

UNOFFICIAL COPY

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2660/0414 03 001 Page 1 of 24

1998-10-30 14:58:23

Cook County Recorder

67.50



98982223

THIS INSTRUMENT  
SHOULD BE  
RETURNED TO:

J. Andrew Murphy, Esq.  
Hunton & Williams  
1900 K. Street, N.W.  
Suite 1200  
Washington, DC 20006-1109  
(T) 202/955-1543  
(F) 202/778-2201



Property Tax ID # 02-12-100-083  
02-12-100-084  
02-12-100-080  
01-01-100-078  
01-12-100-005

RECORDER'S SPACE

SUPPLEMENT  
to  
ASSIGNMENT OF LEASE

Palatine, Illinois

24

## SUPPLEMENT TO ASSIGNMENT OF LEASE

SUPPLEMENT, dated as of October 22, 1998 (this "Supplement"), to the ASSIGNMENT OF LEASE, dated as of October 22, 1998 (the "Assignment of Leases"), made by CREDIT SUISSE LEASING 92A, L.P., (the "Lessor"), as assignor in favor of HD REAL ESTATE FUNDING CORP. II, a Delaware corporation (the "Facility Lender"), as assignee.

The parties hereto agree as follows:

1. The Property. In accordance with the Assignment of Leases, the Lessor has executed this Supplement to subject to the Assignment of Leases the Lease between the Lessor, as lessor, and Home Depot U.S.A., Inc., as lessee, as supplemented by the Lease Supplement executed as of even date herewith with respect to the Property described on Schedule 1 attached hereto and made a part hereof by this reference.
2. Integrated Assignment. Following the execution and delivery of this Supplement, this Supplement, and all supplements previously delivered under the Assignment of Leases, shall constitute a part of the Assignment of Leases, a copy of which is attached hereto as Exhibit A and made a part hereof by this reference. The terms and provisions of Exhibit A are expressly incorporated into this Supplement by reference.
3. Confirmation. Except as expressly supplemented hereby, the provisions of the Assignment of Leases are and shall remain in full force and effect. Further, the Lessor hereby reaffirms its obligations under the Assignment of Leases.
4. GOVERNING LAW. THIS SUPPLEMENT AND THE RIGHTS AND OBLIGATIONS OF THE LESSOR UNDER THIS SUPPLEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES), EXCEPT AS TO MATTERS RELATING TO THE CREATION OF LIENS AND THE EXERCISE OF REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE APPLICABLE PROPERTY IS LOCATED.

IN WITNESS WHEREOF, the Lessor has caused this Supplement to be duly executed as of the day and year first above written.

CREDIT SUISSE LEASING 92A, L.P.,  
a Delaware limited partnership

By: Its general partner:  
CREDIT SUISSE FIRST BOSTON, a Swiss bank operating  
through its New York branch

By: [Signature]  
Name: Robert N. Finney  
Title: Managing Director

By: [Signature]  
Name: Carl C. Weatherley-White  
Title: Vice President

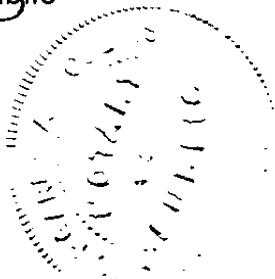
STATE OF GEORGIA )  
 )SS:  
COUNTY OF FULTON )

On the 22 day of October, 1998, before me personally came  
Robert N. Finney to me known, who, being by me duly sworn, did  
depose, acknowledge and say that he/she resides at  
Alpharetta, Georgia, that he/she is a Managing Director of  
Credit Suisse First Boston, the general partner of Credit Suisse Leasing 92A, L.P.,  
the entity described in and which executed the above instrument; and that he/she  
signed his/her name thereto by order of the board of directors of said entity.

