

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

LAND COURT
Misc. 281116

 *
 HOME DEPOT U.S.A., INC. *
 *
 Plaintiff *
 *
 v. *
 *
 THE CAPE COD COMMISSION *
 *
 Defendant *
 *

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M.R.B. 1132 PAGE 51

**MOTION FOR RELIEF FROM JUDGMENT
 AND FOR ENTRY OF AMENDED JUDGMENT**

The parties move, pursuant to Massachusetts Rules of Civil Procedure 58(a) and 60(b)(5) and (6), that the judgment which entered on July 25, 2003 be vacated and that a new judgment in the form attached hereto be entered. The July 25, 2003 judgment was entered pursuant to an agreement between the parties settling all of their differences and specifically provided in paragraph 18 thereof that the parties would meet to review and reassess the reporting and other requirements of their Agreement in light of information and experience developed during the first two years that the Agreement was in effect.. The parties have made such a reassessment and now wish to amend the agreement to reclassify certain products which have minimal hazardous characteristics and to modify certain reporting and other requirements in light of the parties' actual experience with the Agreement. Accordingly, the parties have amended and restated the Agreement which was the predicate for the July 2003 judgment. As a result it is no longer equitable that the July 2003 judgment have prospective application and there are good and

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sufficient reasons justifying relief from the operation of that judgment. Instead, the parties desire that their agreement as amended and restated become the judgment of the Court.

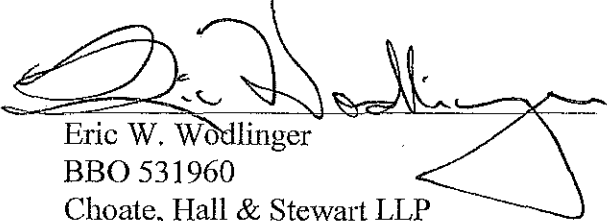
For the foregoing reasons, the parties respectfully request that the 2003 judgment be vacated and that a new judgment in the form attached hereto enter.

THE CAPE COD COMMISSION

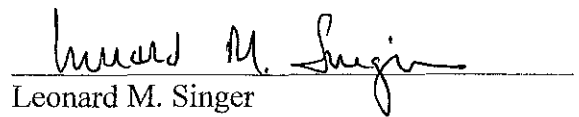
HOME DEPOT U. S. A., INC.

By its attorneys,

By its attorneys,



Eric W. Wodlinger
BBO 531960
Choate, Hall & Stewart LLP
Two International Place
Boston, Massachusetts 02110
617-248-5000



Leonard M. Singer
BBO 464600
101 Arch Street, Ninth Floor
Boston, Massachusetts 02110
617-737-7670

12-8-06

AMENDED AND RESTATED AGREEMENT FOR JUDGMENT

This Amended and Restated Agreement for Judgment (hereafter the "Amended Agreement") is entered into as of this 27th day of November 2016 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 has proposed 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

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 was, at the time of the 2003 Agreement (as defined below), unresolved; and,

WHEREAS, Home Depot maintained (at the time of the said 2003 Agreement) that the Project did not constitute a Change of Use under the Commission's Regulations and that the Commission did 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 was, at the time of the said 2003 Agreement, unresolved; and

WHEREAS, on or about May 19, 2003, the Commission and Home Depot wished to settle the above-referenced litigation and to enter into an agreement resolving all issues concerning Home Depot's development of the Project and accordingly entered into and executed that certain Agreement for Judgment in Land Court Misc. Case No 281116 dated as of May 19, 2003 and allowed by the Land Court on June 10, 2003 and recorded with the Barnstable County Registry of Deeds in Book 17732, Page 51 (hereafter the "2003 Agreement"); and

WHEREAS, the 2003 Agreement limited the quantities of certain products that met the Commission's definition of Hazardous Materials, as set forth in the said 2003 Agreement, that could be kept or maintained on the Premises at any one time and further classified those products as either Type 1 or Type 2 Hazardous Materials in accordance with definitions set forth in said 2003 Agreement.

