

This instrument prepared  
by & return to:  
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Memphis, TN 38120

HT 2812

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**THIS INSTRUMENT PREPARED BY:**

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**RECIPROCAL EASEMENT AND OPERATION AGREEMENT**

**RECIPROCAL EASEMENT AND OPERATION AGREEMENT** (this "Agreement"), made as of this 4th day of September, 1998, between **MARKET STREET PROPERTIES, LLC** ("Landholder"), a Tennessee limited liability company having an office at 3824 Shea Road, Collierville, Tennessee, 38017 ("Landholder"), and **HOME DEPOT U.S.A., INC.**, a Delaware corporation, having an office at 2455 Paces Ferry Road, N.W., Building C, 20th Floor, Atlanta, Georgia 30339-4024 ("HD").

**Preliminary Statement**

HD is the owner in fee of certain real property consisting of approximately twelve (12) acres (the "HD Parcel") described on **Schedule A** annexed hereto. HD intends to construct on the HD Parcel a building containing approximately 107,500 square feet of ground floor area (exclusive of mezzanine), a garden area and truck loading docks, customer pickup and compactor facilities and related parking and site facilities in the areas indicated on the Site Plan.

Landholder is the owner in fee of the following properties:

(a) the real property consisting of approximately 19.8 acres (the "Southerly Landholder Parcel") adjacent to the southerly boundary line of the HD Parcel and described in **Schedule B** annexed hereto, including the outparcels (each individually, an "Outparcel"; all collectively, the "Outparcels") described as "Outparcels 1, 2, 3, 4 and 5" on the site plan (the "Site Plan") annexed hereto as **Schedule C**; and

(b) the real property consisting of approximately 10 acres (the "Northerly Landholder Parcel") adjacent to the northerly boundary line of the HD Parcel and described in **Schedule D** annexed hereto.

Landholder intends to construct on the Southerly Landholder Parcel and within the Outparcels certain retail and related service use buildings and related parking and site facilities as shown on the Site Plan and on the Northerly Landholder Parcel, as Landholder shall determine, certain retail, office, assisted living, hotel, extended stay, medical office or other commercial uses consistent with first-class commercial developments.

The Southerly Landholder Parcel (including but not limited to the Outparcels) and the Northerly Landholder Parcel (collectively, the "Landholder Parcels") and the HD Parcel are shown schematically on the Site Plan. Each of the Southerly Landholder Parcel, the Northerly Landholder Parcel and the HD Parcel are herein referred to as a "Parcel." All of the Southerly Landholder Parcel, the Northerly Landholder Parcel and the HD Parcel are herein referred to collectively as the "Parcels."

Landholder and HD recognize that for the most favorable development of the Parcels, it is necessary that they agree and cooperate with respect to the operation and maintenance of their Parcels and the common areas and facilities to be erected thereon as indicated in the Site Plan (the "Common Areas"). Landholder and HD therefore intend herein to grant to each other certain reciprocal easements for pedestrian and vehicular ingress and egress over the common curb cuts, roadways, driveways, aisles, walkways and sidewalks for access and for delivery and to grant certain rights to install and maintain utility lines and site facilities within the Common Areas. Landholder and HD also intend herein to provide for certain obligations and restrictions with respect to the operation and maintenance of their respective Parcels and the Common Areas and

facilities constructed and to be constructed thereon. Such easements, obligations and restrictions shall run to the benefit of, and bind the respective Parcels, and the owners from time to time of the Parcels or any portion thereof. The terms "HD" and "Landholder" shall be deemed to refer to such parties and the respective heirs, successors, grantees and assigns of such parties, and any net lessee of any Parcel or part thereof who has assumed all of the obligations of the owning party (individually the "Owner", or collectively, the "Owners").

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

### **ARTICLE I - GRANT OF EASEMENTS**

#### **Section 1.01. Access and Parking Easements.**

(a) HD and Landholder hereby grant and convey, each to the other, for the benefit of the Parcels, a permanent, reciprocal and non-exclusive easement and right to the use during the term of this Agreement of the Common Areas and the common curb cuts, roadways, driveways, aisles, walkways and sidewalks located on the Parcels for purposes of ingress, egress, passage and delivery by vehicles and pedestrians, as the Common Areas and the common curb cuts, roadways, driveways, aisles, walkways and sidewalks exist from time to time. The Common Areas and the common curb cuts, roadways, driveways, aisles, walkways and sidewalks may be reconfigured from time to time in accordance with all applicable laws, rules, regulations and ordinances provided that vehicular and pedestrian access between the Parcels is not materially and adversely impeded, except that (i) curbcuts from and within either "Outparcel 2" or "Outparcel 5" shown on the Site Plan shall not be located, configured or reconfigured without HD's prior written consent and (ii) the "Primary Roadways" shown on the Site Plan extending from the HD Parcel to Poplar Avenue, White Street and Market Boulevard shall not be located configured or reconfigured without HD's prior written consent. Notwithstanding the immediately foregoing sentence, Landholder may reconfigure the Primary Roadways extending from the HD Parcel to Poplar Avenue to accommodate development of the Southerly Landholder Parcel, provided that such reconfiguration is performed at no cost to HD, is performed so as to cause no interruption of access to the HD Parcel and is performed in accordance with plans and specifications reasonably approved by HD and in accordance with all applicable laws, rules and regulations.

(b) HD and Landholder hereby grant and convey, each to the other, for the benefit of the Southerly Landholder Parcel (excluding the Outparcels), the Northerly Landholder Parcel and the HD Parcel (collectively, the "Primary Parcels") a perpetual, reciprocal, non-exclusive easement and right to the use during the term of this Agreement of the parking areas from time to time maintained on such Parcels for the purpose of parking of motor vehicles within designated parking areas, other than overnight parking except in the loading dock areas (including, without limitation, service vehicles); provided that trucks making deliveries to any Parcel shall be permitted to park only in the loading areas on such Parcel. Notwithstanding the foregoing easements, each Owner shall maintain on each of its Parcels the parking ratio required pursuant to Section 3.01(d) hereof. Notwithstanding the foregoing provisions of this Section 1.01 (b), the Northerly Landholder Parcel shall have the benefit of the foregoing parking easement if and only if, and only so long as, the Northerly Landholder Parcel is developed and operated primarily with retail facilities.

