

assessed to each owner. The owner of Parcel I, if requested, forthwith shall furnish written evidence of payment of an expense and shall make the records relating to the Common Area expenses available for audit during regular business hours on ten (10) days written notice. Any other Parcel owners shall reimburse the owner of Parcel I for their share of expenses within thirty (30) days from the date of receipt of the Billing. Billing by the owner of Parcel I shall constitute notice and if not paid within thirty (30) days, the owner of Parcel I shall have the option to: (i) file a lien against Parcel II with the Blount County Register of Deeds for the amount of the cost owed, with the owner of Parcel I having the further right to enforce that lien by having Parcel II sold with the proceeds applied toward those monies owed for costs and repairs; (ii) file suit against the owner of Parcel II for the non-payment of any cost owed; and (iii) may pursue all other rights or remedies allowed by law or equity.

3.3 Owner of Parcel II shall have an affirmative obligation to maintain its common area, including without limitation maintaining all of its paved area, in good repair. The owner of Parcel II agrees to maintain the paved surfaces in a level and smooth condition, free of potholes. Any maintenance or repairs to the paved areas is to be performed by using the type of materials as originally used or a substitute equal in quality. The full cost of any maintenance or repair shall be borne by the owner of Parcel II.

In the event the owner of Parcel II fails to maintain the paved surfaces as outlined above, then the owner of Parcel I

and (iii) may pursue all other rights or remedies allowed by law or equity.

#### ARTICLE IV - LIABILITY INSURANCE

SECTION 4.1 The owner of each Parcel shall maintain comprehensive general liability insurance naming the other owners as additional insureds and providing coverage with a combined bodily injury, death and property damage limit of Two Million Dollars (\$2,000,000) or more per occurrence. As long as Kroger and Super X may have a legal or equitable interest in a Parcel, they shall be named as additional insureds as required under Article IV. An owner or its tenant having a net worth of Fifty Million Dollars (\$50,000,000) or more may self-insure this obligation. The owner of a Parcel, if requested, shall provide an owner or Kroger, whichever the case may be, with a certificate of insurance or self-insurance.

#### ARTICLE V - DAMAGE OR DESTRUCTION

SECTION 5.1 In the event that any part of the Common Area is destroyed or damaged by fire, casualty or force majeure, the owner of the affected Parcel, at its sole expense, forthwith shall clear and restore such area.

SECTION 5.2 In the event that any part of the building improvements on a Parcel is damaged by fire, casualty or force majeure, the owner thereof shall not be obligated to restore same, provided that such owner, at its sole expense, forthwith shall raze the damaged structures, remove all debris, shall pave such area for parking in general conformity with the parking layout shown in the Plot Plan and shall install adequate lighting

and storm water drainage. Any area restored in this manner shall be maintained as though it were part of the Common Area until improved with building improvements.

SECTION 5.3 In the event that any part of the Common Area is condemned, the owner of the affected Parcel, at its sole expense, forthwith shall restore such area as much as practicable to provide the same approximate configuration, size, location and number of all light standards, driveways, walkways, parking spaces and curb cuts to adjacent roadways existing prior to the condemnation. Any award on account of a condemnation on the Common Area first shall be used in the restoration of same, and any claim to the award made by a Parcel owner or its tenant or licensee hereunder shall be expressly subject and subordinate to its use in such restoration. The term "condemnation" as used herein shall include all conveyance made in anticipation or lieu of an actual taking.

#### ARTICLE VI - RESTRICTIONS

SECTION 6.1 No part of the Shopping Center, except Parcel I, shall be used as a drug store or a business, principally devoted to the sale of health and beauty aids, or for a pharmacy requiring the services of a registered pharmacist, provided that this restriction shall cease to be in force and effect if the occupant of the storeroom situated on Parcel I fails to operate a drug store, or pharmacy in the case that Parcel I is not used as a drug store, for a period of three hundred sixty-five (365) consecutive days subsequent to completion of said storeroom, except when such failure is caused

by labor disputes, force majeure (including reconstruction as a result of fire or other casualty) or conditions beyond the control of the occupant. Either the owner of Parcel I or its tenants may enforce this restriction.

SECTION 6.2 No part of the Shopping Center, except Parcel I, shall be used as a food store or food department, or for the sale of groceries, meats, fish, produce, dairy products or bakery goods for off-premises consumption, provided that nothing herein shall prevent the sale of such products as an incidental part of a business so long as the total number of square feet devoted to the display for the sale of such products does not exceed five percent (5%) of the total square footage of the building improvements in which such products are sold or five hundred (500) square feet, including, in either case, one-half (1/2) of the aisle space adjacent any display area, whichever is smaller, and further provided that the restriction shall cease to be in force and effect if the occupant of the storeroom situated on Parcel I fails to conduct a business for the sale of groceries, fish, produce, dairy products or bakery goods for off-premises consumption, for three hundred sixty-five (365) consecutive days subsequent to completion of said storeroom, except when such failure is caused by labor disputes, force majeure (including reconstruction as a result of a fire or other casualty) or conditions beyond the control of the occupant. Either Kroger or its tenants may enforce this restriction.

SECTION 6.3 No part of the Shopping Center shall be used as a disco, bar, nightclub, restaurant serving any alcohol

by the drink including without limitation beer, health spa, theatre, bowling alley or any other non-retail business which requires extensive parking, or as a business which principally features sexually explicit products or drug paraphernalia.