WHEREAS, The 2003 Agreement limited the quantity of Type 1 Hazardous Materials that could be kept or maintained on the Premises at any one time to 5,000 gallons and further limited the total quantity of Type 1 and Type 2 Hazardous Materials that could be kept or maintained on the Premises at any one time to 36,319 gallons and imposed these limitations by identifying specific products carried or intended to be carried as inventory at the Project and classifying each of these specific products as either Type 1 or Type 2 Hazardous Materials in a series of Exhibits to the 2003 Agreement; and,

WHEREAS, the 2003 Agreement required that Home Depot submit quarterly reports detailing the monthly quantities of Hazardous Materials at the Project as well as new or reformulated items added to inventory which would be Hazardous Materials under the Commission's definition as set forth in the 2003 Agreement; and,

WHEREAS, Paragraph 18 of the 2003 Agreement provided that within two years of the opening date of the Project that Home Depot and the Executive Committee of the Commission should meet to assess the reporting required under the 2003 Agreement in light of the information base and experience developed by that time and that by mutual consent the Cape Cod Commission and Home Depot (the Parties) could modify the reporting schedule; and

WHEREAS, the Project opened on October 31, 2003; and,

WHEREAS, Home Depot and the Executive Committee of the Commission met on September 26, 2005 to review the terms of the reporting required under the 2003 Agreement and other matters; and,

WHEREAS, the Commission, upon such review and after due deliberation, wishes to amend and modify the 2003 Agreement (i) to remove from classification as Hazardous Materials for the purposes of this Amended Agreement certain products which have minimally hazardous characteristics (such as bagged concrete mix, bagged compost, and bagged topsoil) which had been listed in Exhibit B-3 (Categories To Be Considered Type2) of the 2003 Agreement , (ii) to adjust for this removal by reducing from 36,319 to 32,319 gallons the total quantity of Hazardous Materials that may be kept or maintained on the Premises at any one time, (iii) to modify certain reporting requirements in light of the Parties' actual experience with the requirements of the 2003 Agreement since the Project opened in 2003, and (iv) to make certain other modifications to the 2003 Agreement, all as herein set forth, and Home Depot is agreeable to such amendments and modifications; and

WHEREAS, the Commission and Home Depot wish to set forth such amendments and modifications in an Amended and Restated Agreement for Judgment, as herein set forth, to the end that this Amended and Restated Agreement for Judgment shall, upon its due execution by the Parties, its due allowance by the Land Court, and its due recording with the Barnstable County Registry of Deeds, wholly replace and stand in the place of the

2003 Agreement, which shall, as of such due execution, allowance and recording, be of no further force or effect.

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 Amended Agreement.
2. The parties agree that Home Depot shall not keep and maintain on the Premises at any time more than 32,319 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 Amended Agreement, 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 Amended 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 Amended 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 32,319 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 has provided 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 were present upon opening. Said inventory was 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 was also formatted consistent with the Exhibits attached to the 2003 Agreement, and with the compliance tool developed by Home Depot. At this time Home Depot also provided 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 Amended 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 biannual (twice yearly) basis within 30 days after the close of each six-month period (the "Biannual Report"). Such Biannual Report shall be consistent with the Exhibits attached to this Amended Agreement and with the compliance tool

referenced in paragraph 7 below. Such Biannual Report shall also include monthly totals of Type 1 Hazardous Materials and total Hazardous Materials for each of the prior six months. All such reports shall include notice of any change, reformulation or new products in accordance with paragraph 9 below. Home Depot shall also provide to the Commission within seven (7) days of the end of each month a monthly report (the "Monthly Report"). The Monthly Report shall set forth only the quantity of Type I Hazardous Materials and the total quantity of Hazardous Materials in the store on the last day of the month in question. The Commission retains the right to request that Home Depot provide MSDSs for Commission review at any time and Home Depot shall provide the same within 14 days of the Commission's request. Home Depot shall also notify the Commission when the quantity of Hazardous Materials kept or maintained on the Premises at any time comes within 5% of the limits for Type 1 Hazardous Materials and total Hazardous Materials established under this Amended Agreement. The Monthly Report and Biannual Report may be submitted to the Commission electronically.

