

Law Office of Singer & Singer, LLC

26 Upper County Road
P. O. Box 67
Dennisport, Massachusetts 02639

Andrew L. Singer

Myer R. Singer
Of Counsel

Tel: (508) 398-2221
Fax: (508) 398-1568
www.singer-law.com

September 25, 2015

Via Hand Delivery

Jessica Wielgus, Esquire
Commission Counsel
Cape Cod Commission
P.O. Box 226
Barnstable, MA 02630

Re: Home Depot, Southwind Plaza, Hyannis

Dear Jessica:

Following up the Executive Committee's recent vote to approve the proposed expansion of the Home Depot Store in Hyannis into adjacent, vacant retail space at Southwind Plaza, enclosed for signature by the Commission and Commission Counsel are the following original documents:

1. Second Amendment to the governing 2006 Amended and Restated Agreement for Judgment, as previously amended (signed by Home Depot's Senior Corporate Counsel; and
2. Motion for Entry of Second Amendment to the Land Court (signed by me as attorney for Home Depot).

Please confirm that Attorney Schneider will file the documents with the Land Court once signed.

Thank you for your continued assistance in this matter.

Very truly yours,



Andrew L. Singer

ALS/a
Enclosures

cc: Johanna W. Schneider, Esquire (with encl.)

**SECOND AMENDMENT TO
AMENDED AND RESTATED AGREEMENT FOR JUDGMENT**

This Second Amendment to Amended and Restated Agreement for Judgment is entered into as of this _____ day of September, 2015, by and between the Cape Cod Commission (Commission) and Home Depot U.S.A., Inc. (Home Depot).

WHEREAS, the Commission and Home Depot entered into an Amended and Restated Agreement for Judgment dated November 26, 2006, and

WHEREAS, the Commission and Home Depot entered into a First Amendment to Amended and Restated Agreement for Judgment dated September 27, 2010; and

WHEREAS, the Commission and Home Depot now wish to further amend such Amended and Restated Agreement for Judgment, as previously amended, to allow expansion into adjacent vacant retail space as well as formalize an exterior product staging area.

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

1. The Third Whereas Clause of the Amended and Restated Agreement for Judgment, as previously amended by the First Amendment to Amended and Restated Agreement for Judgment, is hereby deleted in its entirety and replaced with the following:

“WHEREAS, Home Depot has proposed to develop a so-called ‘Home Depot Lite’ store consisting of approximately 84,895 sq. ft. of ground floor space (79,995 sq. ft. existing plus 4,900 sq. ft. as shown on Exhibit B attached hereto) and 2,105 sq. ft. of mezzanine space within the existing building (including demolition of the existing 14,000 sq. ft. mezzanine) and no more than 9,953 sq. ft. of outside area adjacent to the existing building for a seasonal garden facility and Christmas tree fenced sales area, as shown on plans respectively 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 (Exhibit A), and ‘Home Depot Expansion Area Site Plan,’ prepared by GreenbergFarrow, and dated 09/04/15 (Exhibit B), and ‘Site Plan, Home Depot Pop-Up Garden Center, 65 Independence Drive, in Hyannis, Massachusetts’ prepared by BSC Group, 349 Route 28, Unit D, W. Yarmouth, Massachusetts 02673, dated May 4, 2010, and revised 7/7/10, Scale 1" = 40 ft., Sheet 2 of 3 (Exhibit C)(collectively Plans), in and adjacent to a retail building, together with associated parking and access (collectively Project) formerly occupied by Bradlees and adjacent retail tenants at 65 Independence Drive, Southwind Plaza, in the Town of Barnstable, MA (Premises); and”;

2. Paragraph 11 of the Amended and Restated Agreement for Judgment, as previously amended by the First Amendment to Amended and Restated Agreement for Judgment, is hereby deleted in its entirety and replaced with the following:

“11. Home Depot shall operate the Project in accordance with the following: 1) The Project will occupy only 84,895 square feet of ground floor space (79,995 sq. ft. existing plus 4,900 sq. ft. as shown on Exhibit B, which 4,900 sq. ft. of space will not be used to

store or display any products containing hazardous materials as defined by this Amended and Restated Agreement for Judgment) and 2,105 square feet of mezzanine space within the existing building; 2) The Project will utilize store racking with shelving no more than 12 feet in height; 3) The store will have no public food vending (although vending machines are allowed); 4) All forklift trucks will operate on electricity/batteries or propane gas; 5) The Project will occupy no more than 9,953 square feet of outside area adjacent to the existing building as shown on Exhibit C a) for the annual installation of a seasonal garden facility to operate from March 20th through September 20th each year with annual installation and removal scheduled for 10 days before and 10 days after such dates, respectively, and b) for the annual installation of a smaller fenced area also to be located in the portion of the property to be seasonally used by the garden facility to sell Christmas trees from November 15th through December 31st each year with annual installation and removal scheduled for 10 days before and 10 days after such dates, respectively; and 6) There will be no increase in floor space in the existing building and no increase in the outside seasonal garden facility and Christmas tree fenced sales area for the operation of the store.”

