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Document prepared by and return to:

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Attention: Enrique R. Anderson, Esq.

RESTRICTIVE COVENANTS AND EASEMENT AGREEMENT

THIS RESTRICTIVE COVENANTS AND EASEMENT AGREEMENT (this "Agreement") is made as of July 9, 2004, by and between **HALLE PROPERTIES, L.L.C.**, an Arizona limited liability company ("Halle"), and **HOME DEPOT U.S.A., INC.**, a Delaware corporation ("Home Depot").

Handwritten initials

WITNESSETH

WHEREAS, by virtue of a conveyance from Home Depot by special warranty deed of even date herewith, Halle is the owner of that certain tract of land described on **Exhibit A** attached hereto and made a part hereof, said property being referred to herein as the "Halle Property"; and

WHEREAS, Home Depot is the owner of that certain tract of land described on **Exhibit B** attached hereto and made a part hereof, said property being contiguous to the Halle Property, and being hereinafter referred to as the "Home Depot Property"; and

WHEREAS, Halle desires to impose certain restrictions on the Halle Property for the benefit of the Home Depot Property; and

WHEREAS, Home Depot and Halle intend, that for the most favorable development of the Properties (as defined below), to create and establish (i) certain permanent reciprocal easements for pedestrian and vehicular ingress and egress, (ii) a permanent easement for use of storm water facilities, and (iii) certain permanent easements for parking and the maintenance and repair of certain roadways, drives, walks and curbing and related directional signage; and

STEWART TITLE OF ILLINOIS
2 N. LASALLE STREET
SUITE 1820
CHICAGO, IL 60602

372349 DP

STEWART TITLE COMPANY
2055 W. Army Trail Road, Suite 110
Addison, IL 60101
630-889-4000

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WHEREAS, the creation, use and maintenance of the easements and restrictions granted herein will be beneficial to the Properties.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by each party hereto to the other (including, with respect to Halle, Home Depot's conveyance to it of the Halle Property), the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I – DEFINITIONS

Section 1.01. Definitions. The following defined terms shall have the meanings set forth below for purposes of this Agreement.

- (A) “Building”: Any permanently enclosed structure placed, constructed or located within the Halle Property, which shall include any appurtenant canopies and supports.
- (B) “Claims”: Causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and court costs).
- (C) “Default Rate”: A rate equal to the lesser of (i) the maximum rate allowed by law or (ii) fifteen percent (15%) per annum.
- (D) “Floor Area”: The total number of square feet of floor space in a Building, including basement, subterranean, balcony and mezzanine space, irrespective of whether actually occupied, and including any outdoor or patio seating area used exclusively by an Owner or Occupant for its Permittees. Floor Area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components.
- (E) “Halle Storm Water Facilities”: Any and all storm water drainage lines and facilities (including, but not limited to, any water collection, retention or detention facilities) from time to time located within that portion of the Home Depot Property generally depicted as the “Halle Storm Water Easement Area” on the Site Plan.
- (F) “Hazardous Substances”: Asbestos, polychlorinated biphenyl and such materials, waste, contaminants or other substances defined as toxic, dangerous to health or otherwise hazardous by cumulative reference to the following sources as amended from time to time: (i) the Resource Conservation and Recovery Act of 1976, 42 USC §6901 *et. seq.* (“RCRA”); (ii) the Hazardous Materials Transportation Act, 49 USC §1801, *et. seq.*; (iii) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC §9601 *et. seq.* (“CERCLA”); (iv) applicable laws, rules, regulations, ordinances and agency agreements of the jurisdiction where the Property is

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located, and (v) any federal, state or local statutes, regulations, ordinances, rules or orders issued or promulgated under or pursuant to any of those laws or otherwise by any department, agency or other administrative, regulatory or judicial body (such sources being referred to as "Environmental Laws").

(G) "HD Access": Any and all roadways, drives, walks and curbing and related directional signage now or hereafter existing within that area generally depicted on the Site Plan as the "HD Easement Area" and located on the Halle Property.

(H) "HD Storm Water Facilities": Any and all storm water drainage lines and facilities from time to time located within the Halle Property, including, but not limited to, the "Proposed Storm Water Line" and "Outflow Line" generally depicted on the Site Plan.

(I) "Improvements": Any and all Buildings, patios, structures, signs, parking facilities, paved surfaces, drives, walks, curbs or other improvements now or hereafter located on the Halle Property, but excluding the Main Access and Lighting Facilities.

(J) "Lighting Facilities": Those certain lampposts depicted on the Site Plan as "Lampposts" and any related utility lines or facilities serving such lampposts as may exist on the Halle Property as of the date hereof.

(K) "Occupant": Any Person from time to time entitled to the use and occupancy of any portion of the Properties under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

(L) "Owner" or "Owners": Individually or collectively, Halle, Home Depot and their respective heirs, personal representatives, successors and assigns acquiring title in any portion of the Properties.

(M) "Main Access": All roadways, drives, walks and curbing and related directional signage now or hereafter existing within that area generally depicted on the Site Plan as the "Main Access" and located on the Halle Property and the Home Depot Property.

(N) "Property" or "Properties": Individually or collectively, the Home Depot Property and the Halle Property, as each is shown on the Site Plan.

(O) "Permittees": All Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, tenants, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended use of the Properties.

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(P) "Person": Individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(Q) "Readerboard Signs": Any sign panel (including electrical and non-electrical) containing a reader board, which reader board displays scrolling, replaceable or removable signage and/or advertising.

(R) "Restaurant": Any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on- or off-site consumption.

(S) "Site Plan": That certain site plan attached hereto as **Exhibit C** and made a part hereof.

ARTICLE II - GRANT OF EASEMENT

Section 2.01. Ingress and Egress.

(A) Home Depot and Halle hereby grant and convey, each to the other, for the benefit and use of each Property and its respective Owners and Permittees, a perpetual nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over, across and through the Main Access located on the granting party's Property.

(B) Halle hereby grants and conveys to Home Depot, for the benefit of the Home Depot Property, its respective Owners and Permittees, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic and parking of vehicles upon, over, across and through the HD Access.

(C) Halle hereby grants and conveys to the Owner of the Home Depot Property (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property), a perpetual non-exclusive easement to install, construct, maintain, and repair any portion of the Main Access located on or within the Halle Property, together with a temporary non-exclusive easement to perform any acts on the Halle Property reasonably necessary for the installation, construction, maintenance, and repair of the Main Access, including, but not limited to, the right to enter upon and use the Halle Property for pedestrian and vehicular access, ingress and egress during the time of such installation, construction, maintenance, or repair.

Section 2.02. Storm Sewer Easement.

(A) Home Depot hereby grants and conveys to Halle, for the benefit of the Halle Property, a nonexclusive easement for the flow, passage, use, and connection of

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the Halle Storm Water Facilities, including the right to use and impound storm water within the Halle Storm Water Facilities. Halle covenants and agrees to procure, at its own expense, all permits, licenses and approvals and pay any and all tap-on or similar fees or costs required to utilize and connect any Improvements to the Halle Storm Water Facilities. The easement set forth in this Section 2.02(A), along with Home Depot's obligation to maintain and/or repair the Halle Storm Water Facilities, shall terminate upon the dedication of the Halle Storm Water Facilities to governmental or quasi-governmental authorities or to public utilities servicing the Properties.

