

LU B1  
MAD/663065

0713310

NATRONA CO. CLERK WY  
MARY ANN COLLINS  
RECORDED       

AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
APR 02 2003  
2003 APR 2 PM 1 10

THIS AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Amendment") is dated the [31] day of March, 2003, by and between HOME DEPOT U.S.A., INC., a Delaware corporation ("Home Depot").

RECITALS

A. Home Depot executed that certain Declaration of Covenants, Conditions and Restrictions dated January 25, 2001, and recorded on February 5, 2001, as Instrument No. 665128, Records of Natrona County, Wyoming (the "Declaration") concerning certain real property located in the City of Casper, County of Natrona, State of Wyoming and more particularly described in the Declaration.

B. Pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated February 28, 2003, on [APRIL 2, 2003], 2003, Home Depot sold to East Land Development, LLC, a Wyoming limited liability company ("East Land" or the "Outparcel Owner") that certain Outparcel legally described as Lot 6, Block 1, "Replat of Block 1 of the Luker Landmark Addition" to the City of Casper, Natrona County, Wyoming, as per plat recorded on December 14, 2000, as Instrument No. 663065, Records of Natrona County, Wyoming (the "Outparcel").

C. In connection with the purchase and sale of the Outparcel, Home Depot desires to modify and amend the Declaration as more specifically set forth below.

AMENDMENT

Now therefore Home Depot hereby modifies and amends the Declaration as follows:

1. Outparcel Building Height. Notwithstanding anything to the contrary contained in Section 2.1 of the Declaration, any Outparcel building constructed "in-line" with the Home Depot store will not exceed one (1) story and thirty-five (35) feet in height. Any other buildings located on the Outparcel will not exceed one (1) story and twenty-two (22) feet in height.
2. Plan Approval/Procedure. Notwithstanding anything to the contrary contained in Section 2.2(a) of the Declaration, Home Depot will notify the Outparcel Owner whether the Plans and Specifications are approved or disapproved within thirty (30) days after the submission of the Plans and Specifications by the Outparcel Owner to Home Depot. In addition, notwithstanding anything to the contrary contained in Article 2 of the Declaration, any consent or approval required from Home Depot under said Article 2 will not be unreasonably withheld or delayed.

579887.1 LGSCHR 03/28/03 1:06 PM

ATA

6-23<sup>00</sup>

Compliments of  
FIRST AMERICAN TITLE INSURANCE CO., INC.  
120 N. Center Street • Casper, WY 82601 • (307) 237-8488



Restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such restrictions violate 42 USC 3604(c).

3. **Monument Signs.** Section 2.3 of the Declaration is hereby deleted and is replaced in its entirety as follows:

2.3 **Monument Signs.** Provided the signage otherwise permitted by Governmental Regulations to Home Depot is not adversely affected thereby, the Outparcel may have, subject to Governmental Regulations, two (2) freestanding monument signs on the Outparcel, at locations identified on the Site Plan. Each such monument sign will display a single Occupant's designation. The initial design of each monument sign structure (including without limitation height and size) will be subject to applicable Governmental Regulations and the prior written approval of Home Depot, which approval will not be unreasonably withheld or delayed. Any change to the initial design of any monument sign structure will be subject to Governmental Regulations and to the prior written approval of Home Depot, which approval will not be unreasonably withheld or delayed. The size and design of all sign fascia displayed on each such monument sign shall be subject to the prior written approval of Home Depot, which approval will not be unreasonably withheld or delayed. The cost of constructing, installing, maintaining, operating, repairing and replacing such monument sign structures and sign fascia will be paid by the Outparcel Owner. It will be per se reasonable for Home Depot to disapprove the design of any monument sign structure if such sign interferes with the visibility of any monument or pylon signs located on the Major Parcel.

4. **Parking Areas.** Section 2.5(h) of the Declaration is hereby deleted and is replaced in its entirety as follows:

(h) **Parking Areas.** Following commencement of development of the Outparcel and at all times thereafter, all portions of the Outparcel which can be used for buildings in compliance with parking and Building Area requirements will, until developed for such building use, be either developed as parking area or covered with a one-inch dust cap and kept weed free and clean by the Outparcel Owner.