[See Next Page for Signatures]

Executed under seal by the authorized representatives of Home Depot U.S.A., Inc., and the Cape Cod Commission this 1st day of ~~September~~ October, 2015.

For the Cape Cod Commission,

Richard E. Roy
Chairman

Oct. 1, 2015
Date

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

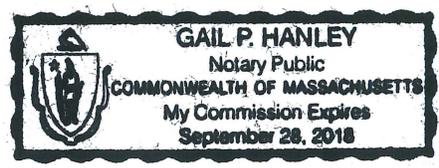
Jessica Borgert
Corporate Counsel
Jessica Borgert
Senior Corporate Counsel

9-22-2015
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss: October September 1, 2015

Then personally appeared the above named Richard E. Roy, Chair of the Cape Cod Commission, known to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of the Cape Cod Commission, before me.



Gail P. Hanley
Notary Public
My Commission Expires: 9-28-18

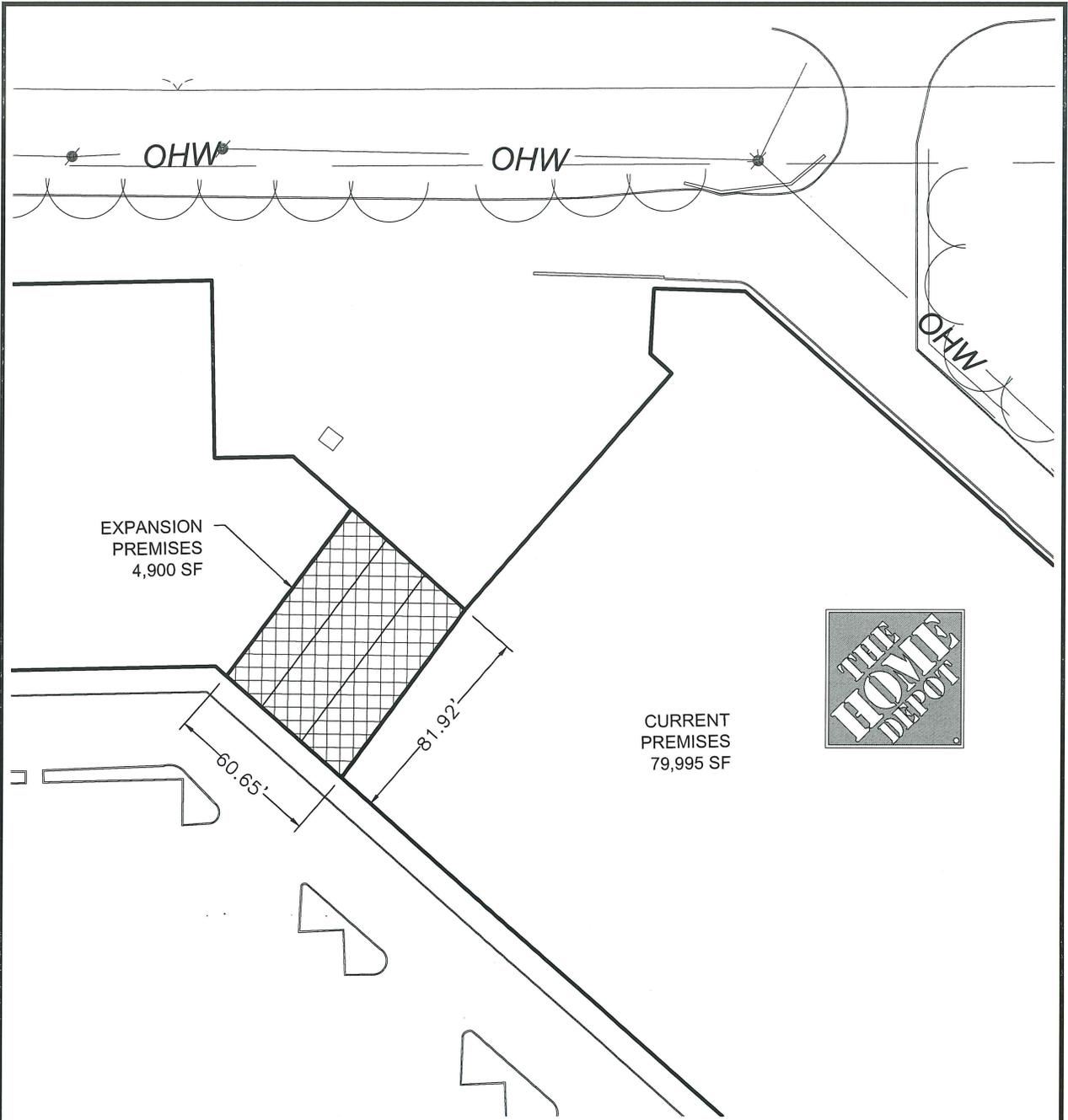
STATE OF GEORGIA

County of Cobb, ss: September 22, 2015

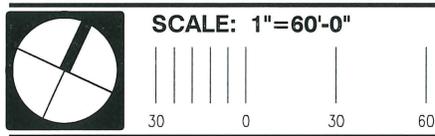
Then personally appeared the above named Jessica Borgert, the sr. Corporate Counsel of Home Depot U.S.A., Inc., known to me through satisfactory evidence of identification, which was In person herself, to be the person whose name is signed on the preceding or attached document, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of Home Depot U.S.A., Inc., before me.



Barbara Turner
Notary Public
My Commission Expires: 7-23-18



HOME DEPOT EXPANSION AREA SITE PLAN



DRAWING ISSUE/REVISION RECORD		
DATE	NARRATIVE	INITIALS
08/05/15	INITIAL RELEASE	SP
09/04/15	REVISED EXPANSION AREA	SP

SITE PLANNER: STEPHEN PAVLICS
 SITE DEV. COORDINATOR: JOHN KEREKES



THE HOME DEPOT
 HYANNIS, MA

65 INDEPENDENCE DRIVE

GFA PROJECT NUMBER

GreenbergFarrow

3 EXECUTIVE DRIVE, SUITE 150
 SOMERSET, NJ 08873
 t: 732.537.0811 f: 732.537.0831

SITE PLAN

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

BARNSTABLE, ss.

MISCELLANEOUS
CASE NO. 02MISC281116

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

MOTION FOR ENTRY OF SECOND AMENDMENT TO AMENDED AND RESTATED
AGREEMENT FOR JUDGMENT