(B) At any time and from time to time Home Depot shall have the right to relocate the Halle Storm Water Easement Area and to install, repair, maintain or relocate any portion of the Halle Storm Water Facilities located or to be located on the Halle Property provided that (i) in the case of a relocation, such relocation shall be performed only after thirty (30) days' advance written notice to Halle that Home Depot intends to undertake said relocation and (ii) any such repair, maintenance and/or relocation shall not permanently reduce the usefulness, capacity or function of the Halle Storm Water Facilities.

(C) Halle hereby grants and conveys to Home Depot, for the benefit of the Home Depot Property, a perpetual non-exclusive easement to install, construct, operate, use, maintain, repair and relocate HD Storm Water Facilities, together with a temporary non-exclusive easement to perform any acts on the Halle Property reasonably necessary for the installation, construction, maintenance, repair and relocation of the HD Storm Water Facilities, including but not limited to, the right to enter upon and use the Halle Property for pedestrian and vehicular access, ingress and egress during the time of such installation, construction, maintenance, repair or relocation. The easement set forth in this Section 2.02(C), along with Home Depot's obligation to maintain and/or repair the HD Storm Water Facilities, shall terminate upon the dedication of the HD Storm Water Facilities to governmental or quasi-governmental authorities or to public utilities servicing the Properties.

(D) Home Depot and Halle hereby grant and convey, each to the other, for the benefit and use of each Property, a perpetual nonexclusive easement to drain surface storm water runoff from the benefiting party's Property, as the same hereafter may be improved, over, onto, across and through the granting party's Property and into the storm water drainage lines from time to time located thereon.

(E) In connection with Halle's construction of the Improvements, Halle shall, at its sole cost and expense, relocate a portion of the existing storm sewer lines and facilities located on the Halle Property, being generally depicted on the Site Plan as the "Old Storm Water Line," to a new location on the Halle Property generally depicted on the Site Plan as the "Proposed Storm Water Line." Any and all work performed by Halle, or on behalf of Halle, pursuant to this Section 2.02(E), shall be performed (i) in a lien-free, professional and workmanlike manner, (ii) in accordance with all applicable laws, rules, regulations, and requirements (federal, state and local),

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(iii) in a manner that will not unreasonably interfere with the use, occupancy or enjoyment of, the Home Depot Property, and (iv) so as not to permanently reduce the usefulness, capacity or function of the storm water lines or facilities located on the Home Depot Property.

Section 2.03 Lighting Facilities Halle hereby grants and conveys to Home Depot, for the benefit of the Home Depot Property, a perpetual non-exclusive easement to use, maintain, repair and replace the Lighting Facilities, together with a temporary non-exclusive easement to perform any acts on the Halle Property reasonably necessary for the maintenance, repair and replacement of the Lighting Facilities, including but not limited to, the right to enter upon and use the Halle Property for pedestrian and vehicular access, ingress and egress during the time of such maintenance, repair or replacement.

ARTICLE III - MAINTENANCE RESPONSIBILITIES

Section 3.01. Home Depot's Maintenance Obligations. The Main Access, Halle Storm Water Facilities, HD Storm Water Facilities and Lighting Facilities shall be kept and maintained by the Owner of the Home Depot Property (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property) (i) in good condition and repair and (ii) in compliance with all applicable laws, rules, regulations and ordinances. On or before January 31 of each calendar year, Halle shall deliver to the Owner of the Home Depot Property (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property) the sum of \$750.00, as Halle's contribution toward the cost of said maintenance of the Main Access, Halle Storm Water Facilities, HD Storm Water Facilities and Lighting Facilities (the "Maintenance Fee"). The initial Maintenance Fee shall be increased by five percent (5%) as of January 31, 2007, and five percent (5%) as of January 31 of each successive third (3rd) anniversary thereafter. Notwithstanding any other provisions hereof, if the Owner of the Halle Property, or any of its Permittees damages the Main Access, Halle Storm Water Facilities, HD Storm Water Facilities and Lighting Facilities, Halle shall reimburse the Owner of the Home Depot Property (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property) for the costs and expenses for the repair and restoration of such damage within thirty (30) days after receipt of an invoice from the Owner of the Home Depot Property (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property), and in the event Halle fails to make such payment within such 30-day period, Halle shall be required to pay the amount due, together with interest thereon at the Default Rate until the payment is made.

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Section 3.02. Halle's Maintenance Obligations. Halle shall maintain, repair, and replace, as appropriate, all Improvements, so as to keep the Improvements at all times in a safe, sightly, good and functional condition consistent with the standards of first class community shopping centers in the Chicago, Illinois metropolitan area, which shall include, without limitation, the following requirements:

- (A) all parking surfaces, driveways, sidewalks and walkways shall be swept and, if necessary, washed at intervals sufficient to maintain the same in a reasonably clean condition;
- (B) all surface waters, trash and debris shall be promptly removed, and all snow and ice will be removed as promptly as is reasonable and practical;
- (C) all public trash and rubbish containers shall be emptied at intervals sufficient to maintain same in a reasonably clean condition;
- (D) all landscaping shall be properly maintained, including, without limitation, irrigating, mowing, replacing dead plantings and removing weeds and foreign matter;
- (E) all hard-surfaced markings shall be inspected at appropriate regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear or other cause;
- (F) all asphalt and concrete paving (including, without limitation, parking surfaces, driveways, sidewalks and walkways), shall be inspected at appropriate regular intervals and maintained in a good and safe condition;
- (G) all surface utility facilities servicing the common facilities (including, without limitation, hose bibs, standpipes, irrigation lines and domestic water lines) shall be inspected at appropriate regular intervals and promptly repaired or replaced, as the occasion may require;
- (H) all lamps on lighting standards or otherwise shall be inspected at appropriate regular intervals and all lamps shall be promptly replaced when no longer properly functioning; and
- (I) appropriate measures shall be taken at regular intervals to control and/or eliminate rodents, vermin and other pests.

ARTICLE IV -HALLE PROPERTY COVENANTS

Section 4.01. Restrictions on Halle Property. The Halle Property shall be owned and used subject to the following restrictive covenants, which shall run with the

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land and be binding upon Halle and each of Halle's Occupants, and its and their respective successors and assigns:

(A) No more than one (1) building or other structure shall be located on the Halle Property at any time. No building or structure of any kind located on the Halle Property shall exceed twenty-four (24) feet in height (including parapet walls or any other projections of any kind other than rooftop mechanical equipment) or contain more than Seven Thousand Eight Hundred Eighty-Four (7,884) square feet of Floor Area. No building or structure of any kind shall be located within that portion of the Halle Property depicted as the "No-build Area" on the Site Plan, without the prior written approval by the Owner of the Home Depot Property (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property), in such Owner's sole and absolute discretion.

