

RECIPROCAL EASEMENT AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 1991, by and between The Kroger Co., an Ohio corporation ("Kroger"), Regal Investment Company, a Tennessee corporation ("Regal"), and Hooks-Super X, Inc., a Delaware corporation ("Super X"), a tenant of Parcel I described herein;

W I T N E S S E T H:

WHEREAS, Kroger is the owner of certain real estate ^{TRACT} ("Parcel I") situated in the City of Alcoa, County of Blount and State of Tennessee, and more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Regal is the owner of certain real estate ^{TRACT} ("Parcel II"), adjacent to ^{TRACT} Parcel I, more particularly described in Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, Kroger and Regal desire to establish certain rights and servitudes over the ^{TRACTS} ~~Parcels~~ in order to facilitate the integrated use thereof as a shopping center ("Shopping Center") as shown on the plan ("Plot Plan") attached hereto as Exhibit "C" and made a part hereof.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), the receipt and sufficiency which are hereby acknowledged, the parties agree as follows:

ARTICLE I - DEFINITIONS

SECTION 1. The following terms shall be defined as set forth below:

Building Area: The area(s) of the Shopping Center improved with buildings.

Common Area: The remaining area(s) of the Shopping Center not designated as Building Area in the Plot Plan.

ARTICLE II - EASEMENTS

SECTION 2.1 The parties hereby establish a non-exclusive easement over the Common Area in favor of each ~~Parcel~~^{TRACT} to permit parking and unobstructed pedestrian and vehicular passage by the owner thereof and its agents, contractors, employees, tenants, licensees and invitees, provided that nothing herein shall prevent the ~~Parcel~~^{TRACT} I owner or its tenant or licensee from storing bascars or selling merchandise on the Common Area portion of ~~Parcel~~^{TRACT} I, and further provided that nothing herein shall prevent the exclusive use of any receiving area situated on a servient Parcel by the owner thereof or its tenant or licensee. This non-exclusive easement is established for the existing as well as the future owners and/or tenants of ~~Parcel~~^{TRACT} I and II. Tenants of future improvements shall likewise have all rights of ingress and egress from their improvement to all thoroughfares adjacent to the Shopping Center and shall likewise have all rights to access to the parking lots and common areas located on ~~Parcel~~^{TRACT} I and II.

SECTION 2.2 The parties hereby establish a non-exclusive easement over the Common Area in favor of each Parcel to permit the construction, maintenance and use of all apparatus necessary to provide utility services to a ~~Parcel~~^{TRACT},

including telephone, electricity, natural gas and storm and sanitary sewer, provided that same are constructed underground. Any disruption or demolition of a servient ~~Parcel~~^{TRACT} by reason of the use of this easement shall be kept to a minimum and such area forthwith shall be restored by the dominant ~~Parcel~~^{TRACT} owner to its original condition at no expense to the servient ~~Parcel~~^{TRACT} owner.

SECTION 2.3 The parties hereby establish a non-exclusive easement over each Parcel in favor of the other Parcel(s) to permit the temporary occupation of the servient Parcel in order to facilitate the construction, maintenance, repair or re-construction of the improvements on the dominant Parcel, provided that the use of this easement shall be kept to a minimum and shall not unreasonably interfere with the construction or operation of the improvements on the servient Parcel, and further provided that this easement shall not permit the storage of materials or equipment on the servient Parcel.

SECTION 2.4 Consent is hereby granted by the owner of Parcel I to owner of Parcel II to allow the installation of building foundation footing encroachments, not to exceed one linear foot provided that any such footings must be constructed underground. Upon the owner of Parcel II determining its desire to improve its property, and upon consent being granted by the owner of Parcel I, they shall acquire or have their contractor acquire construction insurance naming Kroger and Super X as insureds on the policy. This insurance shall provide for \$2,000,000.00 coverage for general liability and \$1,000,000.00 for property damage. The insurance policy shall be with an

insurance company that has an A-XIII BEST rating. The insurance policy cannot be cancelled without thirty (30) day written notice to Kroger and Super X.