7. Home Depot has developed and used a compliance tool, utilizing a computerized database using Microsoft ACCESS or other similar program, for implementing the 2003 Agreement in consultation with Commission staff. Home Depot shall modify such database and tool in consultation with Commission staff to provide for appropriate Biannual Reports and Monthly

Reports as herein set forth. 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 Amended 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 Amended 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 Biannual Report for the six-month period in which such item is added to inventory, such notice to be in a form substantially similar to that employed in Exhibits B-1 through B-4 hereto. 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 Biannual 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 Amended 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 Hazardous Materials Report or Biannual 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 has , within ninety (90) days of the execution and filing of the 2003 Agreement, contributed 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 date this Amended Agreement is allowed by the Land Court, Home Depot and the Executive Committee of the Commission shall meet to assess the reporting required in this Amended Agreement and any other matters in light of the information base and experience developed by that time and may modify the reporting schedule or any other matters by mutual consent.

19. The Commission agrees that the Town of Barnstable may forthwith, upon the execution and filing of the 2003 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 Amended 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 Amended 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 Amended 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 Amended 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 has withdrawn without prejudice, as of the date of the 2003 Agreement, all claims in its complaint in this matter other than those that may arise from the violation of the 2003 Agreement, and hereby withdraws without prejudice all claims in its complaint in this matter other than those that may arise from the violation of this Amended Agreement.

Executed under seal by the authorized representatives of Home Depot U.S.A., Inc. and the Cape Cod Commission this 27th day of November, 2006.

For the Cape Cod Commission,

[Signature]
W. Bradford Crowell, Chair

11/27/06
Date

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

[Signature]
Cynthia Warren, Corporate Counsel
Director-Legal

October 30, 2006
Date

COMMONWEALTH OF MASSACHUSETTS

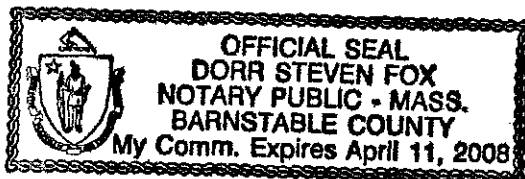
County of Barnstable

Then personally appeared the above-named W. Bradford Crowell, Chair of the Cape Cod Commission, known to me through satisfactory evidence of identification, which was W. BRADFORD CROWELL to be the person whose name is signed on the foregoing instrument 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:

[Signature]
Notary Public

11/27/06
Date



COMMONWEALTH OF MASSACHUSETTS

Canton, Ma, ss

Then personally appeared the above-named Cynthia Warren, the
Director - Legal of Home Depot U.S.A., Inc., , known to me through
satisfactory evidence of identification, which was Self Known, to be the
person whose name is signed on the foregoing instrument and acknowledged the
foregoing instrument to be ___ free act and deed and the free act and deed of said Home
Depot U.S.A., Inc., before me,

My commission expires: 5-11-12


Patricia J. Gorman
Notary Public

10-30-06
Date

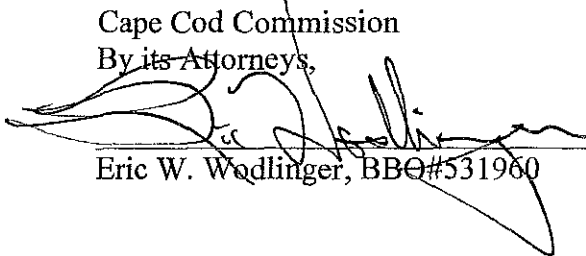
Home Depot U.S.A., Inc.
By its Attorneys,


Michael D. Bliss, BBO #045850

Connors & Bliss, P.C.
101 Arch Street, 9th Floor
Boston, MA 02110 617-375-9080


Leonard M. Singer, BBO # 464600
101 Arch Street, 9th Floor
Boston, MA 02110
617-859-8200

