

THIS INSTRUMENT PREPARED BY:
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018978 RECIPROCAL EASEMENT AND OPERATION AGREEMENT

THIS RECIPROCAL EASEMENT AND OPERATION AGREEMENT ("Agreement") is made as of this ~~30th~~ day of June, 1995, between HOWARD D. WALL and SALLY S. WALL, individually, d/b/a W. and O. Investments, having an office at 1980 Old Fort Parkway, Murfreesboro, Tennessee 37129 ("Landholder"), and HOME DEPOT U.S.A., INC., a Delaware corporation, having an office at 2727 Paces Ferry Road, 11th Floor, Atlanta, Georgia 30339 ("HD").

Preliminary Statement

Landholder is the owner in fee of certain real property located in the City of Murfreesboro, County of Rutherford, State of Tennessee, consisting of 7.5 acres more particularly described in Schedule A annexed hereto (the "Landholder's Parcel"). Landholder intends to construct on Landholder's Parcel the retail and related service use buildings and related parking and site facilities that are indicated on the site plan attached as Schedule D (the "Site Plan").

HD is the owner in fee of certain real property consisting of approximately 10.2 acres (the "HD Parcel"), located contiguous to Landholder's Parcel. The HD Parcel is more particularly described in Schedule B annexed hereto. HD intends to construct on the HD Parcel a building containing approximately 103,550 square feet of ground floor area (exclusive of mezzanine), a garden area containing approximately 27,972 square feet of floor area and truck loading docks, customer pickup and compactor facilities and related parking and site facilities in the areas indicated on the Site Plan. Landholder's Parcel and the HD Parcel as more particularly described in Schedule C and as same may be enlarged from time to time are herein collectively referred to as the "Parcels" or the "Center", and each individually as a "Parcel".

Landholder is also the owner in fee of certain real property located adjacent and to the north of the HD Parcel, which property is identified and more particularly described on the Site Plan as "Outparcel 1", containing approximately 2.1 acres. Landholder is also the Owner of in fee of certain real property located in the northwestern corner of the Center, which property is identified and more particularly described on the Site Plan as "Outparcel 2", containing approximately .67 acres. Landholder is also the owner in fee of certain real property located adjacent and to the south of the Landholder Parcel, which property is identified and more particularly described on the Site Plan as "Outparcel 3", containing approximately 1.71 acres. Outparcel 1, Outparcel 2 and Outparcel 3 are sometimes hereinafter collectively referred to as the "Outparcels." For the purpose of this Agreement, the Outparcels shall be considered to be within the definition of "Center", "Parcels" or "Parcel", notwithstanding that the Owner of any Parcel may also be the Owner of either or both of the Outparcels.

Landholder and HD recognize that for the most favorable development of the Center, it is necessary that they agree and cooperate with respect to the operation and maintenance of their Parcels and the common areas and facilities to be erected thereon as indicated in the Site Plan (the "Common Areas"). Landholder and HD therefore intend herein to grant to each other certain reciprocal easements for pedestrian and vehicular ingress and egress over the common curb cuts, roadways, driveways, aisles, walkways and sidewalks for access and for delivery and to grant certain rights to install and maintain utility lines and site facilities within the Common Areas. Landholder and HD also intend herein to provide for certain obligations and restrictions with respect to the operation and maintenance of their respective Parcels and the Common Areas and facilities constructed and to be constructed thereon. Such easements, obligations and restrictions shall run to the benefit of, and bind the respective Parcels, and the owners from time to time of the Center or any portion thereof. The terms HD or Landholder shall be deemed to refer to such parties and the respective heirs, successors, grantees and assigns of such parties, and any net lessee of any Parcel or part thereof who has assumed all of the obligations of the owning party (individually the "Owner", or collectively, the "Owners").

For Amendment to Reciprocal Easement and Operation Agreement, see Record Book 14, page 1595.

*For First Amendment, see Deed Book 563, page 158.
For First Amendment, see Deed Book 574, page 491.*

RECORDING FEE 72.00
STATE TAX —
REGISTER'S FEE —
TOTAL PAID 72.00
RECEIPT NO. 30134

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Landholder and HD hereby grant, covenant and agree as follows:

ARTICLE I - GRANT OF EASEMENTS

Section 1.01. Access Easements.

(a) The Owners of the HD Parcel, the Landholder's Parcel and the Outparcels hereby grant and convey, each to the other, for the benefit of the HD Parcel, the Landholder's Parcel and the Outparcels, a non-exclusive easement and right to the use during the term of this Agreement of the Common Areas and the common curb cuts, roadways, driveways, aisles, walkways and sidewalks located on the HD Parcel, the Landholder's Parcel and the Outparcels and indicated on the Site Plan and located on the Parcel of the granting Owner, for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians.

The Owners of the HD Parcel and Landholder's Parcel hereby grant and convey, each to the other, for the benefit of the HD Parcel and Landholder's Parcel, a non-exclusive easement and right to the use during the term of this Agreement of the parking areas from time to time maintained on the HD Parcel and the Landholder's Parcel and located on the Parcel of the granting Owner, for purposes of vehicular parking. Notwithstanding the foregoing easements, each Owner shall maintain on its respective Parcel the parking ratio required pursuant to Section 3.01(c) hereof.

Landholder, as Owner of the Outparcels, hereby acknowledges and agrees that the foregoing reciprocal easements for parking shall not apply to the Outparcels. The Outparcels shall have neither the benefit, nor the burden, of any cross parking privileges with respect to the Landholder Parcel or the HD Parcel. Throughout the term of this Agreement, the Owners of the Outparcels shall maintain on the Outparcels the greater of (i) the parking ratio required pursuant to Section 3.01(c) hereof, or (ii) the total number of parking spaces reasonably necessary to support the then current specific development and use of each of the Outparcels.

