Box 37
LL

BOOK 11638 PAGE 47

Address New Owner:	Map-Parcel Numbers:	Send Tax Bills To:
POOL AND SPA DEPOT, L.L.C. P.O. Box 17770 Nashville, Tennessee 37217	174-206	Same as New Owner
This instrument prepared by: Boult, Cummings, Conners & Berry, PLC (JSK) 414 Union Street, Suite 1600, P.O. Box 198062, Nashville, Tennessee 37219		

SPECIAL WARRANTY DEED

1b2 07'27 0101 03CHECK 1124.46

STATE OF TENNESSEE §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DAVIDSON §

This Indenture, made as of the date set forth below, between ***AMERICAN GENERAL REALTY INVESTMENT CORPORATION***, a Texas corporation, successor by merger to Hickory Downs Development, Inc., a Delaware corporation, whose mailing address is c/o American General Realty Advisors, Inc., 2929 Allen Parkway, 40th Floor, Houston, Texas 77019, Attn: George Polydoros ("**Grantor**"), and ***POOL AND SPA DEPOT, L.L.C.***, a Tennessee limited liability company, whose mailing address is P.O. Box 17770, Nashville, Tennessee 37217 ("**Grantee**").

W I T N E S S E T H:

That Grantor, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt and sufficiency of which consideration is hereby confessed and acknowledged, has **GRANTED, BARGAINED, SOLD** and **CONVEYED**, and by these presents does **GRANT, BARGAIN, SELL** and **CONVEY**

STATE OF TENNESSEE
COUNTY OF DAVIDSON

The actual consideration or value, whichever is greater, ~~for this transfer~~ is $562,556.10.

Affiant

Subscribed and sworn to before me this 26th day of August, 1999.

Notary Public
My Commission Expires: 9.29.2001

NOTARY PUBLIC

to Grantee (a) that certain real property, more particularly described on **Exhibit "A"** attached hereto; and (b) all rights and appurtenances of Grantor pertaining thereto including any right, title and interest of Grantor (but without warranty, whether statutory, express or implied) in and to adjacent streets, alleys or rights-of-way.

The property and property rights described in (a) and (b) above shall be hereinafter collectively referred to as the "**Subject Property**."

The conveyance of the Subject Property is made by Grantor and accepted by Grantee subject to (a) the matters herein stated, (b) all matters of record including those matters set forth in **Exhibit "B"** attached hereto and incorporated by reference herein for all purposes, but only to the extent such matters are valid, subsisting and affect the Subject Property (the "**Permitted Exceptions**"), and (c) real estate taxes for the year 1999 (which have been prorated as of the date hereof and assumed by Grantee).

EXCEPT AS TO THE WARRANTY OF TITLE AS EXPRESSLY PROVIDED HEREIN, GRANTEE ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OF, AS TO, CONCERNING, OR WITH RESPECT TO, (i) THE VALUE, NATURE, QUALITY OR CONDITION OF THE SUBJECT PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (ii) THE SUITABILITY OF THE SUBJECT PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (iii) THE COMPLIANCE OF OR BY THE SUBJECT PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (iv) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SUBJECT PROPERTY, OR (v) ANY OTHER MATTER WITH RESPECT TO THE SUBJECT PROPERTY. SPECIFICALLY, BUT NOT IN LIMITATION OF THE FOREGOING, GRANTEE FURTHER ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES REGARDING COMPLIANCE OF THE SUBJECT PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING WITHOUT LIMITATION, THOSE PERTAINING TO SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE SUBJECT PROPERTY, OF ANY HAZARDOUS SUBSTANCES, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND THE REGULATIONS PROMULGATED THEREUNDER. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE SUBJECT PROPERTY, GRANTEE IS RELYING

SOLELY ON GRANTEE'S OWN INVESTIGATION OF THE SUBJECT PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY GRANTOR. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE SUBJECT PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE SUBJECT PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS.