[Signature]  
Notary Public

My commission expires

MY COMMISSION EXPIRES OCT. 8, 2002



STATE OF GEORGIA

)

)SS:

COUNTY OF FULTON

)

On the 22 day of Oct., 1998, before me personally came Carl C. Weatherkey-White to me known, who, being by me duly sworn, did depose, acknowledge and say that he/she resides at New York, New York, that he/she is a Vice President of Credit Suisse First Boston, the general partner of Credit Suisse Leasing 92A, L.P., the entity described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the board of directors of said entity.

Margaret A. Accina  
Notary Public

My commission expires

MY COMMISSION EXPIRES OCT. 8, 2002

THIS INSTRUMENT  
PREPARED BY:

Thomas K. Dotzenrod, Esq.  
King & Spalding  
191 Peachtree Street  
Atlanta, Georgia 30303

EXECUTION COPY

---

ASSIGNMENT OF LEASE

dated as of October 22, 1998

from

CREDIT SUISSE LEASING 92A, L.P., as assignor

to

HD REAL ESTATE FUNDING CORP. II, as assignee

---

ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE, dated as of October 22, 1998 (this "Assignment"), made by CREDIT SUISSE LEASING 92A, L.P., a Delaware limited partnership (the "Lessor"), as assignor to HD REAL ESTATE FUNDING CORP. II, a Delaware corporation (the "Facility Lender"), as assignee.

Preliminary Statement

Pursuant to that certain Loan Agreement dated as of even date herewith by and between the Facility Lender, as lender and the Lessor, as borrower (as hereafter amended, modified or supplemented, the "Loan Agreement"), the Facility Lender has agreed to make a term loan to the Lessor from the proceeds of certain Fixed Rate Notes issued by the Facility Lender in an aggregate principal amount not to exceed \$273,278,000, upon the terms and subject to the conditions set forth therein, to be evidenced by the note ("Note") issued by the Lessor under the Loan Agreement.

It is a condition, among others, to the obligation of the Facility Lender to make the loan to the Lessor under the Loan Agreement that the Lessor shall have executed and delivered, and the Lessee shall have consented to, this Assignment to the Facility Lender.

In order further to secure payment of all the amounts advanced under the Loan Agreement, the Note and the other Operative Documents, the Lessor and the Facility Lender have agreed to enter into, execute, and deliver this Assignment.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used but not otherwise defined in this Assignment shall have the respective meanings specified in Appendix 1 attached to the Participation Agreement and made a part hereof by this reference; and the rules of interpretation set forth in such Appendix 1 shall apply to this Assignment.
2. Assignment. The Lessor hereby irrevocably assigns, transfers, sets over and conveys to the Facility Lender all the following described property relating to or arising in connection with the Properties, whether now owned or held or hereafter acquired, exclusively and without any reservation thereof unto the Facility Lender, excluding, in each case, Excepted Payments and Excepted Rights:
  - (a) All of the estate, right, title, interest, benefits, powers and privileges of the Lessor, as lessor, under the Lease (including all Lease Supplements) including, but not by way of limitation except as set forth in the following proviso, (i) the immediate and continuing right to make claim for, receive, collect and receipt for all rents, income, revenues, issues, profits,

insurance proceeds, condemnation awards, sales proceeds and other sums payable to or receivable by the Lessor under the Lease, or pursuant to any provisions thereof, whether as rent or as the purchase price or termination payment for any interest in any Property or otherwise (including, without limitation, the Residual Value Guaranty, the Property Balance and any sales proceeds payable to the Lessor pursuant to the Lease) (collectively, the "Lease Rents"), including all cash, securities or letters of credit delivered or deposited pursuant thereto to secure performance by the Lessee of its obligations under the Lease, (ii) the right to declare the Lease to be in default under Section 17.1 thereof, (iii) the right to exercise remedies under or with respect to the Lease, (iv) the right to make all waivers and agreements on behalf of the Lessor under the Lease provided for or permitted under such Lease, (v) the right to give all notices, consents, releases and other instruments provided under the Lease, (vi) the right to give all notices of default and to take all action upon the happening of a Lease Default or a Lease Event of Default, including the commencement, conduct and consummation of proceedings as shall be permitted under any provision of the Lease, or by law or in equity, (vii) the right to receive all notices sent to the Lessor under the Lease, (viii) the Lessor's interest under the Lease in the Lessee's tangible and intangible property used or arising in connection with any Property, including, but not limited to, permits, licenses, contract rights and prepaid expenses, and (ix) the right to do any and all other things whatsoever which the Lessor is or any lessor is, or may be entitled to do under the Lease, in each case the Lessor hereby agrees that any action taken by the Facility Lender (or its designee) pursuant to this Assignment shall be exclusive, and no party relying on such action of the Facility Lender (or such designee) pursuant hereto shall be required to obtain the concurrence or consent of the Lessor to such action or to a request for such action; provided, however, that in each case the Lessor shall retain, and the foregoing assignment shall in no event include, the Excepted Payments, and the Lessor shall retain, and the rights and powers assigned herein shall in no event include the Excepted Rights.

