

Return to:

Leigh A. Rutherford, Attorney  
2430 Caffey St., Suite B  
Hernando, MS 38632 STATE MS.-DESOTO CO.  
662 449-0422 FILED

This instrument prepared by:  
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Nashville, TN 37219  
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BK 438 PG 628  
W.E. DAVIS CH. CLK.

**FIRST AMENDMENT TO DECLARATION OF  
RECIPROCAL EASEMENTS AND RESTRICTIONS**

THIS FIRST AMENDMENT TO DECLARATION OF RECIPROCAL EASEMENTS AND RESTRICTIONS (this "Amendment") is made as of the 24<sup>th</sup> day of February, 2003, by Kroger Limited Partnership I, an Ohio limited partnership, whose mailing address is 800 Ridge Lake Boulevard, Nashville, Tennessee 38120-9427, telephone number: (901) 765-4160 ("Kroger"); Hernando Shops, LLC, a Tennessee limited liability company, whose mailing address is 3200 West End Avenue, Suite 401, Nashville, Tennessee 37203, telephone number: (615) 369-1600 ("Company"); and ZP No. 114, LLC, whose mailing address is 111 Princess Street, Wilmington, North Carolina 28401, telephone number: (910) 763-4669 ("Zimmer").

**WITNESSETH:**

**WHEREAS**, Kroger is the Owner of certain parcels of land located in Desoto County, Mississippi ("Parcel I" and "Outlot II") described on Exhibit A attached hereto and incorporated herein by reference; and

**WHEREAS**, Company is the Owner of a certain parcel of land located in Desoto County, Mississippi ("Parcel II") described on Exhibit B attached hereto and incorporated herein by reference; and

**WHEREAS**, Zimmer is the Owner of a certain parcel of land located in Desoto County, Mississippi (the "Outlot I") described on Exhibit C attached hereto and incorporated herein by reference; and

**WHEREAS**, Parcel I, Parcel II, Outlot II and the Outlot I are subject to that certain Declaration of Reciprocal Easements and Restrictions recorded at Book 377, Page 760 in the Register's Office of Desoto County, Mississippi (the "Agreement"); and

**WHEREAS**, the parties hereto wish to amend the Agreement as hereinafter set forth.

**NOW, THEREFORE**, in consideration of these premises, the Agreement shall be and hereby is amended as follows:

1. Section 3.1 of the Agreement is amended by deleting the first paragraph therein and inserting the following in lieu thereof: "Except as provided herein, each Outlot owner shall keep and maintain the Common Area on such owner's Outlot in good condition and repair. The Parcel II Owner shall be responsible for the repair and upkeep of the Common Area on the Parcels and the

repair and upkeep of the driveway and Shopping Center landscaping located on the Outlots, which repair and upkeep shall be performed in a workmanlike, diligent and efficient manner and shall include:" Items (a) through (i) shall remain unmodified.

2. Section 8.2 of the Agreement is deleted in its entirety and the following shall be Section 8.2 of the Agreement:

SECTION 8.2. Any sums remaining unpaid in accordance with Article III or Section 8.1, together with interest calculated at the prime rate charged by CitiBank, 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 or Outlot of the owner in default and may be perfected in accordance with the laws of the State of Mississippi, which lien shall be subordinate to any first mortgage lien against any Parcel or Outlot but otherwise shall retain the original priority of title of this Agreement.

3. All other provisions of the Agreement shall remain unchanged. All capitalized terms which are not defined herein shall have the meanings ascribed to them in the Agreement unless otherwise indicated.

4. The provisions of this Amendment shall run with the land and shall bind and inure to the benefit of the parties hereto and their successors and assigns.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

**KROGER:**

KROGER LIMITED PARTNERSHIP I,  
an Ohio limited partnership

By: KRGP Inc., an Ohio corporation,  
general partner

By: Thomas P. O'Brien, Jr.

