

CHOATE, HALL & STEWART

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

EXCHANGE PLACE

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July 30, 2003

Margaret Callanan, Esquire
Staff Counsel
Cape Cod Commission
3225 Main Street
P.O. Box 226
Barnstable, MA 02630

RE: Home Depot v. Cape Cod Commission

Dear Margaret:

I enclose the original certification of the Motion for Entry of Judgment and the Agreement for Judgment bearing the Land Court attestation in the above-entitled matter. These are now suitable for recording in the Barnstable Registry, where they will forever after alert any successor-in-title to the existence of the Agreement for Judgment.

By copy of this letter to Mike Bliss, I am sending him a copy of the attested Agreement for Judgment and Motion.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Eric W. Wodlinger".

Eric W. Wodlinger, P.C.

EWV:tkd
Enclosure

cc: Michael D. Bliss, Esq. (w/enc.)
Sarah Hunt Broughel, P.C. (w/o enc.)

ALLOWED
(Piper, J)
JUSTICE

COMMONWEALTH OF MASSACHUSETTS

MR. Session Clerk
LAND COURT
MISCELLANEOUS 281116

SUFFOLK, ss:

HOME DEPOT U.S.A., INC.

Plaintiff

v.

THE CAPE COD COMMISSION

Defendants

I HEREBY ATTEST AND CERTIFY ON
June 18, 2003 THAT THE
FOREGOING DOCUMENT IS A FULL
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY.

ANN-MARIE J. BREUER
DEPUTY RECORDER
LAND COURT

BY Melissa Chynoweth
T. K. Examiner II
Land Court

MOTION FOR ENTRY OF JUDGMENT

The parties move, pursuant to Massachusetts Rule of Civil Procedure 58(a), that the Agreement for Judgment attached hereto be entered as the judgment of the Court. The grounds for this motion are that the parties have reached an agreement which resolves all of the issues raised in this litigation and wish to have that agreement entered as the judgment of the Court. The Agreement for Judgment attached hereto has been signed by both parties and by their counsel.

THE CAPE COD COMMISSION

By its attorneys,

Eric W. Wodlinger
BBO 531960
Choate, Hall & Stewart
53 State Street
Boston, Massachusetts 02109
(617) 248-5000

HOME DEPOT U.S.A., INC.

By its attorneys,

Leonard M. Singer
BBO 464600
Craighead Glick LLP
277 Dartmouth Street
Boston, Massachusetts 02116
(617) 859-8200

b

AGREEMENT FOR JUDGMENT

This Agreement for Judgment (Agreement) is entered into this 19th day of May, 2003 by and between the Cape Cod Commission (Commission) and Home Depot U.S.A., Inc. (Home Depot).

WHEREAS, Home Depot is engaged in the business of the retail sale of goods; and

WHEREAS, the Commission is a Massachusetts county agency established by Chapter 716 of the Acts and Resolves of 1989, as amended (Act); and

WHEREAS, Home Depot proposes to develop a so-called "Home Depot Lite" store consisting of approximately 79,995 square feet of ground floor area and 2,105 square feet of mezzanine space (including demolition of the existing 14,000 square foot mezzanine) as shown on a plan entitled "Home Depot USA, Inc., Store Number 2612, Hyannis, Massachusetts, 65 Independence Drive," prepared by Greenberg Farrow Architecture, Engineering, Planning, and dated 3/4/02 and last revised 3/28/03, Sheet titled "Floor Plans," Sheet Number A1.0, (Plan)(Exhibit A) in a vacant retail building together with associated parking and access (Project) formally occupied by Bradlees at 65

Independence Drive, Southwind Plaza, in the Town of Barnstable, Massachusetts

(Premises); and

23 pages

I have reviewed and certify on June 18, 2003 THAT THE FOREGOING DOCUMENT IS A FULL TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.

ANN-MARIE J. BREUER
DEPUTY RECORDER
LAND COURT

W. [Signature]
Land Court
The Examiner II

WHEREAS, an example of a “Home Depot Lite” store exists in Staten Island, New York and represents a departure from traditional or customary Home Depot retailing in terms of the store’s size, inventory, and product racking system and other features; and,

WHEREAS, the Project is located within a Wellhead Protection Area/District identified by the Commission’s 1996 Regional Policy Plan (RPP); and

WHEREAS, the RPP prohibits greater than household quantities of hazardous materials in Wellhead Protection Areas/Districts;

WHEREAS, the quantity of hazardous materials and hazardous wastes attributable to the former Bradlees at the Premises is unresolved; and,

WHEREAS, Home Depot maintains that the Project does not constitute a Change of Use under the Commission’s Regulations and that the Commission does not have jurisdiction over the Project; and

WHEREAS, on or about April 18, 2002, the Commission voted to assert jurisdiction over the proposed Project pursuant to Section 12(h) of the Act; and