(b) All of the estate, right, title, interest, benefits, powers and privileges of the Lessor, to and under all other leases, subleases or licenses of each Property, any license, concession, management, mineral or other agreements of a similar kind that permit the use or occupancy of any Property or any part thereof for any purpose in return for any payment, or permit the extraction or taking of any gas, oil, water or other minerals from any Property or any part thereof in return for payment of any fee, rent or royalty, now or hereafter entered into by the Lessor (collectively, the "Other Leases"), together with all estate, rights, title, interest, benefits, powers and privileges of the Lessor, as lessor, under the Other Leases including, without limitation, the immediate and continuing right to make claim for, receive, collect and receipt for all charges, fees, income, issues, profits, receipts, rents, revenues or royalties payable under any of the Other Leases (collectively, the "Other Lease Rents") and all estate, right, title and interest of the Lessor thereunder, including all cash, securities or letters of credit delivered or deposited thereunder to secure performance by the Lessee of its obligations thereunder; provided, however, that the Lessor shall retain, and the Other Lease Rents shall in no event include, the Excepted Payments, and the rights and powers assigned herein shall in no event include the Excepted Rights.

(c) All of the estate, right, title, interest, benefits, powers and privileges of the Lessor, to and under all agreements or contracts for the sale or other disposition of all or any part of any Property, now or hereafter entered into by the Lessor (collectively, the "Contracts"), together with all estate, right, title, interest, benefits, powers and privileges of the Lessor under the Contracts including, without limitation, the immediate and continuing right to make claim for, receive, collect and receipt for all charges, fees, income, issues, profits, receipts, rents, revenues or royalties payable under any of the Contracts (collectively, the "Contract Rents" and, together with the Rent and the Other Lease Rents, the "Rents") and all right, title and interest of the Lessor thereunder, including all cash, securities or letters of credit deposited thereunder to secure performance by the obligors of their obligations thereunder; provided, however, that the Lessor shall retain, and the Contract Rents shall in no event include, the Excepted Payments, and the rights and powers assigned herein shall in no event include the Excepted Rights.

(d) All of the right, title and interest of the Lessor in and to all claims and rights to the payment of money at any time arising in connection with any repudiation, rejection or breach of the Lease by the Lessee or a trustee or receiver of the Lessee (or any Other Lease by any lessee thereunder, trustee or receiver of any such lessee) under any insolvency statute, law or regulation, including, without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by the Lessee or such trustee or receiver (or by such lessee, trustee or receiver) in respect of any Property or any portions thereof following rejection, repudiation or disaffirmance of the Lease or following the entry of an order for relief under any insolvency statute, law or regulation in respect of the Lessee (or such lessee) and all rentals and other charges outstanding under the Lease (or Other Lease) as of the date of entry of such order for relief; provided, however, that the Lessor shall retain all rights with respect to the Excepted Payments, and the rights and powers assigned herein shall in no event include the Excepted Rights.

Upon the Closing Date and upon the substitution of any Property pursuant to Section 7 of the Participation Agreement the Lessor shall execute and deliver a supplement to this Assignment in the form of Exhibit A attached hereto and made a part hereof by this reference, appropriately completed, pursuant to which the Lessor shall acknowledge and agree that such Property will be governed by the terms of this Assignment. Following the execution and delivery of a supplement to this Assignment as provided above, such supplement and all supplements previously delivered under this Assignment, shall constitute a part of this Assignment.