(B) No more than one (1) business shall be permitted to operate on the Property at any time, except where two (2) businesses operate under the same entity and out of the same building on the Property (such as a gas station and food service vendor).

(C) Any building or structure on the Halle Property shall, where reasonably possible, orient its main entrance away from the parking areas located on the Home Depot Property.

(D) Any construction on the Halle Property shall be conducted in a manner which will limit, to the maximum extent reasonably practicable, any interference with the operation of the Home Depot Property.

(E) Readerboard Signs shall not be permitted on the Halle Property.

(F) Self contained parking sufficient to comply with applicable rules and regulations of applicable governmental authorities (without variance) shall be provided by the owner of the Halle Property with respect to the Halle Property at all times; provided, however, that in no event shall the Halle Property contain less than five (5) parking spaces per one thousand (1,000) square feet of Floor Area used for retail purposes (other than as a Restaurant) or less than fifteen (15) parking spaces per one thousand (1,000) square feet of Floor Area used as a Restaurant. In no event, however, shall the number of parking spaces maintained on the Halle Property be less than thirty-nine (39) spaces.

(G) No portion of the Halle Property 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.

(H) No portion of the Halle Property may be leased, used or occupied as or for a funeral parlor; flea market; discotheque; skating rink; Restaurant (except for a

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fast food restaurant); the sale or distribution of alcoholic beverages (except as incidental to the business being operated on the Halle Property); bar (a bar being defined for purposes of this Agreement as an establishment offering the sale of alcoholic beverages for consumption on the premises where such sales are not incidental to the business being operated on the Halle Property); unsupervised game room or amusement arcade; movie theater; automobile dealership; automotive repair shop which replaces automotive engines or transmissions; billiard parlor; bowling alley; industrial manufacturing; truckstop; adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials; massage parlor; so-called "head shop"; body and fender shop; off-track betting parlor; health spa; "social encounter" type Restaurant; or any promotion, entertainment, or amusement activities such as traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fire works, sales by transient merchants utilizing vehicles or booths, or other promotions of any nature. The sale of alcoholic beverages shall be deemed incidental if the gross sales derived from such alcoholic beverages are less than ten percent (10%) of the total gross sales derived from the business operated on the Halle Property.

(I) No portion of the Halle Property shall be used for the sale, display, lease or distribution of lumber, hardware items, plumbing supplies, electrical supplies, paint, wallpaper and wallcoverings, hard and soft flooring (including, without limitation, tile, wood flooring, rugs and carpeting), interior design services, kitchens or bathrooms or components thereof (including, without limitation, tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware), indoor and outdoor lighting, window treatments (including, without limitation, draperies, curtains and blinds), cabinets, siding, ceiling fans, gardening supplies, nursery products, pool supplies, barbecue or gas grills, patio furniture and patio accessories, non-patio furniture (including, without limitation, home entertainment centers), kitchen appliances (including, without limitation, countertop small appliances and cookware), closet organizing systems, pictures or picture framing, or Christmas trees.

(J) Prior to constructing any buildings, signage, or other improvements on the Halle Property, Purchaser shall deliver to the owner of the Home Depot (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property) a grading plan, utility plan, site plan, exterior building elevations, drainage plan, signage plan and landscape plan for the Halle Property (collectively, the "Plans"). The Plans shall be subject to the prior approval by the Owner of the Home Depot Property, in such Owner's sole discretion. Notwithstanding anything to the contrary contained herein, any Building constructed on the Halle Property shall be constructed of split face block, stucco and/or brick on all four (4) sides of the exterior of such Building.

Section 4.02. Security Services for Halle Property. Halle shall, at Halle's sole cost and expense, implement, keep and maintain at the Halle Property security services comparable as to coverage, control and responsiveness to that which would be obtained

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by prudent owners or operators of like enterprises in the greater metropolitan Chicago, Illinois area. Halle acknowledges and agrees that Home Depot shall have no responsibility or obligation whatsoever to provide any security or crime prevention services for the benefit of Halle Property and Halle hereby releases and agrees to hold harmless Home Depot from and against any and all liability or loss to Halle, or its Permittees arising out of or in any way connected with any trespass, criminal activity, damage or injury to persons or property at the Halle Property or the Home Depot Property.

Section 4.03. Lighting. The lighting of the Halle Property (excluding the Lighting Facilities and any lighting installed by or on behalf of Home Depot) shall be constructed in accordance with the Plans and shall not be brighter than the lighting on the Home Depot Property. During the term of this Agreement, each Owner grants an irrevocable license to each other Owner for the purpose of permitting the lighting from one Property to incidentally shine on the other Property. No portion of the Lighting Facilities shall be removed, replaced, relocated, or altered without the written consent of the Owner of the Home Depot Property (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property).

ARTICLE V – INSURANCE, EMINENT DOMAIN AND INDEMNIFICATION

Section 5.01. Liability Insurance.

(A) Halle shall maintain or cause to be maintained commercial general liability insurance with broad form coverage insuring against claims on account of bodily injury or death, personal and advertising injury, property damage or destruction, and contractual liability (i.e., exclusions for liability assumed under contract must be deleted) that may arise from, or be related to (i) the conduct of Halle and/or its Occupants, or (ii) the condition, use or occupancy of the Halle Property (the "Halle Liability Insurance").

(B) The Halle Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State of Texas with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system), and have limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence and Five Million and No/100 Dollars (\$5,000,000.00) in the aggregate. The insurance required pursuant to this Section 5.01 shall be at least as broad as the most commonly available ISO Commercial General Liability policy form CG 00 01 0798 and shall include the following provisions: (i) the policy may not be canceled or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days' prior written notice by the insurer to each insured and additional insured; (ii) severability of interests; (iii) an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds; (iv) name Home

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Depot as an additional insured; and (v) endorsed to cover Halle's agreement to indemnify as set out in this Agreement. Upon Home Depot's request, Halle agrees to furnish to Home Depot evidence that: (i) such insurance is in full force and effect; (ii) the premiums have been paid in full; and (iii) the appropriate parties are designated as additional insureds on ISO Form CG 2026 1185. If not part of such policy, the Halle Liability Insurance shall have at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or caused by employees; (iii) providing for blanket contractual liability coverage (including all of Halle's indemnity obligations contained in this Agreement), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; (iv) providing for coverage of employer's automobile non-ownership liability; and (v) if the use of the Halle Property includes the sale of alcoholic beverages, including coverage for employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) per occurrence. The Halle Liability Insurance shall be written on an "occurrence" basis form and not on a "claims made" form. The insurance referenced in this Section 5.01 may be provided under (i) an individual policy specifically covering the Halle Property (ii) a blanket policy or policies which includes other liabilities, properties and locations of Halle; so long as the amount and coverage of insurance required to be carried hereunder is not diminished, or (iii) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by Halle in compliance with this Section 5.01, Halle shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed one percent (1%) of an Owner's net worth.

Section 5.02. Insurance Coverage During Construction.