WHEREAS, on or about May 21, 2002 Home Depot filed a complaint in the Land Court Department of the Trial Court, Docket # Misc. 28116 appealing the Commission’s assertion of jurisdiction; and

WHEREAS, the issue of the jurisdiction of the Commission with respect to the Project is unresolved; and

WHEREAS, the parties hereto wish to settle this litigation and enter into an agreement resolving all issues concerning Home Depot's development of the Project;

NOW THEREFORE, the parties hereto stipulate and agree as follows:

1. Home Depot shall be permitted to use and occupy the Premises for retail uses as allowed under the Barnstable Zoning Ordinance, as the same may be amended from time to time, together with uses (such as parking) customarily accessory thereto, such uses also to be in accordance with the terms and conditions of this Agreement.
2. The parties agree that Home Depot shall not keep and maintain on the Premises at any time more than 36,319 gallons of Hazardous Materials, of which no more than 5,000 gallons shall be Type 1 Hazardous Materials as that term is defined in paragraph 3 below.
3. For the purposes of this Agreement for Judgment, Type 1 Hazardous Materials shall mean those inventory items classified in the Home Depot categories (identified by Department, Class, and Subclass) listed in the attached Exhibit B-

1, together with those specific inventory items listed in the attached Exhibit B-2. In general these Type 1 Hazardous Materials are materials that, based on the best available information: 1) contain solvents, oil-based paints, petroleum products, pesticides, herbicides or other substances; and 2) are likely, by virtue of their physical state and environmental mobility, to result in groundwater contamination if spilled or otherwise released to the environment. For the purposes of this Agreement those inventory items classified in the Home Depot categories (identified by Department, Class, and Subclass) listed in the attached Exhibit B-3 together with those specific inventory items listed in the attached Exhibit B-4, shall be deemed to be Type 2 Hazardous Materials. For purposes of this Agreement, Hazardous Materials (“Hazardous Materials”) shall mean those materials that are Type 1 Hazardous Materials or Type 2 Hazardous Materials as set forth above.

4. The two limitations on the volume of Hazardous Materials set forth herein (i.e., a total store inventory of no more than 36,319 gallons of Hazardous Materials, of which no more than 5,000 gallons may be Type 1 Hazardous Materials) are intended as overall, total caps neither of which shall be exceeded. These limitations would be equally reached, for example, with respect to Type 1 Hazardous Materials, whether Home Depot maintained an inventory consisting of 5,000 gallons of a single product or 100 products whose combined volume was 5,000 gallons.

5. Prior to opening the store, Home Depot, or its designee shall provide to the Executive Director of the Commission (Executive Director), the name of the store manager and an inventory of all Type 1 and Type 2 Hazardous Materials that will be present upon opening. Said inventory shall be formatted to include the common name of each product, the manufacturer or supplier, the type of product, and Home Depot's relevant stock keeping unit (SKU) or goods inventory code. It shall also be formatted consistent with the Exhibits attached to this Agreement, and with the compliance tool developed by Home Depot. At this time Home Depot shall also provide to the Executive Director a memorandum describing Home Depot's standard operating procedures for assuring in-store compliance on a day-to-day operating basis with the limitations on Hazardous Materials set forth in this Agreement (the "Hazmat SOP"). Home Depot shall also provide to the Executive Director copies of any significant revisions of the Hazmat SOP within 30 days of such revision.

6. Home Depot shall within 30 days after completion of its annual inventory each year, file a detailed annual inventory performed by a third party contractor and/or company that specializes in conducting inventories for retail firms, substantially in the form of the spreadsheets in Exhibits B-1 through B-4 attached hereto, of all Type 1 and Type 2 Hazardous Materials on site and gallonage with the Executive Director (the "Annual Hazardous Materials Report"). Home Depot shall also provide to the Commission an inventory of all Type 1 and Type 2 Hazardous Materials on site on a quarterly basis within

30 days after the close of each quarter. Such quarterly inventory report shall be consistent with the Exhibits attached to this Agreement and with the compliance tool referenced in paragraph 7 below. Such quarterly inventory reports shall also include, during the first year following store opening, monthly totals of Type 1 Hazardous Materials and total Hazardous Materials for each quarter. All such reports shall include notice of any change, reformulation or new products in accordance with paragraph 9 below.

7. Home Depot shall develop and use a compliance tool for implementing this Agreement in consultation with Commission staff. Such tool shall be at least a computerized database using Microsoft ACCESS or other similar program. Such database and tool shall provide for appropriate quarterly reports. It shall also be used with the annual third-party inventory.

8. The Commission or its agents may at any time enter upon the Premises during Home Depot's normal operating hours and undertake an inspection to determine Home Depot's compliance with the limitations set forth in this Agreement. Immediately upon making such an entry for the purpose of such inspection, the Commission or its agents shall notify Home Depot's on-site manager and shall be allowed unlimited access to all retail areas of the Premises, including storage areas, and to records reasonably related to the matters addressed in this Agreement.