The easements granted hereby and granted in Section 1.02 shall be for the benefit of, but not restricted solely to, the Owners of the HD Parcel and Landholder's Parcel and each such Owner may grant the benefit of such easement to the tenants and other occupants of the HD Parcel and the Landholder's Parcel for the duration of such occupancy, and to the customers, employees, agents and business invitees thereof; but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public nor shall it affect any real property outside of the Center. Such easement areas are reserved for said use for the term of this Agreement.

Section 1.02. Utility Easements. The Owners of the HD Parcel and Landholder's Parcel hereby grant and convey, each to the other, for the benefit of the HD Parcel and Landholder's Parcel an easement in, to, over, under and across the Common Areas of the HD Parcel and Landholder's Parcel for the purpose of installation, operation, maintenance, repair, replacements, removal and relocation of underground storm sewer lines, sanitary sewer pipes, septic systems, water and gas mains, electric power lines, telephone lines, and other underground utility lines ("Utility Lines") to serve the facilities located on the HD Parcel and Landholder's Parcel. The installation of any Utility Lines shall be subject, as to location, to the approval of the granting Owner, which approval shall not be unreasonably withheld or delayed.

The Owners of the HD Parcel and Landholder's Parcel or any designee served by such Utility Lines may operate, maintain and repair (and, if it does not interfere with the use of the granting Owner's Parcel, relocate) such Utility Lines, provided such repair and maintenance is performed expeditiously and only after five (5) business days' written notice to the granting Owner utilizing or serviced by said Utility Lines or the parking area to be affected by any construction work. The party performing the repair shall, at its cost and expense, repair any damage to any improvements. Each Owner shall indemnify and hold the granting Owner and

any occupant of the granting Owner's Parcel harmless from any claims, damage or loss which may result from the activities in making such repairs or relocating its facilities.

Section 1.03. Temporary Construction Easement. In connection with any construction work to be performed in the development of the Center, each Owner hereby grants the other temporary easements for incidental encroachments upon the party's Parcel which may occur as a result of construction, so long as such encroachments are kept within the reasonable requirements of construction work expeditiously pursued and so long as customary insurance is maintained protecting the other party from the risks involved.

Section 1.04. Pylon Sign Easement. Landholder hereby grants HD a perpetual easement to construct, use and maintain a pylon structure and sign on Landholder's Parcel in the area indicated on the Site Plan, which shall be the only pylon sign in the Center. HD may, at its option, construct said pylon on the HD Parcel. Such pylon structure and sign shall be designed in a manner reasonably acceptable to HD and Landholder with not less than sixty percent (60%) of the signage area thereon to be utilized by HD, and no more than two (2) other signs to be placed thereon. The design, color and size of such other signs shall be subject to the approval of HD and such other signs shall be maintained in good repair at the sole expense of Landholder. Landholder shall reimburse HD for its proportionate share of the costs of constructing, lighting, maintaining and repairing the pylon based on the ratio of the area of HD's sign over the total area of all signs on the pylon. HD may make changes to and/or replace such pylon structure and/or sign, so long as all necessary governmental approvals are obtained therefor. Landholder shall be responsible for illuminating, maintaining, repairing and/or replacing the pylon sign structure. HD shall reimburse Landholder for its proportionate share of the reasonable and actual costs incurred by Landholder in illuminating, maintaining, repairing, and/or replacing the pylon sign based on the ratio of the area of HD's sign over the total area of all signs on the pylon.

Section 1.05. Restrictions. The easements granted by this Article I shall be subject to the covenants and restrictions set forth in Article III.

ARTICLE II - MAINTENANCE AND OPERATION

Section 2.01. Maintenance and Repair.

(a) Each Owner shall maintain, repair and replace all improved portions of the Common Areas located on its respective Parcel, so as to keep such areas at all times in a safe, sightly, good and functional condition to standards of comparable community shopping centers in the market area.

(b) Each Owner shall be responsible for keeping the Common Areas on its own Parcel clean and free from refuse and rubbish. Any landscaped areas on the respective Common Areas shall be mowed and otherwise tended to by the Owner thereof.

(c) Each Owner shall repave, re-stripe and replace markings on the surface of the parking areas and driveways in its Parcel from time to time as and when necessary so as to provide for the orderly parking of automobiles and shall place and maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of said parking areas. Any striping and other markings shall be consistent with the Site Plan, and the lighting, paving and striping materials shall be consistent with that used in the Center.

(d) Each Owner shall service, maintain, repair and replace, and pay the cost of any fees or charges in connection with the Utility Lines located on its Parcel to the extent that such Utility Lines service the improvements on that Parcel or service the Center as a whole if such services are not provided. To the extent that any Utility Line exclusively servicing any Parcel crosses another Owner's Parcel, such Utility Line shall be so maintained by the party served by the Utility Line, subject to the provisions of Section 1.02. Maintenance of any portion of any Utility Lines serving more than one Parcel shall be performed by the Owner of the Parcel crossed

by the Utility Line, but the cost thereof shall be shared on an equitable basis based upon the relative consumption or usage of the utility furnished from such Utility Line.

(e) Each Owner shall pay, prior to any penalty attaching thereto, all real estate taxes, assessments and personal property taxes, if any, imposed upon the land and improvements and equipment located on its respective Parcel.

(f) Each Owner shall cause the Common Areas and all buildings and improvements located on its Parcel to comply with all applicable requirements of law and governmental regulation applicable thereto, provided however, that an Owner may contest any such law or regulation so long as such contest would not create any material danger of a loss of title to, or impairment in any way of the use of all or any portion of the Common Areas for their intended purposes.