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

The Owner of any Parcel served by such Utility Lines may operate, maintain and repair such Utility Lines, provided such repair and maintenance is performed expeditiously and only after five (5) business days' written notice to the granting Owner (except in the case of emergency, in which case such notice, if any, as is reasonable under the circumstances shall be given). The Owner of a Parcel served by such Utility Lines may relocate such Utility Lines with at least thirty (30) days' notice to the other Owners utilizing the Utility Line, if any, provided that the relocation is accomplished so as not to interfere with or impede the utility services of the other Owners or use of the Common Areas by any Owners. The party performing any repair, maintenance or relocation shall, at its cost and expense, repair any damage caused thereby. Each Owner hereby agrees to defend, indemnify and hold the granting Owner and any occupant of the granting Owner's Parcel harmless from any claims, damage or loss which may result from the activities in making such repairs or relocating its facilities.

The Owner of a Parcel across which a Utility Line is located in whole or part may relocate such Utility Line on its Parcel with at least thirty (30) days' notice to the other Owners utilizing the Utility Line, if any, provided that the relocation is accomplished so as not to interfere with or impede the utility services of the other Owners.

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

**Section 1.04. Detention Facilities.** Landholder hereby grants to HD, for the benefit of the HD Parcel, a perpetual, nonexclusive easement to discharge storm and surface water from the HD Parcel (including but not limited to storm and surface water discharged onto the HD Parcel from other properties) into and through any and all detention or retention ponds and other drainage facilities located on the Landholder Parcels intended and designed to serve the HD Parcel in whole or in part. HD hereby grants to Landholder, for the benefit of the Landholder Parcels, a perpetual, nonexclusive easement to discharge storm and surface water from the Landholder Parcels (including but not limited to storm and surface water discharged onto the Landholder Parcels from other properties) into and through any and all detention or retention ponds and other drainage facilities located on the HD Parcel intended and designed to serve the Landholder Parcels in whole or in part.

**Section 1.05. Pylon Sign.** HD shall construct and maintain one (1) shared pylon structure (the "Pylon Sign") at the location designated therefor on the Site Plan. The Pylon Sign shall be designed substantially as set forth on the plans (the "Sign Plans") annexed hereto as **Schedule E**. HD's sign panels shall be entitled to occupy not less than thirty (30%) of the total available retail signage area on each side of the Pylon Sign. The design, color and size of any other signs placed on the Pylon Sign shall be subject to the approval of HD, and such other signs shall be installed and maintained in good repair at no cost to HD. HD's sign panels shall always have the top operator position on each display side of the Pylon Sign. Landholder hereby grants to HD a perpetual, nonexclusive easement to construct, maintain, repair and replace the Pylon Sign to be located on Southerly Landholder Parcel as shown on the Site Plan, to install, maintain, repair and replace such electrical and other utility lines as are required for the operation of such Pylon Sign and to install, maintain, repair and replace HD's sign panels on such Pylon Sign. No pylon or monument signs other than the Pylon Sign shall be erected within the Parcels, except that, subject to applicable laws, rules and regulations, (a) HD shall be entitled to erect one (1) monument sign on the HD Parcel and (b) Landholder shall be entitled to erect one (1) monument sign on each Outparcel, provided that under no circumstances shall any monument sign be allowed on any Outparcel if the erection of such monument sign in any way reduces or otherwise adversely impacts the signage that is allowed by applicable governmental law, rule, regulation or ordinance on the HD Parcel or on the Pylon Sign.

**Section 1.06. Footing Encroachments.** In order to accommodate the construction, reconstruction or repair of any building which may be constructed or reconstructed immediately adjacent to the common boundary lines of any of the Primary Parcels, HD and Landholder hereby grant, establish and create, for the benefit of the Primary Parcels, non-exclusive easements for lateral support for improvements constructed on or near such common boundary lines, together with the right and easement to install, maintain, repair and replace footings and underground supports for such improvements in space not theretofore occupied by any then existing structure, provided that the location of such footings shall be subject to the consent and approval of the Owner of the Parcel onto which the footings and underground supports are to extend, such approval not to be unreasonably withheld, and provided that such footings shall in no event extend more six (6) inches onto the servient Parcel. This easement shall continue in effect for the term of this Agreement and thereafter so long as the improvements utilizing the easement exists, including a reasonable period to permit reconstruction or replacement of such improvements or to permit the construction of new improvements, and shall include the reasonable right of access necessary to exercise and enjoy such grant, provided no damage is caused to the buildings or other improvements located on the Parcel encumbered by such easement or the operation of business thereon. When an Owner of a Primary Parcel constructs its improvements along a common boundary line, it shall do so in a manner that does not result in damage or injury to the buildings or other improvements previously placed by another owner of a Primary Parcel along such common boundary line. Any Owner that constructs a common footing pursuant to this Section 1.06 shall be solely responsible for payment of the costs of construction and maintenance thereof. Notwithstanding the immediately foregoing sentence, each Owner shall be solely responsible for any damages resulting from its actions or negligence. In the event any building utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any improvements utilizing the same located on the adjoining Primary Parcel. With respect to buildings constructed along the common boundary line between any of the Primary Parcels, nothing herein shall be deemed to create or establish (a) a "common" or "party" wall to be shared with the adjacent building, or (ii) the right for a building to receive support from or apply pressure to the adjacent building.

**Section 1.07. Restrictions.** The easements granted by this Article I shall be subject to the covenants and restrictions set forth in Article III.

## **ARTICLE II - MAINTENANCE AND OPERATION**

### **Section 2.01. Maintenance and Repair.**

(a) Each Owner, at its sole expense, shall maintain, repair and replace all improved portions of its respective Parcels in a safe, sightly, good and functional condition to standards of comparable community shopping centers in the market area.

(b) Each Owner shall, at its sole expense, repave, re-stripe and replace markings on the surface of the parking areas and driveways in its Parcel from time to time as and when necessary so as to provide for the orderly parking of automobiles and shall place and maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of said parking areas. All paving and striping materials, as well as the lighting standards and materials within the Landholder Parcels shall be consistent with that used on the HD Parcel.

(c) Each Owner shall, at its sole expense, maintain and replace, if necessary, all directional signs, markers, or lights as shall be reasonably necessary in the Common Areas.