9. When Home Depot adds a new or reformulated item to inventory which is a hazardous material as that term is defined in the Commission's Regional Policy Plan dated November 1996 such item shall be initially classified by Home Depot as a Type 1 or Type 2 Hazardous Material consistent with paragraph 3 above (Assessment). Home Depot shall provide notice of such items in the quarterly report for the quarter in which such item is added to inventory, such notice to be in the form of an Exhibit B-5 thereto. Such notice shall include Home Depot's Assessment and the Material Safety Data Sheets (MSDS) for all items that it classifies as Type 2. If the Commission does not respond in writing to Home Depot within 45 days of the date the quarterly report is received by the Commission's office, such Assessment shall be deemed to have been accepted by the Commission. If the Commission disagrees with an Assessment it shall so notify Home Depot within said 45 days and Home Depot shall modify the inventory to remain within the Type 1 and total limits set forth in paragraph 2 of this Agreement, treating the new or reformulated product as a Type 1 Hazardous Material.

10. The Commission shall have the right to utilize the assistance of a third party to analyze Home Depot's Assessment, to analyze the annual or quarterly reports or to assist in its inspections.

11. Home Depot shall operate the Project in accordance with the following: 1)
The Project will occupy only 79,995 square feet of ground floor space and

2,105 square feet of mezzanine space within the existing building; 2) The Project will have no outdoor sale or storage of inventory and all inventory (for sale and in storage) shall be kept within the building; 3) The Project will utilize store racking with shelving no more than 12 feet in height; 4) the store will have no public food vending (although vending machines are allowed); 5) there will be no increase in floor space and no increase in the existing building footprint for the operation of the store; 6) all forklift trucks will operate on electricity/batteries or propane gas.

12. Home Depot shall determine where the existing trench drain at the loading dock discharges. Regardless of the discharge point of this trench drain, Home Depot shall install a cutoff valve in the discharge line from the trench drain. If technically feasible, this valve will be controlled by an automated system that closes the valve when freight is delivered to the loading dock area. If this is not technically feasible, a manually operated cutoff valve will be installed. Home Depot will rehabilitate the existing trench drain so that it functions as designed. If the existing trench drain cannot be rehabilitated and needs to be excavated and replaced with a new drain structure, Home Depot will also install in conjunction with this new drain structure a gasoline and sand trap (an "MDC trap" or its functional equivalent) if: a) approval of the installation of the trap may reasonably be obtained under the terms of Home Depot's lease; and b) no special approvals (beyond a town building permit, plumbing permit or other like approval) are needed from, and no special conditions will

be imposed by the town or the Commonwealth to install this trap. Home Depot will implement a standard operating procedure requiring a Home Depot employee to confirm that the cut-off valve is closed during all deliveries. Home Depot will maintain a supply of spill remediation and/or containment materials (i.e., sorbents, absorbent socks, or booms) in a location convenient to the loading dock. Home Depot will ensure that the depression at the loading dock will provide containment for at least 24 cubic feet (180 gallons) of material. This containment will be provided by the existing paved, depressed area, provided that Home Depot will: a) repave/ reconstruct/ seal the loading dock area as necessary to provide an unbroken concrete and/or bituminous paved surface in the containment area; and b) submit a measured drawing, prepared by GZA GeoEnvironmental, demonstrating that the containment area can contain the required volume. Prior to the opening of the store, Home Depot shall provide the Executive Director with construction plans and drawings of the containment system stamped and sealed by a registered professional engineer (RPE) and with a professional opinion, signed by the same RPE that, as built, the depression in the loading dock has the capacity to contain spillage of at least 180 gallons of Type 1 Hazardous Materials for 24 hours without releasing it to the ground or groundwater and with evidence of compliance with this paragraph and paragraph 15 below.

13. Home Depot shall undertake employee training at the Premises designed to educate employees about the appropriate response to spills or releases of

hazardous materials in the store. This training shall be provided to all store employees within two months of hire, and at least annually thereafter for the duration of the employee's tenure at Home Depot. Home Depot shall maintain in the store at all times a spill response kit that provides tools and other equipment sufficient to remediate a spill or release in the store of hazardous materials other than that caused by a fire or release of the fire suppression system. Home Depot shall establish and maintain hazardous material operating practices and procedures and emergency spill control plans as set forth in the following documents, as the same may be amended from time to time, copies of which have been delivered to the Commission:

- a. Home Depot Hazardous Waste Reference Manual (9/02)
- b. Home Depot Hazardous Products Contingency Plan (January 2002)
- c. The Employee's Right to Know About Hazardous Materials
- d. Home Depot Manager's Safety Reference Guide
- e. Handling Hazardous Materials (Video) (9/30/02)

14. Home Depot shall continuously maintain a contract with a qualified, licensed hazardous materials/hazardous waste response company to provide for spill response/cleanup in the event of a spill of hazardous materials in the store and for post-event response in the event of a fire or accidental release of the fire suppression system. Prior to the opening of the store, Home Depot shall provide to the Executive Director evidence of this contract. Home Depot shall advise the Commission in writing of any changes in the future relative to this condition, including, but not limited to the expiration of a contract or a change in the vendor providing this service to Home Depot.