Section 2.02. Operation and Lighting.

(a) Each Owner shall keep the driveways and parking areas of its respective Parcel open to the customers of the Center seven days a week at all times and lighted after dusk until 11:00 p.m. on Monday through Saturday and from dusk until 7:00 p.m. on Sunday ("Normal Lighting Hours"). Any Owner or occupant of a Parcel may require the lights on any other Parcel to be kept lighted after Normal Lighting Hours if such Owner or occupant reimburses the requested Owner for the additional electrical costs incurred thereby, which cost shall be shared on a pro rata square footage basis with any other occupant which remains open during such additional hours.

(b) Any facilities and fixtures to be used in the lighting of the roadways or parking areas of the Center shall be constructed in accordance with specifications mutually agreed upon by the Owners. The Center's lighting facilities and fixtures shall be designed and installed with separate meters to measure the electricity consumed on the respective Parcels. The meters and lighting control switches for the exterior parking and roadway lighting for each Parcel shall be located with the improvements on such Parcel.

Section 2.03. Delegation of Management. The Owners may enter into an agreement, with the consent of the Owners of all Parcels affected thereby, appointing one of the Owners or a third party to perform all or portions of the maintenance and repair of the Common Areas and related facilities of the Center. In such event each Owner shall be responsible to pay its respective Share (as hereinafter defined) of the costs incurred by the designated party in performing such services, which costs shall include the ordinary operating and maintenance expenditures incurred as well as capital expenditures to the extent so authorized, provided however, that any expenditure in which another Owner must share for a repair or replacement of the designated party costing \$5,000 or more shall require the prior approval of each such Owner. As used herein the term "Share" shall mean a fraction, the numerator of which shall be the number of square feet of floor area (exclusive of mezzanines used for storage and related office and non-sales uses) in all structures located on such Owner's Parcel as measured from the exterior base of any exterior wall and to the center line of any party wall ("Building Floor Area"), and the denominator of which shall be equal to the aggregate of the Building Floor Area (as so measured) in all buildings in the Center; provided that in no event shall the HD Share exceed sixty percent (60%).

ARTICLE III - COVENANTS AND RESTRICTIONS

Section 3.01. Restrictions on Center and Common Areas. The Center shall be subject to the following restrictions which shall be binding on each Owner and each of its tenants, occupants, employees, agents or invitees:

(a) No obstruction to the free flow of traffic and use of the parking and delivery facilities shall be permitted, except to the extent, if any, indicated on the Site Plan or herein expressly provided for.

(b) No building or other structure of any kind shall be permitted in portions of the Center except in the "Building Areas", "Future Building Areas" and "Future Retail Areas" designated on the Site Plan, nor shall any building or structure in the Building Areas or Future Building Areas exceed the "Maximum Building Floor Areas" or the "Maximum Height" (including parapet walls or any other projections of any kind) indicated thereon; further, Landlord shall not construct any buildings or improvements on the Landlord's Parcel except in the designated areas on the Site Plan without the express written consent of the Owner of the HD Parcel.

(c) No building or other structure shall be permitted within the Center if such building or other structure would reduce the parking ratio within the Center, or any individual Parcel, to fewer than 4.8 parking spaces for every 1,000 square feet of floor space (excluding mezzanine level space used only for storage and related offices and non-sales uses, and excluding the area designated as the garden center adjacent to the building on the HD Parcel) located therein, or below the number of parking spaces required under applicable governmental rules, regulations and ordinances.

(d) Any construction shall be conducted in a manner which will limit the maximum extent practicable any interference with the operation of the balance of the Center.

(e) No portion of the Center shall be used for a business or use which creates strong, unusual or offensive odors, fumes, dust or vapors; is a public or private nuisance; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; or creates unusual fire, explosive or other hazards.

(f) No portion of the Center may be leased, used or occupied as a health spa or exercise facility; theatre; movie theatre; bowling alley; billiard parlor; funeral parlor; flea market; industrial manufacturing; automobile dealership; discotheque; skating rink; bar (other than incidental to a business operated primarily as a restaurant), restaurant/bar, or social encounter restaurant; adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials; massage parlor; so-called "head shop"; unsupervised amusement arcade or game room; body and fender shop; car wash; off-track betting parlor; or restaurant or fast food operation incorporating coin-operating amusements or showing movies to its customers thereof other than as an incidental or immaterial part of its business.

(g) No portion of the Center outside of the HD Parcel may be used for (i) general offices in excess of 1,500 square feet; (ii) a restaurant in excess of 4,000 square feet; or (iii) a home improvement center or for the sale of lumber, hardware items, plumbing supplies, electrical supplies, paint, wallpaper, carpeting, floor coverings, cabinets, siding, ceiling fans, gardening supplies, nursery products, furniture and pool supplies and other related items customarily carried by a home improvement center except for the incidental sale of such items; provided, however, that notwithstanding subsection (ii) above, a restaurant in excess of 4,000 square feet may be located on Outparcel 3 or within the buildings shown as "Retail B" and "Retail C" on the Site Plan. No restaurant shall be permitted to operate on Landholder's Parcel within 300 feet of the main entrance of the building to be erected on the HD Parcel. Notwithstanding the foregoing, the sale or use of less than 2,000 square feet for the sale of paint, wallpaper or ceiling fans in the aggregate shall not be deemed to constitute a violation hereof.