Cape Cod Commission
By its Attorneys,


Eric W. Wodlinger, BBO#531960

Sarah H. Broughel, BBO#637595

Choate, Hall & Stewart
Exchange Place
53 State Street
Boston, MA 02109-2891
(617) 248-5000

I HEREBY ATTEST AND CERTIFY ON
January 9, 2007 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





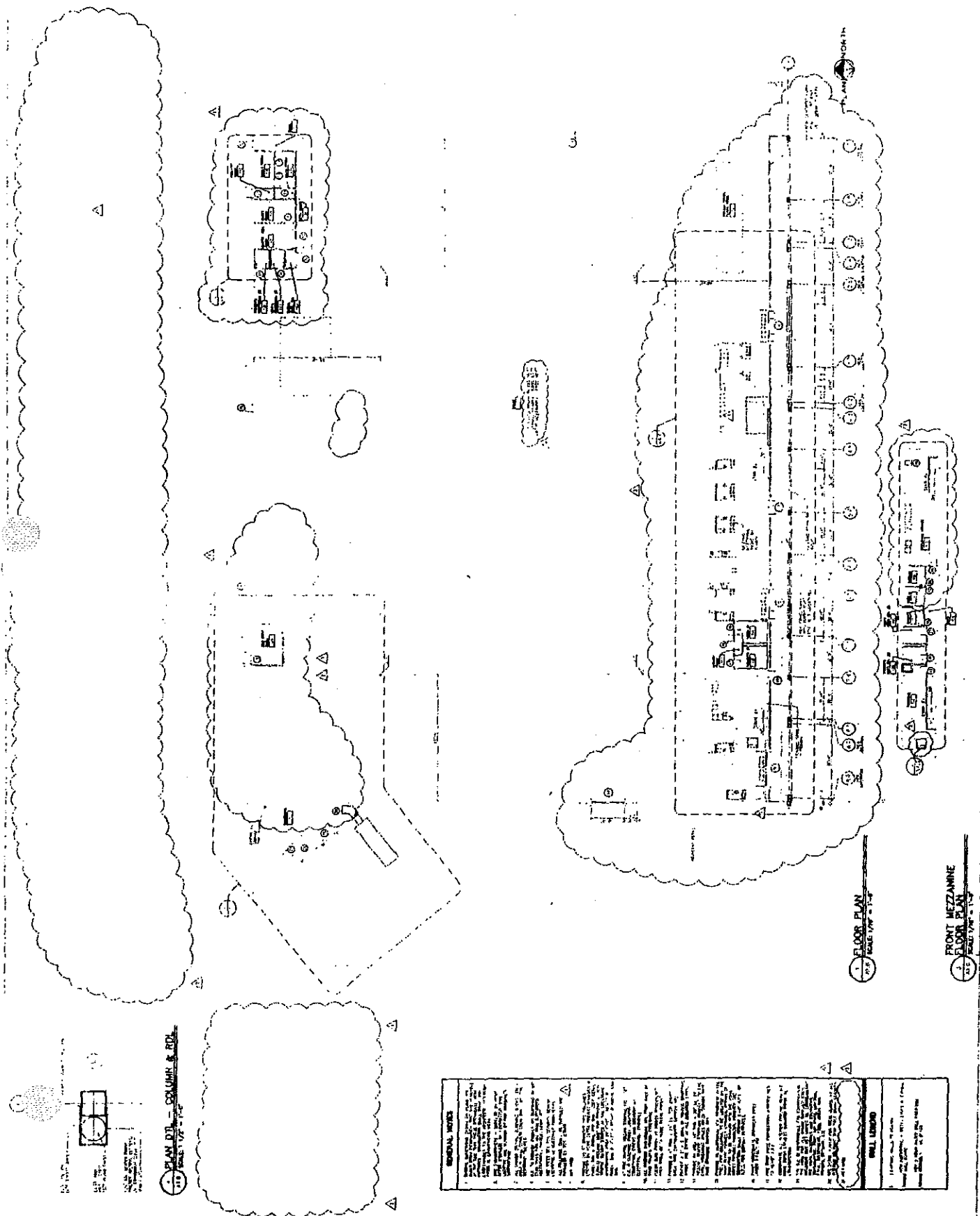
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ATTORNEYS
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FLOOR PLAN
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| SPECIAL NOTES | |
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FRONT MEZZANINE FLOOR PLAN
 SCALE: 1/8" = 1'-0"