TO HAVE AND TO HOLD the Subject Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, its successors and assigns, forever; and Grantor, for its successors, assigns and legal representatives, does covenant and agree to and with the Grantee, its successors and assigns, that Grantee in lawfully seized in fee of the aforesaid premises, that the same are free of all encumbrances (subject, however, to (a) the Permitted Exceptions and the matters herein stated; and (b) taxes for the year 1999, which have been prorated as of the date hereof and payment of which is assumed by Grantee), that it has good right to sell and convey the same to Grantee as aforesaid and that it will warrant and forever defend, all and singular, the Subject Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

Conveyance of the Subject Property is subject to the following:

1. **Right of First Refusal.** Grantor hereby reserves the exclusive right to repurchase all or any portion of the Subject Property from Grantee if Grantee does not desire to construct the improvements contemplated to be constructed by Grantee (the "**Improvements**") on the Subject Property and intends to sell all or any portion of the Subject Property to any third party in its unimproved condition. This right of first refusal shall be applicable only to that portion of the Subject Property which Grantee may desire, in the future, to sell in an unimproved condition. For purposes hereof, "**unimproved condition**" shall mean and refer to real property which is not improved with either vertical building improvements or paved parking facilities, and as used in this paragraph 1, the term "**Property**" shall mean and refer to all or any portion of the Subject Property which Grantee desires to sell in an unimproved condition.

If the Transferor offers the Subject Property for sale, exchange or other form of conveyance prior to the commencement of construction of the Improvements and the Transferor shall have received an acceptable bona fide written offer (the "**Sales Offer**," which Sales Offer must state a purchase price payable in cash and/or on terms that can be matched by Grantor) for the sale of the Subject Property to a third party, the Transferor shall first offer the Subject Property to Grantor, and Grantor shall have a period of thirty (30) days after the Transferor shall have given Grantor notice and a copy of the Sales Offer in which to accept or reject the Transferor's offer to repurchase the Subject Property. If Grantor accepts the Transferor's

aforesaid offer, Grantor shall repurchase the property on the same terms and conditions as contained in the Sales Offer or for cash, provided, however, in no event shall Grantor be obligated to pay as the purchase price in connection with said Sales Offer an amount in excess of the purchase price paid by Grantee for purchase of the Subject Property from Grantor (the "**Purchase Price**"). If Grantor fails or refuses, within such thirty (30) day period, to give the Transferor written notice as to whether Grantor accepts or rejects such offer, Grantor shall be deemed to have rejected such offer. The repurchase shall occur within thirty (30) days after the date that Grantor exercises such repurchase option. Simultaneously with the payment of the Purchase Price to the Transferor, the Transferor shall execute and deliver a Special Warranty Deed to the Subject Property to Grantor, subject only to the Permitted Encumbrances. The closing of the repurchase hereunder shall occur at Lawyers Title Insurance Company, through its agent, Boult, Cummings, Conners & Berry, PLC, 414 Union Street, Suite 1600, Nashville, Tennessee 37219, or other agent acceptable to Grantor, and the costs of closing shall be paid for as specified in the Sales Offer. The Transferor hereby agrees that Grantor may have the right of specific performance against the Transferor to enforce Grantor's preferential repurchase rights herein created and that any contract or sale made in violation of this Deed shall be null and void. If Grantor rejects the Transferor's offer to sell the Subject Property, the Transferor shall have a period of sixty (60) days from the date of Grantor's rejection to consummate the sale of the Subject Property to a third party on terms no more favorable than contained in the Sales Offer without again being required to offer the Subject Property to Grantor.

If the Transferor commences construction and certifies the same in writing to Grantor, Grantor agrees, upon the Transferor's written request, to deliver promptly to Transferor a duly executed and acknowledged release, releasing Grantor's right of first refusal as set forth herein.

2. **Repurchase Option.** Grantee has represented and warranted to Grantor, and Grantor has relied on such representation and warranty in connection with the conveyance of the Subject Property herein to Grantee, that Grantee shall commence construction of the Improvements on the Subject Property on or before nine (9) months following the date hereof (the "**Construction Commencement Date**"). If Grantee has not, on or before the Construction Commencement Date (plus a period of time equal to the duration of delays caused by events not within the reasonable control of Grantee) commenced construction of the Improvements, then Grantor may require Grantee to reconvey the Subject Property to Grantor for an amount not to exceed the Purchase Price, payable in cash at the closing of the repurchase of the Subject Property. Grantor shall not be obligated to (i) reimburse Grantee for any taxes or maintenance charges paid by Grantee with respect to the Subject Property or any other sums paid by Grantee in connection with the purchase of the Subject Property or (ii) pay Grantee any interest on the Purchase Price paid by Grantee.