(d) Each Owner shall, at its sole expense, service, maintain, repair and replace, and pay the cost of any fees or charges in connection with, the Utility Lines located on its Parcels that service the improvements on its Parcels. Maintenance of any portion of any Utility Lines serving more than one Parcel shall be performed by the Owner of the Parcel crossed by the Utility Line, but the cost thereof shall be shared on an equitable basis based upon the relative

consumption or usage of the utility furnished from such Utility Line. To the extent that any Utility Line exclusively servicing any Parcel crosses another Owner's Parcel, such Utility Line shall be so maintained by the party served by the Utility Line at that party's cost. Upon request of any Owner, the Owners shall cooperate to dedicate for public maintenance the Utility Lines or any thereof as deemed beneficial to the Parcels.

(e) Each Owner shall, at its sole cost, maintain and replace all lighting facilities, bulbs and ballasts within its Parcels.

(f) Each Owner shall be responsible, at its sole expense, for keeping its own Parcel clean and free from refuse and rubbish. Any landscaped areas on the respective Parcels shall be mowed, maintained and otherwise tended to by the Owner thereof at its sole expense as required to maintain such areas in a healthy and attractive condition.

(g) All refuse shall be kept in closed containers within the interior of buildings or within suitable exterior trash containers, and in all events, no trash containers (other than those exclusively for use by customers) or compactors shall be visible from the parking areas. Each Owner shall arrange, or cause its tenants or occupants to arrange, for regular removal of all trash and refuse from its business operations conducted on its respective Parcels at its sole cost and expense so that there shall be no undue accumulations of garbage, trash, rubbish, or other refuse within the Parcels. The portions of the Common Areas in immediate proximity to the exterior trash enclosures of any Owner shall be maintained in a clean and safe condition by such Owner.

(h) Each Owner shall, at its sole expense, cause the buildings, structures and Common Areas located on such Owner's Parcels to comply with all applicable requirements of law and governmental regulations, permits and approvals applicable thereto; provided, however, that an Owner may contest any such law, regulation, permit or approval so long as such contest does not adversely impair in any way the use of all or any portion of the Common Areas for their intended purposes.

(i) Each Owner shall pay or cause to be paid all real estate taxes, ad valorem taxes, assessments, water and sewer rents, if any, and all other charges, if any, special or otherwise, foreseen or unforeseen, levied, imposed on or assessed upon or with respect to such Owner's Parcels and the buildings and improvements located thereon, or any part thereof or any improvements thereon by any public or quasi-public authority having jurisdiction; provided, that, if the taxes or assessments or other governmental charges or any part thereof may be paid in installments, an Owner may pay each such installment as and when the same becomes due and payable, and in any event prior to the delinquency thereof.

(j) Any unimproved portion of any Parcel shall, pending the construction thereon of improvements and the paving of parking surfaces, be kept in a clean and trimmed state, seeded and grassed by its Owner solely at that Owner's expense (provided, however, that any wooded area may be maintained in its natural wooded state but the Owner of any Parcel containing such an area shall keep such area clean and trimmed) and shall be kept free of trash, rubbish and debris other than the storing of construction materials for reasonable periods prior to and during the construction of improvements on such Parcel.

(k) Until the opening of one or more retail stores on the Landholder Parcels, HD shall maintain and repair the Pylon Sign in good operational condition and appearance; and Landholder shall, within thirty (30) days after written request from HD, such request accompanied by reasonable supporting documentation, reimburse HD for seventy percent (70%) of the costs of lighting, maintaining, repairing and, as reasonably required, replacing the Pylon Sign. From and after the opening of one or more retail stores on the Landholder Parcels, Landholder shall maintain and repair the Pylon Sign in good operational condition and appearance; and HD shall, within thirty (30) days after written request from Landholder, such request accompanied by reasonable supporting documentation, reimburse Landholder for thirty percent (30%) of the costs of lighting, maintaining, repairing and, as reasonably required, replacing the Pylon Sign. Costs of maintenance of the Pylon Sign shall include the costs of

installing and maintaining reasonable landscaping in the immediate vicinity of the Pylon Sign and the cost of insurance pertaining to the Pylon Sign.

(l) Each Owner shall maintain and repair any and all detention or retention ponds and other drainage facilities located on their respective Parcels, but the cost thereof shall be shared on an equitable basis based upon the relative usage of the facilities. Upon request of any Owner, the Owners shall cooperate to dedicate for public maintenance such facilities or any thereof as deemed beneficial to the Parcels.

**Section 2.02. Operation and Lighting.**

(a) Each Owner shall keep the roadways and parking areas of its respective Parcels open seven days a week at all times and lighted after dusk until 11:00 p.m. on Monday through Saturday and from dusk until 7:00 p.m. on Sunday ("Normal Lighting Hours"). Any Owner or occupant of a Parcel may require the lights on any other Parcel to be kept lighted after Normal Lighting Hours if such Owner or occupant reimburses the requested Owner for the additional electrical costs incurred thereby, which cost shall be shared on a pro rata square footage basis with any other occupant which remains open during such additional hours. The party responsible for maintenance of the Pylon Sign, as set forth above, shall cause the Pylon Sign to be lighted during Normal Lighting Hours and during any additional time during which the lights on any Parcel are kept lighted pursuant to the immediately foregoing sentence.

(b) Any facilities and fixtures to be used in the lighting of the roadways or parking areas of the Parcels shall be constructed in accordance with the specifications utilized for the lighting facilities and fixtures on the HD Parcel. The Parcels' lighting facilities and fixtures shall be designed and installed with separate meters to measure the electricity consumed on the respective Parcels. Unless otherwise approved by HD in writing, the exterior lighting fixtures on the Landholder Parcels shall not exceed the average lighting output of the exterior lighting fixtures on the HD Parcel.

**Section 2.03. Delegation of Management.** The Owners may enter into an agreement, with the consent of the Owners of all Parcels affected thereby, appointing one of the Owners or a third party to perform all or portions of the maintenance and repair of the Common Areas and related facilities of the Parcels. Such agreement may provide for an administrative fee not exceeding ten percent (10%) of the costs incurred in maintaining and repairing the Common Areas, excluding insurance. In such event each Owner shall be responsible to pay its respective Share (as hereinafter defined in this Section 2.03) of the costs incurred by the designated party in performing such services, which costs shall include the ordinary operating and maintenance expenditures incurred as well as capital expenditures to the extent so authorized, provided however, that any expenditure in which another Owner must share for a repair or replacement of the designated party costing \$5,000 or more shall require the prior approval of each such Owner. As used herein the term "Share" shall mean a fraction, the numerator of which shall be the acreage of such Owner's Parcel and the denominator of which shall be the aggregate acreage of all Parcels.