(h) There shall be no promotion, entertainment, amusement or other activities in the Common Areas, including the sidewalks immediately adjacent to the premises occupied by such merchants, which would interfere with the use of the Common Areas

and related facilities for their intended purposes. Notwithstanding the foregoing, (i) HD may utilize the portions of the Common Areas on the HD Parcel for purposes of Christmas tree sales and other seasonal sales, and (ii) Landholder may utilize the portions of the Common Areas adjacent to the premises identified as "Retail B" and "Retail C" as indicated on the Site Plan for the purpose of promotional sales being conducted by the tenants of the "Retail B" and "Retail C" premises.

(i) No building or other structure located on the Outparcels shall have any elevation more than twenty-five feet (25') above the finished floor elevation of the building located on the HD Parcel.

ARTICLE IV - LIABILITY AND INDEMNIFICATION

Section 4.01. Liability: Indemnification. Each Owner shall indemnify and hold every other Owner, tenant, and occupant of the Center harmless (except for loss or damage resulting from the tortious acts of such other parties) from and against any damages, liability actions, claims, and expenses (including attorneys' fees in a reasonable amount) in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon such Owner's Parcel, or occasioned wholly or in part by any act or omission of said Owner, its tenants, agents, contractors, employees, or licensees.

Section 4.02. Liability Insurance. Each Owner shall maintain or cause to be maintained public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas in the Center by the Owner and its tenants, agents, contractors, employees, licensees, customers and invitees, of such Owner or the occupants of its Parcels except as herein provided. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State in which the Center is located and having limits for loss of life or bodily injury in the amounts of not less than \$500,000 for each person and \$1,000,000 for each occurrence and \$500,000 for property damage for each occurrence. Each Owner shall maintain or cause to be maintained contractual liability insurance specifically endorsed to cover said Owner's agreement to indemnify as set out in Section 4.01. Notwithstanding the foregoing, any Owner or party responsible to maintain such insurance may "self insure", or provide for a deductible from said coverage related to the Parcel, to the extent of one percent (1%) of the net worth of said Owner or party in its last annual or fiscal year as certified by an independent certified public accountant and computed in accordance with generally accepted accounting principles consistently applied. Such insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations. Each Owner shall, upon written request from the other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section or evidence of a self-insurance capacity as hereinabove provided, as the case may be. All such insurance shall include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each Owner hereby waives any rights of recovery against any other Owner, its directors, officers, employees, agents and tenants and occupants for any damage or consequential loss covered by said policies, against which such Owner is protected by insurance, to the extent of the proceeds payable under such policies, whether or not such damage or loss shall have been caused by any acts or omissions of the other Owner or its directors, officers, employees, agents, tenants or occupants.

ARTICLE V - CASUALTY AND EMINENT DOMAIN

Section 5.01. Casualty.

(a) If any of the buildings located on any Parcel is damaged or destroyed by fire or other cause, the Owner of such building shall as promptly as reasonably practicable cause either: (i) the repair, restorations, or rebuilding of the building so damaged or destroyed, or (ii) the razing of any damaged building, the filling of any excavation, and performance of any other work necessary to put such portion of the Center in a clean, sightly and safe condition.

(b) In the event any Common Area improvements are damaged or destroyed, the Owner of the Parcel to which such damage has occurred shall as promptly as reasonably practicable cause the repair, restoration or rebuilding of the Common Area improvements to the extent necessary to restore the area outlined in red on the Site Plan to its previously improved condition and restore such other areas to the extent necessary to avoid interference with the remaining Common Areas of the Center and to adhere to any required parking ratios required by law and as set forth herein.

Section 5.02. Casualty Insurance. In order to assure performance of their respective obligations under Section 5.01, the Owners of the respective Parcels shall cause to be carried fire and extended coverage insurance on all improvements (including without limitation, all buildings) on their respective Parcels in the amount of the replacement cost of such improvements, and in amounts at least sufficient to avoid the effect of any co-insurance provisions of such policies, except if the Owner of said Parcel, or party responsible for any required restorations, is permitted to "self insure" pursuant to 5.01. Any such insurance shall otherwise conform to the provisions with respect to insurance contained in Section 4.02.

Section 5.03. Eminent Domain. In the event the whole or any part of the Center shall be taken by right of eminent domain or any similar authority of law (a "Taking"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the property so taken or to such Owner's mortgagees or tenants, as their interest may appear, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Agreement. Any Owner of a Parcel which is not the subject of a taking may, however, file a collateral claim with the condemning authority over and above the value of the land being so taken to the extent of any damage suffered by such Owner resulting from the severance of the land or improvements so taken if such claim shall not operate to reduce the award allocable to the Parcel taken. In the event of a partial Taking, the Owner of the portion of the Center so taken shall restore the improvements located on the Common Areas of the Owner's Parcel as nearly as possible to the condition existing prior to the Taking without contribution from any other Owner and any portion of any condemnation award necessary therefor shall be held in trust and applied for such purpose.

ARTICLE VI - REMEDIES

Section 6.01. Self Help; Lien Rights Disputes.

(a) If any Owner shall default in the performance of an obligation of such Owner (such Owner being herein called a "Defaulting Owner"), which default affects the Owner of another Parcel or any occupant thereof (an "Affected Party"), such Affected Party, in addition to all other remedies it may have at law or in equity, after thirty (30) days' prior written notice to the Defaulting Owner and any first Mortgagee or SL Lessor as herein defined (or in the event of an emergency after such notice as is practical under the circumstances), shall have the right to perform such obligation on behalf of the Defaulting Owner. In such event, the Defaulting Owner shall promptly reimburse the Affected Party the cost thereof, together with interest thereon from the date of outlay at a rate equal to the lesser of (i) two percent in excess of the prime lending rate charged by Citibank, N.A. for commercial loans of its most preferred commercial customers or (ii) the highest rate permitted by applicable law (the "Interest Rate").