(A) Prior to commencing any construction activities within the Halle Property, the Owner of the Halle Property or its Occupant shall obtain or require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

- (1) Workers' compensation and employer's liability insurance:
 - a. Worker's compensation insurance as required by any applicable law or regulation.
 - b. Employer's liability insurance in the amount of Five Million and No/100 Dollars (\$5,000,000.00) each accident for bodily injury, Five Million and No/100 Dollars (\$5,000,000.00) policy limit for bodily injury by disease, and Five Million and No/100 Dollars (\$5,000,000.00) each employee for bodily injury by disease.

(2) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:

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- (a) Required coverages:
- (i) Premises and Operations;
 - (ii) Products and Completed Operations;
 - (iii) Contractual Liability insuring the indemnity obligations assumed by contractor under the contract documents;
 - (iv) Broad Form Property Damage (including Completed Operations);
 - (v) Explosion, Collapse and Underground Hazards;
 - (vi) Personal Injury Liability; and
 - (vii) Builders Risk
- (b) Minimum limits of liability:
- (i) Two Million and No/100 Dollars (\$2,000,000.00) per occurrence.
 - (ii) Five Million and No/100 Dollars (\$5,000,000.00) aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work),
 - (iii) Five Million and No/100 Dollars (\$5,000,000.00) general aggregate applied separately to the Shopping Center.
- (3) Automobile Liability Insurance: Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, with limits of liability of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.
- (4) Umbrella/Excess Liability Insurance: The general contractor shall also carry umbrella/excess liability insurance in the amount of Five Million and No/100 Dollars (\$5,000,000.00). If there is no per project aggregate under the Commercial General Liability policy, the limit shall be Ten Million and No/100 Dollars (\$10,000,000.00).
- (B) Home Depot shall be added as an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount or

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coverage below the requirements of this Agreement without at least thirty (30) days' prior written notice to the insured and additional insured.

Section 5.03. Damage to Buildings. If any Building is damaged or destroyed by fire or other cause, the Owner of the Property on which said Building was or is located shall promptly cause either (i) the repair, restoration, or rebuilding of the Building so damaged or destroyed in accordance with the Plans, 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 Property in a clean, sightly and safe condition. All areas on which Buildings are not reconstructed following a casualty or "Taking" (as defined in Section 5.07 below) shall be (i) graded or caused to be graded by the Owner thereof in such a manner as not to adversely affect the drainage of the Properties or any portion thereof, (ii) covered by decomposed granite, gravel, sod, or hydroseed, and (iii) kept weed free and clean at the subject Owner's sole cost and expense until such time as Buildings are reconstructed thereon.

Section 5.04. Casualty Damage to Main Access. In the event any portion of the Main Access is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this Agreement, Home Depot shall repair or restore such area of the Main Access with due diligence, and the cost of such repair and/or restoration shall be borne equally by all Owners. The cost of such repair and/or restoration allocable to each Owner shall be paid to Home Depot within thirty (30) days after receipt of an invoice from Home Depot, and in the event an Owner fails to make such payment within such 30-day period, said Owner shall be required to pay the amount due, together with interest thereon at the Default Rate until the payment is made. In the event such damage or destruction of the Main Access or the is caused wholly by the negligent or willful act of another Owner, Occupant or third Person, Home Depot reserves and retains the right to proceed against such other Owner or third Person for indemnity, contribution or damages.

Section 5.05. Property Insurance. To assure performance of its (including financial obligations) under Sections 5.03 and 5.04 above, the Owner of the Halle Property shall cause to be carried causes of loss - special form property insurance at least as broad as ISO Special Form Causes of Loss, CP 1030 0695, in an amount not less than eighty percent (80%) of the full insurable replacement cost (excluding roofings, foundations or excavations) of all Buildings and improvements on the Halle Property. The insurance referenced in this Section 5.05 may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of the Owner of the Halle Property; so long as the amount and coverage of insurance required to be carried hereunder is not diminished, or (iii) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by the Owner of the Halle Property in compliance with this Section 5.05, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed one percent (1%) of said Owner's net worth. Any required property insurance shall be carried by an insurance company or

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companies qualified to do business in the State of Georgia with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system).

Section 5.06. Eminent Domain. In the event the whole or any part of the Halle Property shall be taken or damaged by right of eminent domain or any similar authority of law or any transfer in lieu thereof (a "Taking"), the Owner of the Home Depot Property (or, if there be more than one (1) owner of the Home Depot Property, then the owner of the largest area of the Home Depot Property) shall have the right to file a collateral claim with the condemning authority with respect to the Property (or portion thereof) being so taken to the extent of any damage suffered by such Owner resulting from the severance of the land or improvements so taken. In the event of a partial Taking, the Owner of the Halle Property shall restore any affected portion of the HD Access or Main Access as nearly as possible to the condition existing prior to the Taking to insure its continued use and operation, or, in the case of the Main Access, to insure the continued ingress/egress to, from and between the Properties and the adjacent public right of ways to the extent reasonably feasible, without contribution from any other Owner.

Section 5.07. Environmental Indemnification. Halle shall not store, release, or use, or permit the storage, release or use of, Hazardous Substances on, about or under the Halle Property, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Halle hereby agrees to indemnify Home Depot for any and all loss, cost, claim, damage, liability or expense, including, without limitation, (i) any devaluation of adjacent property resulting from and (ii) reasonable attorney's fees and expenses incurred as a result of Halle's breach of this covenant.

ARTICLE VI - MISCELLANEOUS PROVISIONS

Section 6.01. Time of the Essence. Time is of the essence of this Agreement.

Section 6.02. Amendment. Halle and Home Depot hereby agree that, except to the extent otherwise set forth herein, only upon the written consent of the parties hereto may this Agreement be amended, modified or terminated, or, except to the extent otherwise set forth herein, may any of the easements or easement areas be relocated, changed, altered, diminished or expanded.

Section 6.03. Waiver. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent and the breach of any covenant by any party shall not release or discharge such party from its obligations hereunder. No delay or omission by any party to exercise its rights accruing upon any noncompliance or failure of performance by any party shall impair any such right or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements to be performed by any other party shall not be

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construed to be a waiver of any succeeding breach or of any other covenants, conditions or agreements contained herein.

Section 6.04. Severability. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any Person or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to Person or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

Section 6.05. Binding Effect; Appurtenance. This Agreement shall be binding upon and inure to the benefit of Halle and Home Depot and their respective successors and assigns, including successors in title. Notwithstanding the foregoing, each Owner shall be responsible only for its obligations, indemnities, duties, liabilities and responsibilities set forth in this Agreement that accrue during the period of time during which such Owner holds fee simple title to its respective Property or portion thereof. Upon the conveyance of a Property or a portion thereof, the Owner making such conveyance shall be relieved from the obligations, duties, indemnities and responsibilities hereunder arising from and after the date of such conveyance as to the Property, or portion thereof conveyed, and the successor Owner shall become obligated hereunder for all matters arising from and after the date of conveyance. The rights, privileges and easements granted and conveyed hereunder shall exist for the benefit of, and be a burden upon, the Home Depot Property and the Halle Property and shall run with title to, and be appurtenant to, such Properties.