**ARTICLE III - COVENANTS AND RESTRICTIONS**

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

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

(b) No building or other structure of any kind shall be permitted on any Parcel except in the "Building Areas" and "Future Building Areas" designated on the Site Plan.

(c) Absent HD's express written consent to the contrary, no structures or improvements on any Outparcel shall exceed one (1) story or twenty-five feet (25') in height (plus five (5) feet for architectural features) from first (1st) floor elevation.

(d) No building or other structure shall be permitted within the Parcels if such building or other structure would reduce the parking ratio within the Parcels, or any individual Parcel, to fewer than five (5) parking spaces for every 1,000 square feet of floor space (excluding mezzanine level space used only for storage and related offices and non-sales uses) located therein, or below the number of parking spaces required under applicable governmental rules, regulations and ordinances.

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

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

(g) No portion of the Parcels may be leased, used or occupied for any of the following uses: non-retail use (other than [i] as otherwise set forth herein in regard to the Northerly Landholder Parcel, [ii] retail service uses customary to first-class shopping centers, such as banks and travel agencies and [iii] general offices not exceeding 2,000 square feet per establishment); health spa or exercise facility; medical offices or facilities (other than as otherwise set forth herein in regard to the Northerly Landholder Parcel); hotels or motels (other than as otherwise set forth herein in regard to the Northerly Landholder Parcel); theater; movie theater; auditorium; bowling alley; billiard parlor; funeral parlor; flea market; pawn shop; junkyard; business selling "second-hand" goods (except for such a business selling such goods in "first-class" condition, such as "Play-it-Again Sports"); industrial manufacturing (provided that this shall not preclude or restrict assembly of inventory on the HD Parcel for retail sale); automobile or boat dealership; vehicle repair shop (including but not limited to lubrication and/or service centers); dry-cleaning establishments (except for establishments that provide only drop-off and pick-up points, with no cleaning being performed on site); discotheque; dance hall; night club; skating rink; bar (other than incidental to a business operated primarily as a restaurant in accordance herewith); restaurant outside the HD Parcel and within 250 feet of the HD Parcel; any "social encounter restaurant" (defined as a restaurant that either [i] does not maintain a full-service menu or [ii] receives fifty (50%) or more of its income from the sale of alcoholic beverages); adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials; massage parlor; so-called "head shop"; amusement arcade or game room; body and fender shop, car wash; off-track betting parlor; any operation incorporating coin-operating amusements or showing movies to its customers thereof other than as an incidental or immaterial part of its business. The Northerly Landholder Parcel may be utilized for such retail, office, assisted living, hotel, extended stay, medical office or other commercial uses consistent with first-class commercial developments as Landholder shall determined, subject to the other applicable provisions of this Agreement. Notwithstanding the foregoing provisions of this Section 3.01 (g), any Outparcel shown on the Site Plan may be utilized for the operation of a restaurant (excluding a social encounter restaurant as defined above). Notwithstanding the immediately foregoing sentence, Outparcel 5 shown on the Site Plan and any portion of the Northerly Landowner Parcel may be utilized for the operation of a restaurant (excluding in all events a social encounter restaurant) provided that sufficient parking spaces are provided on Outparcel 5 or on the Northerly Landowner Parcel, as applicable, to provide not less than ten (10) parking spaces for every one thousand (1,000) square feet of floor area within Outparcel 5 or within any restaurant within the Northerly Landowner Parcel, as applicable.

(h) So long as at least fifty percent (50%) of the floor area of the building on the HD Parcel is open and operating as a home improvement store (subject to temporary discontinuance of such business due to repair and reconstruction from casualty, remodeling [by reason of a permitted assignment or subletting or otherwise], condemnation or other reason beyond HD's control), no portion of the Parcels outside of the HD Parcel may be used for a home improvement center or for the sale of lumber, hardware items, plumbing supplies, electrical supplies, paint,

wallpaper, carpeting, floor coverings, cabinets, siding, ceiling fans, gardening supplies, nursery products, patio furniture, Christmas trees, pool supplies and other related items customarily carried by a home improvement center or hardware store or for any outdoor garden center or greenhouse selling live plants, trees, shrubbery or other vegetation except for the incidental sale of such items. Notwithstanding the foregoing, (i) the use of less than 2,000 square feet for the sale of paint, wallpaper or ceiling fans in the aggregate per store shall not constitute a violation hereof, (ii) the use of less than 3,000 square feet for the sale of pool supplies per store shall not constitute a violation hereof and (iii) the incidental sale of nursery products, plants and other vegetation by a grocery store shall not constitute a violation hereof.

(i) There shall be no promotion, entertainment, amusement or other activities in the Common Areas which would interfere with the use of the Common Areas and related facilities for their intended purposes. Notwithstanding the foregoing, HD may utilize all sidewalks on the HD Parcel for the display and sale of merchandise and (ii) a grocery store within the Parcels may use the sidewalks immediately in front of the grocery store space for the display and sale of merchandise.

**Section 3.02. Special Building Restrictions.** Landholder acknowledges that HD initially proposes to construct on the HD Parcel a building which is classified as an "unlimited area" building under certain building codes. (By way of explanation, but not limitation, an "unlimited area" building is designated II-N or V-N under the Uniform Building Code.). HD agrees that if it constructs an "unlimited area" building, such building shall be located immediately adjacent to the boundary line common to the Parcel on which it is built and the adjoining Parcel of Landholder. No building or improvements shall be placed or constructed on the Landholder's Parcel that would cause any building on the HD Parcel to lose such classification.

#### **ARTICLE IV - LIABILITY INDEMNIFICATION**

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

**Section 4.02. Liability Insurance.** Each Owner shall maintain or cause to be maintained comprehensive general commercial liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas by the Owner and its tenants, agents, contractors, employees, licensees, customers and invitees, of such Owner or the occupants of its Parcels except as herein provided. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State in which the Parcels are located and have limits of not less than \$2,000,000 per each person and \$5,000,000 for each occurrence and \$500,000 for property damage for each occurrence. Each Owner shall maintain or cause to be maintained contractual liability insurance specifically endorsed to cover said Owner's agreement to indemnify as set out in Section 4.01. Notwithstanding the foregoing, any Owner or party responsible to maintain such insurance and having a tangible net worth of at least One Hundred Million Dollars (\$100,000,000) may "self insure", or provide for a deductible from said coverage related to its Parcel, to the extent of one percent (1%) of the net worth of said Owner or party in its last annual or fiscal year as certified by an independent certified public accountant and computed in accordance with generally accepted accounting principles consistently applied. Such insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations. Each Owner shall, upon written request from another Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section or evidence of a self-insurance capacity as hereinabove provided, as the case may be. All such insurance shall include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each Owner hereby waives any rights of recovery against any other Owner, its directors, officers, employees, agents and tenants and occupants for any damage or consequential loss covered by said policies, against which such Owner is protected by insurance, to the extent of the proceeds payable under such policies, whether or not such damage or loss shall have been



caused by any acts or omissions of the other Owner or its directors, officers, employees, agents, tenants or occupants.