(b) Any such claim for reimbursement, together with interest thereon as aforesaid, shall be secured by a lien on the Parcel and improvements thereon owned by the Defaulting Owner, which lien shall be effective upon the recording of a notice thereof in the Office of the Clerk or Registrar of the County in which the Center is located. The lien shall be subordinate to any first mortgage or deed of trust now or hereafter affecting the subject Parcel (a "First Mortgage") and to the interest of any party who has purchased the Parcel and leased it back to the preceding Owner ("SL Lessor"), or its subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale leaseback" transaction (a "SL Lease"); and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such First Mortgage or assignee of such SL Lease shall take title subject only to liens thereafter accruing pursuant to this Section 6.01.

Section 6.02. Injunctive and Other Remedies. In the event of a breach by any Owner of any obligation of this Agreement, the other Owners shall be entitled to obtain an order specifically enforcing the performance of such obligation or an injunction prohibiting any such breach; the Owners hereby acknowledge the inadequacy of legal remedies and the irreparable harm which would be caused by any such breach, and/or to relief by other available legal and equitable remedies from the consequences of such breach. Any action taken or document executed in violation of this Agreement shall be void and may be set aside upon the petition of the other Owners of portions of the Center. Any costs and expenses of any such proceeding, including attorneys' fees in a reasonable amount, shall be paid by Defaulting Owner and, if recorded without effective Dispute as provided in Section 6.06, shall constitute a lien against the land, and improvements thereon, or the interests therein, until paid.

Section 6.03. Nonwaiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, (i) no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement and (ii) all remedies at law or in equity shall be available.

Section 6.04. Non-terminable Agreement. No breach of the provisions of this Agreement shall entitle any Owner or party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value covering any part of the Center, and any improvements thereon.

Section 6.05. Force Majeure. In the event any Owner or any other party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

ARTICLE VII - TERM

Section 7.01. Term. This Agreement and the easements, rights, obligations and liabilities created hereby shall be perpetual to the extent permitted by law.

ARTICLE VIII - EFFECT OF INSTRUMENT

Section 8.01. Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Center shall at all times be subject and subordinate to the terms of this Agreement, except to the extent expressly otherwise provided herein, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Agreement, subject to Section 6.01 hereof. Each party hereto represents and warrants to the other parties that there is no presently existing mortgage or deed of trust lien on its Parcel, other than mortgage or deed of trust liens that are expressly subordinate to the lien of this Agreement.

Section 8.02. Binding Effect. Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by either party to this Agreement is made by such party not only personally for the benefit of the other party hereto but also as Owner of a portion of the Center and shall constitute equitable servitude on the portion of the Center owned by such party appurtenant to and for the benefit of the other portions of the Center. Any transferee of any part of the Center shall automatically be deemed, by acceptance of the title to any portion of the Center, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in its Parcel and to have agreed with the then Owner or Owners of all other portions of the Center to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement and the transferor shall upon the completion of such transfer be relieved of all further liability under this Agreement except liability with respect to matters that may have arisen during its period of ownership of the portion of the Center so conveyed that remain unsatisfied.

Section 8.03. Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Center to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns and that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 8.04. Responsibility. Notwithstanding anything to the contrary contained in this instrument, each party to this Agreement shall be liable and responsible for the obligations, covenants, agreements and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in the land and improvements on the Landholder's Parcel and the HD Parcel, as the case may be.

ARTICLE IX - NOTICES

Section 9.01. Notices. Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is mailed by registered or certified mail, return receipt requested, to the parties at the addresses shown below or at such other address as the respective parties may from time to time designate by like notice, on the third business day following the date of such mailing:

If to Landholder: W. and O. Investments
 1980 Old Fort Parkway
 Murfreesboro, Tennessee 37129
 Attention: Mr. Barry E. Dotson

If to HD: Home Depot U.S.A., Inc.
 2727 Paces Ferry Road
 7th Floor
 Atlanta, Georgia 30339
 Attention: Legal Department

With a copy to: Mark J. Levick, Esquire
Altman, Kritzer & Levick, P.C.
6400 Power Ferry Road, N.W.
Suite 224 - Powers Ferry Landing
Atlanta, Georgia 30339

ARTICLE X - MISCELLANEOUS

Section 10.01. Miscellaneous.

(a) If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State in which the Center is located.

(c) The Article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

(d) Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other.

(e) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

(f) This Agreement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the parties to the Agreement or their successors or assigns; this Agreement shall not be otherwise amended, modified or terminated during the term hereof.

(g) As of the date of this Agreement, Landlord is the record title holder of the Outparcels. By execution of this Agreement, Landholder hereby acknowledges and accepts all benefits in favor of, and all burdens against, the Outparcels as set forth in this Agreement. This Agreement shall be binding upon and inure to the benefit of the Owner of the Outparcels, and its successors and assigns.