Section 6.06. Notices. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, facsimile (provided that a copy thereof shall be sent concurrently to the intended recipient by one of the other methods provided herein), or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Halle:

Halle Properties, L.L.C.
20225 N. Scottsdale Road
Scottsdale, Arizona 85255
Attention: James Silhasek, Esq.
Facsimile Number: (480) 606-4361
Telephone Number: (480) 606-6000

If to Home Depot: Home Depot U.S.A., Inc.

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2455 Paces Ferry Road
 Atlanta, Georgia 30339
 Attention: Vice President - Real Estate Law
 Telephone Number: (770) 433-8211
 Facsimile Number: (770) 384-3042
 HD Store #1932

If the notice is sent
 within 180 days
 following the date
 hereof, with a copy
 to:

Sutherland Asbill & Brennan LLP
 999 Peachtree Street
 Suite 2300
 Atlanta, Georgia 30309
 Attention: James B. Jordan, Esq.
 Telephone Number: (404) 853-8101
 Facsimile Number: (404) 853-8806

or to such other address as any party may from time to time designate by notice in writing to the other parties. Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

Section 6.07. Remedies. In the event an Owner fails to perform the maintenance, repair or other work required by this Agreement, or fails to perform the work in accordance with the requirements of this Agreement, or otherwise breaches the terms of this Agreement, the non-defaulting Owner may notify the defaulting Owner and shall specify the deficiencies in the work or the breach. If such deficiencies are not corrected, or the breach not cured, within thirty (30) days after receipt of such notice, then such non-defaulting Owner shall have the right to correct such deficiencies or perform the work (even if such work must be undertaken on the defaulting Owner's Property) or cure the breach, and recover all actual costs and expenses related thereto from the defaulting Owner. Notwithstanding the foregoing, in the event that the failure to perform the work, or failure to perform the work in the manner required in this Agreement, or the breach of this Agreement, creates an imminent danger of damage to persons or properties, or jeopardizes the continuance of business operations on any Property, no notice shall be required prior to the non-defaulting Owner commencing such work or commencing a cure. Any monetary amounts due and payable to the non-defaulting Owner pursuant to this Agreement shall be paid within ten (10) days from the date the defaulting Owner is notified of the amounts due. The failure to pay any amounts due pursuant to this Agreement shall not entitle such non-defaulting Owner to file a lien or claim of lien against the Property or portion thereof owned by the defaulting Owner.

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Section 6.08. Covenants Run With the Land. All the covenants, conditions, restrictions, easements, terms and provisions hereof are and shall be deemed to be covenants running with the property described herein and shall burden and benefit such property as described herein and, with respect to such property, each Owner, the holders or owners of any mortgage, indenture, deed of trust or deed to secure debt encumbering any of such property, any purchaser at a foreclosure sale, any other person or entity acquiring any right, title or interest in such property and their respective heirs, executors, administrators, representatives, successors and assigns. Each Owner shall be released from its obligations hereunder following the conveyance of all its interest in its respective Property.

Section 6.09 Continuation Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall entitle any party hereto to cancel, rescind or otherwise terminate this Agreement. Such limitation, however, shall not affect in any manner any other rights or remedies which such party may have hereunder by reason of such breach.

Section 6.10. Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and exhibits hereto.

Section 6.11. Construction. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party hereto.

Section 6.12. Governing Law. This Agreement shall be construed in accordance with the laws of the State in which the Properties are located, without regard to conflicts laws or choice of law rules thereof.

Section 6.13. Estoppel Certificates. Upon the request of any party hereto, the other parties shall issue to any party designated by the requesting party an appropriate certificate certifying whether the party to whom the request is made knows of any default under this Agreement or of any assignment, modification or amendment to this Agreement (and the nature and extent of any such default or other known matter) and whether, to that party's knowledge, this Agreement is in full force and effect. The certificate may be relied upon by a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary and shall constitute a waiver of any claim by the certifying party based upon facts contrary to the certificate of which that party had knowledge at the time of making the certificate. The certificate shall not subject the party furnishing the certificate to any liability for any inaccurate statement which such party in good faith believed was correct when made or any obligation to correct or disclose any change in the information certified.

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Section 6.14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

Section 6.15. Term. This Agreement and the easements, rights, obligations and liabilities created hereby shall be perpetual to the extent permitted by applicable law, and if not permitted by applicable law to exist in perpetuity, shall exist for the longest duration permitted thereby.

[The remainder of this page is intentionally left blank.]

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

HALLE PROPERTIES, L.L.C., an
Arizona limited liability company

Stephanie Helfman
Witness

By: WILANNA, INC., an Arizona
corporation, its managing member

Brenda Haney
Notary Public

By: *James Silhasen*
Name: JAMES SILHASEN, AGENT

My commission expires

[NOTARIAL SEAL]



Attest: *Brenda Haney*
Name: Brenda Haney

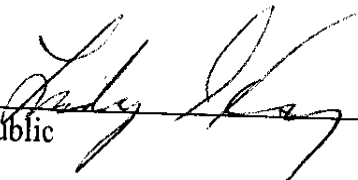
(CORPORATE SEAL)

[signatures continue on following page]


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Signed, sealed and delivered
in the presence of:

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

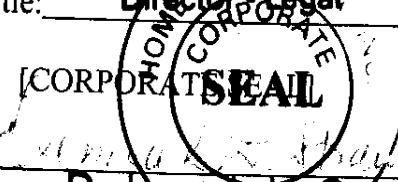


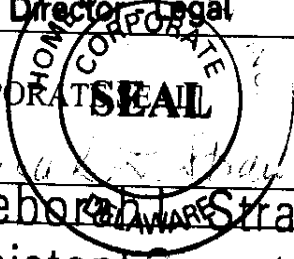
Notary Public

By: 
Name: Jeff Israel
Title: Director Legal

RRP

My commission expires:

Attest: 
Name: Deborah Straw
Title: Assistant Secretary



Property of Cook County Clerk's Office

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EXHIBIT "A"

Halle Property

Lot 2 in the Resubdivision of Lot 1 in Corporate Lakes Subdivision – Unit VI, being a part of the Northeast Quarter of Section 21, Township 35 North, Range 13 East of the Third Principal Meridian, according to the plat of said resubdivision recorded August 11, 2004 as document 0422434011, in Cook County, Illinois

PIN: 31-21-201-008-0000 (Affects the subject property and other land)

C/K/A: Vacant land at the South west corner of Cicero Avenue and Maplewood Lane, Matteson, IL

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EXHIBIT "B"