The parties move, pursuant to Massachusetts Rules of Civil Procedure, that the Amended and Restated Agreement for Judgment which entered on January 2, 2007, as previously amended in a First Amendment to Amended and Restated Agreement for Judgment which entered on November 2, 2010, to be further amended in the form attached hereto and that such amendment be entered. The parties originally entered into an Agreement for Judgment dated July 25, 2003, pursuant to an agreement between the parties settling all of their differences and providing for subsequent review and assessment by the parties. After such review and assessment was completed, the Agreement for Judgment was vacated and an Amended and Restated Agreement for Judgment was entered on January 2, 2007, at the request of the parties. Thereafter, a First Amendment to Amended and Restated Agreement for Judgment was entered on November 2, 2010, at the request of the parties. Now, in accordance with an additional agreement between the

parties to alter the site and allow additional retail space within the building, the parties desire that their agreement as amended become the Second Amendment to the Amended and Restated Agreement for Judgment.

For the foregoing reasons, the parties respectfully request that the 2007 Amended and Restated Agreement for Judgment, as previously amended by the First Amendment to Amended and Restated Agreement for Judgment, be further amended in the form attached hereto and that such amendment be entered.

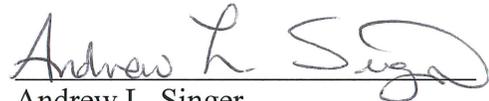
THE CAPE COD COMMISSION

HOME DEPOT U.S.A., INC.

By its attorneys,

By its attorneys,

Johanna W. Schneider
BBO
Rackeman, Sawyer & Brewster
160 Federal Street
Boston, MA 02110
617-951-1162
jschneider@rackemann.com



Andrew L. Singer
BBO 632418
Law Office of Singer & Singer, LLC
26 Upper County Road, P.O. Box 67
Dennisport, MA 02639
508-398-2221
alsinger@singer-law.com

Date: _____

Date: 9/22/15

DATE: September 25, 2015

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing by first class mail, postage pre-paid, on the attorney for the plaintiff/defendant as follows:

Plaintiff
By its attorney,


Andrew L. Singer

Johanna W. Schneider
Rackeman, Sawyer & Brewster
160 Federal Street
Boston, MA 02110
617-951-1162
jschneider@rackemann.com