### **ARTICLE V - CASUALTY AND EMINENT DOMAIN**

#### **Section 5.01. Casualty.**

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

(b) In the event any Common Area improvements are damaged or destroyed, the Owner of the Parcel to which such damage has occurred shall promptly cause the repair, restoration or rebuilding of the Common Area improvements to the extent necessary to restore such area to the extent necessary to avoid interference with the remaining Common Areas and to adhere to any required parking ratios required by law and as set forth herein.

**Section 5.02. Casualty Insurance.** In order to assure performance of their respective obligations under Section 5.01, the Owners of the respective Parcels shall cause to be carried fire and extended coverage insurance on all buildings and improvements on their respective Parcels in the amount of the replacement cost of such improvements, and in amounts at least sufficient to avoid the effect of any co-insurance provisions of such policies, subject to self-insurance under the circumstances authorized in Section 4.02. Any such insurance shall otherwise conform to the provisions with respect to insurance contained in Section 4.02.

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

### **ARTICLE VI - REMEDIES**

#### **Section 6.01. Self Help; Lien Rights Disputes.**

(a) If any Owner shall default in the performance of an obligation of such Owner (such Owner being herein called a "Defaulting Owner"), which default affects the Owner of another Parcel or any occupant thereof (an "Affected Party"), such Affected Party, in addition to all other remedies it may have at law or in equity, after ten (10) days' prior written notice to the Defaulting Owner and any holder of a First Mortgagee or any SL Lessor as herein defined (or in the event of an emergency after such notice as is practical under the circumstances), shall have the right to perform such obligation on behalf of the Defaulting Owner. In such event, the Defaulting Owner shall promptly reimburse the Affected Party the cost thereof, together with interest thereon from the date of outlay at a rate equal to the lesser of (i) two percent (2%) in excess of the prime lending rate charged by First Tennessee Bank for commercial loans of its most preferred commercial customers or (ii) the highest rate permitted by applicable law (the "Interest Rate").

(b) Any such claim for reimbursement, together with interest thereon as aforesaid, shall be secured by a lien on the Parcels and improvements thereon owned by the Defaulting Owner, which lien shall be effective upon the recording of a notice thereof in the Office of the Clerk of the County in which the Parcels are located. The lien shall be subordinate to any first

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mortgage or deed of trust now or hereafter affecting the subject Parcel (a "First Mortgage") which is of record prior to the date upon which notice of the lien is filed in the said Clerk's office and to the interest of any party who has purchased the Parcel and leased it back to the preceding Owner ("SL Lessor"), or its subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale leaseback" transaction (a "SL Lease") under a SL Lease entered into prior to the date upon which notice of the lien is filed in the said Clerk's office; and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such First Mortgage or assignee of such SL Lease shall take title subject only to liens thereafter accruing pursuant to this Section 6.01.

**Section 6.02. Injunctive and Other Remedies.** In the event of a breach by any Owner of any obligation of this Agreement, the other Owners shall be entitled to obtain an injunction specifically enforcing the performance of such obligation; the Owners hereby acknowledge the inadequacy of legal remedies and the irreparable harm which would be caused by any such breach, and/or to relief by other available legal and equitable remedies from the consequences of such breach. Any action taken or document executed in violation of this Agreement shall be void and may be set aside upon the petition of the other Owners of portions of the Center. Any costs and expenses of any such proceeding, including attorneys' fees in a reasonable amount, shall be paid by the Defaulting Owner and, if recorded, shall constitute a lien against the Parcels of the Defaulting Owner and improvements thereon, or the interests therein, until paid.

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

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

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

#### **ARTICLE VII - TERM**

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

#### **ARTICLE VIII - EFFECT OF INSTRUMENT**

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

existing mortgage or deed of trust lien on its Parcels, other than mortgage or deed of trust liens that are expressly subordinate and subject to this Agreement.

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

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

**Section 8.04. Responsibility.** Notwithstanding anything to the contrary contained in this instrument, each party to this Agreement shall be liable and responsible for the obligations, covenants, agreements and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in the land and improvements on their respective Parcels.

#### ARTICLE IX - NOTICES

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

If to Landholder:      Market Street Properties, LLC  
3284 Shea Road  
Collierville, Tennessee 38017  
Attn: David P. Halle, Jr.

With a copy to:        Trezevant Realty Corporation  
7514 Corporate Center Drive  
Germantown, Tennessee 38138  
Attn: Mr. John H. Trezevant

If to HD:                Home Depot U.S.A., Inc.  
2455 Paces Ferry Road  
Building C, 20th Floor  
Atlanta, Georgia 30339-4024  
Attention: Legal Department

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

#### ARTICLE X - ENVIRONMENTAL COMPLIANCE

**Section 10.01. Compliance and Indemnification.**

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(a) Each Owner of a Parcel agrees to (i) comply with all governmental laws, rules or regulations related to the use, storage, treatment, transportation, removal or disposal of Hazardous Materials (as said term is hereinafter defined); (ii) give notice to the other Owners immediately upon Owner's acquiring knowledge of the Hazardous Materials Contamination (as said term is hereinafter defined) with a full description thereof; and (iii) promptly, at such Owner's sole cost and expense, to comply with the requirements of any governmental laws, rules or regulations requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide the Owner with satisfactory evidence of such compliance.

(b) Each Owner shall defend, indemnify and hold harmless the other Owners from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, interest, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees and remedial costs) the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the other Owner by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any covenant of an Owner contained in or referred to in this Section 10.01 of this Agreement or which may be asserted as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Owner's Parcel of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Owner's Parcel, whether or not occasioned wholly or in part by any condition, accident or event caused by an act or omission of the Owner.