3. Receipt of Rents. The Lessor hereby irrevocably designates the Facility Lender (or its designee or assignee) to receive all payments of the Lease Rents, the Other Lease Rents and the Contract Rents and any other sums payable to the Lessor under the Lease, any Other Lease or any Contract other than those constituting Excepted Payments. The Lessor agrees to direct (and hereby directs) the Lessee, each other lessee and each contracting party to deliver to the Facility Lender (or its designee or assignee), at its address set forth herein or at such other address or to such other Person as the Facility Lender shall designate, all such payments and sums on account of the Lease Rents, the Other Lease Rents and the Contract Rents, and no delivery thereof by the Lessee, any other lessee or any contracting party shall be of any force or effect unless made to the Facility Lender (or its designee or assignee), as herein provided.
4. Delivery of Lease; Receipt of Notices. Upon execution and delivery thereof to the Lessor, the Lessor shall deliver to the Facility Lender (or its designee or assignee) the original of the Lease and of each Lease Supplement. The Lessor hereby designates the Facility Lender (or its designee or assignee) to receive (in addition to, and not to the exclusion of, the Lessor) duplicate originals or copies of all notices, undertakings, demands, statements, documents, financial statements and other communications which the Lessee, any other lessee or any contracting party is required or permitted to give, make, deliver to or serve pursuant to the Lease, any Other Lease or any Contract. The Lessor agrees to direct (and hereby directs) the Lessee, each other lessee and each contracting party to deliver to the Facility Lender (or its designee or assignee), at its address set forth herein or at such other address or to such other Person as the Facility Lender shall designate, duplicate originals or copies of all such notices, undertakings, demands, statements, documents, financial statements and other communications, and no delivery thereof by the Lessee, any other lessee or any contracting party shall be of any force or effect unless made to the Lessor and also made to the Facility Lender (or its designee), as herein provided. The Lessor further agrees that upon receipt by the Lessor of any such notices, undertakings, demands, statements, documents, financial statements and other communications, the Lessor shall promptly deliver copies thereof to the Facility Lender unless the Lessor shall reasonably believe that the Facility Lender has already received such copies.
5. Irrevocability; Supplemental Instruments. The Lessor agrees that this Assignment and the designation and direction to the Lessee set forth in Sections 1 and 2 of this Assignment are irrevocable and that it will not take any action as lessor under the Lease or otherwise which is inconsistent with this Assignment and that any action, assignment, designation or direction inconsistent herewith shall be void. The Lessor will from time to time execute and deliver all instruments of further assurance and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Assignment.
6. The Lessor Remains Liable. While the assignment made hereby is present, direct and continuing, it has been made for the purpose of providing the Facility Lender with security for the performance of the Lessor's obligations under the Loan Agreement and the Note and the execution and delivery hereof shall not impair or diminish in any way the obligations of the Lessor under the Lease or impose any of such obligations on the Facility Lender. This

Assignment shall not operate to cause the Facility Lender (or its designee or assignee) to be regarded as a mortgagee in possession. Neither the Facility Lender nor its designee or assignee shall be responsible or liable for performing any of the obligations of the Lessor under the Lease, any Other Lease or any Contract, for any waste by Lessee or others, for any dangerous or defective conditions of any Property, for negligence in the management, upkeep, repair or control of any Property or any other act or omission by any other Person. Nothing contained herein shall operate or be construed to (i) obligate the Facility Lender (or its designee or assignee) to assume the obligations of the Lessor under the Lease, any Other Lease or any Contract, to perform any of the terms and conditions contained in the Lease, any Other Lease or any Contract or otherwise to impose any obligation upon the Facility Lender with respect to any Lease, any Other Lease or any Contract or (ii) place upon the Facility Lender (or its designee or assignee) any responsibility for the operation, control, care, management or repair of any Property or any part thereof.