Home Depot Property

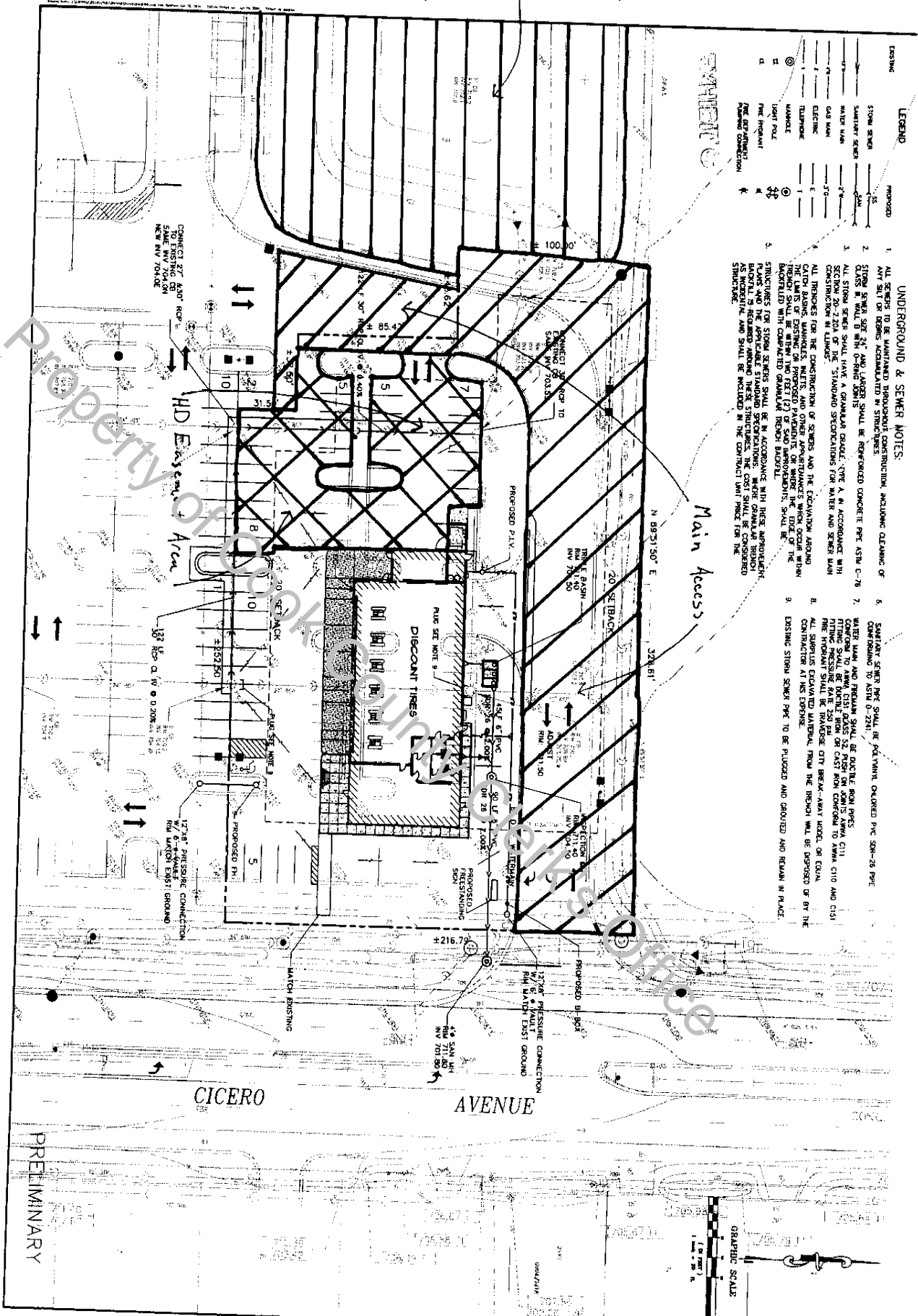
Lot 1 in the Resubdivision of Lot 1 in Corporate Lakes Subdivision -- Unit VI, being a part of the Northeast Quarter of Section 21, Township 35 North, Range 13 East of the Third Principal Meridian, according to the plat of said resubdivision recorded August 11, 2004 as document 0422434011, in Cook County, Illinois

PIN: 31-21-201-008-0000 (Affects the subject property and other land)

C/K/A: 20808 Cicero Avenue, Matteson, IL

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Halle Storm Water Easement Area



DISCOUNT THE CO. INC.

GREENBERG FARROW ARCHITECTURE DEVELOPMENT

1415 N. LAUREL ST. SUITE 200
CHICAGO, IL 60610
PHONE: 312.467.2000
FAX: 312.467.2000

CONSTRUCTION DOCUMENT

141519
06/04

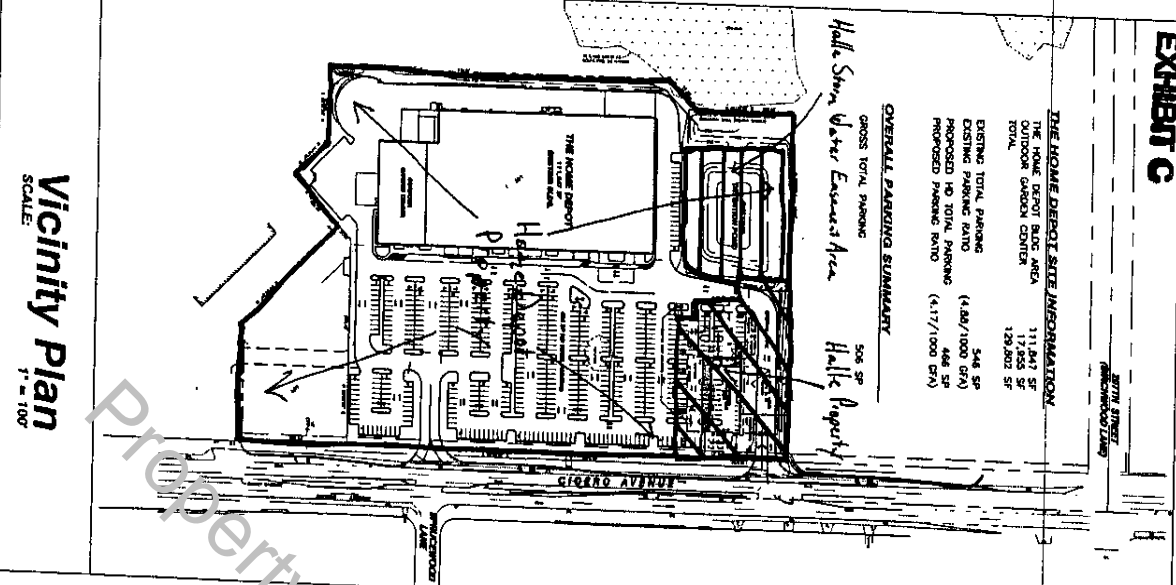
PRELIMINARY UTILITY PLAN

C-6

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EXHIBIT C

Vicinity Plan
SCALE 1" = 100'