**Section 10.02. Hazardous Materials.** The term "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), as amended from time to time and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) any substance, the presence of which on the Parcel is prohibited by any governmental law, rule or regulation; (f) any petroleum-based products stored or used other than in compliance with governmental laws, rules or regulations; (g) underground storage tanks; and (h) any other substance which by any governmental law, rule or regulation requires special handling in its collection, storage, treatment or disposal.

**Section 10.03. Hazardous Materials Contamination.** The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Parcel's facilities, soil, ground water, air or other elements on or of the Parcel by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air or other elements on or of any other real property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Parcel.

## ARTICLE XI - MISCELLANEOUS

### Section 11.01.

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

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

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

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

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

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

**[SIGNATURES COMMENCE ON NEXT PAGE]**

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IN WITNESS WHEREOF, Landholder and HD have executed this Agreement under seal as of the date first above written.

**Landholder:**

**MARKET STREET PROPERTIES, LLC**

By: [Signature]  
Printed Name: David P. Halle  
Printed Title: Chief Manager

[SEAL]

STATE OF Tennessee  
COUNTY OF Shelby

Personally appeared before me, the undersigned, a Notary Public in and for the aforesaid state and county, David P. Halle, with each of whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the chief manager of Market Street Properties, LLC, the within-named bargainor, a limited liability company, and that he as such chief manager, being authorized to do so, executed the foregoing instrument for the purposes contained therein by signing the name of the company by himself as chief manager.

WITNESS my hand and official seal this 4<sup>th</sup> day of September, 1998.

[Signature]  
Notary Public

My Commission Expires:

April 30, 2002

[NOTARIAL SEAL]



HD:

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

By: Kathryn E Lee  
Printed Name: \_\_\_\_\_  
Printed Title: Kathryn E. Lee  
Senior Corporate Counsel/Real Estate  
9/1/98

[CORPORATE SEAL]

STATE OF GEORGIA  
COUNTY OF COBB

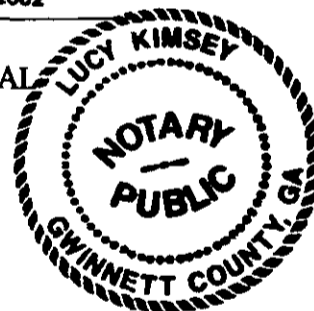
Gwinnett Personally appeared before me, the undersigned, a Notary Public in and for the aforesaid state and county, Kathryn E. Lee, with each of whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged herself/himself to be the Sr. Corp. Counsel-RE of Home Depot U.S.A., Inc., a corporation, the within-named bargainor, and that she/he as such Sr. Corp. Counsel-RE being authorized to do so, executed the foregoing instrument for the purposes contained therein by signing the name of the corporation by herself/himself as Sr. Corp. Counsel-RE

WITNESS my hand and official seal this 1st day of September, 1998.

Lucy Kimsey  
Notary Public

My Commission Expires:  
Notary Public, Gwinnett County, Georgia  
My Commission Expires July 9, 2002

[NOTARIAL SEAL]



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**SCHEDULES**

- A - HD Parcel
- B - Southerly Landholder Parcel
- C - Site Plan
- D - Northerly Landholder Parcel
- E - Sign Plans



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## SCHEDULE A

## HD Parcel

**TO FIND THE TRUE POINT OF BEGINNING**, begin at a 1/2-inch rebar set at the intersection of the northerly right-of-line of Poplar Avenue with the westerly right-of-way line of Market Boulevard;

Run thence in a westerly direction along the northerly right-of-way line of Poplar Avenue a distance of 845.09 feet to a 1/2-inch rebar located at the southeasterly corner of property now or formerly owned by Merrie Oldsmobile-GMC, Inc. (X9-7983);

Run thence North 03 degrees 21 minutes 20 seconds East a distance of 998.71 feet along the easterly line of the Merrie Oldsmobile-GMC, Inc. (X9-7983) property and the easterly line of property now or formerly owned by Poplar View Meadows P.D. Section "H" (GK3514 & Plat Book 148, page 55) to a 1/2-inch rebar set and **THE TRUE POINT OF BEGINNING**;

**FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED**, running thence along said easterly line of Poplar View Meadows P.D. Section "H" North 03 degrees 21 minutes 20 seconds east a distance of 625.07 feet to a 1/2-inch rebar set;

Running thence South 86 degrees 33 minutes 46 seconds East a distance of 758.47 feet to a 1/2-inch rebar set;

Running thence South 67 degrees 06 minutes 11 seconds East a distance of 47.51 feet to a 1/2-inch rebar set at a point of curvature;

Running thence along a curve to the left an arc distance of 13.77 feet to a 1/2-inch rebar set at a point of tangency, said curve having a radius of 40.50 feet, a central angle of 19 degrees 29 minutes 06 seconds, a chord bearing of South 76 degrees 50 minutes 44 seconds East and a length of 13.71 feet;

Running thence South 86 degrees 35 minutes 17 seconds East a distance of 30.60 feet to a 1/2-inch rebar set on the westerly right-of-way line of Market Boulevard;

Running thence in a southerly direction along said westerly right-of-way line of Market Boulevard South 03 degrees 26 minutes 14 seconds West a distance of 571.87 feet to a 1/2-inch rebar set;

Running thence North 86 degrees 33 minutes 46 seconds West a distance of 210 feet to a 1/2-inch rebar set;

Running thence South 03 degrees 26 minutes 14 seconds West a distance of 54.50 feet to a 1/2-inch rebar set;

Running thence North 86 degrees 33 minutes 46 seconds west a distance of 241.45 feet to a 1/2-inch rebar set;

Running thence North 03 degrees 21 minutes 20 seconds east a distance of 20 feet to a 1/2-inch rebar set;

Running thence North 86 degrees 38 minutes 40 seconds west a distance of 395 feet to a 1/2-inch rebar and the **TRUE POINT OF BEGINNING**.

As shown on ALTA Boundary Survey of a 12.06 acre part of the Market Street Properties, LLC 50.294 acre tract (HF-9950), Collierville, Shelby County, Tennessee, prepared by Ashworth-Vaughan, Inc., certified to Home Depot U.S.A., Inc. and Commonwealth Land Title Insurance Company, dated July 7, 1998, bearing Job No. 4250.30 and bearing the signature and seal of John Wesley Ashworth III, Tennessee Registered Land Surveyor No. 1344.