If Grantee has not commenced construction of the Improvements on the Subject Property on or before the Construction Commencement Date, Grantor or its nominee shall have a period of one (1) year after the required Construction Commencement Date (plus a period of time equal to the duration of delays caused by events not within the reasonable control of Grantee), to exercise the aforesaid option to purchase, provided that Grantee has not commenced construction

of the Improvements on the Subject Property prior to Grantor's exercise of such repurchase option. Grantor shall be deemed to have exercised such repurchase option upon notifying Grantee, in writing, of its intent to exercise such repurchase option, provided that if Grantee commences construction of the Improvements prior to receipt of such notification from Grantor, Grantor shall no longer have the right to exercise such repurchase option. The repurchase shall occur within thirty (30) days after the date that Grantor exercises such repurchase option. Simultaneously with the payment of the Purchase Price to Grantee, Grantee shall execute and deliver a Special Warranty Deed to the Subject Property to Grantor or its nominee, subject only to the Permitted Encumbrances and any other exceptions to which Grantor may have consented, in writing. Grantee shall also execute any other documents that may be necessary or required to reconvey the Subject Property to Grantor. The closing of the repurchase hereunder shall occur at Lawyers Title Insurance Company, through its agent, Boult, Cummings, Conners & Berry, 414 Union Street, Suite 1600, Nashville, Tennessee 37219, or other agent acceptable to Grantor, and the costs of closing shall be payable in accordance with local custom for the closing of similar transactions in Davidson County, Tennessee. Grantee hereby agrees that Grantor may have the right of specific performance against Grantee to enforce Grantor's preferential repurchase rights herein created and that any contract or sale made in violation of this Deed shall be null and void. This provision shall be binding on Grantee, its successors, and assigns.

If the aforementioned notice of exercise of Grantor's option to purchase the Subject Property in the manner specified in the immediately preceding paragraph shall not be so given by Grantor to Grantee on or before the expiration of such nine (9) month period as aforesaid, Grantor's option to exercise the purchase of the Subject Property because of Grantee's failure to commence construction on or before the Construction Commencement Date shall thereupon cease and terminate.

Grantor agrees, upon Grantee's written request, to deliver to Grantee a duly executed and acknowledged release, releasing Grantor's option to repurchase the Subject Property for failure to commence construction on or before the Construction Commencement Date in the event either: (i) Grantee commences construction on or before the Construction Commencement Date, and certifies to the same in writing to Grantor, prior to the time Grantor exercises its option to purchase the Subject Property for Grantee's failure to commence construction on or before the Construction Commencement Date; or (ii) Grantor fails to exercise its option within the time and in the manner set forth herein.

For purposes of this Deed, "**commencement of construction**" or "**commences construction**" shall mean the pouring of the foundation for not less than a 35,000 to 40,000 square foot warehouse and showroom to comprise part of the Improvements following approval of the plans and specifications and plot plan therefor as set forth in the Restrictions (as defined on **Exhibit "B"** attached hereto and made a part hereof).

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has executed this Deed this 17 day of August, 1999.

AMERICAN GENERAL REALTY INVESTMENT CORPORATION, a Texas corporation, successor by merger to Hickory Downs Development, Inc., a Delaware corporation

By: _____

Name: W. Larry Mask
Real Estate Investment Officer

Title: _____

"GRANTOR"

APPROVED
AS TO CONTRACT COMPLIANCE
PER SPM NO. 132
LAW DEPARTMENT
AGC 99-658
CONTROL NO.
DATE 8/12/99
SIGNED

Grantee joins in the execution of this Deed for the purposes of acknowledging the terms and provisions in the Deed.