FLOOR PLAN
 SCALE: 1/8" = 1'-0"

PLAN DETAIL - COLUMN & RDL
 SCALE: 1/2" = 1'-0"

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 | 4 | RUST PREVENTATIVE |
| 24 | Paint | 3 | SPRAY PAINT | 5 | SPECIALTY/DECOR |
| 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/LACQUERS/SPECIAL |
| 24 | Paint | 15 | INTERIOR PAINT | 8 | HI GLOSS |
| 24 | Paint | 15 | INTERIOR PAINT | 11 | MISC/ADDITIVES |
| 24 | Paint | 16 | EXTERIOR PAINT | 8 | DRIVEWAY/FLOOR |
| 24 | Paint | 17 | PERFRMNCÉ ENAMEL/BRSH ON | 2 | GENERAL PURPSE/DECORATIV |
| 24 | Paint | 17 | PERFRMNCÉ ENAMEL/BRSH ON | 3 | RUST PREVENTATIVE |
| 24 | Paint | 17 | PERFRMNCÉ ENAMEL/BRSH ON | 4 | TRAFFIC/MARKING/SAFETY |
| 24 | Paint | 22 | INTERIOR/EXTERIOR | 5 | GLOSS |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 2 | SOLVENTS |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 4 | REMOVERS-SOLVENT |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 5 | REMOVERS-SAFER/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 | Class | 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 |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES, INC. | KILZ PRIMER-1 GALLON |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES, INC. | KILZ PRIMER-5 GALLON |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | WILLIAM ZINSSER CO. | PERMAWHT BATHWALL & CEILING S/G GAL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES, INC. | KILZ PRIMER-AEROSOL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES, INC. | KILZ UPSHOT AEROSOL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | WILLIAM ZINSSER CO. | SPRAY B-I-N PRIMER-SEALER 13 OZ |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | WILLIAM ZINSSER CO. | COVER STAIN - GALLON |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | WILLIAM ZINSSER CO. | COVER STAIN PRIMER SEALER SPRAY |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES | KILZ ODORLESS QUART |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES | KILZ ODORLESS AEROSOL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES | KILZ ODORLESS 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. |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | GUARDSMAN PRODUCTS, INC. | GOOF OFF 12 OZ. AEROSOL |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | W.M. BARR & COMPANY | BRUSH CLEANER QT |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | BEHR PROCESS CORP | WOOD BRIGHTENER/CONDITIONER 1GAL |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | CUSTOM BUILDING PRODUCTS | TSP PLUS PREPAINT CLEANER |
| 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 |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | QT. CLEAR PVC PRIMER |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | QT. PURPLE PVC PRIMER |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 16 OZ PVC SOLVENT FOR SHOWER LINER |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | LEAK DETECTOR W/DAUBER-8OZ |
| 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 |
|-------|--------------------|-------|--------------------------|----------|------------------------|
| 22 | Building Materials | 4 | INSULATION | 5 | FOAM |
| 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 | 11 | EXT STAINS/WATERSEALERS | 2 | EXTERIOR SOLID STAIN |
| 24 | Paint | 12 | WATERPROOFERS | 3 | READY-MIX |
| 24 | Paint | 12 | WATERPROOFERS | 4 | NON READY MIX |
| 24 | Paint | 15 | INTERIOR PAINT | 3 | CEILING PAINT |
| 24 | Paint | 15 | INTERIOR PAINT | 4 | FLAT/MATTE |
| 24 | Paint | 15 | INTERIOR PAINT | 5 | EGGSHELL |
| 24 | Paint | 15 | INTERIOR PAINT | 6 | SATIN |
| 24 | Paint | 15 | INTERIOR PAINT | 7 | SEMI GLOSS |
| 24 | Paint | 15 | INTERIOR PAINT | 9 | TEXTURE |
| 24 | Paint | 15 | INTERIOR PAINT | 10 | FAUX/SPECIALTY |
| 24 | Paint | 16 | EXTERIOR PAINT | 4 | SATIN |
| 24 | Paint | 19 | WALLPAPER ADHESIVE/TOOLS | 2 | ADHESIVES |
| 24 | Paint | 22 | INTERIOR/EXTERIOR | 2 | PRIMERS |