5. **Parking Ratios.** Section 4.1(a) of the Declaration is hereby deleted and is replaced in its entirety as follows:

(a) **Parking Ratios.** There shall be no charge for parking in the Common Area without the prior written consent of Home Depot, which consent may be withheld or delayed in the sole and absolute discretion of Home Depot. The Parking Area on the Outparcel shall contain sufficient ground level parking spaces in order to comply with the following minimum requirements, without reliance on parking spaces located on any other Parcel:

(1) four (4.0) parking spaces for each one thousand (1,000) square feet of Floor Area;



(2) if a business use contains a drive-up unit (such as remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than ten (10) automobiles (exclusive of any drive-aisle) for each drive-up unit; and

(3) for each single restaurant, ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area.

In the event the minimum number of parking spaces required by Governmental Regulations is greater than the minimum requirements set forth above, then the minimum number of parking spaces as required by Governmental Regulations shall control.

6. Use Restrictions. Section 4.2(a)(3) of the Declaration is hereby modified by the deletion of the phrase "car wash facility or gasoline station," so that such uses may be permitted subject to Home Depot's rights of approval under the Declaration as amended.

7. Restrictions on Hazardous Materials. The third sentence of Section 4.3(a) of the Declaration is hereby deleted and is replaced in its entirety as follows:

It shall be per se reasonable for Home Depot to prohibit underground storage tanks on the Outparcel which do not comply with Environmental Regulations, and it shall be per se reasonable for Home Depot to require any above-ground storage tanks to have a double-wall containment system.

8. Truck/Service Drive. Section 5.1(b) of the Declaration is hereby deleted and is replaced in its entirety as follows:

(b) Maintenance of the Permanent Truck/Service Drive. Home Depot will maintain the Permanent Truck/Service Drive at all times in good condition and repair and in a manner consistent with the standard of maintenance generally maintained by Home Depot for its other home improvement stores in similar urban areas of the Rocky Mountain and Pacific Northwest regions. Each Outparcel Owner served by the Truck/Service Drive shall pay its pro rata share (the "Truck/Service Drive Contribution") of all reasonable costs and expenses incurred by Home Depot for the repair, maintenance, resurfacing and replacement of the Truck/Service Drive and all appurtenant improvements. Said pro rata share shall be based on the ratio of the total square footage of Floor Area located on each Outparcel served by the Truck/Service Drive to the total square footage of Floor Area located on all Parcels (including the Major Parcel) served by the Truck/Service Drive but, in no event shall an Outparcel Owner's annual share of the Truck/Service Drive Contribution be less than One Thousand Five Hundred Dollars (\$1,500.00). Each Outparcel Owner will pay such share within thirty (30) days after demand from Home Depot. Home Depot's maintenance obligations with respect to the Truck/Service Drive shall include, without limitation, the following:





(1) Maintaining, repairing, resurfacing and replacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as will in all respects be equal or superior in quality, use and durability; and restriping, when necessary;

(2) Removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition; and

(3) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines.

9. Indemnification. Section 5.6 of the Declaration is hereby supplemented by insertion of the following after the second sentence of such Section 5.6:

Home Depot shall defend, indemnify and hold the Outparcel Owner harmless for, from and against any and all damages, liabilities, losses, actions, claims, costs and expenses (including reasonable attorneys' fees and court costs on appeal) in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon that portion of the Truck/Service Drive located on the Outparcel, unless such loss, injury or damage is caused by the grossly negligent or willful act or omission of the Outparcel Owner or its Permittees.

10. Capitalized Terms. All capitalized terms not defined in this Amendment will have the meanings given such terms in the Declaration.

11. Effect. Except as specifically modified herein, the terms of the Declaration will continue in full force and effect.

12. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.  
SIGNATURE PAGE FOLLOWS.]**