7. Lessee's Consent. The Lessor and the Facility Lender hereby consent to the provisions of each Lessee's Consent in the form attached to this Assignment as Exhibit B and made a part hereof and agree to be bound thereby. Nothing in this Section shall be construed as limiting or otherwise affecting in any way (i) the Lessor's Excepted Rights or (ii) the Lessor's right to receive directly the Excepted Payments.
8. Absolute Assignment. The Lessor has, subject to and in accordance with the terms and conditions of this Assignment, assigned and transferred unto the Facility Lender all of the Lessor's right, title and interest other than with respect to Excepted Rights and Excepted Payments in and to Lease Rents, Other Lease Rent and Contract Rent now or hereafter arising from the Lease, any Other Lease or any Contract heretofore or hereafter made or agreed to by the Lessor, it being intended to establish an absolute transfer and assignment, subject to and in accordance with the terms and conditions of this Assignment, of all such Lease Rents, the Lease, the Other Leases and the Contracts to the Facility Lender and not merely to grant a security interest therein. The Facility Lender (or its designee or assignee) may other than with respect to Excepted Rights and Excepted Payments in the Lessor's name and stead exercise the Lessor's rights under the Lease. Nothing in this Section shall be construed as limiting or otherwise affecting in any way (i) the Lessor's Excepted Rights or (ii) the Lessor's right to receive directly the Excepted Payments.
9. Ongoing Right to Collect Rents; Receivers. If notwithstanding the terms of this Assignment, a petition or order for sequestration of rents, or the appointment of a receiver or some similar judicial action or order is deemed required under applicable state law to allow the Facility Lender to continue to collect the moneys described in paragraphs 2(a), (b), (c) and (d) of this Assignment, then it is agreed by the Lessor that any proof of claim or similar document filed by the Facility Lender in connection with the breach or rejection of the Lease by the related Lessee thereunder or the trustee of any lessee under any federal or state insolvency statute shall for the purpose of perfecting the Facility Lender's rights conferred in said paragraph (d) be deemed to constitute action required under such state law.

10. Amendment. This Assignment may not be amended or otherwise modified except by a writing signed by the Lessor and the Facility Lender (and its designee or assignee) in accordance with the terms of the Participation Agreement.
11. Notices. All notices, demands, requests, consents, approvals and other instruments under this Assignment shall be made in accordance with the notice provisions of the Participation Agreement.
12. Successors and Assigns. All covenants, agreements, representations and warranties in this Assignment by the Lessor and the Facility Lender shall bind, and shall inure to the benefit of and be enforceable by, their respective successors and assigns, whether or not so expressed. The Lessor expressly acknowledges and agrees that the Facility Lender shall assign its right, title and interest hereunder to the Indenture Trustee pursuant to the Master Assignment and that the Indenture Trustee shall be entitled to exercise the rights and remedies of the Facility Lender hereunder.
13. Severability. If any provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of law of competent jurisdiction to be in violation of any local, state or Federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of the parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interests of the Lessor, the Facility Lender and the Lessee under the remainder of this Assignment shall continue in full force and effect.
14. **GOVERNING LAW. THIS ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE LESSOR UNDER THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES), EXCEPT AS TO MATTERS RELATING TO THE CREATION OF LIENS AND THE EXERCISE OF REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE APPLICABLE PROPERTY IS LOCATED.**
15. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

16. Limitation on Recourse Against Lessor. Notwithstanding anything contained in this Assignment to the contrary, Facility Lender agrees to look solely to Lessor's (or to any partner thereof's) estate and interest in the Properties and rights under the Operative Documents for the collection of any judgment requiring the payment of money by Lessor in the event of liability by Lessor, and no other property or assets of Lessor or any shareholder, owner or partner (direct or indirect) in or of Lessor, or any director, officer, employee, beneficiary, Affiliate of any of the foregoing shall be subject to levy, execution or other enforcement procedure for the satisfaction of Facility Lender's remedies against Lessor under or with respect to this Assignment, the relationship of Lessor and Facility Lender hereunder or Facility Lender's use of the Properties or any other liability of to Lessor to Facility Lender; provided that, nothing herein shall limit recourse against the Lessor or its partners for the gross negligence or willful misconduct of such Persons or claims proximately caused by Lessor's breach of its obligations pursuant to Sections 9.1, 10.2 (solely with respect to the first sentence thereof), 10.3, 10.4, 10.6(a), (g), (h) or 10.7 of the Participation Agreement; provided further, that the foregoing proviso is intended to allow a claim for damages against Lessor but shall not be construed as creating a full recourse obligation on the part of Lessor (or any partner thereof) to repay the Loan or any amounts relating to the Loan arising under the Loan Agreement and the Note.