15. Home Depot shall construct and install the following improvements to reduce potential impacts to groundwater from Hazardous Materials: 1) The floor of the Premises shall be constructed in accordance with the Massachusetts State Plumbing Code and as shown in the Plan to eliminate all floor drains within the containment area shown on Exhibit A (some bathrooms and the fire suppression closet may have floor drains but they will be outside the containment area). The improvements will include an oil/chemical resistant high density polyethylene (HDPE) liner system, or its equivalent, under the floor with a slope inward from the perimeter, so that the lowest point in the center is approximately 1.8 inches below the highest point at the perimeter, and so as to be capable of retaining approximately 57,000 gallons of liquid in the event of an accidental spill, fire or similar event; and 2) as set forth in paragraph 12 above certain improvements will be made to the loading dock trench drain so that any accidental spills of Hazardous Materials which might occur during delivery can be contained. Prior to the opening of the store Home Depot shall provide the Executive Director with construction plans, drawings and specifications and with evidence of compliance with this paragraph 15.

16. Home Depot shall, within ninety (90) days of the execution and filing of this Agreement, contribute the amount of \$20,000 to the Town of Barnstable to fund a mutually agreeable educational program in the Barnstable School system concerning hazardous materials and wastes and their impact on the

drinking water supply, or to support the inspection and enforcement efforts of the Barnstable Health Department with respect to proper hazardous materials and hazardous waste management in the Town of Barnstable.

17. Home Depot will work through its Community Affairs Coordinator with the Commission to support programs aimed at educating purchasers of home improvement materials in the responsible use and disposal of hazardous materials.
18. Within two years of the opening date of the Project, Home Depot and the Executive Committee of the Commission shall meet to assess the reporting required in this Agreement in light of the information base and experience developed by that time and may modify the reporting schedule by mutual consent.
19. The Commission agrees that the Town of Barnstable may forthwith, upon the execution and filing of this Agreement, issue any and all permits and approvals for the Project, including a Certificate of Occupancy.
20. In the event that the Commission or its agents determine that Home Depot has violated the provisions of this Agreement, then the Commission shall be entitled to commence an appropriate action in court against Home Depot and

to recover its costs and attorney fees for such proceedings if the Court determines Home Depot has violated the terms of this Agreement.

21. Home Depot will notify the Commission in writing thirty days before: 1) any change in the occupancy of the Premises, as per either the Barnstable Zoning ordinance or the State Building Code; or 2) any change in the identity of the tenant.
22. This Agreement shall be binding on Home Depot's successors and assigns. The Commission reserves the right to assert DRI jurisdiction over any successor, assignee or subsequent tenant whose operations would constitute a change of use.
23. Home Depot and the Commission acknowledge that the terms and conditions set forth in this Agreement contemplate interactions between Home Depot and the Commission over an extended period of time and agree to act in good faith in the exercise of their respective rights and obligations hereunder.
24. Home Depot hereby withdraws without prejudice all claims in its complaint in this matter other than those that may arise from the violation of this Agreement.

Executed under seal by the authorized representatives of Home Depot U.S.A., Inc. and the Cape Cod Commission this 19 day of May, 2003.

For the Cape Cod Commission,

Robert D. Deane
Robert Deane, Chair

5/15/03
Date

COMMONWEALTH OF MASSACHUSETTS

County of Barnstable

Then personally appeared the above-named Robert Deane, Chair of the Cape Cod Commission and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Cape Cod Commission, before me,

My commission expires:

Dorr Steven Fox
Notary Public

5/15/03



For Home Depot U.S.A., Inc.

Cynthia Warren
Cynthia Warren
Corporate Counsel

5.19.03
Date

COMMONWEALTH OF MASSACHUSETTS

County of Norfolk, ss

Then personally appeared the above-named Cynthia Warren, the Corporate Counsel of Home Depot U.S.A., Inc., and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of said Home Depot U.S.A., Inc., before me,

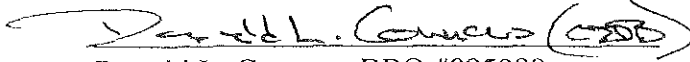
My commission expires:

Karen A. Auld
Notary Public

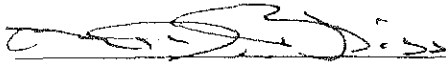
5.19.03
Date

KAREN A. AULD
NOTARY PUBLIC
My Commission Expires April 21, 2006

Home Depot U.S.A., Inc.
By its Attorneys,

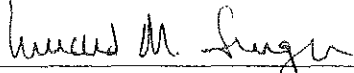


Donald L. Connors, BBO #095880



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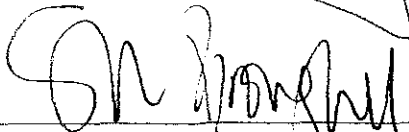
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Cape Cod Commission
By its Attorneys,