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

| Dept | Dept Name | Class | Class description | Subclass | Subclass description |
|------|-----------------|-------|--------------------------|----------|---------------------------|
| 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 | 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 | 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 | BEHR PROCESS CORP | RL INT DEEPTONE PRIMER GALLON |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | BEHR PROCESS CORP | RL INT DEEPTONE PRIMER QUART |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | BEHR PROCESS CORP | PREM PLS INT PVA PRIMER 1GAL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | BEHR PROCESS CORP | PREM PLS INT PVA PRIMER 5GAL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | GLIDDEN COMPANY PROPAIN | SPEEDWALL INT LTX PVA PRIMER GAL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | GLIDDEN COMPANY PROPAIN | SPEEDWALL INT LTX PVA PRIMER 5 GAL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES | KILZ TOTAL ONE PRIMER GAL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | MASTERCHEM INDUSTRIES | KILZ TOTAL ONE PRIMER QT |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | WILLIAM ZINSSER CO. | B-I-N PRIMER-SEALER GAL |
| 24 | Paint | 15 | INTERIOR PAINT | 2 | PRIMERS | WILLIAM ZINSSER CO. | B-I-N PRIMER-SEALER QT |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | 3M | SCOTCHGARD FABRIC PROTECTOR 10 OZ |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | 3M | SCOTCHGARD PROTECTOR FOR CARPETS |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | BEHR PROCESS CORP | DECK & MILDEW STAIN RMOVR 1GAL |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | CUSTOM BUILDING PRODUCTS | TSP SUBSTITUTE 1# |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | CUSTOM BUILDING PRODUCTS | TSP SUBSTITUTE 5# |
| 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 | LOCTITE CORPORATION | NAVAL JELLY RUST REMOVER TRIGGER 12Z |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | LOCTITE CORPORATION | NAVAL JELLY RUST REMOVER 8 OZ. |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | LOCTITE CORPORATION | FAST ORANGE 15 OZ BRUSH BOTTLE |
| 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 | MAGIC AMERICAN CORPORATION | GOO GONE -8 OZ |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | MAGIC AMERICAN CORPORATION | GOO GONE -1 OZ |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | MINWAX COMPANY | WOOD CLEANER TRIGGER 22 OZ |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | MINWAX COMPANY | WOOD CLEANER 32 OZ PUSH/PULL |
| 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 | PERMATEX INDUSTRIAL | FAST ORANGE GALLON PUMP W/PUMICE |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | ZEP/ENFORCER | ZEP DRIVEWAY/CONCRETE CLEANER-GAL |
| 24 | Paint | 34 | SOLVENTS/REMOVERS/CLEANR | 3 | CLEANERS | ZEP/ENFORCER | ZEP HOUSE SIDING CLEANER-GAL |
| 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 CO. | 5LB. 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 | 32OZ HEAVY DUTY PVC CEMENT |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | QT. PVC CEMENT |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 8 OZ. PVC RAIN R SHINE |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 8 OZ REGULAR PVC CEMENT |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 2OZ. PIPE JOINT COMPOUND |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 1/2PT. BLOCK |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 14 OZ. PLUMBERS PUTTY |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 1 OZ TEFLON PIPE JT. COMPOUND |
| 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 |