IN WITNESS WHEREOF, the Lessor has caused this Assignment to be duly executed as of the day and year first above written.

Witnessed by:

Name: Missy Price

CREDIT SUISSE LEASING 92A, L.P.,  
as Lessor, a Delaware general partnership

BY: CREDIT SUISSE FIRST BOSTON,  
its general partner

Name: Mike John

By: [Signature]  
Name: Robert Firney  
Title: Managing Director

By: [Signature]  
Name: Walter H. H.  
Title: Vice President

STATE OF GEORGIA )  
 ) SS.:  
COUNTY OF FULTON )

The foregoing instrument was acknowledged before me this 22 day of October, 1998, by Robert N. Finney, the Managing Director, and Carl C. Weatherly, the Vice President of Credit Suisse First Boston, a Swiss bank operating through its New York branch, and the general partner of Credit Suisse Leasing 92A, L.P., a Delaware limited partnership, on behalf of the bank and the limited partnership.

Margaret A. Curran

Notary Public

My Commission Expires: MY COMMISSION EXPIRES OCT. 2, 2002

When recorded return to:

Hunton & Williams  
1900 K Street, N.W.  
Suite 1200  
Washington, DC 20006-1109  
Attention: J. Andrew Murphy, Esq.

## EXHIBIT A

### FORM OF SUPPLEMENT TO ASSIGNMENT OF LEASE

SUPPLEMENT, dated effective as of \_\_\_\_\_ (this "Supplement"), to the ASSIGNMENT OF LEASE, dated as of \_\_\_\_\_, 1998 (the "Assignment of Lease"), made by CREDIT SUISSE LEASING 92A, L.P., (the "Lessor"), as assignor in favor of HD REAL ESTATE FUNDING CORP. II, a Delaware corporation (the "Facility Lender"), as assignee.

The parties hereto agree as follows:

1. The Property. In accordance with the Assignment of Lease, the Lessor has executed this Supplement to subject the Lease between the Lessor, as lessor, and Home Depot U.S.A., Inc., as lessee, as supplemented by the Lease Supplement executed as of even date herewith with respect to the Property described on Exhibit A to the Lease Supplement. The description of the Property is attached hereto as Exhibit A and made a part hereof by this reference.

2. Integrated Assignment. Following the execution and delivery of this Supplement, this Supplement, and all supplements previously delivered under the Assignment of Lease, shall constitute a part of the Assignment of Lease, a copy of which is attached hereto as Exhibit B and made a part hereof by this reference.

3. Confirmation. Except as expressly supplemented hereby, the provisions of the Assignment of Lease are and shall remain in full force and effect. Further, the Lessor hereby reaffirms its obligations under the Assignment of Lease.

4. GOVERNING LAW. THIS SUPPLEMENT AND THE RIGHTS AND OBLIGATIONS OF THE LESSOR UNDER THIS SUPPLEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES), EXCEPT AS TO MATTERS RELATING TO THE CREATION OF LIENS AND THE EXERCISE OF REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE APPLICABLE PROPERTY IS LOCATED.



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IN WITNESS WHEREOF, the Lessor has caused this Supplement to be duly executed as of the day and year first above written.