(SIGNATURES BEGIN ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LANDHOLDER:

HOWARD D. WALL and SALLY S. WALL,
individually, d/b/a W. and O. Investments

[Signature]

Witness

[Signature] (SEAL)

HOWARD D. WALL, individually

[Signature] (SEAL)

SALLY S. WALL, individually

Notary Public

HD:

HOME DEPOT U.S.A., INC.,
a Delaware corporation

[Signature]

[Signature]

Witness

By: [Signature]

Its: KATHRYN E. LEE
CORPORATE COUNSEL REAL ESTATE

Notary Public

(CORPORATE SEAL)

County of Rutherford
State of Tennessee
The consideration for this transfer is \$0.00

[Signature]
Affiant

Sworn to and subscribed before me July 10, 1995
Commission expires 1-16-99

[Signature]
Notary Public



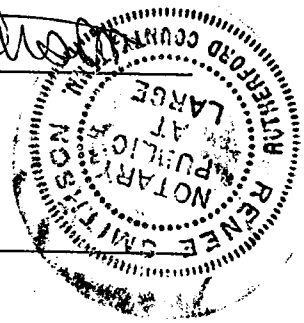
STATE OF TENNESSEE
COUNTY OF Rutherford

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Howard D. Wall, whom I am personally acquainted and who upon oath, acknowledged himself to be the individual in the foregoing instrument, and that he executed the foregoing instrument for the purposes contained therein.

Witness my hand and official seal this 30 day of June, 1995.

Renee Smithson
Notary Public

My Commission Expires:
1-16-99



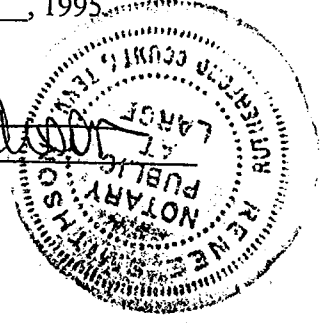
STATE OF TENNESSEE
COUNTY OF Rutherford

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared Sally S. Wall, with whom I am personally acquainted and who upon oath, acknowledged herself to be the individual in the foregoing instrument, and that she executed the foregoing instrument for the purposes contained therein.

Witness my hand and official seal this 30 day of June, 1995.

Renee Smithson
Notary Public

My Commission Expires:
1-16-99



STATE OF GEORGIA
COUNTY OF COBB

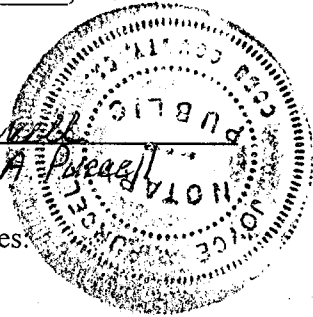
Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared KATHRYN E. LEE, with whom I am personally acquainted and who upon oath, acknowledged ~~himself~~ ^{herself} to be the CORPORATE COUNSEL GEN. EST. of Home Depot U.S.A, a Delaware corporation, in the foregoing instrument, and that as such officer being duly authorized so to do executed the foregoing instrument for the purposes contained therein by signing in the name of Home Depot, U.S.A., Inc. as such officer.

Witness my hand and official seal this 29th day of June, 1995.

Jane A. Pierce
Notary Public

My Commission Expires

7/11/95



270

SCHEDULE "A"

Landholder Parcel

Land in Rutherford County, Tennessee being Lots 5, 6, 7, 8 and 9 on the Final Plat of Home Depot Subdivision, of record in Plat Book 17, Page 100, Register's Office for Rutherford County, Tennessee, to which plan reference is made for a more complete description.

SCHEDULE "B"

HD PARCEL

Land in Rutherford County, Tennessee, being Lot No. 1 on the Final Plat of Home Depot Subdivision, of record in Plat Book 17, Page 100, Register's Office for Rutherford County, Tennessee, to which plan reference is made for a more complete description.

SEC, Inc.**SITE ENGINEERING CONSULTANTS**

ENGINEERING • SURVEYING • LAND PLANNING

LEGAL DESCRIPTION
(TOTAL TRACT LESS RESERVE PARCEL 2)

BEING A TOTAL OF 7 PARCELS OF LAND LYING IN THE CITY OF MURFREESBORO, IN THE 13th CIVIL DISTRICT OF RUTHERFORD COUNTY, TENNESSEE; BEING ALL THE LANDS CONVEYED TO MELVIN R. ADAMS, IN DB. 241, PG. 404, AND DB. 327, PG. 174; ALL THE LANDS CONVEYED TO LOGAN HICKERSON, BY QUIT-CLAIM DEED IN DB. 443, PG. 749, A PORTION OF THE LANDS CONVEYED TO JAMES L. RUNGEE, SR., IN DB. 371, PG. 180, A PORTION OF LOT 3, STONES RIVER MALL, PB. 14, PG. 11, CONVEYED TO T. MICHAEL HARRIS & RICH D. WEST, A JOINT PARTNERSHIP, IN DB. 499, PG. 718, AND A PORTION OF LOT 4, STONES RIVER MALL, PB. 14, PG. 11, CONVEYED TO T. MICHAEL HARRIS & RICH D. WEST, JOINT PARTNERSHIP, DB. 499, PG. 718, A VACATED PORTION OF STONES RIVER MALL BLVD., AND ALL OF THE VACATED RIGHT-OF-WAY OF STONES RIVER PLACE, ALL OF REGISTERS OFFICE, RUTHERFORD COUNTY, TENNESSEE, AND BOUNDED ON THE WEST BY LANDS OF ALLEN PRINCE, JR., DB. 171, PG. 303; ON THE NORTH BY THE CENTERLINE OF THE STONES RIVER, ON THE EAST AND NORTH BY LANDS OF CITY OF MURFREESBORO, OLD FORT PARK GOLF COURSE, ON THE EAST BY REMAINING LANDS OF LOT 4, STONES RIVER MALL, BEING REMAINING LANDS OF HARRIS & WEST, JOINT PARTNERSHIP DB. 499, PG. 718, ON THE EAST BY REMAINING RIGHT-OF-WAY OF STONES RIVER MALL BLVD, ON THE EAST BY THE WESTERLY LINE OF LOT 1, STONES RIVER MALL, BEING LANDS OF STONES RIVER REAL ESTATE, DB. 470, PG. 62, ON THE SOUTH, BY THE REMAINING PORTION OF LOT 3, STONES RIVER MALL. ON THE EAST BY A PORTION OF THE VACATED RIGHT-OF-WAY OF STONES RIVER PLACE, THE SOUTH BY THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROUTE 96 (OLD FORT PARKWAY), ON THE WEST BY THE EASTERLY LINE OF LANDS OF MCT REAL ESTATE, DB. 430, PG. 461, ON THE WEST AND SOUTH BY LANDS OF FAWZI ABDEL-KHALEK, DB. 468, PG. 520, ON THE SOUTH AND EAST BY LANDS OF OLIVER H. ROGERS, DB. 374, PG. 608, ON THE SOUTH AGAIN, BY THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROUTE 96 (OLD FORT PARKWAY), AND ON THE WEST AND NORTH BY LANDS OF GARDEN PLAZA HOTEL CO., DB. 410, PG. 587, AND BEING MORE PARTICULARLY AS FOLLOWS:

BEGINNING ON AN IRON PIN FOUND LYING ON THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROUTE 96 (OLD FORT PARKWAY), AT THE SOUTHEASTERLY CORNER OF LANDS OF MCT REAL ESTATE, SAID POINT BEING ALSO THE SOUTHWESTERLY CORNER OF THE RIGHT-OF-WAY LINE OF STONES RIVER PLACE, A 50' WIDE ROADWAY (SCHEDULED TO BE VACATED), THENCE, WITH SAID WESTERLY LINE OF STONES RIVER PLACE, AND THE EASTERLY LINE OF MCT REAL ESTATE, N 04° 59' 50" E 125.08 FEET TO AN IRON PIN FOUND, THENCE, STILL WITH SAME, N 06° 49' 42" E 57.60 FEET TO AN IRON PIN FOUND AT THE SOUTHEASTERLY CORNER OF FAWZI ABDEL-KHALEK, THENCE, STILL WITH THE WESTERLY LINE OF STONES RIVER PLACE, AND WITH THE EASTERLY LINE OF ABDEL-KHALEK, N 06° 45' 47" E 30.11 FEET TO AN IRON PIN FOUND, SAID POINT BEING THE SOUTHEASTERLY CORNER OF LANDS OF JAMES L. RUNGEE, SR. THENCE, LEAVING SAID WESTERLY RIGHT-OF-WAY LINE OF STONES RIVER PLACE, AND WITH THE SOUTHERLY LINE OF RUNGEE, AND ALONG THE NORTHERLY LINE OF ABDEL-KHALEK, N 88° 26' 02" W 140.60 FEET TO AN IRON PIN FOUND, THENCE, STILL WITH SAME, S 86° 06' 20" W 98.06 FEET TO AN IRON PIN SET AT THE NORTHWESTERLY CORNER OF ABDEL-KHALEK, AND THE NORTHEASTERLY CORNER OF OLIVER H. ROGERS, THENCE, STILL WITH RUNGEE'S SOUTH LINE, AND THE NORTHERLY LINE OF ROGERS, N 86° 20' 59" W 100.00 FEET TO AN IRON PIN SET IN THE EASTERLY LINE OF LOGAN HICKERSON, SAID POINT BEING RUNGEE'S SOUTHWESTERLY CORNER, AND ROGERS' NORTHWESTERLY CORNER, THENCE, LEAVING LANDS OF RUNGEE, AND WITH THE WESTERLY LINE OF ROGERS AND THE EASTERLY LINE OF HICKERSON, S 08° 04' 44" W; CROSSING AN IRON PIN FOUND AT 200.04 FEET, AND 201.56 FEET IN ALL TO AN IRON PIN SET ON THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROUTE 96 (OLD FORT PARKWAY)(200.00 NORTHERLY OF THE CENTERLINE) SAID PIN BEING THE SOUTHWESTERLY CORNER OF ROGERS, AND THE SOUTHEASTERLY MOST CORNER OF HICKERSON, THENCE, LEAVING ROGERS' WESTERLY LINE, AND WITH THE NORTHERLY RIGHT-OF-WAY OF STATE ROUTE 96, WITH HICKERSON'S SOUTHERLY LINE, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 5529.58 FEET, A CENTRAL ANGLE OF 00° 43' 30", AND AN ARC LENGTH OF 69.97 FEET; WITH THE CHORD BEARING AND CHORD OF N 85° 14' 46" W 69.97 FEET TO AN IRON PIN SET AT HICKERSON'S SOUTHWEST CORNER, AND THE SOUTHEASTERLY CORNER OF LANDS OF GARDEN PLAZA HOTEL CO., THENCE, LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE OF STATE ROUTE 96, WITH THE EASTERLY LINE OF GARDEN