Eric W. Wodlinger, BBO#531960



Sarah H. Broughel, BBO#637595

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Boston, MA 02109-2891
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EXHIBIT B-1: HOME DEPOT CATEGORIES TO BE CONSIDERED TYPE 1

Dept.	Dept Name	Class	Class description	Subclass	Subclass description
23	Flooring	2	CARPETING	11	TOOLS/ACCESS/ADHESIVES
23	Flooring	11	LAMINATE FLOORING	5	LAMINATE ACCESS & TOOLS
23	Flooring	12	CARPET CLEANING	4	CLEANING CHEMICALS
24	Paint	3	SPRAY PAINT	3	GENERAL PURPOSE
24	Paint	3	SPRAY PAINT	3	CLEANERS
24	Paint	3	SPRAY PAINT	4	TRAFFIC/MARKINGS/SAFETY
24	Paint	3	SPRAY PAINT	4	RUST PREVENTATIVE
24	Paint	3	SPRAY PAINT	5	SPECIALTY/DECOR
24	Paint	3	SPRAY PAINT	5	SPECIALTY
24	Paint	3	SPRAY PAINT	6	PRIMERS/PROFESSIONAL
24	Paint	3	SPRAY PAINT	10	PROFESS/TRAFFIC/MARKETNG
24	Paint	3	SPRAY PAINT	13	SPECIALTY-PROFESSIONAL
24	Paint	4	ADHESIVES	6	CONTACT CEMENT
24	Paint	11	EXT STAINS/WATERSEALERS	2	EXTERIOR SOLID STAIN
24	Paint	11	EXT STAINS/WATERSEALERS	3	DECK/TONERS
24	Paint	11	EXT STAINS/WATERSEALERS	4	WATERSEALERS
24	Paint	11	EXT STAINS/WATERSEALERS	7	EXT SEMI TRNSPRNT STAIN
24	Paint	13	INTERIOR STAINS	2	INT OIL-WIPING STAIN
24	Paint	13	INTERIOR STAINS	3	WATERBORN STAIN
24	Paint	13	INTERIOR STAINS	4	GEL STAIN
24	Paint	13	INTERIOR STAINS	7	OILS/CONDITIONERS
24	Paint	13	INTERIOR STAINS	8	STAIN-CLEAR BLEND
24	Paint	14	INTERIOR CLEARS	2	OIL POLYURETHANE
24	Paint	14	INTERIOR CLEARS	3	WATERBORN CLEAR
24	Paint	14	INTERIOR CLEARS	5	SHELLAC/LAQUERS/SPECIAL
24	Paint	15	INTERIOR PAINT	8	HI-GLOSS
24	Paint	15	INTERIOR PAINT	9	TEXTURE
24	Paint	15	INTERIOR PAINT	11	MISC/ADDITIVES
24	Paint	16	EXTERIOR PAINT	4	SATIN
24	Paint	16	EXTERIOR PAINT	8	DRIVEWAY/FLOOR
24	Paint	17	PERFRMNCE ENAMEL/BRSH ON	2	GENERAL PURPOSE/DECORATIVE
24	Paint	17	PERFRMNCE ENAMEL/BRSH ON	3	RUST PREVENTATIVE
24	Paint	17	PERFRMNCE ENAMEL/BRSH ON	4	TRAFFIC/MARKINGS/SAFETY
24	Paint	22	INTERIOR/EXTERIOR	5	GLOSS
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	2	SOLVENTS
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	4	REMOVERS-SOLVENTS
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	5	REMOVERS-CITRUS
25	Hardware	6	MISCELLANEOUS POWER	8	LUBRICANTS/GREASE/FUNNEL
26	Plumbing	7	PLUMBING REPAIR & REPLAC	7	DRAIN OPENERS/CHEMICAL
27	Electrical	11	TOOLS & ACCESSORIES	6	LUBES/PROPELLANTS/TAPES
28	Garden/Seasonal	1	CHEMICALS	2	INDOOR INSECT CONTROL
28	Garden/Seasonal	1	CHEMICALS	3	OUTDOOR INSECT CONTROL
28	Garden/Seasonal	1	CHEMICALS	4	NON-SELECTIVE HERBICIDES
28	Garden/Seasonal	1	CHEMICALS	5	SELECTIVE HERBICIDES
28	Garden/Seasonal	1	CHEMICALS	29	FLYING/WASP & HORNET
28	Garden/Seasonal	1	CHEMICALS	31	TERMITE & CARPENTER ANT
28	Garden/Seasonal	5	POWER EQUIPMENT	29	OIL/FLUIDS
59	Décor	19	WALLPAPER ADHESIVE/TOOLS	4	PRIMERS