SECTION 6.4 No portion of any future building improvements situated on Parcel II shall exceed twenty-two (22) feet in height from ground level or one story.

SECTION 6.5 The owner of Parcel II shall submit to the owner of Parcel I exterior elevation and architectural plans for all improvements to be constructed on Parcel II for the owner of Parcel I's review and approval. Any approval by the owner of Parcel I concerning architectural compatibility shall not be deemed to be a warranty or a representation by the owner of Parcel I respecting the materials and workmanship to be furnished.

SECTION 6.6 The remedies for breach of any of the restrictions set forth in this article shall be cumulative, not exclusive, and shall include injunctive relief.

SECTION 6.7 Portions of the Common Area located within Parcel I and Parcel II may be converted to Building Area subject to the restrictions contained within this Article VI. The parties agree that there shall be no conversion to Building Area on Parcel II except within the building lines as shown on the Plot Plan attached as Exhibit "C" hereto. This section is described as the "Limited Building Area for Parcel II" on the attached Exhibit "C". There shall be no improvements constructed on Parcel II outside Parcel II's Limited Building Area and all

remaining portions of Parcel II shall remain a perpetual common area. The owner of Parcel I may convert to Building Area those portions of the Common Area shown on the Plot Plan attached as Exhibit "C" hereto, as the "Limited Building Area for Parcel I" and the Outlot Parcel. It is the intent of the parties that there shall be no Building Area east of the front building line or west of the rear building line for either Parcel I or Parcel II shown on the Plot Plan attached as Exhibit "C", except for the Outlot Parcel. As to the Outlot Parcel, only thirty (30%) percent of the parcel may be improved with Building Area. The Outlot Parcel's Building Area shall be limited to one story and not exceed sixteen (16) feet in height except for heating and air ventilation systems, gables, parapits or signs.

SECTION 6.8 Nothing herein shall require the owners of Parcel I or Parcel II to improve any portion thereof with additional Building Area or to conduct a business in same.

SECTION 6.9 The remedies for breach of any of the restrictions set forth in this Article shall be cumulative, not exclusive, and shall include injunctive relief.

#### ARTICLE VII - DEFAULT

SECTION 7.1 Should a Parcel owner breach any of its obligations hereunder and such breach continue for a period of thirty (30) days after receipt of notice, any of the other owners shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior notice to the other owners, and further provided that no notice is required should the breach create an emergency or interfere



with use of a Parcel. All expenses required to cure the breach shall be paid by the defaulting owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses.

SECTION 7.2 Any sums remaining unpaid in accordance with Article III or Section 7.1, together with interest calculated at the prime rate charged by The Chase Manhattan Bank, N.A., New York, New York, or any successor thereto, or at the highest annual interest rate allowed by law, whichever is less, may be secured by a lien on the Parcel of the owner in default and may be perfected in accordance with the laws of the State of Tennessee, which lien shall retain the original priority of title of this Agreement.

SECTION 7.3 In the event of litigation by reason of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees in addition to all other expenses incurred by such litigation.

SECTION 7.4 Kroger shall be a beneficiary of all of the rights, easements and restrictions set forth herein and shall be entitled to enforce same for so long as Kroger, its successors or assigns, may have any legal or equitable interest in a Parcel. Further, Super X shall be entitled to enforce any of the rights, easements and restrictions for so long as they have any legal or equitable interest in a Parcel.

#### ARTICLE VIII - MISCELLANEOUS PROVISIONS

SECTION 8.1 No part of this Agreement may be terminated or modified without the prior consent of the owner of

each Parcel, and Kroger for so long as Kroger has a legal or equitable interest in a Parcel.

SECTION 8.2 This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or their tenants or licensees.

SECTION 8.3 No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

SECTION 8.4 Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

SECTION 8.5 All notices and approvals required or permitted under this Agreement shall be served by certified mail, return receipt requested, to a party at the last known address of its principal place of business. Date of service of notice or approval shall be the date on which such notice or approval is deposited in a Post Office of the United States Postal Service or any successor governmental agency. Should a Parcel be subdivided by separate ownership, the party who owns the largest portion thereof is irrevocably appointed attorney-in-fact for all parties who may own an interest in the Parcel to receive all notices and to render all approvals hereunder, which receipt of notices and delivery of approvals shall be binding on all such parties.

SECTION 8.6 All of the provisions hereof shall run with the land in perpetuity.



SECTION 8.7 This Agreement contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

IN WITNESS WHEREOF, the parties have executed this Agreement in three (3) counterparts, each of which constitutes an original agreement.

THE KROGER CO.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

REGAL INVESTMENT COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

HOOKS-SUPER X, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, of the state and county aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged \_\_\_\_\_ self to be \_\_\_\_\_ of The Kroger Co., the within named bargainer, a corporation, and that \_\_\_\_\_ as such \_\_\_\_\_ executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by \_\_\_\_\_ self as such \_\_\_\_\_.

Witness my hand and official seal at office, this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

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

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, of the state and county aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged \_\_\_\_\_ self to be \_\_\_\_\_ of Regal Investment Company, the within named bargainer, a corporation, and that \_\_\_\_\_ as such \_\_\_\_\_ executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by \_\_\_\_\_ self as such \_\_\_\_\_.

Witness my hand and official seal at office, this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

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

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