EXHIBIT B-4: INDIVIDUAL ITEMS CONSIDERED TYPE 2

| Dept | Dept Name | Class | Class description | Subclass | Subclass description | ClientMFGName | ClientProductDesc |
|------|-----------------|-------|-------------------|----------|----------------------|---------------|------------------------------------|
| 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 | PIPE THREAD SEALANT 1 OZ. |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 16 OZ PIPE SEAL |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 8 OZ ALL PURPOSE CEMENT |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 16 OZ. ALL WEATHER PVC CEMENT |
| 26 | Plumbing | 1 | PIPE AND FITTINGS | 21 | PIPE CHEMICALS | OATEY | 16 OZ REGULAR PVC CEMENT |
| 28 | Garden/Seasonal | 22 | BBQ GRILL | 6 | CHARCOAL / STARTERS | KINGSFORD CO | KINGSFORD MATCHLIGHT 20 # CHARCOAL |
| 28 | Garden/Seasonal | 22 | BBQ GRILL | 6 | CHARCOAL / STARTERS | KINGSFORD CO | KINGSFORD CHARCOAL 48LB TWIN PACK |

INCUMBENCY/SECRETARIAL CERTIFICATE

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

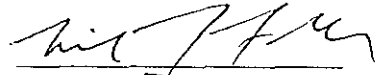

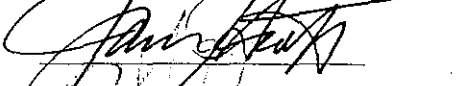
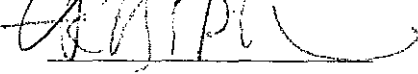
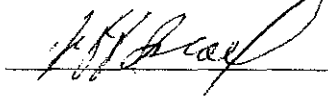
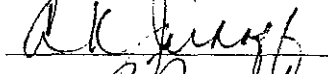
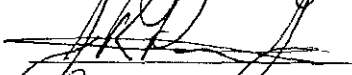
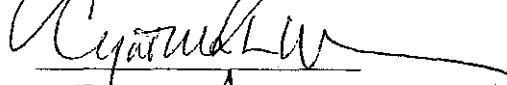

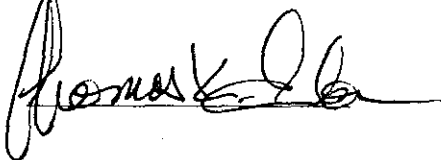
1. That the resolutions below constitute a true and correct copy of the resolutions contained in the Home Depot U.S.A., Inc., Unanimous Written Consent of the Board of Directors in Lieu of A Special Meeting, effective July 1, 2003, and that these resolutions have not been amended, annulled, rescinded 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, the Vice President-Real Estate Law, each of the Senior Directors-Real Estate Law, each of the Directors-Real Estate Law, each of the Corporate Counsel-Real Estate Law, and each of them acting alone or together, or their duly delegated designee, 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, the Vice President-Real Estate Law, each of the Senior Directors-Real Estate Law, each of the Directors-Real Estate Law, each of the Corporate Counsel-Real Estate Law and each of them acting either alone or together, or their duly delegated designee, 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.

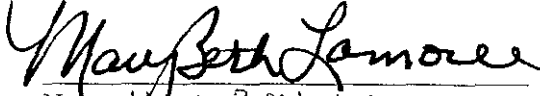
2. The persons named below were on the date hereof the duly designated and qualified signatories of the Corporation, as set opposite his or her respective name, and that the signature appearing opposite his or her name, is the genuine facsimile signature of said signatory:

| <u>Name</u> | <u>Title</u> | <u>Signature</u> |
|------------------------|--|--|
| Michael C. LaFerle | Vice President Real Estate |  |
| Michael T. McGuire | Vice President Real Estate Law |  |
| James J. Scott | Senior Director Real Estate Law |  |
| Randall H. Stephens | Senior Director Real Estate Law |  |
| Jeff A. Israel | Director Real Estate Law |  |
| Ann K. Jerhoff | Director Real Estate Law |  |
| Jacob R. Pritcher, Jr. | Director Real Estate Law |  |
| Cynthia L. Warren | Director Real Estate Law |  |
| Brett D. Soloway | Corporate Counsel - Real Estate Law |  |
| Thomas K. Anderson | Corporate Counsel - Real Estate Law |  |

IN WITNESS WHEREOF, the undersigned has hereunto affixed the seal of the Corporation and set his/her signature, on this, the 30th day of October, 2006.

