day of November, 2003, before me, a notary public in and for the County and State aforesaid, and duly commissioned, personally appeared Kathleen E. Barry, known to me to be the Vice President of ROUSE-RANDHURST SHOPPING CENTER, LLC, who, being by me duly sworn, did depose and say that, on behalf of said entity and by authority of its governing documents, she signed, and delivered said instrument for the uses and purposes therein set forth, as her free and voluntary act, and that she signed her name thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Lois Miller  
\_\_\_\_\_  
Notary Public  
My commission expires: 3/1/06



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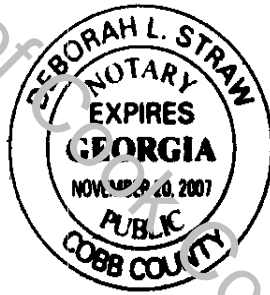
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STATE OF GEORGIA     )  
                                   ) SS  
 COUNTY OF COBB        )

On this 3rd day of October, 2003, before me personally came Jeff Israel, known to me to be the person whose name is subscribed to the foregoing instrument as an authorized signatory for **HOME DEPOT U.S.A., INC.**, a Delaware corporation, the corporation described in and which executed the foregoing instrument, and who acknowledged to me that: the instrument was executed for the purposes and consideration therein expressed as the act of the corporation, and the instrument was signed by the authorized signatory, all by authority of the board of directors of said corporation.

*Deborah L. Straw*  
 \_\_\_\_\_  
 Notary Public

My Commission Expires:



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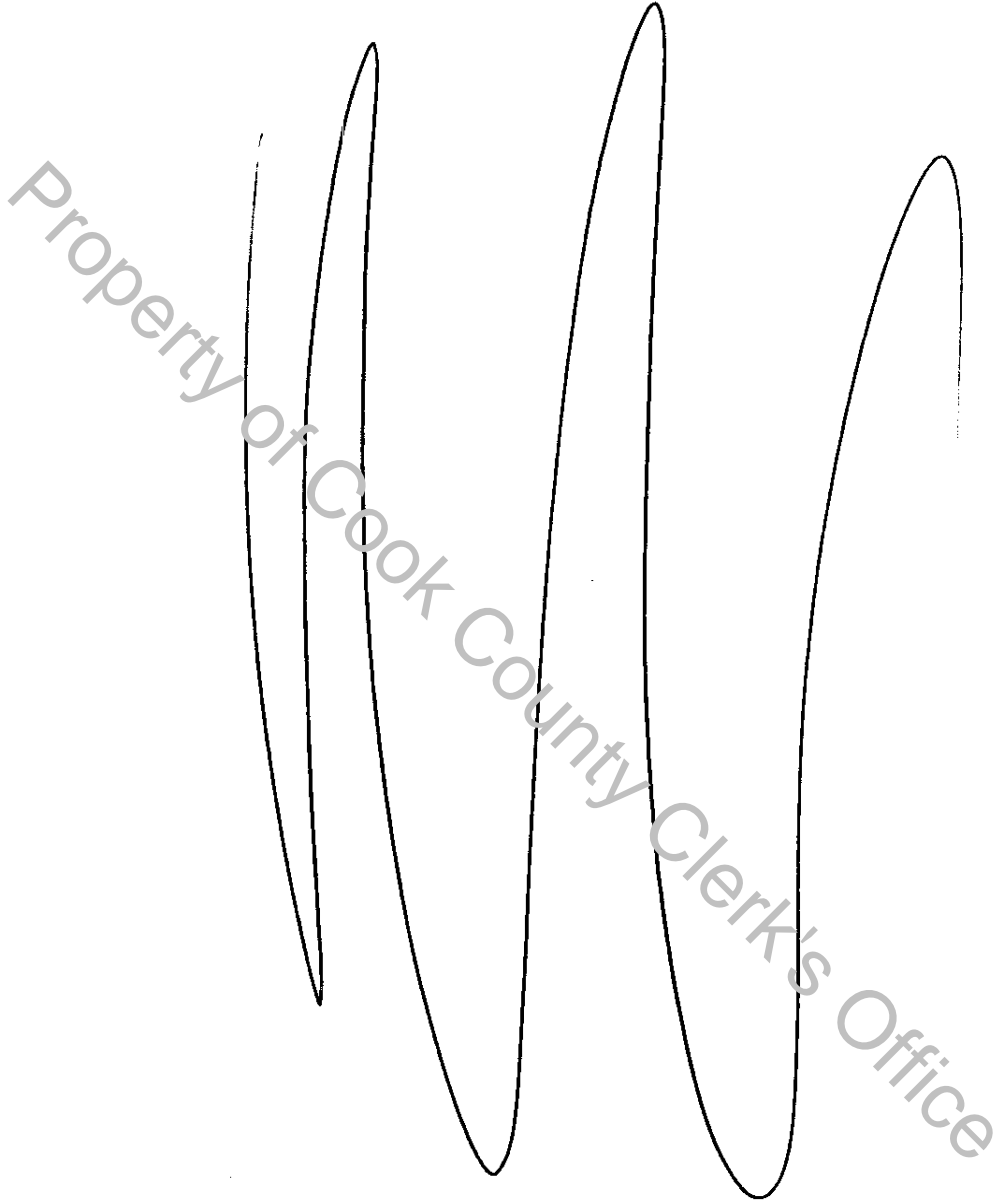