CREDIT SUISSE LEASING 92A, L.P.,  
a Delaware limited partnership

BY: CREDIT SUISSE FIRST BOSTON,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[ADD APPROPRIATE FORM  
OF NOTARY BLOCK]

Property of Cook County Clerk's Office



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Exhibit A  
to Supplement

[Description of Property]

Property of Cook County Clerk's Office

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Exhibit B to Supplement

[Copy of Assignment of Lease]

Property of Cook County Clerk's Office

## LESSEE'S CONSENT

HOME DEPOT U.S.A., INC. (the "Lessee") hereby consents and agrees to all of the terms of the Assignment of Lease dated as of \_\_\_\_\_, 1998 (as amended, supplemented or otherwise modified from time to time, the "Assignment"), made by Credit Suisse Leasing 92A, L.P. (the "Lessor"), as assignor to HD Real Estate Funding Corp. II, a Delaware corporation ("Facility Lender"), as assignee and further agrees as follows:

1. Acknowledgments, Confirmations and Agreements. The Lessee acknowledges, confirms and agrees that: (a) the Lessee has the right, power and authority to enter into this Consent (this "Consent"); (b) the Lease, dated as of \_\_\_\_\_, 1998, between the Lessee and the Lessor (the "Lease"; capitalized terms used herein, and not otherwise defined herein, shall have the meaning assigned thereto in the Lease) is in full force and effect and enforceable against Lessee in accordance with its terms; (c) neither the Lessee nor, to the Lessee's knowledge, the Lessor is in default in the observance or performance of any condition or agreement to be observed or performed by the Lessee or the Lessor, respectively, thereunder; (d) no Basic Rent has been paid by the Lessee in advance; (e) no Rent has been waived, released, reduced, discounted or otherwise discharged or compromised by the Lessor; and (f) the Lessee has not received notice of any other assignment of the Lessor's interest in the Lease other than as permitted by the Operative Documents.

2. Consent. (a) The Lessee, as lessee under the Lease, consents to the Assignment and each of the terms thereof, and agrees to pay and deliver to the Facility Lender (or its designee or assignee) all Rent and other sums payable under the Lease without any offset, deduction, defense, abatement, deferment, diminution or counterclaim, and the Lessee will not assert any offset, deduction, defense (other than the defense of payment to the Facility Lender (or its designee or assignee)), abatement, deferment, diminution or counterclaim in any proceeding brought under the Assignment or with respect to the transactions contemplated therein or herein; provided, that the Lessee shall not pay or deliver to the Facility Lender any amounts representing Excepted Payments. The Lessee will not, for any reason whatsoever, seek to recover from the Facility Lender (or its designee or assignee) any moneys paid to the Facility Lender (or its designee or assignee) by virtue of the Assignment. The Lessee agrees (i) to deliver to the Facility Lender (or its designee or assignee) and the Lessor, at their addresses set forth in the Participation Agreement or at such other addresses as the Facility Lender or the Lessor, as the case may be, may designate, duplicate originals or copies of all notices, undertakings, demands, statements, documents and other communications which the Lessee is required or permitted to deliver pursuant to the Lease or the Assignment; (ii) that, subject to the Excepted Rights, any notice delivered or declaration made to the Lessee by the Facility Lender (or its designee or assignee) pursuant to the Lease shall be effective as a notice given or declaration made to the Lessee by the Lessor as lessor under the Lease; (iii) that the Facility Lender (and its designee or assignee) shall not by reason of the Assignment be subject to any liability or obligation under the Lease; and (iv) that (other than with respect to Excepted Payments and Excepted Rights) any

waiver, consent or approval by the Lessor under the Lease shall not be valid unless approved in writing by the Facility Lender (or its designee or assignee).

(b) The Lessee hereby agrees that upon a Lease Event of Default, the Facility Lender (or its designee or assignee) shall have the right to deliver a notice of default under the Lease, which shall be effective for all purposes under the Lease as if sent by the Lessor.

(c) To the extent that Lessee, in good faith, is unable to determine whether a payment pursuant to the Lease constitutes an Excepted Payment, it shall be entitled to deposit such amount in the Cash Collateral Account, with such dispute to be resolved by the Participants.