[CORPORATE SEAL]




 Name: Mary Beth Lamoree
 Title: Assistant Secretary

CLERK'S CERTIFICATE OF INCUMBENCY AND AUTHORITY

The undersigned Clerk of the Cape Cod Commission hereby certifies as follows:

1. W. Bradford Crowell is the duly appointed Chair of the Cape Cod Commission.
2. That the resolution below is a true and accurate copy of the Resolution passed by vote of the Cape Cod Commission on November 27, 2006 and that this resolution has not been amended, annulled, rescinded or revoked and remains in full force and effect as of the date hereof.

RESOLVED that W. Bradford Crowell, Chair of the Cape Cod Commission, is hereby authorized and empowered on behalf of the Commission to execute the Amended and Restated Agreement for Judgment by and between the Cape Cod Commission and Home Depot USA, Inc. in the form executed by Home Depot USA, Inc. on or about October 30, 2006, a true copy of which is on file in the Commission's Home Depot, Hyannis file.

IN WITNESS WHEREOF, the undersigned Clerk of the Commission has signed this Certificate on this 27 November, 2006.

Gail Hanley

 Gail Hanley, Clerk

COMMONWEALTH OF MASSACHUSETTS

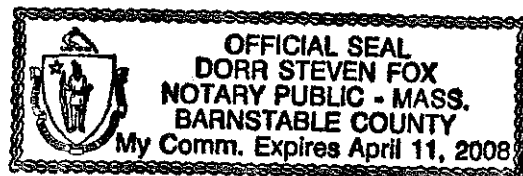
DUKES, ss.

November 27, 2006

Before me, the undersigned notary public, personally appeared the above named Gail Hanley, whose name is signed on the preceding document, and such person acknowledged to me that she signed such document voluntarily, for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

Dorr Steven Fox

 Notary Public:
 My Commission Expires:



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COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

BARNSTABLE, ss.

MISCELLANEOUS
CASE NO. 281116

HOME DEPOT U.S.A., INC.,

Plaintiff,

v.

THE CAPE COD COMMISSION,

Defendant.

**ORDER
APPROVING
AMENDED AND RESTATED
AGREEMENT FOR JUDGMENT**

On June 10, 2003, the court (Piper, J.) allowed a motion brought jointly by plaintiff Home Depot U.S.A., Inc. and defendant The Cape Cod Commission pursuant to Mass. R. Civ. P. 58(a) for "entry of judgment" in accordance with an agreement for judgment dated May 19, 2003. Now before the court is the parties' joint Motion for Relief from Judgment and for Entry of Amended Judgment. In this motion, the parties seek the vacation of the 2003 court-approved agreement for judgment, and the entry of a new judgment pursuant to the Amended and Restated Agreement for Judgment dated as of November 27, 2006. The court treats the pending motion as one for approval of the Amended and Restated Agreement for Judgment pursuant to Land Court Rule 10, and as a request that the Amended and Restated Agreement for Judgment, as so approved, substitute for the one approved June 10, 2003.

On consideration of the joint motion, good cause therefor appearing, it is ALLOWED. The Agreement for Judgment approved by the court June 10, 2003 is vacated. The Amended and Restated Agreement for Judgment dated as of November 26, 2006 is hereby approved by the court pursuant to Land Court Rule 10, and, as provided for in that rule and in Mass. R. Civ. P. 58(a), is to constitute the judgment of the court for all purposes. This Order, or a certified copy of it, together with the Amended and Restated Agreement for Judgment dated as of November 27, 2006, or a certified copy of it, may, upon payment of all fees required by law, be recorded by

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