PLAZA HOTEL, AND THE WESTERLY LINE OF HICKERSON, N 52° 26' 35" E 28.51 FEET TO AN IRON PIN SET, THENCE, N 08° 04' 24" E, CROSSING AN IRON PIN FOUND AT 1.36 FEET, AND 535.45 FEET IN ALL TO AN IRON PIN FOUND AT THE NORTHEASTERLY CORNER OF GARDEN PLAZA HOTEL, THENCE, WITH THE NORTHERLY LINE OF GARDEN PLAZA, AND THE SOUTHERLY LINE OF HICKERSON, N 83° 03' 30" W 260.41 FEET TO AN IRON PIN FOUND AT THE SOUTHEASTERLY CORNER OF LANDS OF MELVIN R. ADAMS, THENCE, LEAVING SAID LANDS OF HICKERSON, WITH THE SOUTHERLY LINE OF ADAMS, AND STILL WITH THE NORTHERLY LINE OF GARDEN PLAZA HOTEL CO., N 83° 03' 30" W 182.67 FEET TO AN IRON PIN FOUND, SAID POINT LYING ON THE EASTERLY LINE OF LANDS OF ALLEN PRINCE, JR., BEING THE NORTHWESTERLY CORNER OF GARDEN PLAZA HOTEL CO., AND THE SOUTHWESTERLY CORNER OF ADAMS, THENCE, LEAVING LANDS OF GARDEN PLAZA HOTEL, WITH THE WESTERLY LINE OF ADAMS, AND THE EASTERLY LINE OF PRINCE, N 08° 19' 43" E 394.21 FEET TO AN IRON PIN FOUND AT THE NORTHWESTERLY CORNER OF ADAMS, AND A SOUTHWESTERLY CORNER OF LOGAN HICKERSON, THENCE, WITH THE WESTERLY LINE OF HICKERSON, AND STILL WITH THE EASTERLY LINE OF PRINCE, N 08° 13' 17" E 850.21 FEET CROSSING AN IRON PIN FOUND, SAID PIN BEING A WITNESS CORNER LYING 100.00 FEET SOUTHERLY OF THE CENTERLINE OF THE STONE RIVER, AND 950.21 FEET IN ALL, THENCE, LEAVING LANDS OF PRINCE, AND WITH THE CENTERLINE OF STONES RIVER, AND THE SOUTHERLY LINE OF OLD FORT PARK GOLF COURSE S 72° 20' 32" E 84.01 FEET TO A POINT, THENCE, STILL WITH SAME, N 76° 36' 44" E 430.10 FEET TO A POINT, SAID POINT BEING THE NORTHEASTERLY CORNER OF HICKERSON, AND A NORTHWESTERLY CORNER OF SAID OLD FORT PARK GOLF COURSE, THENCE, LEAVING THE CENTERLINE OF THE STONES RIVER, AND WITH THE WESTERLY LINE OF OLD FORT PARK GOLF COURSE, S 06° 06' 22" W CROSSING AN IRON PIN FOUND AT 75.00 FEET, BEING A WITNESS CORNER, AND 461.73 FEET IN ALL TO AN IRON PIN FOUND, THENCE, WITH THE NORTHERLY LINE OF HICKERSON, AND THE SOUTHERLY LINE OF OLD FORT PARK GOLF COURSE, S 78° 35' 38" E 289.91 FEET TO AN IRON PIN FOUND, SAID POINT BEING THE NORTHEASTERLY CORNER OF HICKERSON, AND THE NORTHWESTERLY CORNER OF LOT 4, STONES RIVER MALL, THENCE, LEAVING LANDS OF HICKERSON, AND WITH THE WESTERLY LINE OF SAID LOT 4 S 06° 24' 56" W 95.29 FEET TO A POINT, SAID POINT LYING ON THE NORTHWESTERLY PROPOSED RIGHT OF WAY OF MALL CIRCLE DRIVE; THENCE ALONG SAID RIGHT OF WAY S 49° 02' 21" E 203.77 FEET TO AN IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 215.00 FEET, A CENTRAL ANGLE OF 09° 32' 23" A LENGTH OF 35.80 FEET, AND A CHORD OF S 44° 16' 09" E 35.76 FEET TO AN IRON PIN SET; THENCE N 87° 54' 11" E 44.03 FEET TO AN IRON PIN SET; THENCE S 02° 10' 19" E 1001.41 FEET TO A CHSILED X, SAID POINT LYING ON THE NORTHERLY RIGHT OF WAY OF EXISTING NORTH FRONTAGE ROAD; THENCE ALONG SAID RIGHT OF WAY S 87° 46' 23" W 20.08 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 195.00 FEET, A CENTRAL ANGLE OF 53° 58' 17" A LENGTH OF 183.69 FEET AND A CHORD OF S 60° 53' 01" W 176.97 FEET TO AN I.P. FOUND; THENCE S 33° 47' 24" W 187.19 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 145.00 FEET A CENTRAL ANGLE OF 7° 47' 03", A LENGTH OF 19.70 FEET, AND A CHORD OF N 37° 32' 38" E 19.63 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 5529.58 FEET, A CENTRAL ANGLE OF 0° 48' 59", A LENGTH OF 78.78 FEET AND A CHORD OF S 89° 52' 55" W 78.78 FEET TO A POINT, SAID POINT LYING ON THE EASTERLY RIGHT OF WAY OF STONES RIVER PLACE; THENCE ALONG SAID RIGHT OF WAY N 04° 59' 43" E 45.85 FEET TO AN IRON PIN FOUND; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 5650.23 FEET, A CENTRAL ANGLE OF 01° 30' 49", A LENGTH OF 149.28 FEET, AND A CHORD OF N 05° 47' 22" E 149.27 FEET TO AN IRON PIN FOUND; THENCE N 06° 31' 23" E 12.42 FEET TO A POINT; THENCE ACROSS SAID RIGHT OF WAY N 83° 28' 39" W 49.63 FEET TO A POINT, SAID POINT LYING ON THE WESTERLY RIGHT OF WAY OF STONES RIVER PLACE; THENCE ALONG SAID RIGHT OF WAY S 06° 45' 47" W 30.11' TO AN IRON PIN FOUND; THENCE S 06° 49' 42" W 57.60 FEET TO AN IRON PIN FOUND; THENCE S 04° 59' 50" W 125.08 FEET TO THE POINT OF BEGINNING CONTAINING 34.76 ACRES MORE OR LESS