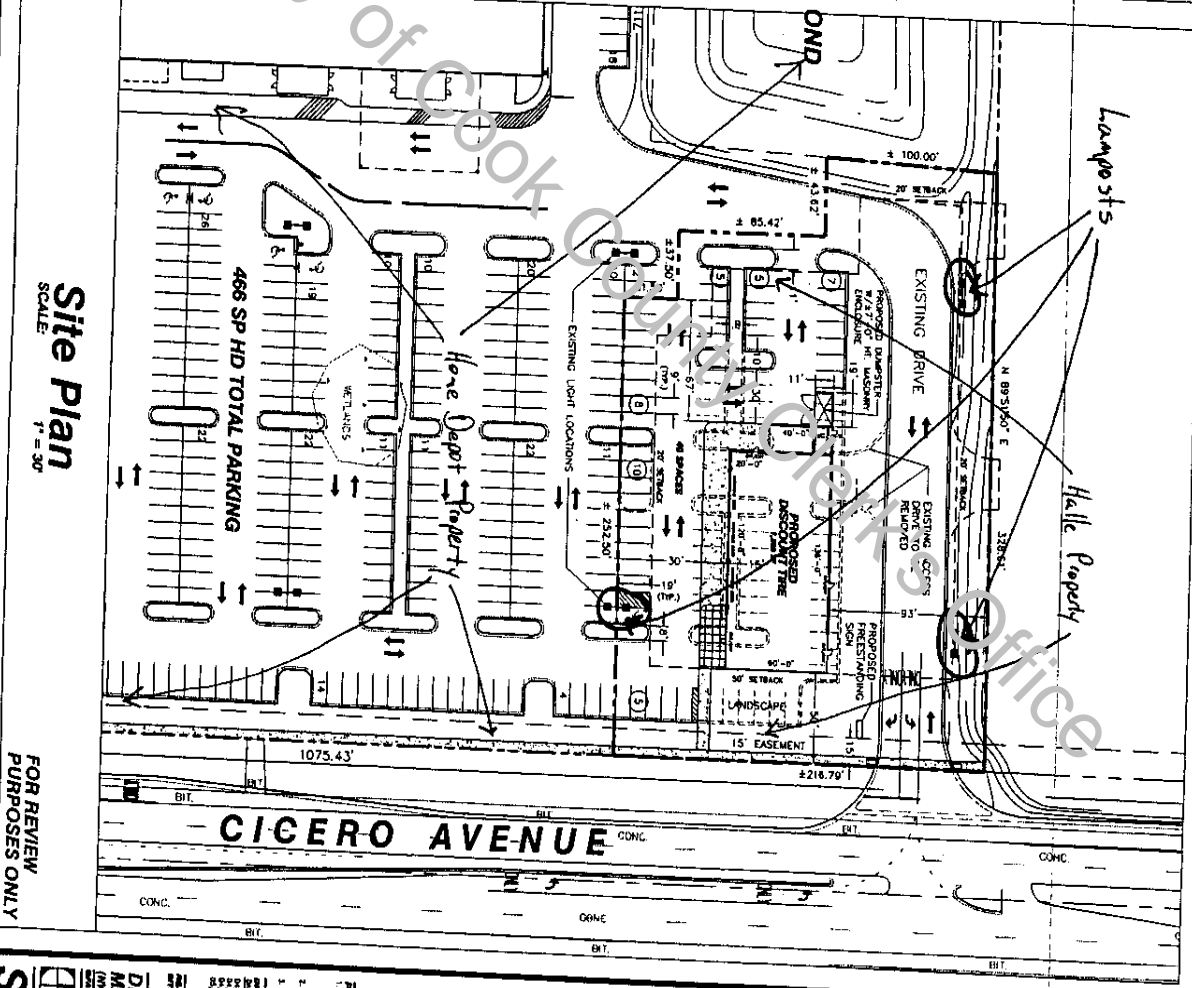
THE HOME DEPOT SITE INFORMATION

THE HOME DEPOT BLDG AREA	111,841 SF
1700N CROTON CENTER	17,853 SF
TOTAL	129,694 SF
EXISTING TOTAL PARKING	544 SP
EXISTING PARKING RATIO	(4.86/1000 SF)
PROPOSED HD TOTAL PARKING	468 SP
PROPOSED PARKING RATIO	(4.17/1000 SF)

OVERALL PARKING SUMMARY

GROSS TOTAL PERSONS	506 SP
---------------------	--------

Site Plan
SCALE 1" = 30'



FOR REVIEW
PURPOSES ONLY

Site Plan-4

EXHIBIT C

PROJECT NOTES

1. THIS SITE PLAN IS FOR THE PROPOSED CONSTRUCTION OF THE HOME DEPOT STORE AT THE INTERSECTION OF HALLE STREET AND CIGERO AVENUE. THE SITE PLAN IS BASED ON AERIAL PHOTOGRAPHS DATED 10/28/04.
2. THE HOME DEPOT STORE IS TO BE CONSTRUCTED ON THE WEST SIDE OF HALLE STREET, ADJACENT TO THE EXISTING HOME DEPOT STORE.
3. THE HOME DEPOT STORE IS TO BE CONSTRUCTED ON A 1.151 AC. PARCEL.
4. THE HOME DEPOT STORE IS TO BE CONSTRUCTED ON A 1.151 AC. PARCEL.