3. Amendment or Termination of the Lease or the Assignment; Facility Lender's Designation. The Lessee agrees that it will not, except in accordance with the express terms of the Lease and except with respect to Excepted Rights and Excepted Payments, unilaterally or by agreement, subordinate, amend, supplement, modify, extend (except in accordance with the express terms of the Lease), discharge, waive or terminate the Lease or this Consent or any provision of any thereof without the Facility Lender's prior written consent, and that any attempted subordination, amendment, supplement, modification, extension, discharge, waiver or termination without such consent shall be null and void. In the event that the Lease shall be amended or supplemented as herein permitted, the Lease, as so amended or supplemented, shall continue to be subject to the provisions of the Assignment and this Consent without the necessity of any further act by any of the parties hereto. Nothing in this Section 3 shall be construed as limiting or otherwise affecting in any way (i) the Lessor's Excepted Rights or (ii) the Facility Lender's right to receive directly the Excepted Payments.

4. Continuing Obligations of the Lessor and the Lessee. Neither the execution and delivery of the Assignment, nor any action or inaction on the part of the Facility Lender shall impair or diminish any obligations of the Facility Lender or the Lessee under the Lease, and shall not impose on the Facility Lender (or its designee or assignee) any such obligations, nor shall it impose on the Facility Lender (or its designee or assignee) a duty to produce Rent or cause the Facility Lender to be a mortgagee in possession for any purpose.

5. Severability. If any provision or provisions, or if any portion of any provision or provisions, in this Consent is found by a court of law of competent jurisdiction to be in violation of any local, state or Federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of the Lessee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Consent shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, and that the rights, obligations and interests of the Lessor, the Facility Lender and the Lessee under the remainder of this Consent shall continue in full force and effect.

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6. GOVERNING LAW. THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE LESSEE UNDER THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES), EXCEPT AS TO MATTERS RELATING TO THE CREATION OF LIENS AND THE EXERCISE OF REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE APPLICABLE PROPERTY IS LOCATED.

IN WITNESS WHEREOF, the Lessee has caused this Consent to be duly executed as of the \_\_\_\_ day of October, 1998.

HOME DEPOT U.S.A., INC.

By: \_\_\_\_\_

Name: Carol B. Tome'

Title: Vice President & Treasurer

Attest: \_\_\_\_\_

Name: Mary Beth Lamoree

Title: Assistant Secretary

[CORPORATE SEAL]

Signed, sealed and delivered this  
\_\_\_\_ day of October, 1998 in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

[NOTARIAL SEAL]

Property of Cook County Clerk's Office

Schedule 1

Description of Property

Common  
Address:

\_\_\_\_\_

P.I.N.:

\_\_\_\_\_

Property of Cook County Clerk's Office

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## SCHEDULE I

### PARCEL 1:

LOTS 1 AND 1A IN HOME DEPOT PALATINE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST ¼ OF SECTION 12, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MAY 19, 1997 AS DOCUMENT NO. 97353781.

### PARCEL 2:

EASEMENTS AND RIGHTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE RECIPROCAL EASEMENT AND OPERATING AGREEMENT DATED MAY 16, 1997 RECORDED MAY 19, 1997 AS DOCUMENT NO. 97353789.

### PARCEL 3:

EASEMENTS AND RIGHTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE EASEMENT AGREEMENT DATED MAY 16, 1997 AND RECORDED MAY 19, 1997 AS DOCUMENT 97353791.

### PARCEL 4:

EASEMENTS AND RIGHTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE EASEMENT AGREEMENT DATED MAY 16, 1997 AND RECORDED MAY 19, 1997 AS DOCUMENT NO. 97353792.

### PARCEL 5:

EASEMENTS AND RIGHTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE CROSS ACCESS EASEMENT AGREEMENT DATED MAY 16, 1997 AND RECORDED MAY 19, 1997 AS DOCUMENT 97353790.

**Tax NO:** 02-12-100-083  
02-12-100-084  
02-12-100-080  
02-12-100-078  
02-12-100-051

**Address:** 825 E. Dundee Road  
Palatine, Illinois