POOL AND SPA DEPOT, L.L.C.,
a Tennessee limited liability company

By: _____

Name: BENNO VON HOFFGARTEN

Title: CHIEF MANAGER

"GRANTEE"

STATE OF Texas §
§
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this day personally appeared W. Larry Mask, Real Estate Investment Officer of **AMERICAN GENERAL REALTY INVESTMENT CORPORATION**, a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Witness my hand and seal of office this 17 day of August, 1999.

Edna Dominguez
Print Name: Edna Dominguez
(Notary Public)

(AFFIX NOTARY SEAL)

My Commission Expires:
5-31-00

EDNA DOMINGUEZ
Notary Public, State of Texas
My Commission Expires
MAY 31, 2000

STATE OF Tennessee §
§
COUNTY OF Davidson §

BEFORE ME, the undersigned authority, on this day personally appeared BENNO VON HOFFGARTEN, CHIEF MANAGER of **POOL AND SPA DEPOT, L.L.C.**, a Tennessee limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Witness my hand and seal of office this 26th day of August, 1999.

Lee Ellis Smith

Print Name: Lee Ellis Smith
(Notary Public)

My Commission Expires:

9.29.2001

(AFFIX NOTARY SEAL)

NOTARY PUBLIC AT LARGE DAVIDSON COUNTY TENN.

06294460

99 AUG 27 PM 12:

REFERENCE

EXHIBIT "A"

Legal Description

Land in Davidson County, Tennessee, being Lot No. 1 on the Plan of The Crossings at Hickory Hollow Phase II, Resubdivision of Lot 3, as shown on plat of record in Plat Book 9700, at page 969, Register's Office for Davidson County, Tennessee.

Being a portion of the same property conveyed to Hickory Downs Development, Inc., by deed of record in Book 9534, page 423, Register's Office for Davidson County, Tennessee.

EXHIBIT "B"

Permitted Exceptions

1. 1999 taxes, a lien, which are not yet due and payable.

2. Taxes and/or assessments levied or assessed against the subject property pursuant to the provisions of TCA 67-5-603, et seq., which have not been assessed and are not payable.

3. All matters shown on the Plat of record in Book 7900, page 39, Book 7900, page 229, Book 9700, pages 511 and 512, as amended by Surveyor's Certificate of record in Book 10728, page 740, and Plat of record in Book 9700, page 969, Register's Office for Davidson County, Tennessee.

4. Covenants, conditions, restrictions, reservations, easements, liens for assessments, the manual of standards and limitations on title set forth in restrictions recorded in Book 7963, page 145, as re-recorded in Book 7966, page 60, as amended by Book 8085, page 402, Book 9730, page 957, and as supplemented in Book 10722, page 95, Register's Office for Davidson County, Tennessee.

5. Declaration of No-Build Area of record in Book 10722, page 114, Register's Office for Davidson County, Tennessee.

6. Easement Agreement of record in Book 10722, page 119, Register's Office for Davidson County, Tennessee.

7. Subject to Final Order for Taking by Department of Highways and Public Works of the State of Tennessee at Book 3929, page 810, Register's Office for Davidson County, Tennessee.

8. Easement Agreement recorded in Book 3929, page 810, Register's Office for Davidson County, Tennessee.

9. Lack of Access to I-24 - southerly boundary.

OFFICIAL RECEIPT

BILL GARRETT
REGISTER OF DAVIDSON COUNTY
NASHVILLE, TENNESSEE

RECEIVED OF _____

FOR _____

BOOK 11633 PAGE 57

CO - CONVEYANCE	CC - CERTIFIED COPY	MISC - MISCELLANEOUS
MO - MORTGAGE	REL - RELEASE	CO TX - STATE TAX CONVEY
WD - WARRANTY DEED	UCC - UNIFORM COMMERCIAL CODE	MO TX - STATE TAX MORT
TD - TRUST DEED	CFEE - COMPUTER FEE	PRFEE - PROBATE FEE

0629446

99 AUG 27 PM 12:18

CAMT
562556.10
CON TX 2081.46
PRFEE 1.00
WDEED 40.00
CFEE 2.00
TOTAL 2124.46
CHECK 2124.46

08/27/99 01 12:18 0001 1626

RECEIPT IS NOT VALID UNTIL CHECK IS PAID BY BANK

No. 1509699