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## SCHEDULE B

## Southerly Landowner Parcel

**BEGINNING** at a 1/2-inch rebar set at the intersection of the northerly right-of-line of Poplar Avenue with the westerly right-of-way line of Market Boulevard;

Running thence in a westerly direction along the northerly right-of-way line of Poplar Avenue a distance of 845.09 feet to a 1/2-inch rebar located at the southeasterly corner of property now or formerly owned by Merrie Oldsmobile-GMC, Inc. (X9-7983);

Running thence North 03 degrees 21 minutes 20 seconds East a distance of 998.71 feet along the easterly line of the Merrie Oldsmobile-GMC, Inc. (X9-7983) property and the easterly line of property now or formerly owned by Poplar View Meadows P.D. Section "H" (GK3514 & Plat Book 148, page 55) to a 1/2-inch rebar set;

Running thence South 86 degrees 38 minutes 40 seconds East a distance of 395 feet to a 1/2-inch rebar set;

Running thence South 03 degrees 21 minutes 20 seconds West a distance of 20 feet to a 1/2-inch rebar set;

Running thence South 86 degrees 33 minutes 46 seconds East a distance of 241.45 feet to a 1/2-inch rebar set;

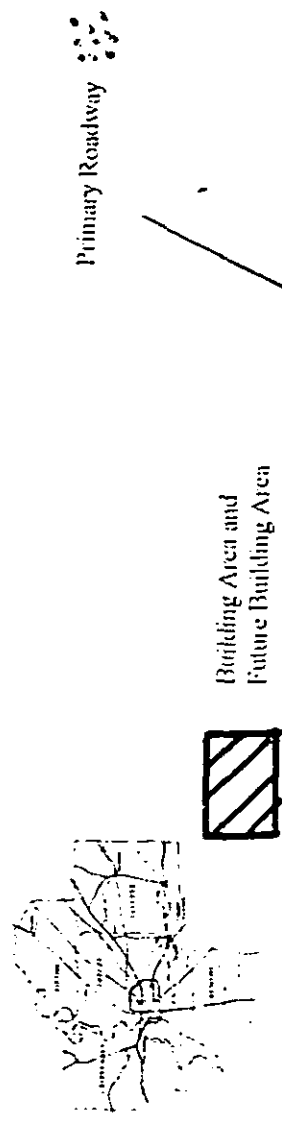
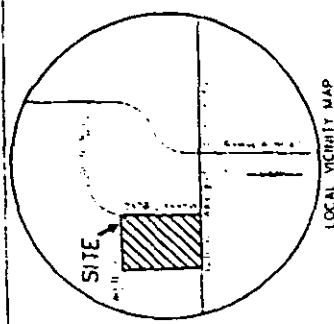
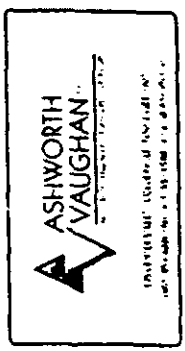
Running thence North 03 degrees 26 minutes 14 seconds East a distance of 54.50 feet to a 1/2-inch rebar set;

Running thence South 86 degrees 33 minutes 46 seconds East a distance of 210 feet to a 1/2-inch rebar set on the westerly right-of-way line of Market Boulevard;

Running thence South 03 degrees 26 minutes 14 seconds West a distance of 1041.77 feet to a 1/2-inch rebar set at the intersection of the northerly right-of-line of Poplar Avenue with the westerly right-of-way line of Market Boulevard and **THE POINT OF BEGINNING**.

As shown on ALTA Boundary Survey of a 12.06 acre part of the Market Street Properties, LLC 50.294 acre tract (HF-9950), Collierville, Shelby County, Tennessee, prepared by Ashworth-Vaughan, Inc., certified to Home Depot U.S.A., Inc. and Commonwealth Land Title Insurance Company, dated July 7, 1998, bearing Job No. 4250.30 and bearing the signature and seal of John Wesley Ashworth III, Tennessee Registered Land Surveyor No. 1344.

SCHEDULE C



Northerly Landholder Parcel

IID Parcel

Southerly Landholder Parcel

FUTURE DEVELOPMENT 9.6 (-/-) ACRES

WHITE ROAD

POPLAR AVENUE

MARKET BOULEVARD

Outparcel 5

Outparcel 4

Outparcel 3

Pylon Sign

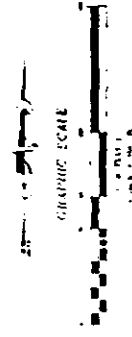
MASTER SITE PLAN

THE COLLIERVILLE MARKETPLACE

COLLIERVILLE, TENNESSEE

A PROJECT BY

TREZEVANT REALTY CORPORATION



## SCHEDULE D

## Northerly Landowner Parcel

**TO FIND THE TRUE POINT OF BEGINNING**, begin at a 1/2-inch rebar set at the intersection of the northerly right-of-line of Poplar Avenue with the westerly right-of-way line of Market Boulevard;

Run thence in a Westerly direction along the northerly right-of-way line of Poplar Avenue a distance of 845.09 feet to a 1/2-inch rebar located at the southeasterly corner of property now or formerly owned by Merrie Oldsmobile-GMC, Inc. (X9-7983);

Run thence North 03 degrees 21 minutes 20 seconds East a distance of 1623.78 feet along the easterly line of the Merrie Oldsmobile-GMC, Inc. (X9-7983) property and the easterly line of property now or formerly owned by Poplar View Meadows P.D. Section "H" (GK3514 & Plat Book 148, page 55) to a 1/2-inch rebar set and **THE TRUE POINT OF BEGINNING**;

**FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED**, running thence North 03 degrees 21 minutes 20 seconds East a distance of 961.27 feet to a 1/2-inch rebar set at the southwesterly corner of property now or formerly owned by Standard Construction Company, Inc. (L3-2298);

Running thence along the southerly boundary line of said Standard Construction Company property South 86 degrees 16 minutes 10 seconds East a distance of 848.75 feet to a 1/2-inch rebar set;

Running thence South 03 degrees 26 minutes 14 seconds West a distance of 975.05 feet a 1/2-inch rebar set ;

Running thence North 86 degrees 35 minutes 17 seconds West a distance of 30.60 feet to a 1/2-inch rebar set at a point of tangency:

Running thence along a curve to the right an arc distance of 13.77 feet to a 1/2-inch rebar set, said curve having a radius of 40.50 feet, a central angle of 19 degrees 29 minutes 06 seconds, a chord bearing of North 76 degrees 50 minutes 44 seconds West and a length of 13.71 feet;

Running thence North 67 degrees 06 minutes 11 seconds West a distance of 47.51 feet to a 1/2-inch rebar set;

Running thence North 86 degrees 33 minutes 46 seconds West a distance of 758.47 feet to a 1/2-inch rebar set and **THE TRUE POINT OF BEGINNING**.