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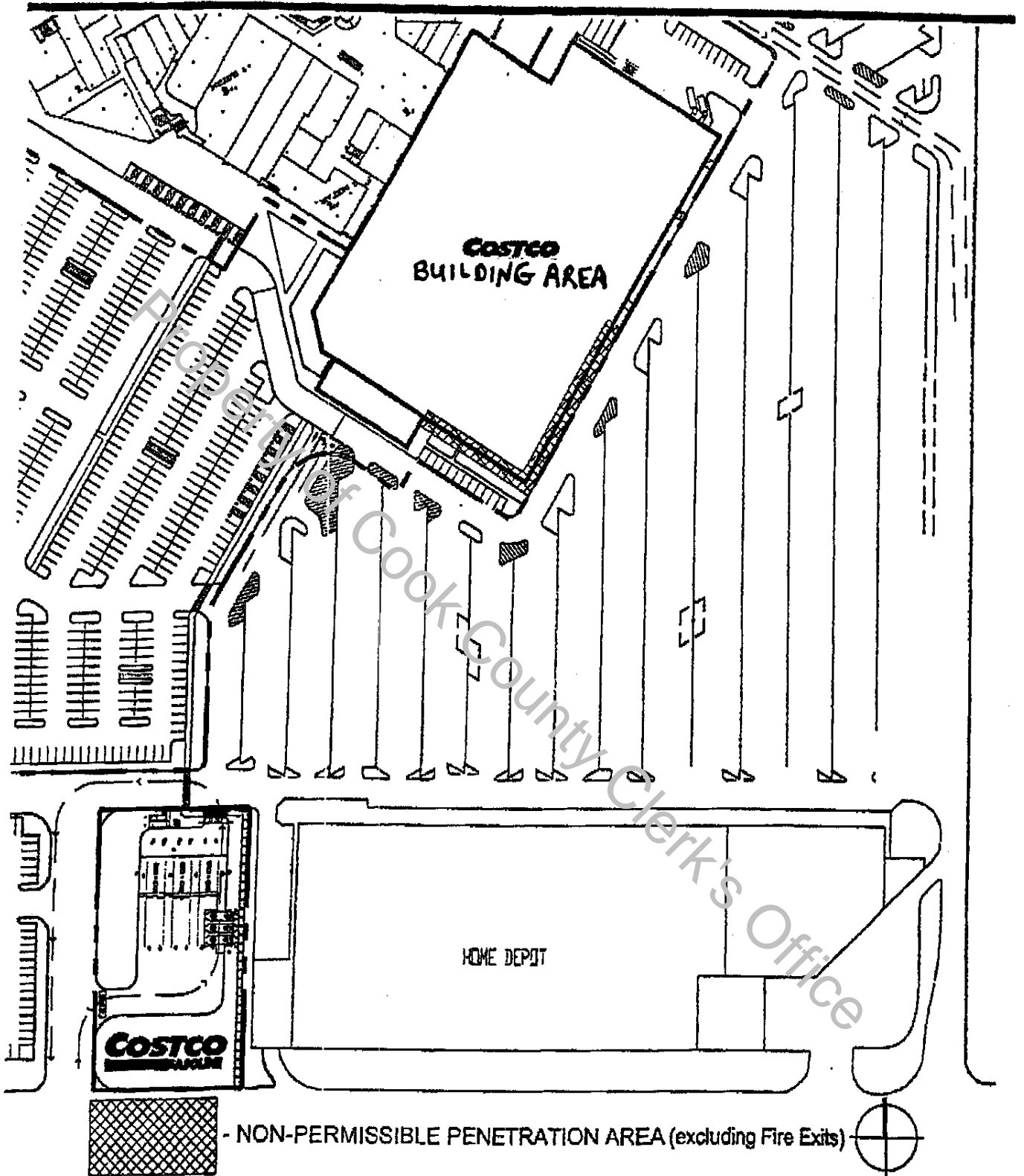
## EXHIBIT I

### Depiction of Costco Building Area and Non-Permissible Penetration Area

[See following page]



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MT. PROSPECT, IL  
 / RANDHURST MALL  
 KENSINGTON RD. & ELMHURST RD.