The owner of Parcel II shall take no action which would damage, weaken or place any additional load upon the existing improvements located on Parcel I, including but not limited to the existing most northerly wall located on Parcel I adjacent to the Parcel II property line, hereinafter referred to as the ("Super-X Wall"). Upon the completion of the construction of the new improvement by the owner of Parcel II, each owner shall be responsible for the maintenance of their own wall. The area between Parcel I's northernmost exterior wall ("Super-X Wall") and any exterior wall constructed near Parcel II's southern property line ("New Wall"), is the Gap Area. The owner of Parcel II shall properly drain the Gap Area. The owner of Parcel II must build a curtain wall connecting the Super-X Wall and the New Wall on the Gap Area's east side to match the then existing Building Area's front elevation ("Curtain Wall"). The owner of Parcel II shall also build a wall or fence on the Gap Area's west side allowing access only to owner of Parcel I's or Parcel II's employees or contractors, but not the general public ("Rear Security Structure"). The Curtain Wall and Rear Security Structure may abut and attach to the Super-X Wall but not impose any load on the Super-X Wall. The improvements constructed by the owner of Parcel II must allow adequate access to the Gap Area so that each exterior wall can be maintained in proper repair.

Before the owner of Parcel II can begin any construction of any improvements, including but not limited to the construction of the Curtain Wall, Rear Security Structure, drainage improvements and any foundation footings, the plans must be provided to the owner of Parcel I for review and approval.

The owner of Parcel I agrees to allow the owner of Parcel II to have a temporary construction easement on a portion of its property during the construction of any improvements; the area to be designated as a temporary construction easement is outlined on the Plot Plan attached hereto as Exhibit "C" and made a part hereof. The owner of Parcel II shall be allowed to store supplies and equipment within this area. The owner of Parcel II must provide a fence around a significant portion of this temporary construction easement so as to avoid creating an attractive nuisance. This temporary construction easement must be abandoned, with the area restored to its original condition, the earlier of: ten (10) days after the completion of the improvements to Parcel II, or within one hundred twenty (120) days from the beginning date of construction. In the event the owner of Parcel II desires to improve its property, it shall hold harmless the owner of Parcel I as well as the tenants of Parcel I, including but not limited to the costs of defending any suit, as to any injury to person or property whether said injury or damage occurs within the temporary construction area or within the premises described as Parcel I or Parcel II.

Consent is granted by the owner of Parcel II to the owner of Parcel I to allow for any encroachment which exists as

to the existing or replacement walls located on Parcel I but encroaching on Parcel II.

SECTION 2.5 The dominant Parcel owner shall indemnify and save harmless the other Parcel owners and their tenants and licensees from all claims, liens, damages and expenses, including reasonable attorneys' fees, arising out of its use of any of the easements established in this Article II.

SECTION 2.6 Nothing herein shall create a gift or dedication of any portion of the Shopping Center to the general public. Notwithstanding any other provision hereof to the contrary, each owner periodically may restrict ingress and egress on its Parcel in order to prevent a prescriptive easement from arising by continued public use of same. Any restriction on ingress or egress shall be limited to the minimum time period necessary to prevent the creation of a prescriptive easement and shall occur at such times as to have minimum effect on the construction or operation of the Shopping Center.

ARTICLE III

MAINTENANCE AND UPKEEP OF COMMON AREA

SECTION 3.1 Kroger shall be responsible for the repair and upkeep of the Common Area, which repair and upkeep shall be performed in a workmanlike, diligent and efficient manner and shall include:

- (a) removal of all trash and debris and washing or sweeping as required;
- (b) removal of snow and ice from paved surfaces and sidewalks;

- (c) maintenance of appropriate parking area entrance, exit and directional markers, and other traffic control signs as are reasonably required to effect the Plot Plan;
- (d) cleaning of lighting fixtures and relamping as needed;
- (e) restriping as required to keep same clearly visible;
- (f) maintenance of any electrical and storm water lines which exclusively provide service to the Common Area;
- (g) maintenance of all landscaping, but excluding installation and replacement thereof;

SECTION 3.2 The owner of Parcel II shall be obligated to pay for a share of all reasonable expenses incurred by the owner of Parcel I for Common Area repair and upkeep on the items outlined in Section 3.1, based upon whichever ratio is greater: either the ratio of the square footage of land within each parcel as it bears to the total square footage of both parcels, or the square footage of the Building Area on its Parcel as it bears to the total square footage of the Building Area in the Shopping Center. The owner of Parcel I shall bill ("Billing") no more often than quarterly, the owner of Parcel II for its share of all expenses incurred by Common Area repair and upkeep, provided that insurance, office overhead and equipment depreciation shall be excluded from the Billing. The Billing shall itemize the expenses and shall state the calculations used to compute the sum