As shown on ALTA Boundary Survey of a 12.06 acre part of the Market Street Properties, LLC 50.294 acre tract (HF-9950), Collierville, Shelby County, Tennessee, prepared by Ashworth-Vaughan, Inc., certified to Home Depot U.S.A., Inc. and Commonwealth Land Title Insurance Company, dated July 7, 1998, bearing Job No. 4250.30 and bearing the signature and seal of John Wesley Ashworth III, Tennessee Registered Land Surveyor No. 1344.

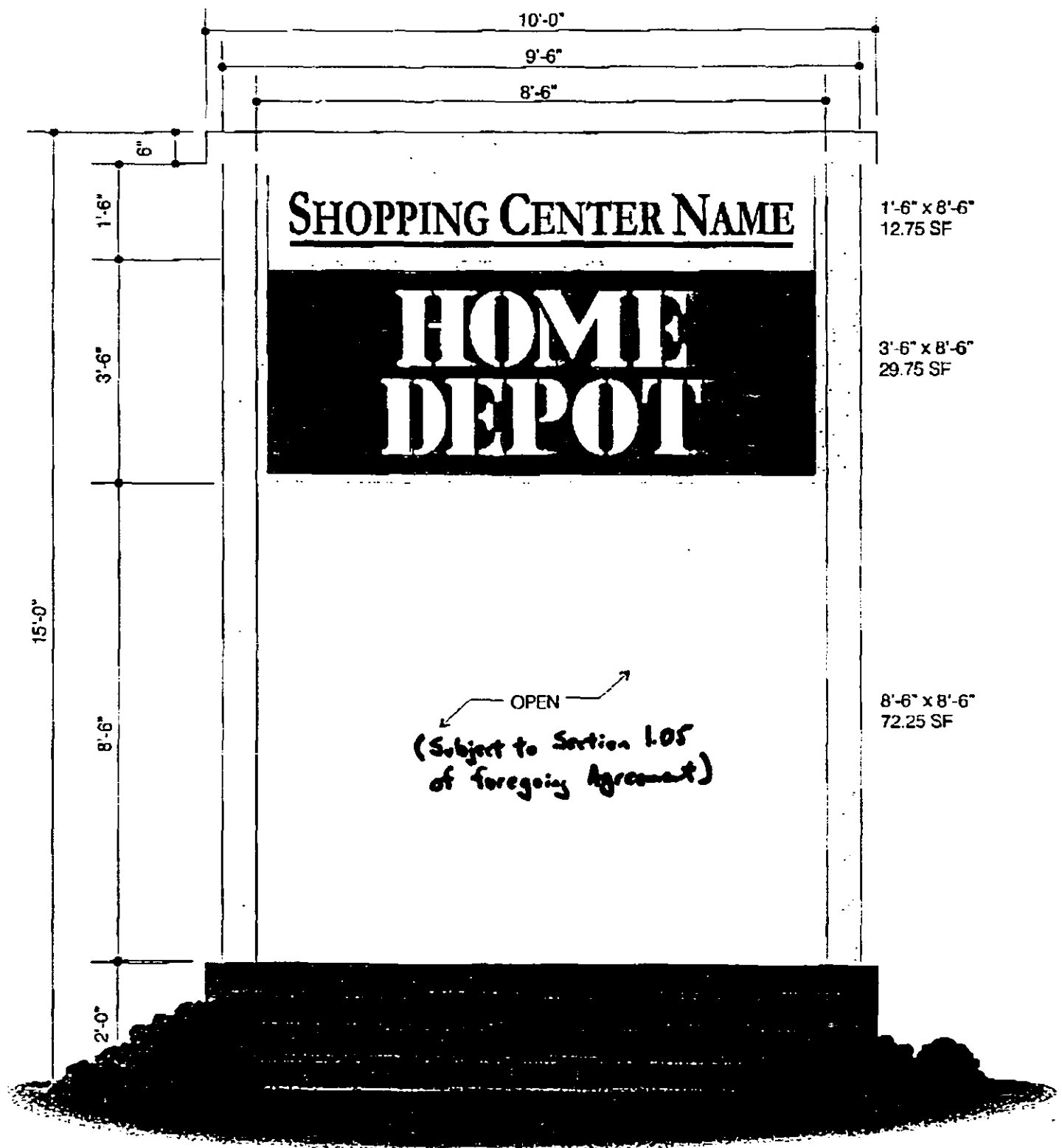
SCHEDULE E

HT 2812

08/17/98 17:58 FAX 770 303 2335


GREENBERG FARROW

002



Scale: 1/2" = 1'-0"

Total SF of all Tenants  
102 SF

<b>Client</b> The Home Depot	<b>Date of Design</b> 07/30/98	<b>Revision Number</b> 2416A.CDR	<b>Representative</b> Evans	<b>COLLINS SIGNS</b>  4229 Hayes Field Road Dothan, Alabama 36425 334.943.4800 Telephone 334.953.1379 Fax	<small>This is an original architectural drawing created by Collins Signs Inc. It is subject to the provisions of the International Copyright Law and is protected by the Copyright Act of 1976. No part of this drawing may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Collins Signs Inc. This drawing is the property of Collins Signs Inc. and is loaned to you for your use only. It is not to be used for any other purpose without the prior written permission of Collins Signs Inc.</small>
<b>Location</b> Collierville, TN	<b>Design Number</b> 2416A.CDR	<b>Revision Date(s)</b> 07/31/98 08/04/98			

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RETURN TO:  
Philip G. Kaminsky, Attorney  
1755 Kirby Parkway, Suite 100  
Memphis, TN 38120

RECORDING STAMPS:

No. HT 2812	
D/C	27
PRE	22
Val	—
STAMP	—
REV	8800
PER	20
D.F.	—
W.L.	900
TOTAL	—
STAMPED BY	
GUY D. BATES	
REGISTER	

HT2812

SHELBY COUNTY  
REGISTER OF DEEDS  
98 SEP -8 AM 8:18