DISCOUNT TIRE CO. MATTISON, ILLINOIS
1700N CIGERO AVENUE & US 30
MATTISON, ILLINOIS 62451

ZONING CLASSIFICATION

REQUIRED BY THE CITY: M2 - MIXED USE
PROVIDED BY DISCOUNT TIRE: M2 - MIXED USE

PARKING COUNT SUMMARY

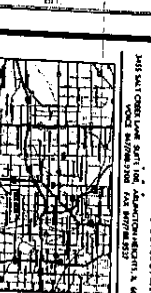
PROVIDED BY THE CITY: 36 SP
PROVIDED BY DISCOUNT TIRE: 49 SP

DISCOUNT TIRE STORE DATA

BASE BUILDING: 7,860 SF
DISCOUNT TIRE: 3,151 AC
OPEN SPACE: 33,348 AC
PARKING LOT AREA (17,702 SF): 0.41 AC

LOCATION MAP

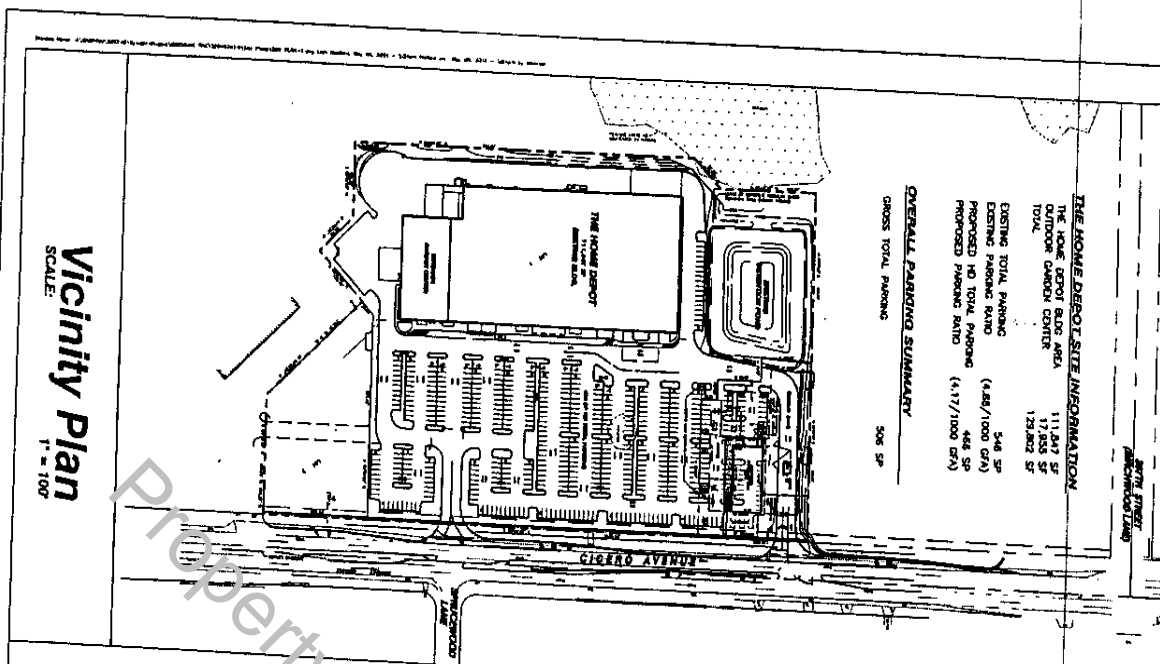
PROJECT INFORMATION



Handwritten initials or signature.

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EXHIBIT C

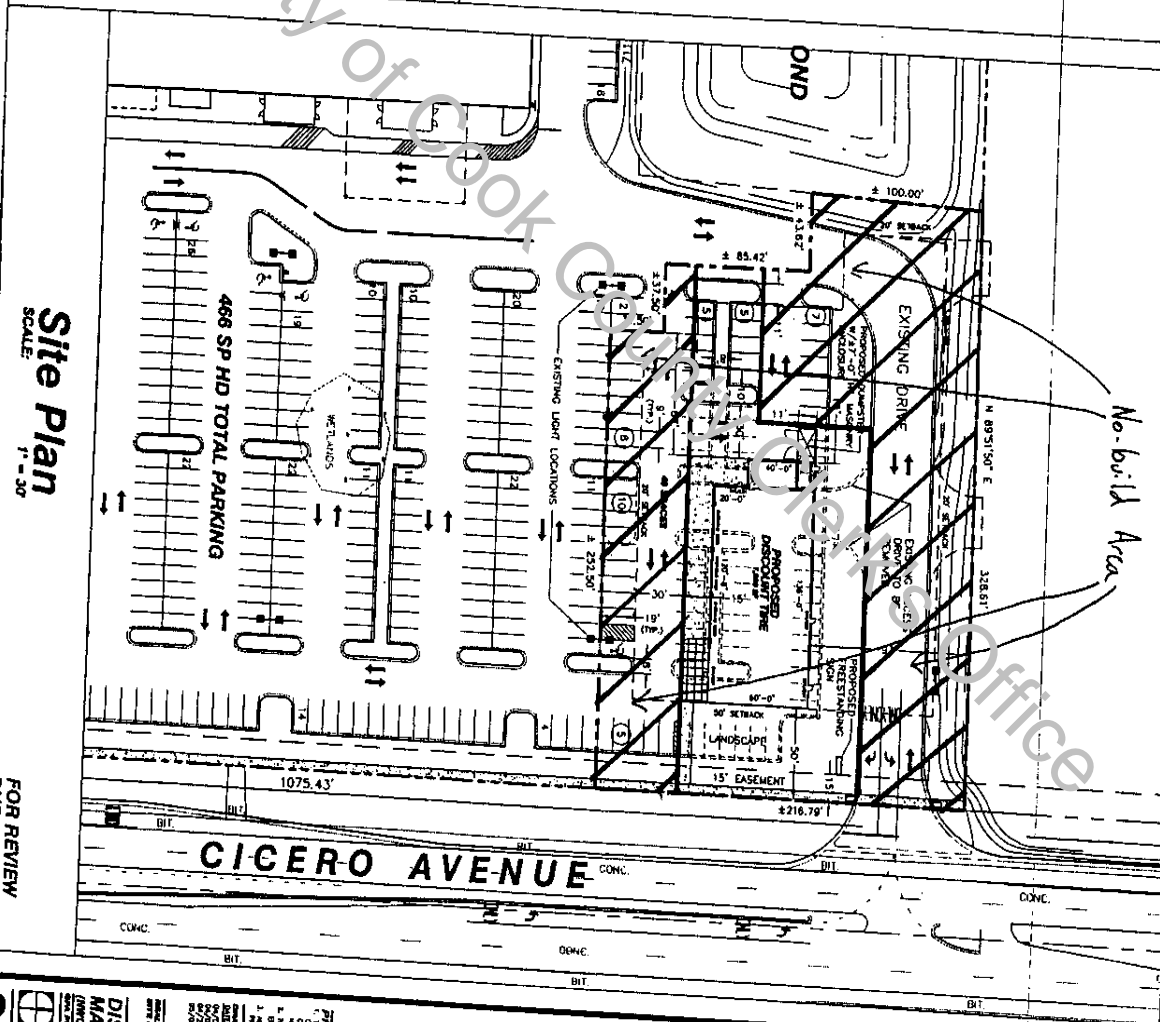


THE HOME DEPOT SITE INFORMATION

THE HOME DEPOT BLVD AREA	11,447 SF
EXISTING HOME DEPOT CENTER	17,835 SF
TOTAL	29,282 SF
EXISTING TOTAL PARKING	348 SP
PROPOSED HD TOTAL PARKING	(488/1000 SP)
PROPOSED PARKING RATIO	488 SP
PROPOSED PARKING RATIO	(417/1000 SP)

OVERALL PARKING SUMMARY

GROSS TOTAL PARKING	506 SP
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CHERUBIC FARROW ARCHITECTURE
ARCHITECTS/PLANNERS/ENGINEERS/DESIGNERS
2000 BAKER DRIVE, SUITE 100, BLOOMINGTON, IL 61710
TEL: 309.244.1100 FAX: 309.244.1101

PROJECT INFORMATION

LOCATION MAP

SITE AREA

DISCOUNT TIME	± 1.51 AC
OPEN SPACE	± 3.38 AC
PARKING LOT AREA (17,702 SF)	0.41 AC

DISCOUNT TIME STORE DATA

BASE BUILDING	7,860 SF
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PARKING COUNT SUMMARY

PROVIDED BY DISCOUNT TIME	40 SP
REQUIRED BY THE CITY	36 SP
NET EXCESS	4 SP

ZONING CLASSIFICATION

EXISTING	UOD - URBAN USE
PROPOSED	UOD - URBAN USE

PROJECT NOTES

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
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8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

DISCOUNT TIME CO.
MATTISON, ILLINOIS
17702 CICERO AVENUE & US 50
BLOOMINGTON, IL 61710
TEL: 309.244.1100 FAX: 309.244.1101

Site Plan-4

EXHIBIT C