Title: Vice President

STATE OF OHIO  
COUNTY OF HAMILTON



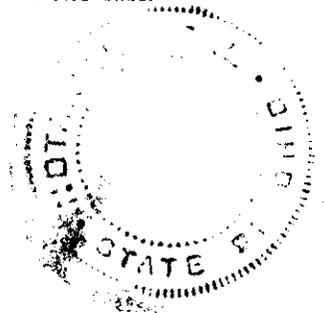
The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of February, 2003, by Thomas P. O'Brien, Jr., Vice President of KRGP Inc., an Ohio corporation, general partner of Kroger Limited Partnership I, an Ohio limited partnership, on behalf of the partnership.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

My commission expires:  
\_\_\_\_\_

Patricia Tighe Ash  
Notary Public

PATRICIA TIGHE ASH, Attorney at Law  
NOTARY PUBLIC STATE OF OHIO  
My Commission has no expiration  
date. Section 147.03 O.R.C.



COMPANY:

HERNANDO SHOPS, LLC,  
a Tennessee limited liability company

By: *Timothy H. Lehning*  
Timothy H. Lehning, Chief Manager

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Before me, *Stephony Loney Owen*, a Notary Public of said County and State, personally appeared Timothy H. Lehning, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be Chief Manager of Hernando Shops, LLC, a Tennessee limited liability company, the within named bargainer, a limited liability company, and that he as such Chief Manager executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Chief Manager.

Witness my hand and seal, at Office in Nashville, Tennessee, this 18<sup>th</sup> day of February, 2003.

*Stephony Loney Owen*  
Notary Public

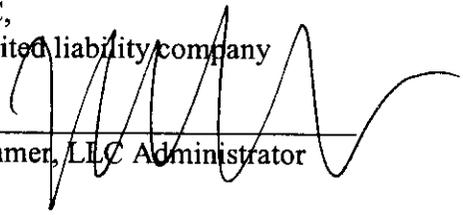
My Commission Expires: 11/26/05



**ZIMMER:**

ZP No. 114, LLC,  
a Mississippi limited liability company

By: \_\_\_\_\_  
Jeffrey L. Zimmer, LLC Administrator



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

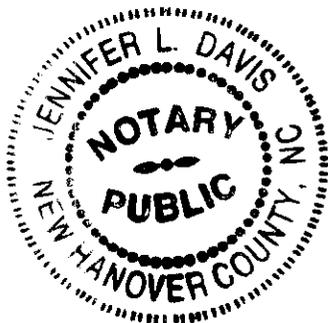
Before me, Jennifer C. Davis, a Notary Public of said County and State, personally appeared Jeffrey L. Zimmer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the LLC Administrator of ZP No. 114, LLC, a Mississippi limited liability company, the within named bargainor, a limited liability company, and that he as such LLC Administrator executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as LLC Administrator.

[NOTARIAL SEAL]

Witness my hand and seal this 18<sup>th</sup> day of February, 2003.

Jennifer C. Davis  
Notary Public

My Commission Expires: 11/1/05



**EXHIBIT A**

**LEGAL DESCRIPTION OF PARCEL I AND OUTLOT II**

**PARCEL I:**

Lot 1 of Kroger Center, a commercial subdivision, located in Section 18, Township 3 South, Range 7 West, City of Hernando, DeSoto County, Mississippi, and more particularly described in Plat Book 72 at Page 41 in the office of the Chancery Clerk of DeSoto County, Mississippi.

**OUTLOT II:**

Lot 4 of Kroger Center, a commercial subdivision, located in Section 18, Township 3 South, Range 7 West, City of Hernando, DeSoto County, Mississippi, and more particularly described in Plat Book 72 at Page 41 in the office of the Chancery Clerk of DeSoto County, Mississippi.

**EXHIBIT B**

**LEGAL DESCRIPTION OF PARCEL II**

Lot 2 of Kroger Center, a commercial subdivision, located in Section 18, Township 3 South, Range 7 West, City of Hernando, DeSoto County, Mississippi, and more particularly described in Plat Book 72 at Page 41 in the office of the Chancery Clerk of DeSoto County, Mississippi.

EXHIBIT C

**LEGAL DESCRIPTION OF OUTLOT I**

Lot 3 of Kroger Center, a commercial subdivision, located in Section 18, Township 3 South, Range 7 West, City of Hernando, DeSoto County, Mississippi, and more particularly described in Plat Book 72 at Page 41 in the office of the Chancery Clerk of DeSoto County, Mississippi.