EXHIBIT B-2: INDIVIDUAL ITEMS CONSIDERED TYPE 1

Dept	Dept Name	Classes	Class description	Subclass	Subclass description	ClientMFGName	ClientProductDesc
24	Paint	15	INTERIOR PAINT	2	PRIMERS	EMERY-INTERIOR PAINT	PERMAWHITE WALL/CEIL S/G-QT
24	Paint	15	INTERIOR PAINT	2	PRIMERS	MASTERCHEM INDUSTRIES	KILZ PRIMER-QUART / OIL
24	Paint	15	INTERIOR PAINT	2	PRIMERS	MASTERCHEM INDUSTRIES, INC.	KILZ PRIMER-1 GALLON / OIL
24	Paint	15	INTERIOR PAINT	2	PRIMERS	MASTERCHEM INDUSTRIES, INC.	KILZ PRIMER-5 GALLON / OIL
24	Paint	15	INTERIOR PAINT	2	PRIMERS	WILLIAM ZINSSER CO.	PERMAWHT BATHWALL & CEILING S/G GAL
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	ZEP/ENFORCER	ZEP DRIVEWAY/CONCRETE CLEANER-GAL
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	ATLANTA SUNDRIES	GOOF-OFF 2 16OZ TRIGGER SPRAY
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	GUARDSMAN PRODUCTS, INC.	GOOF OFF 16 OZ - EZ POUR
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	GUARDSMAN PRODUCTS, INC.	GOOF OFF CARDED 4.5 OZ
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	MUMBY & ASSOCIATES LTD.	GOOF-OFF -4.5 OZ.
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	8 OZ CLEANER
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	8 OZ. NSF/UPC PURPLE PRIMER
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	PURPLE PRIMER NSF 16OZ
28	Garden/Seasonal	22	BBQ GRILL	6	CHARCOAL / STARTERS	KINGSFORD CO	64OZ LIGHTER FLUID METAL CAN

EXHIBIT B-3: HOME DEPOT CATEGORIES TO BE CONSIDERED TYPE 2

Dept	Dept Name	Class	Class description	Subclass	Subclass description
21		7	LANDSCAPE	6	SPECIALTY
22	Building Materials	4	INSULATION	5	FOAM
22	Building Materials	9	CONCRETE	2	BAG GOODS
22	Building Materials	9	CONCRETE	8	ACCESSORIES/REPAIR
22	Building Materials	10	ROOFING	3	MINERAL SURFACE ROLLS
22	Building Materials	10	ROOFING	6	ROOF COATINGS
22	Building Materials	10	ROOFING	11	METAL GUTTER
22	Building Materials	12	GYPSUM	3	JOINT TREATMENT
23	Flooring	4	VINYL FLOORING	6	VINYL ADHESIVES
23	Flooring	10	WOOD FLOORING	4	WOOD ADHES/ACCES/TOOLS
23	Flooring	14	TILE SET MATERIALS/TOOLS	2	ADHESIVES
23	Flooring	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS
23	Flooring	35	PATCHING	2	READY MIX
24	Paint	1	CONSTRUCTION ADHESIVE	2	GEN PURPOSE-LIGHT DUTY
24	Paint	1	CONSTRUCTION ADHESIVE	4	SUBFLOOR
24	Paint	1	CONSTRUCTION ADHESIVE	5	SPECIALTY
24	Paint	1	CONSTRUCTION ADHESIVE	10	GEN PURPOSE-HEAVY DUTY
24	Paint	1	CONSTRUCTION ADHESIVE	12	POLYURETHANES
24	Paint	2	CAULKS	2	LATEX
24	Paint	2	CAULKS	3	SILICONES
24	Paint	2	CAULKS	4	TUB & TILE SILICONE
24	Paint	2	CAULKS	5	SPECIALTY
24	Paint	2	CAULKS	8	LATEX/SPECIALTY
24	Paint	2	CAULKS	10	TUB & TILE LATEX
24	Paint	4	ADHESIVES	3	WOOD GLUES
24	Paint	4	ADHESIVES	12	POLYURETHANES
24	Paint	4	ADHESIVES	13	CARDED-SUPER GLUE
24	Paint	4	ADHESIVES	14	CARDED-HOUSEHOLD
24	Paint	4	ADHESIVES	15	CARDED-EPOXIES
24	Paint	12	WATERPROOFERS	3	READY-MIX
24	Paint	12	WATERPROOFERS	4	NON READY MIX
24	Paint	15	INTERIOR PAINT	3	CEILING PAINT LTX
24	Paint	15	INTERIOR PAINT	4	FLAT/MATTE LTX
24	Paint	15	INTERIOR PAINT	5	EGGSHELL LTX
24	Paint	15	INTERIOR PAINT	6	SATIN LTX
24	Paint	15	INTERIOR PAINT	7	SEMI GLOSS LTX
24	Paint	15	INTERIOR PAINT	10	FAUX/SPECIALTY LTX
24	Paint	19	WALLPAPER ADHESIVE/TOOLS	2	ADHESIVES