01-2610 A  
 PM: XIAOLI LIU  
 JUNE 9, 2003

1110 112TH AVE, NE | SUITE 500  
 BELLEVUE, WA | 98004

T: 425.463.2000 | F: 425.463.2002

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## EXHIBIT II




### Depiction of Modified No Take Area

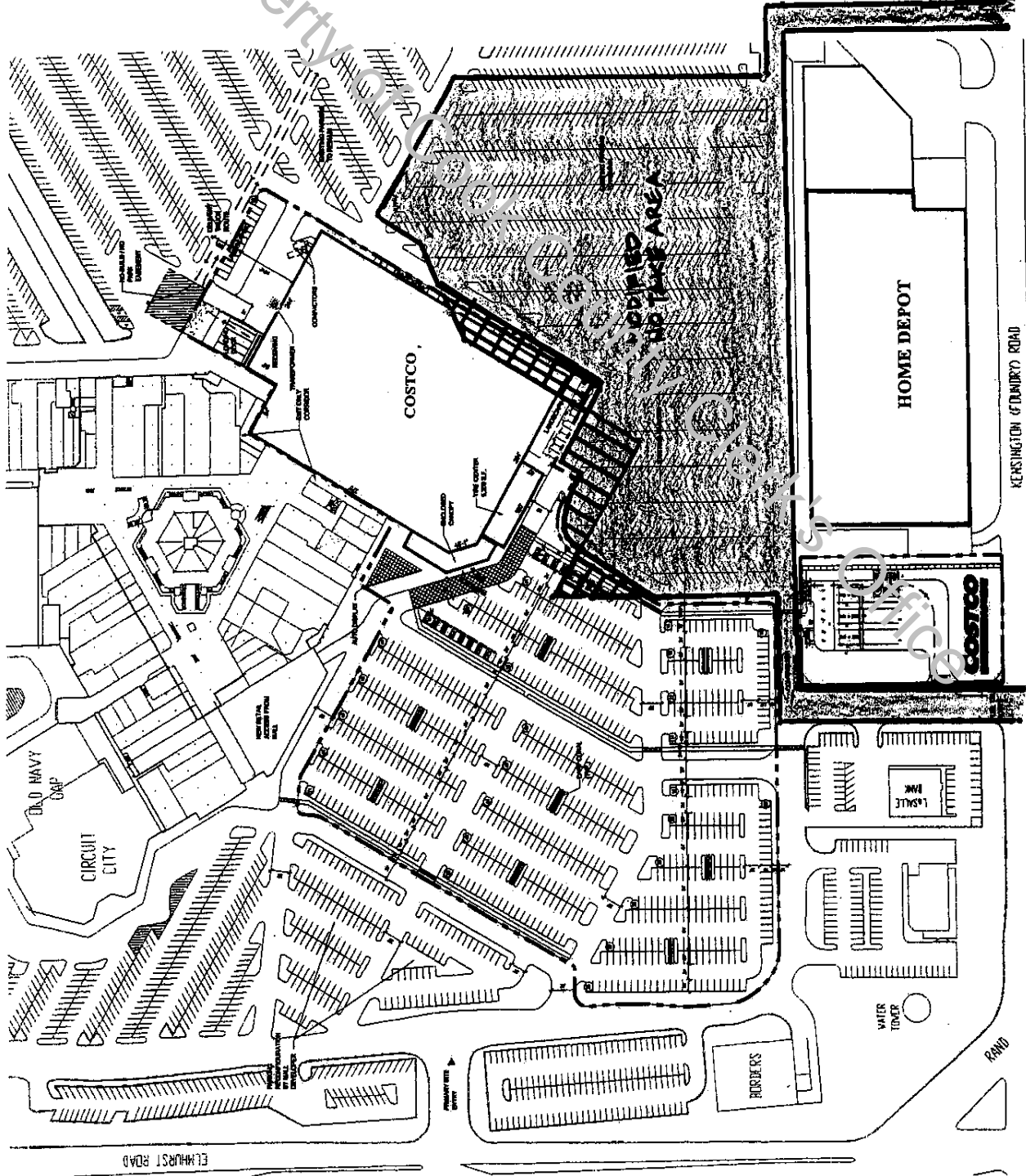
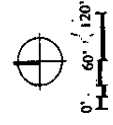
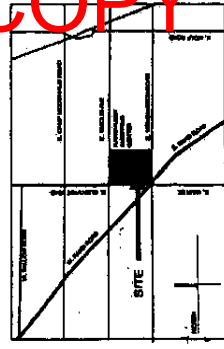
[See following page]

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## HOME DEPOT NO-TAKE REVISIONS LONDHURST SHOPPING CENTER 117 PROSPECT, ILLINOIS March 12, 2003

-  -- Denotes Modified No Take Area
-  -- Denotes new portion of Modified No Take Area
-  -- Denotes original portion of No Take Area exchanged for new portion of Modified No Take Area



Property of Home Depot

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## FEE OWNER AND MORTGAGEE CONSENT

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee under Declaration of Trust dated December 9, 1960, for the Co-mingled Pension Trust Fund (Special Situation Investment Real Estate), being the current fee simple owner and mortgagee of the Shopping Center, hereby consents to all of the terms, covenants, conditions, provisions, restrictions and agreements contained in the attached First Amendment to Lease.