EXHIBIT B-3: HOME DEPOT CATEGORIES TO BE CONSIDERED TYPE 2

Dept	Dept Name	Class	Class description	Subclass	Subclass description
24	Paint	22	INTERIOR/EXTERIOR	2	PRIMERS LTX
24	Paint	35	PATCHING	2	READY MIX
24	Paint	35	PATCHING	3	BAG GOODS
24	Paint	35	PATCHING	4	WOOD FILLERS-LATEX
24	Paint	35	PATCHING	5	WOOD FILLERS-SOLVENT
25	Hardware	1	HAND TOOLS	16	MARKING & LAYOUT TOOLS
25	Hardware	6	MISCELLANEOUS POWER	10	SOLDER
26	Plumbing	1	PIPE AND FITTINGS	22	SOLDERS
26		1	PIPE AND FITTINGS	23	SOLDERS
26	Plumbing	2	AIR CIRCULATION/ACCES.	11	RADIATOR PARTS
28	Garden/Seasonal	1	CHEMICALS	6	ORGANICS
28	Garden/Seasonal	1	CHEMICALS	9	ICE MELT / SALT
28	Garden/Seasonal	1	CHEMICALS	11	RODENT CONTROL
28	Garden/Seasonal	1	CHEMICALS	28	ANIMAL CONTROL
28	Garden/Seasonal	2	FERTILIZERS	3	ALL PURPSE/FLWRNG/VEG/HP
28	Garden/Seasonal	2	FERTILIZERS	4	LAWN FERTILIZERS
28	Garden/Seasonal	3	LANDSCAPE	10	AMENDMENTS/COMPOST
28	Garden/Seasonal	3	LANDSCAPE	16	INDOOR SOIL
28	Garden/Seasonal	3	LANDSCAPE	18	LIME/GYPSUM
28	Garden/Seasonal	4	CLEANING	4	CLEANING CHEMICALS
28	Garden/Seasonal	4	CLEANING	9	WINDOW CLEANING CHEMICAL
28	Garden/Seasonal	4	CLEANING	10	CARPET CLEANING CHEMICALS
28	Garden/Seasonal	4	CLEANING	14	DEGREASERS
28	Garden/Seasonal	6	SEED	4	GRASS PATCH/REPAIR/MATS
28	Garden/Seasonal	7	PLUMBING REPAIR & REPLAC	7	DRAIN OPENERS/CHEMICAL
28	Garden/Seasonal	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS
29	Kitchen/Bath	25	IN STOCK KITCHEN & ACCES	5	KITCHEN ACCESS/TABLEWARE
29	Kitchen/Bath	26	COUNTER TOPS	3	TOOLS/CAULK/MISC
59	Décor	19	WALLPAPER ADHESIVE/TOOLS	2	ADHESIVES

EXHIBIT B-4: INDIVIDUAL ITEMS CONSIDERED TYPE 2

Dept	Dept Name	Class	Class description	Subclass	Subclass description	ClientMFGName	ClientProductDesc
24	Paint	15	INTERIOR PAINT	2	PRIMERS	GLIDDEN COMPANY PROPAIN	SPEEDWALL INT LTX PVA PRIMER 5 GAL
24	Paint	15	INTERIOR PAINT	2	PRIMERS	WILLIAM ZINSSER CO.	B-I-N PRIMER-SEALER PT / LTX
24	Paint	15	INTERIOR PAINT	2	PRIMERS	MASTERCHEM INDUSTRIES	KILZ TOTAL ONE PRIMER GAL / LTX
24	Paint	15	INTERIOR PAINT	2	PRIMERS	MASTERCHEM INDUSTRIES	KILZ TOTAL ONE PRIMER QT / LTX
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	JOMAPS INC.	M-1 HOUSE WASH GALLON
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	JOMAPS INC.	M-1 HOUSE WASH QUART
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	MINWAX COMPANY	WOOD CLEANER 32 OZ PUSH/PULL
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	MINWAX COMPANY	WOOD CLEANER TRIGGER 22 OZ
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	ORANGE-SOL/BLIND BRITE	16 OZ PUMP SPRAY CLEANER
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	BEHR PROCESS CORP	DECK & MILDEW STAIN REMOVER 1 GAL
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	LOCTITE CORPORATION	NAVAL JELLY RUST REMOVER TRIGGER 12Z
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	MAGIC AMERICAN CORPORATION	GOO GONE -1 OZ
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	MAGIC AMERICAN CORPORATION	GOO GONE -8 OZ
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	LOCTITE CORPORATION	STEEL AND ALUMINUM EPOXY 1 FL OZ
24	Paint	34	SOLVENTS/REMOVERS/CLEANR	3	CLEANERS	PERMATEX INDUSTRIAL	FAST ORANGE GALLON PUMP W/PUMICE
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	HERCULES CHEMICAL CO.	14OZ. STA-PUT PUTTY
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	HERCULES CHEMICAL COMPANY, INC.	1/2GAL. FURNACE CEMENT
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	HERCULES CHEMICAL COMPANY, INC.	1/2PT. PRO DOPE
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	HERCULES CHEMICAL COMPANY, INC.	1/2PT. REAL TUFF
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	16 OUNCE HEAVY DUTY PVC CEMENT
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	4 OZ EPOXY PUTTY
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	4 OZ PIPE JT. COMP WITH TEFLON
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	4 OZ THREAD SEALANT W/TEFLON
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	8 OZ PVC CEMENT&PRIMER HANDI-PAK
26	Plumbing	1	PIPE AND FITTINGS	21	PIPE CHEMICALS	OATEY	8 OZ REGULAR PVC CEMENT
28	Garden/Seasonal	22	BBQ GRILL	6	CHARCOAL / STARTERS	KINGSFORD CO	KINGSFORD CHARCOAL 48LB TWIN PACK
28	Garden/Seasonal	22	BBQ GRILL	6	CHARCOAL / STARTERS	KINGSFORD CO	KINGSFORD MATCHLIGHT 20 # CHARCOAL