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, as Trustee as aforesaid

By: *Sheryl M. Crosland*  
Print Name: *Sheryl M. Crosland*  
Title: *Vice President*

*Sept*  
Dated: July 30, 2003


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STATE OF New York, COUNTY OF New York

I do hereby certify that on this 20 day of November, 2003, before me, a notary public in and for the County and State aforesaid, and duly commissioned, personally appeared Sheryl M. Crosland, known to me to be the Vice President of Morgan Guaranty Trust Company, who, being by me duly sworn, did depose and say that, on behalf of said entity and by authority of its governing documents, he/she signed, and delivered said instrument for the uses and purposes therein set forth, as his/her free and voluntary act, and that he/she signed his/her name thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

  
\_\_\_\_\_, Notary Public

My commission expires: 11/20/2006

**ESTHER MARY KRIVDA**  
Notary Public, State of New York  
No. 01KR6051251  
Qualified in Bronx County  
Commission Expires Nov. 20, 2006

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## COSTCO CONSENT

**COSTCO WHOLESALE CORPORATION**, a Washington corporation ("Costco"), as the prospective tenant of a portion of the Shopping Center, including the Costco Building Area, pursuant to that certain lease or agreement (the "Costco Lease") between Costco and Landlord, hereby, for itself and its successors, assigns and subtenants: (i) consents to and agrees to be bound by the building entrance restrictions set forth in Section 2 of the attached First Amendment to Lease (the "First Amendment"); (ii) agrees that its leased premises under the Costco Lease (including, without limitation, the Costco Building Area and any building or buildings located thereon or on its leased premises) shall be encumbered by the building entrance restrictions set forth in Section 2 of the First Amendment; and (iii) represents, warrants and covenants unto Tenant and Landlord that: (a) Costco has full capacity, right, power and authority to execute, deliver and perform this Consent, (b) all required action, authority and approvals therefor have been duly taken and obtained in accordance with all applicable laws and any applicable charter, articles and/or by-laws governing or regulating Costco, (c) the persons signing this Consent on behalf of Costco are and shall be duly authorized to sign the same on behalf of and so as to bind Costco thereto, and (d) this Consent shall be binding upon and enforceable against Costco, and its successors, assigns and subtenants, in accordance with the terms hereof.

Dated: ~~July~~ <sup>SEPT. 24,</sup> 2003

**COSTCO WHOLESALE CORPORATION**,  
a Washington corporation

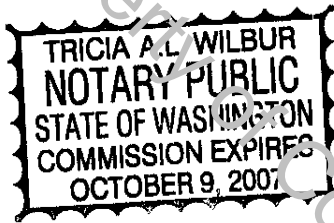
By:   
Print Name: RICHARD J. OLIN  
Title: Vice President/Assistant Secretary

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STATE OF Washington COUNTY OF King

I do hereby certify that on this 24th day of Sept, 2003, before me, a notary public in and for the County and State aforesaid, and duly commissioned, personally appeared Richard J. Olin, known to me to be the Vice President/Assistant Secretary of COSTCO WHOLESALE CORPORATION, who, being by me duly sworn, did depose and say that, on behalf of said entity and by authority of its governing documents, he signed, and delivered said instrument for the uses and purposes therein set forth, as his free and voluntary act, and that he signed his name thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Tricia A. Wilbur  
Notary Public  
My commission expires: 10.9.07

03 27 401 262  
261  
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040

100 E Kensington  
Mt Prospect Illinois



**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTION FOR PROPERTY ON PREMISES SITE PLAN**

Lots 1, 2 and 3 in Randhurst Center Resubdivision No. 1 (less any portion previously taken for state highway purposes), being a resubdivision of Lot 1 in Randhurst Center, being a resubdivision of part of the Southeast  $\frac{1}{4}$  of Section 27, Township 42 North, Range 11, East of the Third Principal Meridian, and the North seventy (70) feet of the West seventy (70) feet of the South one hundred twenty (120) feet of the East half ( $\frac{1}{2}$ ) of the South East Quarter ( $\frac{1}{4}$ ) of Section 27, Township 42 North, Range 11, East of the Third Principal Meridian, all in Cook County, Illinois.

03 27 401 266

03 27 401 262

03 27 401 261

03 27 401 265

03 27 401 040

03 27 401 264

100 E Kensington  
Mt Prospect