INCUMBENCY/SECRETARIAL CERTIFICATE

The undersigned Assistant Secretary of Home Depot U.S.A., Inc., a Delaware corporation (the "Corporation"), hereby certifies:


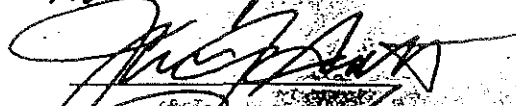
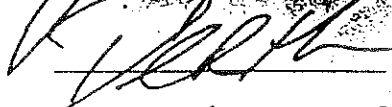


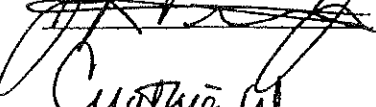
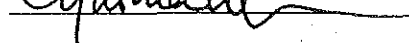
1. That the resolutions below constitute a true and correct copy of the resolutions contained in the Home Depot U.S.A., Inc. Unanimous Written Consent of the Board of Directors in Lieu of A Special Meeting, effective November 15, 2002, and that these resolutions have not been amended, annulled, rescinded or revoked and remain in full force and effect as of the date hereof.

RESOLVED, that the Executive Vice President, Secretary and General Counsel, the Senior Vice President-Real Estate, the Vice President-Real Estate Law Group, Chief Counsel-Real Estate, each Senior Corporate Counsel-Real Estate, each Corporate Counsel-Real Estate, and each of them acting alone or together, or their duly delegated designees, are hereby authorized and directed, in the name of the Corporation, to take such steps as are necessary or desirable to effect the Corporation's policy of expansion and maintenance of its properties including, but not limited to, the acquisition, disposition or financing of real estate, the execution of Leases, Reciprocal Easement Agreement, Development Agreements, Easements, Servitudes, Right of Way, Assignments and any amendments or modifications to the foregoing, or any other instrument required to accomplish the aforesaid Corporate purposes; and

FURTHER RESOLVED, that the Executive Vice President, Secretary and General Counsel, the Senior Vice President-Real Estate, the Vice President-Real Estate Law Group, Chief Counsel-Real Estate, each Senior Corporate Counsel-Real Estate, each Corporate Counsel-Real Estate and each of them acting either alone or together, or their duly delegated designees, are hereby authorized and directed, in the name of the Corporation, to take, or cause to be taken, any and all actions and to execute and deliver any and all such other contracts, assignments, easements, conveyances, deeds, leases, subleases, agreements, certificates, instruments or any other documents as such individual or delegated designee may consider necessary or desirable to carry out the foregoing resolution and the transactions contemplated thereby; and

FURTHER RESOLVED, that these resolutions hereby revoke and supersede any other resolutions that heretofore granted the delegation of corporate authority to execute and deliver real estate documents by and on behalf of the Corporation.

2. The persons named below were on the date hereof the duly designated and qualified signatories of the Corporation, as set opposite his or her respective name, and that the signature appearing opposite his or her name, is the genuine facsimile signature of said signatory:

Name	Title	Signature
Michael R. Folio	Senior Vice President Real Estate	
James J. Scott	Chief Counsel – Real Estate	
Daniel R. Hatch	Senior Corporate Counsel Real Estate	
Jeff A. Israel	Senior Corporate Counsel Real Estate	
Randall H. Stephens	Senior Corporate Counsel Real Estate	
Jacob R. Pritcher, Jr.	Corporate Counsel Real Estate	
Cynthia Warren	Corporate Counsel Real Estate	

IN WITNESS WHEREOF, the undersigned has hereunto affixed the seal of the Corporation and set his/her signature, on this, the 13th day of May, 2003.

[CORPORATE SEAL]




Name: Mary Beth Lamoree
Title: Assistant Secretary